

HCJD/C-121
ORDER SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

Customs Reference Application No.08/2014.

M/s Win Pipe Industries (Pvt.) Ltd.
V E R S U S
Additional Collector, etc.

| S.No. of order/ Proceeding | Date of hearing | Order with signature of Judge, and that of parties or counsel, where necessary. |
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03-7-2014 Mr. Shaukat Ali Qureshi Advocate for Applicant.

This is a reference under Section 196 of the Customs Act, 1969 (hereinafter referred to as "Act"). The relevant facts are, that the petitioner is a Private Limited Company engaged in the manufacture and export of MS pipes, GI pipes, Steel Tubes and profiles. The petitioner is availing the benefit of Duty and Tax Remission for Export Scheme (herein after referred to as "DTRE"). The petitioner imports raw material without payment of duty and taxes under DTRE Scheme for the manufacture of products which are subsequently exported. Chapter-7 of the Customs Rules, 2001, provides for the terms and conditions for availing DTRE facility. The officials of Directorate General Revenue Receipt and Audit (hereinafter referred to as "DGRRA") conducted an audit of the petitioner and in consequence, reported, vide Audit observation No.08, Draft para No.608-Cus., that petitioner had contravened Rule 307(2)(d)(e) of

Customs Rules, 2001. Accordingly a show cause notice dated 28-02-2012 was issued and served on the petitioner. The petitioner was called upon to show cause as to why duty/taxes amounting to Rs.2.057 million alongwith default surcharge should not be recovered. After giving reasonable opportunity to the petitioner, order in original No.08/2013 dated 15-07-2013 was issued by the Additional Collector Customs (Adjudication). The said adjudicating officer found the allegations mentioned in the show cause notice as having been established. It was an admitted fact that the petitioner had not sought the approval of the Regulatory Collector as required under Customs Rules, 2001. The allegations regarding violation of the Customs Rule, 2001, related to the sale of wastage. The petitioner assailed the order in original before the Customs Appellate Tribunal (hereinafter referred to as "Tribunal"). The Tribunal passed its judgment dated 03-02-2014 and the instant reference has been filed under Section 196 of the Act.

2. Mr. Shoukat Ali Qurishi, learned counsel for the petitioner argued that the payment of duty and taxes had already been made and, therefore, the impugned judgment was not in accordance with law. It was contended that 03 questions of law were being raised through reference and the same are as follows:-

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- a) Whether respondent No.1 & 3 have correctly interpreted rule 307-A(2)(e) of the Customs Rules, 2001, when read with Clause-1 of Section 156(1) of the Act.
- (b) Whether the applicant having already paid the due amount of duty and taxes of sales and wastage could be made to pay the same amount twice.
- (c) Whether the order in original NO.08/2013 is time barred in terms of Sub-section (3) of Section 179 of the Act.

3. A query was made from the learned counsel whether the questions of law formulated before this Court under section 196 of the Act, arise out of the impugned judgment of the Tribunal or whether they were taken up or raised in pleadings or at any stage before the Tribunal. The learned counsel could not point out anything on record which would indicate that the questions of law formulated, had been raised in the pleadings, or before any other forum below.

4. Having heard the learned counsel for the petitioner and after perusing the record, we are of the opinion that the instant reference is not maintainable for invoking jurisdiction of this Court, as no question of law arising out of the order of the Tribunal has been formulated before us.

5. By now the principles and law relating to exercise of jurisdiction by this Court under Section 196 of the Act are settled. The provisions of Section 196 expressly confine the maintainability of reference to such questions of law which arise out of the impugned judgment of the Tribunal. The expression 'arising out of such order' in Section 196 of the Act, creates a nexus of the questions of law with the impugned judgment of the Tribunal. The Honourable Supreme Court in the case of "*Messrs Ahmed Karachi Halva Merchants & Ahmad Food Products Vs. The Commissioner of Incom-Tax, South Zone, Karachi*" reported as 1982 S.C.M.R. 489 has interpreted the expression "arises out of such order", in the context of Income Tax Act, 1922, as not including within its concept the question of law which was not raised, argued or decided by the Tribunal. There is preponderance of case law which have enunciated principles in consonance with the aforementioned interpretation of the Honourable Supreme Court. The principles enunciated in case of maintainability of a reference under Section 196 of the Act may be summarized as follows:-

- (I) The scope of a reference application in terms of Section 196 of the Act is limited to a question of law;

- (II) The question of law should arise from the order passed by the Tribunal;
- (III) The question of law should have been raised in the pleadings or before Tribunal, regardless of being adverted to or decided;
- (IV) If a question of law was raised in the pleadings or before the Tribunal and was not adverted to, that in itself is a question of law; and
- (V) The questions of fact, and findings recorded by the Tribunal thereon, unless perverse or erroneous in fact and law, could not be interfered by the High Court in its referral jurisdiction.

6. For the elucidation of the above principles, reference may be made to the following judgments:-

- Messrs Sarwar International through Proprietor and others Vs. Additional Collector of Customs MCC Preventive, AFU JIAP Karachi and others [2013 P.T.D. 813]
- Collector of Customs through Additional Collector of Customs, Karachi Vs. Messrs Qasim International Container Terminal (Pak) Ltd. [2013 P.T.D. 392]
- Messrs Gold Trade Impex through partner and another Vs. Appellate Tribunal Customs, Excise and Sale Tax through Collector Customs, and 2 others [2012 P.T.D. 377]
- Collector of Customs, Karachi Vs. Mazhar-ul-Islam [2011 P.T.D. 2577]
- Collector of Customs, Port Muhammad Bin Qasim, Karachi Vs. Messrs Kaghan Ghee Mills (Pvt.) Ltd [2008 S.C.M.R. 1538]
- Collector of Customs (Appraisement) Vs. Messrs Shahbaz International [2007 P.T.D. 202]
- Pakistan State Oil Company Ltd Vs. Collector of Customs, E&ST (Adjudication-II) and others [2006 S.C.M.R. 425]

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- Collector of Customs, Port Muhammad Bin Qasim, Karachi Vs. Messrs Kaghan Ghee Mills (Pvt.) Ltd. [2006 P.T.D. 541]
- Messrs Zarghoon Zarai Corporation Vs. Collector of Customs and another [2006 P.T.D. 534]
- Collector of Customs and others Vs. Tahir Dawood and others [2005 P.T.D. 1988]

7. After perusal of the record and the impugned judgment, we are of the view that no question of law arises from the impugned order passed by the Tribunal, nor question of law was pleaded and argued, before any of the forums below. We are, therefore, of the view that the impugned order does not require any interference by this Court in its reference jurisdiction.

8. In the light of the above discussion, we do not find any merits in the instant reference application which is, therefore, accordingly *dismissed*.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 3rd July, 2014.

JUDGE

JUDGE

Approved for reporting.

*Luqman/