

14/20

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE MUNIB AKHTER
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

4. AFR

CIVIL PETITION NO.1882 & 1883 OF 2016

(Against judgment dated 09.3.2016 passed by the Islamabad High Court, Islamabad passed in Custom Appeal Nos.13 and 20 of 2003)

Collector of Customs, Islamabad

...Petitioner(s)
(In both cases)

Versus

M/s Askari Cement (Pvt.) Ltd & another
M/s Bestway Cement Co., & another

(In CP 1882/16)
(In CP 1883/16)
...Respondent(s)

For the Petitioner(s):

Dr. Farhat Zafar, ASC
Mr. M.S.Khattak, AOR.

For the Respondent(s):

Mr. Sajid Ijaz Hotiano, ASC
Mr. Mehmood A. Sheikh, AOR.

Date of hearing:

22.1.2020.

ORDER

MAQBOOL BAQAR, J. The respondents, who are engaged in the manufacturing and sale of cement, imported refractory bricks of various classifications, which they declared as falling under PCT headings 6902.1090 and 6902.2090, chargeable to customs duty at the rate of 10% ad-valorem. The above PCT headings relate to refractory bricks which are capable of resisting temperate at or above 1600°C. The department sought expert opinion from three different entities and relying thereupon classified the imported bricks under PCT heading 6902.1010, chargeable to customs duty at the rate of 30%, instead of 10%. Subsequent to show cause notices, orders-in-original were accordingly passed

3

which orders were set-aside by the Customs, Central Excise and Sales Tax Appellate Tribunal, (the Tribunal). The Custom Appeals filed by the department/petitioner, against the order of the Tribunal have been dismissed through the impugned judgment.

2. The controversy before the Tribunal was as to whether the imported bricks, fell under the PCT headings 6902.1090 and 6902.2090 as declared by the respondents, which attracted customs duty @ 10% or under PCT heading 6902.1010, attracting customs duty @ 30%, as determined by the department. For such determination the petitioner/department sought opinion from three entities, namely, M/s Fecto Cement Limited, M/s Heavy Mechanical Complex, Taxila (HMC) and Pakistan Council of Scientific and Industrial Research (PCSIR), and interpreted the same in a manner so as to classify the bricks under PCT heading 6902.1010, chargeable to duties @ 30%, instead of 10%. The Tribunal after examining and analyzing the reports incisively and upon perusal of the relevant literature and specifications relating to the imported bricks thoroughly, upheld the classification as declared by the respondent, as it found that the brick were capable to resisting temperature at 1600°C which characteristics/specification was the sole criteria for distinguishing the refractory bricks falling under PCT heading attracting 10% duty, from those falling under PCT heading attracting 30% duty. The learned High Court elaborately discussed the findings in that regard and found no lacuna or infirmity. The learned ASC for the petitioner has not even claimed any misreading or non-reading in that regard.

3. The learned ASC for the petitioner however submits that since through letter dated 26.12.2001, the concerned Collector of

Customs sought guidance from the Central Board of Revenue (the Board), regarding the departments' point of view purportedly endorsed by HMC and M/s Fecto Cement, that the subject bricks have temperature resistance capacity of less than 1600°C, and are thus chargeable to 30% customs duty, and the Board through its letter dated 08.1.2002, confirmed the above view point, the same should have been prevailed with the Tribunal and the learned High Court. She submitted that the Board is vested with exclusive jurisdiction to classify a product for the purpose of PCT heading and such classification could not have been lawfully disturbed by the Tribunal.

4. The above submission, to say the least, is wholly untenable and misconceived. The resolution of a dispute regarding determination of a PCT heading involves mixed question of law and facts, and thus exclusively falls within the domain of the customs hierarchy, as envisaged by the Customs Act, 1969 (the Act). Such question in the present case also have accordingly been considered and determined by the said hierarchy. The scheme of the Act does not envisage any role of the Board in resolving any dispute relating to the classification of the goods. Indeed in terms of Section 223 of the Act, all officers of the custom and other persons employed in the execution of the Act are obliged to observe and follow orders, instructions and directions of the Board. However proviso to the said section itself restricts the domain of such orders, instructions and directions to the administrative fields only, as it clearly prescribes that the same shall not be so issued to interfere with the discretion of the appropriate officers of customs in exercise of their *quasi-judicial* functions. The instructions, order or directions made or

given must yield to the Act and Rules framed thereunder and should not go beyond the provisions of the statute itself. Direction as envisaged by section 223 of the Act can be given in matters falling within the range of the administrative power so long as the field is not occupied by any statutory provision or a rule. The provisions of the section 223 of the Act, clearly protects discretion of the Appropriate Officers of Customs in exercise of their quasi-judicial functions, where the Board does not figure in the hierarchy of the forums provided for adjudication of assesses liabilities to tax, any interpretation of law by board cannot be treated as a pronouncement by a forum competent to adjudicate upon.

5. Undoubtedly classification of goods for the purpose of duty, determination of the value, and decision of appeals under section 193 of the Act, falls within the scope of quasi-judicial functions under the Act. In case where custom authorities exercise quasi-judicial function, it is not bound by the instructions and directions or orders of the Board which tend to interfere with its judicial discretion. It has to make its own decision on the basis of the facts and circumstances and the law applicable to the case. Customs General Orders are only aids to Customs Officers in order to understand and interpret the Act. They cannot override or modify the law. While exercising quasi-judicial functions the appropriate officer of customs are not subject to the administrative control of the Board by means of orders, instructions or directions. It may be beneficial here to refer to the judgment in the case of **Messrs. Central Insurance Co. and others v. The Central Board of Revenue, Islamabad and others** (1993 SCMR 1232). Relevant

3 portion thereof reads as follows:-

"Though the Central Board of Revenue has administrative control over the functionaries discharging their function under the Ordinance, but it does not figure in the hierarchy of the forums provided for adjudication of assessee's liability as to the tax. Any interpretation placed by the Central Board of Revenue, on a statutory provision cannot be treated as pronouncement by a forum competent to adjudicate upon such a question judicially or quasi-judicially. The Central Board of Revenue cannot issue any administrative direction of the nature which may interfere with the judicial or quasi-judicial functions entrusted to the various functionaries under a statute. The functionaries and directions of the Central Board of Revenue are binding on the section 8 so long as they are confined to the administrative matters. The interpretation of any provision of the Ordinance can be rendered judicially by the hierarchy of the forums provided for under the above provisions of the Ordinance, namely, the Income-Tax Officer, Appellate Assistant Commissioner, Appellate Tribunal, the High Court and the Supreme Court and not by the Central Board of Revenue. In this view of the matter, the interpretation placed by the Central Board of Revenue on the relevant provisions of the Ordinance in the Circular, can be treated as administrative interpretation and not judicial interpretation."

6. In view of the foregoing, there remains no manner of doubt that neither the Tribunal nor the learned High Court was bound by the view point of the department or its conformation by the Board, as wrongly contended by the learned ASC for the petitioner.

7. Another objection raised by the learned ASC for the petitioner was that Bench of the Tribunal that heard and decided the appeal of one of the respondent, namely, M/s Best way Cement

3 Ltd., comprised of member (Technical) only. As both the members

who constituted the Bench were Member (Technical) and no Member (Judicial) participated in the process, which composition is violative of Section 194(c) of the Act, where under a Bench of the Tribunal is essentially required to consists of atleast one Member (Judicial) and one Member (Technical). However, the learned ASC, while raising this objection has lost sight of the fact that the judgment in the case of the other respondent, namely, M/s Askari Cement (Pvt.) Ltd., which case is identical to the case of the respondent M/s Best way Cement, has been rendered by a three member Bench of the Tribunal, out of whom two were Member (Technical) and one was Member (Judicial). Since all the material facts were similar, and the law applicable was the same, in both cases, and thus all the material question involved in both the cases have been attended to and addressed by a Bench of the composition as required by law, the composition of the former Bench is of no consequence. More so when nothing materially distinguishing the two cases from each other has been pointed out.

8. In view of the foregoing, we find the impugned judgment to be just, fair and lawful, giving no space of interference, and would therefore dismiss the petitions.

Islamabad the

22nd January, 2020

'APPROVED FOR REPORTING'

Aamir Sh, /-

13/2/2020