

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.199 of 2024**

Date	Order with Signature of Judge
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Hearing of Case (Priority)

1. For hearing of CMA No.819/2024
2. For hearing of Main Case
3. For hearing of CMA No. 820/2024

26.02.2026

Mr. Pervaiz Ahmed Memon, Advocate for the Applicant

Learned counsel had proposed the following questions of law for determination:

- (1) Whether production of two set of irrelevant Delivery Memo No.70119851 dated 19.05.2022 and No 70121433 dated 27.06.2022 in relation to impugned foreign origin goods and offer to pay duty and taxes does not prove wrong any contention of the 1 Respondent (herein) as to lawful possession and discharge of mandatory burden of proof in terms of Section 187 of the Customs Act, 1969? Whether by ignoring to dilate upon such germane the learned Appellate Tribunal did not arrive at an erroneous conclusion, liable to be set aside?
- (2) Whether the Appellate Tribunal while concluding impugned judgment has not mis-interpreted the applicability of the provisions of Section 2(s) of the Customs Act, 1969, to the extent of bordering areas only?
- (3) Whether the Appellate Tribunal while concluding impugned judgment has not erred in law and failed to appreciate that Bitumen being petroleum product is a notified item by virtue of SRO 566(1)/2006 dated 06.06.2005 issued under the provisions of Section 2(s) and 156(2) of the Customs Act 1969?
- (4) Whether the Appellate Tribunal has not erred in law to set aside well-reasoned and descriptive Order-in-Appeal No. 411 of 2023 dated 15.08.2023, passed by the learned Collector of Customs (Appeals), Karachi, resulting in serious mis-camage of justice?

Irrespective of the foregoing, learned counsel states that the impugned judgment is *prima facie* perfunctory in manner and the same is not befitting the last fact-finding forum in the statutory hierarchy.

Pursuant to order of substituted service, learned counsel states that service has been effected through publication, however, the Respondent has continuously chosen to avoid appearing before the Court.

The Appellate Tribunal is the last fact-finding forum in the statutory hierarchy; therefore, it is incumbent upon it 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 the judgment reported as 2019 SCMR 1726. 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 the 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 the judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned order could not be considered to be a speaking order and is prima facie devoid of any independent reasoning etc. The entire judgment comprises essentially of reproduction and is crowned with a dissonant conclusion. Hence, no case is set forth to sustain the impugned order, which is hereby set aside and the matter is remanded back to the Appellate Tribunal for adjudication afresh in accordance with law. Reference application is disposed of.

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

Judge

Judge

Amjad PS