Form No: HCJD/C-121.

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Custom Reference No.50 of 2018

M/s Shalimar International

Vs.

Member Judicial Customs Appellate Tribunal Bench-II, Islamabad and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
09.	**14.03.2023**	**Mr. Rashid Mehmood Sindhu, Advocate for applicant.** **Ms. Anila Jameel Mughal, Advocate for the respondents.** **Mr. Mohammad Adnan Khan, Deputy Director, PCA, Lahore.**

The reference emanates from judgment of the Customs Appellate Tribunal dated 12.06.2018. By order dated 22.10.2018 the following questions were framed:

i. *If valuation ruling had not been applied at time of assessment under section 80 of Customs Act 1969 and Rule 438 of Sub chapter (III) of Chapter XXI of Customs Rules 2001, said provisions could be applied subsequently after clearance of goods under section 83 of Customs Act 1969 and Rule 442 of Sub Chapter (III) of Chapter XXI of Customs Rules 2001 by competent authority enunciated in Section 83 of Customs Act, 1969?*

ii. *Is it correct position of law that if any authority, court or tribunal gave a finding of fact which was not based on material available on record, findings so given was illegal, arbitrary and became perverse which was violative of principles of appreciation of*

evidence on record and as such not sustainable in law?

2. The learned counsel for the applicant submitted that the real question was whether or not the applicant was entitled to the benefit of SRO 1125(I)/2011 dated 31.12.2011 **("SRO")** and liable to be charged at the rate of zero percent for being registered as an importer with the Federal Board of Revenue **("FBR")**. He submitted that this was the question that required to be adjudicated by the Court instead of those that had formally been framed by order dated 22.10.2018.

3. It was the contention of the learned counsel for the applicant that the applicant fell within condition (i) of SRO as it was registered as an importer with FBR and was consequently entitled to the benefit of supplying goods to zero-rated sectors, including textile, as mentioned in condition (i) of the SRO. He submitted that the Collector in the Order-in-Original dated 13.02.2017 misapplied the SRO by holding that the applicant fell within condition (iv) of the SRO.

4. Learned counsel for the tax department submitted that show cause notice dated 20.09.2016 was issued to the applicant in

view of an audit undertaken by the Post Clearance Audit Directorate of Customs, as it had been found that the applicant had resupplied the imported consignment to M/s Hattar Woolen Mills (Pvt.) Ltd. immediately after its import. She submitted that condition (ii) of the SRO provided that where a registered manufacturer of one of the five zero-rated sectors mentioned in condition (i) imported a consignment, such manufacturer was to be charged at the rate of zero percent when read together with condition (i) of the SRO. However, the applicant's case fell within condition (iv) of the SRO which provided that where commercial importers supplied imported goods as industrial input, they were to be charged a rate of 2% with 1% value addition tax at input stage if the subsequent supply was made to a zero-rated sector and at the rate of 5% if the supply was to be made to a non-zero rated sector. She submitted that it was on this basis that the Order-in-Original was passed, which was subsequently upheld by the Customs Appellate Tribunal. She further submitted that the show cause notice was issued under section 32 of the Customs Act, 1969, which authorized the customs department to issue a show cause notice in case of a duty or tax

being short levied within five years of the date of import. She submitted that such short levy of tax was observed by the Post Audit Clearance Directorate in an audit carried out for purposes of section 32 and the impugned show cause notice therefore suffered from no illegality.

5. We have perused the record. The show cause notice dated 20.09.2016 provides that it is during an audit carried out by Post Clearance Audit Directorate, which by correspondence dated 03.07.2016 reported to the Collectorate of Customs Adjudication that the case of the applicant was one of short levy of sales tax. And consequently a show cause notice was issued to enable the applicant to explain as to how it fell within the exceptions provided for in conditions (i) and (ii) of the SRO.

6. Condition (i) of the SRO merely provides that the benefit of the SRO would be available to every person engaging in the business of textile, carpets, leather, sports and surgical goods who is registered as a manufacturer or an importer or an exporter or a wholesaler. In the event that the applicant was a registered manufacturer in one of the 5 zero-rated sectors mentioned in condition (i) of the SRO sales tax at the time

of import was to be charged at the rate of zero percent on goods useable as an industrial input. Condition (iv) of the SRO then provided that where a commercial importer imported goods and supplied them a zero rated-sector for industrial use, sales tax at the rate of 2% would be chargeable at import stage along with 1% value addition tax. Given the clear language of condition (iv) of the SRO, the applicant, as a registered importer importing goods that fall within the domain of textile and were supplied to a zero-rated sector for industrial use, fell within condition (iv) of the SRO. In other words the applicant as a registered importer was entitled to the benefit of the SRO. But the benefit that was attracted in the case of the applicant was payment of sales tax of a reduced rate of 2% along within 1% value addition tax at the import stage and not payment of sales tax at the rate of zero percent. This is what was held in the Order-in-Original which was then confirmed by the learned Tribunal.

7. We find that the treatment of the applicant by the Collectorate of Customs Adjudication as well as by the learned Tribunal does not suffer from any infirmity. We answer the question raised for our

consideration accordingly. Let a copy of this order be sent to the Registrar of the learned Tribunal under the seal of this Court.

(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(BABAR SATTAR)
JUDGE

M.A. Raza