

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Custom Reference No.19 of 2020
Collector Customs, Model Customs Collectorate (MCC), Islamabad
Versus
M/s SUGI Duty Free Shop (Pvt.) Ltd., and another

Date of Hearing: 20.10.2021.
Applicant by: Mr. Muhammad Amin Feroz Khan, Advocate.
Respondent by: Mr. Touqeer Akram, Advocate.

MIANGUL HASSAN AURANGZEB, J:- This customs reference is directed against the judgment dated 02.12.2019 passed by the Customs Appellate Tribunal, whereby the appeal filed by respondent No.1 against the Order-in-Original dated 05.09.2019 passed by the Collector of Customs (Adjudication), Islamabad, was allowed and the said Order-in-Original was set-aside.

2. At the very outset, learned counsel for respondent No.1 raised objection to the maintainability of this custom reference on the ground that the same is barred by time.

3. The Order-in-Original was passed on 02.12.2019, but the Registrar of the Customs Appellate Tribunal had issued the same on 19.12.2019.

4. This custom reference was initially filed on 03.03.2020, which is within the limitation period of 90 days prescribed by law. The file of the custom reference was returned due to office objections which were all ministerial in nature. The office objections were to the effect that annexure in the B-part of the file had not been flagged; two pages in the file were dim copies; and that one civil miscellaneous application was not competent against two separate orders. Other than these objections, the appeal had been timely filed, and once the said objections were cleared, the custom reference was re-filed. Since the office objection was not with respect to any substantive part of the custom reference, we turn down the said objection of maintainability of this custom reference.

5. The applicant's primary challenge to the order dated 02.12.2019 passed by the Customs Appellate Tribunal was that the Collector of Customs (Adjudication), Islamabad had passed the order dated 05.09.2019 in the applicant's favour under section 13 of the Customs Act,

1969 (“the 1969 Act”) and that section 194-A of the 1969 Act does not provide a remedy of an appeal against an order passed under section 13 of the said Act.

6. It is well settled that the right of an appeal is a substantive right and can only be availed if the law provides for the same. A right of an appeal being the creature of statute must be specified in clear terms that an appeal against a certain order was competent. A right of an appeal cannot be supplemented by implication.

7. Perusal of section 194-A of the 1969 Act shows that remedy of an appeal is provided against order passed under section 179 by an Officer of Customs not below the rank of Additional Collector; an order passed by the Collector (Appeals) under section 193; an order passed under section 195 by the FBR or an Officer of Customs not below the rank of Additional Collector; an order passed in revision by Director General, Customs, section 25-D provided that such appeal shall be heard by a special bench consisting of one Technical Member and one Judicial Member. Under section 194-A(2) of the 1969 Act, the FBR or Collector of Customs can prefer an appeal to the Customs Appellate Tribunal if aggrieved by an order passed by Collector (Appeals).

8. Section 194-A of the 1969 Act does not provide a right of an appeal against an order passed under section 13 of the said Act by Collector of Customs (Adjudication). In the case of M/s. Sugi (Pvt.) Ltd. Vs. Collector of Customs (PTCL 2012 CL. 250), the Hon’ble Lahore High Court has held in an unequivocal term that the provision of the Customs Act, 1969 do not confer a right of an appeal against an order passed under section 13 of the 1969 Act. Paragraph 21 of said report is reproduced below:-

“As there is no appeal provided in the statute against order passed under section 13(3)(4) of Customs Act, 1969 and as such this petition is maintainable and this Court has the power to set aside or affirm the order impugned. The upshot of the above said discussion is that the impugned order dated 3-12-2010 and 19-3-2011 are hereby set aside and are declared without lawful authority.”

9. Vide order dated 06.08.2020, passed by this Court in Writ Petition No.804/2018, a writ petition against an order passed by the Collector of Customs under section 13 of the 1969 Act was entertained and allowed since the alternate remedy of filing an appeal against such an order was not provided by the provisions of the 1969 Act.

10. Learned counsel for respondent No.1 placed reliance on the judgement passed in the case of Zainab DF (Pvt.) Ltd. Vs. Customs Appellate Tribunal (2018 PTD 1742) and submitted that the High Court had inherent jurisdiction to refer a matter to the Federal Board of Revenue for revising an order passed under section 13 of the said Act. In the said case, the Customs Appellate Tribunal had dismissed an appeal against an order passed under section 13 of the 1969 Act as the remedy of an appeal against such an order was not provided in the law, however, while deciding the custom reference, the Hon'ble High Court referred the matter to the Federal Board of Revenue for exercising revisional jurisdiction. The said plea made by the learned counsel for respondent No.1 is a tacit admission that no remedy of an appeal is provided in the 1969 Act against an order passed under section 13 of the said Act. We are not inclined to act *suo moto* and refer the matter to the Federal Board of Revenue to exercise revisional jurisdiction over the order dated 05.09.2019 passed by the Collector of Customs. The provision of Article 199 cannot be invoked while deciding Custom Reference.

11. In view of the above, the instant custom reference is answered in affirmative and consequently the order dated 02.12.2019 passed by the Customs Appellate Tribunal is set aside. There shall be no order as to costs.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON _____/2021.

(JUDGE)

(JUDGE)