

Taxhelpline Case No. 103 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

Customs Appeal No. K-490/2013 Date of hearing 28.08.2013. Date of order 09.09.2013

Mr. Adnan Ahmed, Member (Judicial-II), Karachi

Mr. Ghulam Yasin, P.A., was present for the appellant. Mr. Muhammad Abbas, Advocate, was present for the respondent.

**Collector of Customs, Model Customs Collectorate of PaCCS, Custom House, Karachi.
Appellant**

Vs

**M/s. Captain & Company, 1st Floor, Shafi Court, Opp. Central Hotel, Merewether Road,
Karachi**

Law: Customs Act (IV of 1969) Sections: 79

ORDER---Mr. Adnan Ahmed, Member (Judicial-II): This order will dispose of Customs Appeal No.K-490/2013 filed by the appellant/ department against the Order-in-Original No.74058/2013 dated 28.03.2013, passed by the Collector of Customs (Adjudication-II), Karachi.

2. Brief facts of the case are that the importer M/s. Captain & Company, Karachi electronically filed Goods Declaration No.KCSI-HC-87263 dated 02.01.2013 and declared to contain 17 various items i.e. JP-52 (ACRYLIC POLYMER), JP-62 (ACRYLIC POLYMER), JP-15 (ACRYLIC POLYMER), ADDI 196, ADDI API, etc. as per GD, at total declared value of US\$ 10037.86.

The importer determined his liability of payment of applicable duties & taxes and sought clearance under Section 79(1) of the Customs Act, 1969.

3. Scrutiny of the Goods Declaration under section 80 of the Customs Act, 1969, the examination report revealed that the importer has mis-declared the actual value of the goods. During course of the physical examination, the examination staff has found original invoice from the container which indicates the total value of the goods as US\$ 33366/-. Whereas the GD electronically filed indicates the total declared value US\$ 10037.86. The declared value is as low as 232.41% of the actual value as evident from the original import documents discovered from the container. Goods assessed in the light of original invoice found from the container and prevailing 90 days data.

4. On basis of the allegation of misdeclaration, the Deputy Collector (Adjudication-II), Karachi passed order-in-original No.67158-22022013. The learned adjudicating authority confiscated the goods and gave the importer an option to redeem the goods on payment of fine of Rs. 1,157,042/-

and payment of duty and taxes on the value given in the retrieved invoice. A penalty of Rs.300,000/- was also imposed.

5. In view of the representation made by the importer M/s. Captain and Company, Karachi, the Collector of Customs (Adjudication-II), Custom House, Karachi was reopened the order-in-original No.67158-22022013 under section 195 of the Customs Act, 1969. After hearing of the representative of the importer and written as well as oral submissions, the Collector of Customs (Adjudication-II), Karachi has ordered that the charge of misdeclaration is not established against the importer; therefore, vacate the show cause notice and to assess the goods on declared value unless there is a valid evidence of a higher value.

6. The appellant department being dissatisfied with the order passed by the learned Collector of Customs (Adjudication-II), Karachi/ respondent No.2, filed this appeal before the Tribunal on the grounds incorporated in the Memo of Appeal.

7. The case was fixed for final arguments on 28.08.2013. Mr. Ghulam Yasin, P.A., is on behalf of the appellant department and Mr. Muhammad Abbas, Advocate, on behalf of the respondent No.1 were appeared and argued in length.

8. The contention raised by the learned representative of the appellant/department that during course of adjudication proceedings, the representative of the importer/ respondent No.1 was failed to substantiate his statement with any corroborate document rather admitted the presence of higher value invoice in the container and the forum below, Deputy Collector (Adjudication) confiscated the goods on charge of "deliberate mis-declaration of value" and fine of 35% of the ascertained value was imposed in lieu of redemption of the confiscated goods vide order-in-original dated 22.02.2013.

9. Mr. Ghulam Yasin, P.A., has further argued that subsequently the respondent No.1 approached to the Collector of Customs (Adjudication) for re-opening of the case without giving any reason which was allowed and case was re-opened vide order dated 12.03.2013 without hearing of the appellant and set aside the order-in-original dated 22.02.2013 and giving observation as under:-

"I have examined the case record and considered the submissions made. It is observed that the payment import under G.D. # KCSI -HC-872623-02-01-2013 was made under bank registered contract, LC LICCON06029712-14-11-2012. The value of the goods in the invoice tallies with the bank registered contract. The invoice submitted by the importer appears to be genuine in comparison with the one "retrieved" from the container. The submitted invoice bear logo, name, full address, telephone & fax numbers and e-mail address. It also bears exporter's bank account title and number and details of the bank's address and Swift code. On the other hand, the "retrieved" invoice does not bear any particulars of the exporter. There is no indication as to who has issued the invoice. It is only particulars given on a sheet of paper. As such, I don't find any relevance of the retrieved invoice with the goods imported.

In view of foregoing, I hold that the charge of mis-declaration is not established against the importer. I, therefore, vacate the show cause notice issued to the importer. The customs are ordered to assess the goods on declared value unless there is a valid evidence of a higher value".

And prayed that the Collector of Customs (Adjudication) has not power under section 195 of the

Customs Act, 1969, therefore, order of the respondent No.2 may be treated as null, void and without jurisdiction.

10. On other hand the learned counsel for the respondent No.1 Mr. Muhammad Abbas, Advocate has vehemently opposed the advanced arguments of the representative of the appellant/ department and submitted that during course of hearing, the respondent No.1 has made written and oral submission that the pay of goods to the exporter, a contract was registered with Habib Bank Limited and payment was made through bank accordingly by LC LICCONO6029712 - 14/11/2012. That the goods was proper values and invoice submitted is valid and there is no illegality or misdeclaration on the part of respondent No.1. He further argued that retrieved invoice is bogus as such it is bearing any particulars not even the name of exporter and prayed for dismissal of appeal with special costs.

11. Before concluding the judgment, I would like to express my extreme dissatisfaction, discontentment and displeasure on the manner in which the Officer of Customs Department, Law Officer involved in the filing/institution of this appeal had conducted themselves. From the facts it is abundantly clear that neither the Officer of Customs as clear that no Officer of the Customs Department had bothered find it correct in provision of law relating to filing of appeal before this Tribunal and to obey and comply with the legal requirements. The representative of the appellant who has argued that the appeal has not any proper manner and inspite of clear decade of law filed appeal in the name of wrong person as a petitioner. It is pertinent to mention here that the appeal was filed on 17.05.2013 with supporting affidavit of Deputy Collector Customs (Law), Dr. Shahab Imam where in para 1 of his affidavit he has stated which is produced as under:-

"That I am authorized by the Collector of Customs (PaCCS), vide Office order No.95/2007 (PaCCS) dated 10.09.2007, to file appeal on behalf of the Collectorate/ the appellant, in the case as noted above, as such am will conversant with the facts of the case."

12. While cause of action was arose in March, 2013 but the contents of affidavit shows that which office order No.95/2007 (PaCCS) dated 10.09.2007 was drafted much earlier then cause of action even the department has not filed such documents/ resolution/ authority letters alongwith appeal. Such conduct of the persons involved as resultant in colossal loss to the Government as in view impugned judgment passed by the Collector of Customs (Adjudication).

13. For the foregoing facts discussion and reason, the appeal is found to be without any substance and do not merit consideration. Accordingly, the appeal is dismissed with no order to cost.

14. Order passed accordingly.

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