

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

Before: Ch. Muhammad Tariq, Chairman/Member Judicial,
Islamabad
Mr. Khalid Mahmood, Member Technical-I, Islamabad

Customs Appeals No.K-1203 of 2010

M/s. Limsa Agencies (Pvt. Ltd.),
Room No.1, Ground Floor,
20-Ebrahim Building, West Wharf Road,
Karachi.



Appellant

Versus

The Collector of Customs (Appraisement),
Custom House,
Karachi.

Respondents

Mr. Muhammad Abbas, Advocate for the appellant.
Mr. Arslan Majced - Assistant Collector & Mr. Sahib-e-Ikram PA
for the respondents.

Date of hearing: 06-05-2015
Date of Order: 18-05-2015

J U D G M E N T

ATTESTED



Ch. Muhammad Tariq/Chairman: This appeal has been directed under Section 194-A of the Customs Act, 1969, against Order-in-Original No.APPG/LA/CPBC/17/2002 dated 03-08-2006, passed by the Collector of Customs, Appraisement, Karachi.

02. Brief facts of the case are that the Collector of Customs, Peshawar vide letter C.No.EXP/MISC/06/6796 date 12-06-2006 had reported to the Appraisement Collectorate that some containers stuffed with imported goods destined from Karachi ports to Peshawar Dry Port were not properly accounted for at the port of destination. Consequently an audit team was constituted by the Collectorate to conduct probe and scrutiny of the relevant record of Pakistan Railways vis-à-vis the transshipment permits

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issued by Collectorates of Customs Appraisement and Port Qasim, Karachi. It was reported that eight containers transported by bonded carrier M/s. Limsa Agencies (Pvt.) Limited Karachi did not present with their documents to the Customs staff at Peshawar Dry Port for examination, assessment and payment of leviable duty and taxes. Moreover, on inquiry from Import Section at Karachi and staff of both the Collectorates, it also transpired that the said bonded carrier failed to submit the requisite documents as required under sub-rule (4) & (5) of Rule 336 for clearance of consolidated carrier manifest within 20 days of transshipment of the imported goods. It was further reported that Pakistan Railways at Peshawar admitted receipt of four out of eight containers, but as per record of Railways these containers were handed over to the Customs Agent M/s. Shinwari Customs Agency, Peshawar without fulfilment of legal formalities by the above said bonded carrier. During investigation Mr. Bashir, representative of M/s. Shinwari Customs Agency, disclosed that these cases were processed by one Mr. Arshad representative of Customs Bonded Carrier, namely, M/s. Limsa Agencies (Pvt.) Limited Karachi who were responsible for preparing TPs etc. M/s. Limsa Agencies (Pvt.) Limited, Customs Bonded Carrier were also responsible for safe and secure transportation of bonded goods and handing it over to the custodian at Peshawar Dry Port. M/s. Limsa Agencies (Pvt.) Limited deliberately misused the facility provided under Transshipment Rules issued vide SRO 450(I)/2001, dated 18-06-2001 and violated the transshipment rules 235 and 236 of Customs Rules, 2001.



03. The Order-in-Original dated 28-08-2007, was challenged before this Tribunal, and the matter was decided in favour of the appellant vide order dated 02-02-2009.

04. Feeling dis-satisfied with the order of the Tribunal, the Collectorate of Customs Appraisement, Karachi, filed a Reference No.77/2009 before the Hon'ble High Court of Sindh, Karachi, who disposed of the Reference in the following terms:

"Since we have already decided the issue in the case of Muzamil Ahmed quoted supra that Member (Technical) sitting singly does not have the jurisdiction to decide the question of law, therefore, we are answering both the questions in affirmative and as a consequence of which we are setting aside both the impugned orders and remanding the case back to the Tribunal to be placed before an appropriate Bench for passing a order de novo after giving both the parties an opportunity of being heard."

05. The case was remanded back to the Tribunal with a direction that the Technical Member while sitting alone have no jurisdiction to decide the question of law.

06. This Tribunal has heard arguments of both the sides at considerable length. Learned counsel for the appellant has argued that in the show cause notice issued by the adjudicating authorities of the Peshawar Customs it was admitted that the containers were clandestinely removed from the Peshawar Dry Port, which meant that the containers had reached the destination and were under the control and custody of Customs authorities at Peshawar Dry Port and their removal from the Dry Port was beyond the control of the Bonded Carrier. The impugned show cause notice dated 11-10-2006 under reply also violates provision of section 26 of the General Clauses Act, 1897, which prohibits prosecution and punishment more than once for the same offence. The respondent failed to appreciate that its impugned order not



only violates Section 26 of the General Clauses Act, 1897, but also violates the fundamental right granted by the Article 13 of the Constitution thus the impugned order is illegal and ultra vires under the constitution; and thus cannot be sustained. The adjudication officer who was so technical in the implementation of law, should have been obliged to follow proviso to sub-section 3 of Section 179 of the Customs Act, 1969, as follows:

"The case shall be decided within ninety days of the receipt of the contravention report or within such period extended by the Collector for which reasons shall be recorded in writing, but such extended period shall in no case exceed ninety days."

