ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 1051 of 2024
SCRA 1052 of 2024
SCRA 1064 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of main case.
3. For hearing of CMA No.4777/2024.

20.10.2025

Mr. Pervaiz Ahmad Memon, advocate for the applicant.
Mr. Nehal Khan Lashari, advocate for the respondent.

These reference applications pertain to allegation of smuggling of petroleum products from Iran. The lead reference, 1051 of 2024, pertains to the alleged smuggled item itself, while the remaining two are with respect of conveyance thereof. The latter 2 judgments are consequent upon the lead judgment, hence, these references are being determined vide a common order.

Briefly stated, the crux of applicant's case is that the GD placed on record states that item was Light Aliphatic Hydrocarbon Solvent, whereas, per independent reports available at pages 157 and 159 of the file the item is found to be Kerosene. Learned counsel states that the learned Appellate Tribunal has not displaced or distinguished the findings and without assigning any reason, disregarded the same. It is also articulated that irrespective of the nature of the fuel, import thereof from Iran is prohibited. Learned counsel for the respondent insists that item was as declared in GD, therefore, no case for interference is made out.

It is considered appropriate to rest the discussion on the lead judgment, impugned in the SCRA 1051 of 2024, as the other judgments are consequent thereupon. In order to illustrate the manner in which learned Appellate Tribunal has addressed the controversy, the operative part is reproduced herein below:

> "8. I have scrutinized the case record and heard the parties at length. The respondent department did not take into consideration the lab report and import documents. Further, the quantity seized (105000 liters) tallies with the quantity cleared through GD Nos.QCSI-HC-11690 dated 29.02.2024 and QCSI-HC-11691 dated 29.02.2024. The appellant has discharged his burden of proof by providing import documents and lawful possession of the seized goods.
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> 9. It is evident from the record that the appellant had adequately shifted the burden onto the Respondent Department by producing the Import Goods Declaration. Now it was incumbent upon the department to establish that the goods were smuggled within the context of provisions of Section 2(s) and 16 of the Customs Act, 1969. Nevertheless, para-wise comments and argument of the DR shows that there is nothing on record to show that the goods were smuggled one within the context of above referred provisions of law. Indeed, no document or vehicle tracking report showing inward entry of the subject vehicle carrying the subject seized goods from the Iran Border has been

placed on record by the Respondent. The hon'ble Sindh High Court in a similar case of Barkat Ali and another vs. The State (PLD 1973 Karachi 659) has dilated upon in the issue of burden of proof and on failure to discharge it has given the benefit of doubt to the accused.

10. In view of above legal and factual position, I hold that the impugned show cause notice along with Order-in-Original passed by Collector of Customs (Adjudication), Quetta @ Hyderabad suffer from the grave infirmity being void ab-initio hence are set-aside to the extent of impugned goods. The impugned goods are ordered to be released unconditionally as being imported according to law through above mentioned GDs and cleared by the Clearance Collectorate of Quetta.

11. The appeal is allowed and disposed of in the above terms with no order as to cost."

The Appellate Tribunal is the last fact finding forum in the statutory hierarchy, therefore, it is incumbent to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed has been emphasized by the Supreme Court in judgment reported as 2019 SCMR 1626. This High Court has consistently maintained that the Appellate Tribunal is required to proffer independent reasons and findings and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgments have also maintained that if the impugned order is discrepant in the manner as aforesaid, the correct course is to remand the matter for adjudication afresh. Reliance is placed on judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned judgment could not be considered to be a speaking order and is *prima facie* devoid of relevant discussion and deliberation. The entire judgment comprises essentially of reproduction and is crowned with a dissonant conclusion. It appears to have been rendered without elaborating upon crucial issue of nature of goods or the question of importability. The reports relied upon by the department have not even been referred to by the Appellate Tribunal. Therefore, no case is set forth to sustain the impugned judgments and the same are hereby set aside; the matter is remanded back to the Appellate Tribunal for adjudication afresh per the law.

A copy of this decision may also be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969. Office is instructed to place copy hereof in the connected files.

Judge

Judge

Khuhro/PS