

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Custom Reference No. 03/2021

The Deputy Collector Customs, Dry Port, Islamabad

Versus

M/s Aamir Muhammad & Company, etc.

Applicant by: Mrs. Misbah Gulnar Sharif, Advocate.

Respondent No.1 by: Mr. Touqeer Akram, Advocate.

Date of Decision: 15.09.2021.

MOHSIN AKHTAR KAYANI J. Through the Custom Reference, the applicant has assailed the judgment dated 01.06.2020, passed by learned Customs Appellate Tribunal, Islamabad, whereby, appeal filed by respondent No.1 was allowed and order-in-original was set aside.

2. Learned counsel for the applicant contends that Customs Appellate Tribunal, Islamabad has set aside the order which has been initiated on the basis of show cause notice dated 06.09.2018, whereby audit observation has been raised by the Director General Customs after verifying different six GDs, whereby goods were correctly classified under PCT heading 8707.1000 and eight different GDs have been found under different PCT heading which amounts to misclassification resulted in non-realization of Government revenue amounting to Rs.10,87,970/-; that order-in-original, dated 19.12.2018, passed by Additional Collector (Adjudication) is in accordance with law and no illegality has been observed in the said order but learned Customs Appellate Tribunal, Islamabad has not considered the audit observations and misclassification of different PCT headings in the GDs.

3. Conversely, learned counsel for respondent No.1 raised primarily objection of maintainability on the ground of limitation while referring the

provision of Section 196 of the Customs Act, 1969 with the claim that reference should have been filed within 90 days of the date on which aggrieved person or the Collector as the case may be served with the order of Appellate Tribunal in terms of Customs Act, 1969, where-after authorized officer may prefer an application; that the order appended with the instant reference apparently discloses the delay of approximately seven months and seven days; that reference application has been filed and signed by Assistant Collector Dry Port who is not an authorized officer and as such instant custom reference is liable to be dismissed.

4. Arguments heard, record perused.

5. Perusal of record reveals that respondent No.1 imported half cut bodies of cars and light vehicle through various GDs and got their clearance of different 667 GDs, however eight GDs have been marked under objection by the Directorate General Audit Customs for the year 2016-2017, which have been declared as misclassified resulted in non-realization of government revenue amounting to Rs.10,87,970/- and show cause notice dated 06.09.2018 was issued. The matter has been contested by the respondent, however, the Additional Collector (Adjudication) passed the order-in-original on 19.12.2018 against respondent whose appeal before Customs Appellate Tribunal, Islamabad was allowed vide judgment dated 01.06.2020.

6. While going through the primary objection of limitation, it has been observed that the Customs Appellate Tribunal, Islamabad has passed the judgment on 01.06.2020 and accordingly copy of the same was dispatched to both the parties including respondent on 05.06.2020. However, reference has been filed before this Court on 16.03.2021 for the first time and finally after clearance of objections on application for condonation of delay, CM No.03/2020 has also been filed by the applicant with the following reasons:-

That due to the complete lock down has been announced by the Federal/Provincial Governments, by reason of spread of Pandemic Noval

Corona virus in different parts of the country the building of the dry port has vacated many time for spray and the staff has also been curtailed.

That department received the intimation late due to unavoidable situation and circumstances, and on account of curtailment of movement and non availability of means of transportation, it became impossible to get the necessary permissions and documents and send to the advocate concerned in order to file Custom reference before the Honorable High Court, which also was not available and the courts are also closed for reasons beyond the control.

7. The above referred reasons of condonation of delay relates to Covid-19 pandemic and as such it is the stance of department that on account of curtailment of movement and non availability of means of transportation the custom reference could not be filed in time but this aspect has not been justified through any relevant documentary evidence. Even the order appended with this reference application reveals that attested copy was issued on 08.02.2021, even no stamp on application is affixed on the back of said order, therefore, only date for calculation of limit is considered to be 08.02.2021, which is apparently after seven months and seven days of passing of the impugned order by the Customs Appellate Tribunal, Islamabad. Even then the filing of Custom reference is to be calculated from 16.03.2021 when it was filed before this court for the first time, such aspect clearly establishes that reference has been filed with delay and reasons referred in the application for condonation of delay are an afterthought and not supported with any notification or documentary evidence that the applicant is precluded from approaching to this court especially when this court remains functional in this entire period of Covid-19 pandemic.

8. We have also gone through the reported judgments 2016 PTD 55 (Collector of Customs through Additional Collector of Customs vs. Shahdev Vankwani), 2017 PTD 1207 (Pakistan Soap Manufacturer Association through Chairman vs. Customs Appellate Tribunal and 2 others), 2020 PTD 523 (Noor Muhammad vs. Customs Appellate Tribunal, Peshawar) and confronted learned counsel for the applicant to justify the reasons of delay on some substantial basis

but the applicant fails to justify the plausible explanation for each and every day which is the primary duty of the applicant.

9. We have also gone through the record and confronted learned counsel for the applicant qua the conduct of Appraiser, who has cleared the goods on the misclassified GDs as alleged by the applicant but there is no evidence qua any goods which have been recovered or could be identified other than half cut bodies of the vehicle and as such the Customs Appellate Tribunal has rightly observed that all the GDs have been verified by the Customs Authorities at the time of goods assessment by the deputed staff of customs, even all the leviable customs duties/taxes have been paid and goods were made out of charge resultantly it became past and closed transaction. Hence, the audit observations seems to be an afterthought without any basis, even though this aspect is considered to be a factual dispute, which could not be resolved at this stage in any manner.

10. In view of above, we are not inclined to accept this reference which is not made out, which is apparently time barred, hence, the same is hereby *dismissed*.

(BABAR SATTAR)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE