ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 445 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For hearing of main case.

31.08.2026

Ms. Masooda Siraj, advocate for the applicant

Learned counsel states that on identical facts and circumstances order dated 16.11.2023 has been passed in SCRA 548 of 2017, which reads as follows:

> "Through this Reference Application, the Applicant has impugned Order dated 12.07.2017 passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No. K-1456/2015, proposing various questions of law. However, notice was ordered on question Nos. 1, 2 & 3 only which read as under:
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> i. Whether the second proviso to section 181 of the Customs Act. 1969 imposing fine and penalty in lieu of confiscation on any goods or class of goods is mandatory and whether the word "shall" used for imposition of fine in lieu of confiscation can be ignored?
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> ii. Whether the Appellate Tribunal conferred with the powers of the Adjudicating Authority and whether the Appellate Tribunal while remitting the fine and penalty imposed on the respondent interfered within the discretionary powers of the Adjudicating Authority given under Section 181 of the Customs Act, 1969?
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> iii. Whether on the facts and circumstances of the case, the learned Tribunal erred in law to not properly examine the available record of this case as well as provisions of the section 181 of the Customs Act, 1969 and SRO 499(I)/2009 dated 13.06.2009 resulting in miscarriage of justice?
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> 2. Heard learned Counsel for the parties and perused the record. It appears-that-Respondent imported a consignment declaring it to be of "Cold Rolled Steel Coils Sheets Secondary Quality 500846 Kgs" vide Goods Declaration No. KPPI-HC-7825 dated 11.08.2015. On examination, it transpired that quantity of Cold Rolled Steel Coils Sheets of Secondary Quality was found to be 99737 Kgs, in addition to "GP Steel Sheets in Coils of Secondary Quality 411,098 Kgs". This was found to be a case of mis-declaration as assessment value of GP Steel Sheets was much higher than the value of Cold Rolled Steel Sheets. A Show Cause Notice was issued and Order-in-Original was passed; whereby, the goods were confiscated and were redeemed upon payment of fine @ 35% of the offending value and penalty in terms of SRO 499(1)/2009 dated 13.06.2009 (SRO 499"). The Respondent in its reply to the show cause notice, in addition to various legal and factual objections also raised in objection as to the correct value of the offending goods which apparently has not been attended to by the Adjudicating Authority. The respondent being aggrieved preferred appeal before the Tribunal and the Tribunal has partly allowed the appeal to the extent of imposition of fine and penalty, which has been remitted on the ground that it does not correspond with the gravity of the offence. The Respondent is not aggrieved any further and has not preferred any Reference Application as to the assessment of goods on the higher value and payment of extra duty and taxes on such values.
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> 3. The Tribunal while coming to the above conclusion has though made an attempt to interpret the provisions of Section 181 of the Customs Act, 1969 and the authority of Federal Board of Revenue to issue SRO 499 and while doing

so it has been observed by the Tribunal that the Superior Judicial Fora in plethora of reported judgment has rendered fixation of redemption fine on the goods or class of goods other than Sections 15 & 16 ibid through SRO 499(1)/2009 as ultra vires to the provisions of Section 181 of the Rstoms Act, 1969 by placing reliance on the case of Superior Textile Mills[1], Collector of Sales Tax[2], & Saleem Raza[3].

4. However, on perusal of these three judgments, it appears that the Tribunal was completely misdirected in placing reliance on these cases hasmuch as none of these have dealt with the provisions of Section 181 of the Customs Act, 1969; nor it has declared any Notification issued under Section 181 (ibid) as ultra vires. The case of Superior Textile Mills (Supra) pertains to an issue relating to Sales Tax Special Procedure for Ginning Industries Rules, 1996, whereas, the case of Collector of Sales Tax (Supra) is the judgment of the Supreme Court arising of that case. It has nothing to do with the Customs Act, 1969. Similarly, the case of Saleem Raza (Supra) deals with the interpretation of Section 79(1) of the Customs Act, 1969, and is also not relevant for the issue in hand. Therefore, to that extent, the Tribunal's finding cannot be sustained under any circumstances.