07. Learned counsel for the appellant further contended that the appellant has done substantial compliance with the requirement of law and having fulfilled the requirement of law, the impugned order passed by the respondent is liable to be set aside in the interest of justice and referred the judgment of the Hon'ble Supreme Court of Pakistan in the case of M/s. Nishat Mills Ltd vs. The State, as reported in PLD 1989 S.C at page 222. The relevant portion of the judgment is reproduced as under:

"The proper place of procedure in any system of administration of justice is to help and not to thwart the grant to the people of their rights. All technicalities have to be avoided unless it be essential to comply with them on grounds of public policy. The English system of administration of justice on which our own is based may be to a certain extent technical but we are not to take from that system its defect to the form and not to the substance defeats substantive rights is defective to that extent. The ideal must always be a system that gives to every person what is his."

08. Conversely, the D/R appearing on behalf of the respondent vehemently opposed the arguments advanced by the appellant side and argued in favour of impugned order.

09. Arguments heard, record perused.

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10. The facts of the case are that the appellants M/s. Limsa Agencies (Pvt.) Limited were handed over containers stuffed with imported goods destined from Karachi ports to Peshawar Dry Port which were not properly accounted for at the port of destination. As a result, an audit team was constituted by the Collectorate to probe into the matter.

11. After inquiry, the audit team reported that eight containers transported by the appellant were not presented, alongwith their required documents to the Dry Port at Peshawar, for examination assessment and payment of legitimate duty and taxes. It was further observed that the appellant had also violated the sub-rules 4 and 5 of Rule 336 within the prescribed period of transshipment of the imported goods. The appellant who was obliged to submit quadruplicate copies of transshipment permit to the authorities of Dry Port in accordance with law did not do this, which is a violation of sub-rule 6 of Rule 330 of Chapter XIV of Customs Rules, 2001. Arguments of learned D/R remained un-rebutted. It was also brought into the notice of this Tribunal that the signature and stamp of the Customs Officer, Dry Port Peshawar, on the manifest were found forged.

12. Perusal of the record further highlights that after initiating proceedings by the prosecution agency, the importer deposited the legitimate duty and taxes of pilfered goods which shall be deemed an admission of guilt by the appellant. This Tribunal further observed that the appellant M/s. Limsa Agencies (Pvt.) Limited, Karachi were also penalized in an identical case, in which the licensing authority vide Order-in-Original No. APPG/LA/CPBC/17/2002 dated 03-08-2006 had imposed a

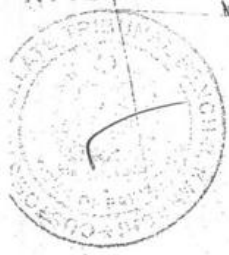
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penalty of Rs. 200,000/-, which was maintained by the Appellate Tribunal vide its order dated 05-12-2007.

13. The matter in hand pertains to the year 2006. Considerable time has lapsed since the onset of this litigation. After giving our thought to the case, we are of the firm view that the charges levelled against the appellant in the show cause notice have been established without any shadow of doubt. However, keeping in view the length of proceedings and the hardship it must have entailed, this Tribunal takes a lenient view and accordingly the penalty of Rs. three million imposed upon the appellant is hereby reduced to Rs. one million. The Order-in-Original is modified to this extent only.

14. Appeal disposed of in above terms.

ATTACHED



Sd/- (KHALID MAHMOOD) Member Technical Islamabad
Sd/- (JUSTICE CH. MUHAMMAD TARIQ) Former Judge High Court Chairman/Member Judicial Islamabad

30/5/10
GOVERNMENT OF PAKISTAN
CUSTOMS EXCISE & BORDER TAX APPELLATE TRIBUNAL
BENCH-II
old No. CUM 564/07 dt 13-9-07
New CUM 1203/10 dt 08-12-10
Linsa Agencies (Pvt) Ltd. *agates*
Collector of Customs (Appraisement) Karachi *issues*
by forwarded
1. M/s Linsa Agencies (Pvt) Ltd. *(W) (922)*
2. M/s. A. A. Mahmood & Co. Abbas (Pvt) Karachi
3. Collector of Customs / Collector Appraisement, Karachi
4. Collector of Customs, Karachi
5. Special General
6. Secret Copy

30/5/2015
SAJJAD HAIDER
Assistant Registrar
Customs Appellate Tribunal
Branch-II, Karachi.
Phone 3322551, Fax. 99202661