

Taxhelpline Case No. 104 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

Customs Appeal No. 44/2013 Date of hearing 11/06/2010. Date of judgment 12/06/2013

Mr. Muhammad Asghar Paswal, Member (Judicial)

Mst. Sharifan Bibi, In person for the appellant. Mr. Nasir Saeed, Inspector for the Respondent

Mst. Sharifan Bibi wife of Noor Ahmad Caste Arain R/o Grand Battery Factory, Chowk Yatem Khana, Multan Road, Lahore

Vs.

1. The Collector of Customs (Appeals), Lahore. 2. Deputy Collector, Customs (Adjudication) AFU, Lahore, Allama Iqbal International Airport, Lahore

ORDER---CH. MUHAMMAD ASGHAR PASWAL, MEMBER (JUDICIAL):- This appeal has been filed against order-in-Appeal No. 397/2012 dated 10.12.2012 passed by the Collector of Customs (Appeals) Lahore.

2. Brief facts of the case are that on receipt of information, the staff of Anti Smuggling Organization, Lahore intercepted 07 rolls lying on road side. The owners of the said cloth were also present there and identified themselves as Sharifan Bibi, R/o Multan Road, Lahore and Shaheen Sarwar, R/o Allama Iqbal Town, Lahore. Examined of said rolls was conducted in the presence of the above said owners and other witnesses which revealed as under-

Foreign origin ladies/Gents cloth (assorted colors and sizes)
(2040 yards=355-Kgs net)

3. On demand, the said ladies failed to produce any documentary evidence regarding lawful possession or legal import of the impugned cloth, there were thus, sufficient reasons to believe that the said cloth had been brought in the county in breach of restrictions and prohibitions for the time being in force evading duty and taxes leviable thereon. As a consequence of adjudication, the adjudicating authority passed order in original No.391/2012 dated 17.10.2012 and confiscated the seized goods observing that the said cloth is notified under SRO 566(I)/2005 dated 06.06.2005. Since the ownership of the goods was claimed by two persons and as such value did not exceed Rs. 150000/-. Thus the provision of 2(s) of the Customs Act, 1969 could not invoke. He, therefore, gave an option to the appellant to get release of the goods on payment of redemption fine equal to 20% of the assessed value alongwith leviable duty and taxes. Being aggrieved and dis-satisfied of the said order, the appellant filed appeal before the Collector (Appeals) Lahore who vide impugned order in Appeal No.397/2012, dated 10.12.2012 rejected

the appeal and upheld the order in original. Hence, this appeal before this Tribunal on certain grounds.

On 11.06.2013, Mst. Sharifan Bibi/appellant appeared in person while the department was represented by Mr. Nasir Saeed, Inspector. The appellant argued that the Collector (Appeals) passed the impugned order in an arbitrary and capricious manner without considering the arguments and record of the case. She further argued that she purchased the seized cloth from open market and was not aware of the custom duty of the above said goods and reiterated before the adjudication officer that she was ready to pay the customs duty. She stated that the case was decided against the appellant on the basis of assessment sheet which was made according to the will of the appraising officer but that was not prepared according to rules and regulations which is null and void in the eye of law and against the direction of the Hon'ble Superior courts of the country. She further stated that the appraising officer appraised the value of the seized cloth which is not according to the rules and regulations and against the norms of justice and equity. She pointed out that the appellant is law abiding citizen of Pakistan and cannot indulge in smuggling. Lastly she prayed that impugned order in original as well as order in appeal may kindly be set aside.

On the other hand, the departmental representative contested the arguments advanced by the appellant and stated that order in appeal is lawfully passed by the Collector (Appeals). He further stated that the owner of the cloth failed to discharge burden of proof lies upon her under Section 156(2) of the Customs Act, 1969. The willingness to pay duty and taxes by the appellant's established that the seized cloth is brought into the country in breach of restriction evading duty and taxes leviable thereon and the adjudicating officer lawfully released the said cloth against government dues in accordance with Section 181 of the Customs Act, 1969. He pointed out that it was the duty of the appellant to produce the import/auction documents in support of lawful possession of the said cloth, but she failed to do so. Lastly he prayed that the order of the Collector (Appeals) may kindly be upheld.

5. I have examined the case record and heard both the sides in detail. I find that the adjudicating officer has passed a correct detailed order considering all aspects of the case. Although, the charges leveled against the appellant were established as the cloth in question comes within the ambit of SRO 566(I)/2005 dated 06.06.2005, but two persons claimed the ownership of the seized cloth and the value of the seized cloth of each person did not exceed Rs. 1,50,000/-. Thus the provision of Section 2(s) of the Customs Act, 1969 cannot be invoked in the instant case. Therefore, the option given to the appellant under Section 181 of the Customs Act, 1969 to get release of the goods on payment of redemption fine equal to 20% of the assessed value alongwith duty and taxes is correct on law and facts. I, therefore, find no reason to interfere with the impugned order passed by the Collector (Appeals) which is upheld and the instant appeal is dismissed.

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