5. It further appears that the Tribunal has also made a passing remark in respect of the "customs value" in SRO 499 on which the prescribed pitch of fine has to be imposed and in this regard has placed reliance on the case of Weave and Knit (Pvt) Ltd[4]. However, here also the Tribunal has misdirected itself for having placed reliance on this judgment as it pertains to an era when Notification by itself was differently worded as against the present Notification i.e. SRO 499. After going through both these SROs and the Judgment passed by this Court, it appears that Tribunal was not justified in making this observation inasmuch as the SRO under consideration before the learned Division Bench of this Court was materially different as it employed a different parameter for imposition of redemption fine in terms of Section 181 of the Act. Earlier it was on the duty and taxes attempted to be evaded, whereas, in the later SRO it is on the customs value of the goods. This issue has already been dealt with and clarified by this Court in Collector of Customs[5]. Therefore, this observation of the Tribunal cannot be sustained as well.

6. Moreover, it does not appear to be in dispute, nor Counsel representing the Respondent has been able to assist us in any Hanner that the case in hand was not of any mis-declaration. Admittedly, GP Steel Sheets was never declared and was found to be available to the extent of 80% of the total consignment. As against this the entire consignment was declared as "Cold Rolled Steel Sheets". Though Counsel for Respondent did argue that the rate of duty is same; however, admittedly it was a case of mis-declaration of physical description as the value of GP Steel Sheets is much higher. Based on this mis-declaration the goods in question were confiscated; and therefore, could only be released on payment of redemption fine, which the Adjudicating Authority has determined on the basis of SRO 499. For the sake of arguments, even if it is presumed that SRO 499 is not applicable, as held by the Tribunal being ultra vires to Section 181 of the Customs Act, this would in turn will not entitle the Respondent ipso facto to seek release of the confiscated goods without imposition of fine. In that case the Adjudicating Authority can even impose a higher fine as against the minimum pitch of 35% as notified by FBR through SRO 499. If not, then the Tribuna! was required to come to a definite conclusion that it is not a case of mis-declaration; hence no fine or penalty could be levied; rather, it has misdirected itself in unnecessary discussion about the implication of Section 181 of the Act by placing reliance on judgments which have not dealt with the issue in hand.

7. Before the proposed questions could be answered it has been noted that insofar as the calculation of the offending value of goods on which fine has been imposed is concerned, there appears to be an apparent mistake in the Show Cause Notice as well the Order in Original and needs to be looked into. The assessment value of GP Sheets is US$539 per ton, whereas, the assessment value of Cold Rolled Steel Sheet-is US$421 per ton, resulting in a difference of US$118 per ton. If the total quantity of GP Sheet is 411.098 MT, then the value of offending goods will be US$ 48,509.564 and not US$221,581.80 as stated in the Show Cause Notice. This is for the reason that the total quantity of the goods has not changed; nor it is a case of any excess quantity. It is only in respect of physical description of one category of goods which is part of the

[1] Superior Textile Mills Ltd. Vs. Federation of Pakistan (2000 PTD 399)
[2] The Collector of Sales Tax Vs. Superior Textile Mills Ltd. and Others (PLD 2001 SC 600)
[3] Saleen Rizza Vs Federation of Pakistan (2012 PTD 302)
[4] Weave and Knit (Pvt) Ltd. Vs. Additional Collector of Customs (PTCL, 2005 C343)
[5] Collector d Customs v Sealink Trading Company (order dated 22.8.2023 in SCRA No.561 of 2011)

total quantity already declared as Cold Rolled Steel Sheets. Therefore, it will be very unfair and against the legal norms to say that the total offending value of the goods is the entire value of GP Sheets. In the given facts and circumstances, it is in fact the net value of goods which will be the offending value for the purpose of fine so imposed in lieu of confiscation of the goods. If any fine has been recovered / paid in excess of this value, then it has to be refunded to the Respondent.

8. In view of hereinabove facts and circumstances of this case, the Order of the Tribunal cannot be sustained in any manner, whereas, the questions of law proposed are to rephrased to only one question i.e. "Whether in the facts and circumstances of the case the Tribunal was justified in ordering release of the goods confiscated in terms of Clause 14 of Section 156(1) of the Customs Act, without redemption fine and penalty and the same is answered in negative; in favour of the Applicant and against the Respondent. As a consequence, thereof, the impugned order of the Tribunal stands set-aside (however, subject to what has been held and observed at Para 7 above) and Reference Application is allowed. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Learned counsel states that the aforesaid order is squarely binding upon this bench, therefore, in mutatis mutandis application thereof this reference application may be decided for the same reasons and upon the same terms. Order accordingly.

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(10) of the Customs Act, 1969.

Judge

Judge

Amjad