

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL,
KARACHI BENCH-I,
3RD FLOOR, JAMII CHAMBERS,
SADDAR, KARACHI

By Order - Mr. Muhammad Nadeem Qureshi, Member (Judicial-I), Karachi.
Mr. Mohammed Yahya, Member (Technical-I), Karachi

Customs Appeal Nos.K-1049 to 1070/2015

The Collector of Customs,
Through the Deputy Collector of Customs (Group-III),
Model Customs Collectorate of Appraisement (West),
Customs House, Karachi. Appellant

Versus

1. M/s. Ahmed Crockery,
First Floor, Rehmat Centre,
Bara Market, Shahalam,
Lahore
2. The Collector of Customs (Appeals),
81-C, Block-6, PECHS, Karachi Respondents

Date of hearing: 11.12.2015
Date of order: 14.12.2015

Mir Amir Aamar Mir, A.C alongwith Mr. Ghulam Mustafa, A.O, present for the appellants.
Mian Abdul Salam Sajid, Advocate alongwith Mr. Farooq, Advocate, present for the respondents.

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J U D G M E N T



MOHAMMED YAHYA, MEMBER (TECHNICAL-I): By this order we
order to dispose of Customs Appeal Nos. K-1049 to 1070/2015 filed by
Appellant, against the Order-in-Appeal Nos.10160 to 10181 /15 dated 25.05.2015
passed by the Collector of Customs (Appeals) Karachi. These appeals have
identical issue of law and facts therefore, being heard dealt with and
disposed of simultaneously though this common order in the light of the
judgment of the Honorable High Court of Sindh in Customs Reference
No.157 of 2008. S.M. Naqi S/o Syed Muhammad Hussain, Karachi Vs
Collector of Customs (Adj-I) and Others.

Brief facts of the case are that the appellant imported a consignment of
misc. goods from China and filed Goods Declaration No. KAPW-IIC99291-04-
02-2014 for clearance of imported goods in terms of Section 79(1)(a) of the

Customs Act, 1969 and declared the description, classification, quantity, origin, weight and import value supported by the commercial invoice, packing list and bill of lading, FTA etc. The respondent opened their case, for exercise of jurisdiction under section 80 of the Customs Act, 1969 readwith Rule 438 of the Customs Rules, 2001 to dissatisfy the description, classification, quantity, origin, weight and import value.

3. The Collector of Customs, (Appeals) Karachi vide Order-in-Appeal Nos. Nos 10160 to 10181/15 dated 25.05.2015. The operative part of the order reproduced as under:

"I have examined the case record. The appellants have primarily contended that goods were assessed and made out of customs charge about a year ago and that the respondents could not create recovery through "view message". The appellants have also cited order-in-appeal no. 9916, wherein recovery created through view message after clearance of goods without issuance of show cause notice under the relevant provision of law, was set aside by this forum. The respondent could not bring on record any new point of fact or law, or any other reasonable cause for this forum to deviate from previous decisions. Therefore, in line with previous orders, change of value and classification of goods after clearance, without issuing show cause notice is held to be arbitrary and accordingly set aside."

4. Being aggrieved and dis-satisfied with the impugned Order-in-Appeal the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal.

5. On the last date of hearing Mr. Amir Aamar Mir, A.C alongwith Mr. Ghulam Mustafa, A.O, appeared on behalf of the appellant/department reiterated the contentions of the appeal and contended that in terms of the provisions of

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Section 80(2) of the Act, the imported goods and the documents related thereto can be examined / assessed even after clearance of the goods from the port, thus, the learned Collector (Appeals) findings in this regard are incorrect. He further contended that the as per explicit provisions of section 80(3) of the Act, the checking/ re-assessment is to be made without prejudice to any other action including the issuance of the show cause notice in terms of section 32 of the Act. That being so, without re-assessment under section 80(3), the recoverable amount cannot be calculated and without such an amount it is not possible to issue a show cause notice under section 32 of the Act. Thus, in view of the above, the learned Collector (Appeals) findings in para 3 of the impugned order are totally incorrect and against the law and procedure prescribed for the goods to be cleared under WeBOC System and without prejudice to the above in compliance of the learned Collector (Appeals) findings the show cause notice in terms of Section 32(2) read with Section 32(1) and 79(1) of the Act is being issued. He prayed that the

impugned order-in-appeal may kindly be set aside and the subject appeal may kindly be allowed.

06. On behalf of the Respondent, Mian Abdul Salam Sajid, Advocate alongwith Mr. Farooq, Advocate, appeared and contended that the appellant has not come up with clean hands before this august forum since appellant has already forwarded the fresh contravention report in the office of Adjudication Collectorate against the respondent deliberately and knowingly that neither Collector Appeals directed the appellant to prepare and forward fresh contravention to adjudication Collectorate nor did this august forum pass such like orders. Thus, above facts alone are sufficed to prove the malafide on the part of appellant in the titled appeal. He further contended that it is brought to the kind notice of this august forum that on the one hand, appellant has filed the titled appeals in this Hon'ble Forum by taking stance that without issuing the show cause notices, appellant can proceed and adjudge the recovery against the respondents, on the other hand, appellant has also prepared and then forwarded fresh contravention report for adjudication purpose to concern Collectorate of Adjudication. Consequently show cause notices were also issued in this regard and respondents are facing proceeding in this regard at two forums for the same case meaning thereby appellant itself negating its own stance taken in titled appeal thus; after this factual position subject appeal cannot be maintainable at all. He also argued that it is trite law that admitted facts needs not to be proved meaning thereby department by preparing contravention report and then forwarding the same to adjudication Collectorate tantamount to an admission and open acceptance that without show cause notice recovery cannot be adjudged. He prayed that the titled appeal may kindly be dismissed being not maintainable.

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We have gone through the record of the case and heard parties to the dispute. In our view the Order-in-Appeal passed by the Collector (Appeals) is absolutely in conformity with the provisions of Customs Act, 1969 as contained in Section-80, 32 and 179 of the Act. The appellant department is not empowered under Section-80(3) of the Customs Act to reopen 'an out of charge' GD. The importers file GDs under Section 79 and the Customs assess the same under Section 80 during the processing of GD. Once the assessment is finalized and the GD is cleared under Section-83 of the Act, it can only be reopened under Section-195 by the Board or the Collector within two years or an appeal must be filed under Section-193 within 30 days before the Collector Appeals or a Show-Cause Notice be issued under Section-32(3) of the Customs Act.

8. In the instant case the Customs did not undertake the right course of action and opted to reopen the GD by sending a view message, which action is not warranted under the Customs law. This Appellate Tribunal came to know through the Preliminary Objection on Maintainability of the subject appeal filed by Respondent No. 1 that the appellant department had also forwarded a contravention report to the office of Adjudication Collectorate and Show-Cause Notice had also been issued in this regard. This action of the appellants renders this appeal infructuous as the right course of action has now been adopted by the Customs by referring the case to the Adjudication Collectorate. In light of the above discussions, the appeal is dismissed with no order as to cost.

9. Order passed and announced accordingly.

sd/-
(MOHAMMED YAHYA)
Member (Technical-I)
Karachi

sd/-
(MUHAMMAD NADEEM QURESHI)
Member (Judicial-I)
Karachi

*W287
2/2/15*

GOVERNMENT OF PAKISTAN
CUSTOMS AND EXCISE TRIBUNAL

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Appeal No. Old ~~15/1065/15~~ 2577/2015
Appeal No. New ~~15/1065/15~~ 2577/2015
M/s. ~~Collector of Customs through D.C of Div III MIA APP (WDA) K~~
C.A. ~~10/60/10/18/15~~ 2575/15 V/s. ~~Taka Enterprise~~
Collector of Customs through D.C of Div III MIA APP (WDA) K

1- Collector of Customs through D.C of Div III MIA APP (WDA) K
2- Mian Abdul Salam Sajid Khan V/s. Taka Enterprise

Additional / Quetta
Sukkur / Quetta

M. M. M. M.

Assistant Registrar-I
Asstt. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench

25/6768/2015/A-west