ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 103 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of main case.
2. For hearing of main case No. 1772/2022.

03.09.2026

Mr. Imran Iqbal Khan, advocate for the applicant.
Mr. Khalid Mehmood Rajpar, advocate for the respondent.

This reference *prima facie* agitates that evidence has not been appreciated by the learned Tribunal, despite being the last fact-finding forum, hence, de novo determination is merited in reference jurisdiction. Learned counsel for the applicant disputes the recognition / identification of the relevant consignment and seeks to place photocopy of dictionary definition on record to argue to the contrary. The impugned judgment observes as follows:

> "8. Heard and perused. The following points need consideration by this Tribunal:-
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> 1. Whether the goods are banned under Appendix "A" of the import Policy Order, 2020 vide SRO 902(I)/2020 dated 25-9-2020?
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> 2. Whether relief of mutilation as provided under Section 27-A of the Act, 1969 is rightly rejected?
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> 3. Whether pneumatic used tyres are usable goods?
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> 9. It is an admitted position that Appellant declared goods as "Used Tyres Cut into Pieces" under Section 79 through WeBOC self assessment system. When in terms of Section 80 of the Customs Act, 1969 subject GD referred for scrutiny was examined the goods were found as used pneumatic tyres.
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> 10. Neither it is alleged in the Appeal nor it is argued that along-with complete tyres, cut tyres are also present. The examination report is also not disputed but the plea is raised that the Exporter has done this mistake. The supplier"s e-mail letter dated 02.02.2021 after issuance of Show Cause Notice is presented by the Appellant.
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> 11. The perusal of supplier's e-mail is also vague. The lack of certainty is apparent from the sentence. "It is possible that the warehouse, staff mixed this up with other containers". Neither there is any certainty nor confirmation how this had happened. This email in its later part also suggest legal way out to face the situation thus this email is mere a legal guidance more than a factual inquiry report. The un-declared goods are banned item of Appendix-A (Negative List) at Serial No. 27 duly inserted through SRO 902(I)/2020 dated 25-09-2020. The Appellant also on the basis of this e-mail denied its mens rea as Appellant was ignorant about it. This argument may be termed as innocent and simple argument but cannot be justified when trading a huge consignment and engaged in a business. Here Section 79 would be relevant, which is reproduced here under:-

"79 Declaration and assessment for home consumption or warehousing. (1) The owner of any imported goods shall make entry of such goods for home consumption or warehousing or transshipment or for any other approved purposes, within ten days of the arrival of the goods, By,

(a) Filing a true declaration of goods, giving therein complete and correct particulars of such goods duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribed; and

(b) Assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user of the Customs Computerized System:

Provided that if, in case of used goods, before filing of goods declaration, the owner makes a request to an officer of customs not below the rank of an Additional Collector that he is unable, for want of full information, to make a correct and complete declaration of the goods, then such officer subject to such conditions as he may deem fit, may permit the owner to examine the goods and thereafter make entry of such goods by filing a goods declaration after having assessed and paid his liabilities of duties, taxes and other charges:

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(2)---
(3)---

The proviso to Section 79 could be exercised by the Appellant which has not been done nor agreement for subject import with the supplier is produced.

12. The subject goods being notified in Appendix-A of Import Policy Order is liable to outright confiscation. The outright confiscation applies only to items covered under Appendix-A of the Import Policy Order and to those which are not redeemable under SRO 499(1) 2009 dated 13-6-2009. The other goods can be released on payment of duty and taxes and on payment of redemption fine but this relief cannot be given for the items covered in Appendix-A.

13. It would be advantageous to re-produce Section 181 of the Act, 1969, which is as under:-

181 Option to pay fine in lieu of confiscated goods. Whenever an order for the confiscation of goods is passed under this Act, the officer passing the order may give the owner of the goods an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit.

Explanation-Any fine in lieu of confiscation of goods imposed under this section shall be in addition to any duty and charges payable in respect of such goods, and of any penalty that might have been imposed in addition to the confiscation of goods.

Provided that the Board may, by an order, specify the goods or class of goods where such option shall not be given:

Provided further that the Board may, by an order, fix the amount of fine which, in lieu of confiscation, shall be imposed on any goods or class of goods imported in violation of the provisions of section 15 or of a notification issued under Section 16 or in violation of any other provisions of this Act, or any other law for the time being in force"

14. From the plain reading of Section 181 of the Act, it transpires that the Adjudicating Officer enjoys the discretion to offer an option to the owner of goods to pay fine in lieu of confiscation of the goods. This discretion is not available regarding certain goods so specified by the Board. It is the case of the respondent that the subject goods are specified by Board under the proviso, to which there is no denial, as admittedly clause 27 of Appendix-A of IPO 2020 covers pneumatic used tyres, therefore Adjudicating officer has rightly exercised this discretion.

15. Before proceeding further for the purpose of convenience Section 27-A of the Act 1969 is reproduced here under:-

"27A Allowing mutilation or scrapping of goods-At the request of the owner of mutilation or scrapping of goods as are notified by the Board, may be allowed, in the manner as prescribed by the rules and where such goods are so mutilated or scrapped they shall be chargeable to duty at such rates as may be applicable to the goods as if they had been imported in the mutilated form or as scrapped.

*Provided that the goods imported in new condition shall not be allowed scrap*ping and mutilation and shall be classified and chargeable to leviable duty and taxes as new goods"

16. The learned counsel has referred a case of Collector of Customs Vs M/s. Ch: Steel Rerolling (Pvt) Limited and argued that in the referred case the Hon'ble High Court under Section 27-A while rejecting the appeal of the department up-held order of the adjudicating authority by which scraping of oversized scrap was allowed to be mutilated to the Respondent. The learned counsel argued that in the referred case it has been categorically laid down that request under Section 27A of the Customs Act, 1969 can be invoked by the importer before or after filing of Goods Declaration. There is no cavil to the fact that after amendment in Section 27A of the Customs Act, 1969 the requirement of making request for scraping of the goods can be made prior or subsequent to filing of goods declaration whereas earlier requirement to file it prior to filing of GD is done away. However, the referred case which is respectfully gone through by this Tribunal finds it completely distinguishable from the facts of this case. The goods confiscated in the referred case was admittedly scrap but of oversize, whereas in the present appeal mis-declared goods are items covered by Appendix-A of the Import Policy Order, 2020. In the referred case there was no mis-declaration. In the present case the entire consignment comprising of complete tyres and without any item of scrap available in the containers. The referred case cannot be relied upon in the instant case on the very first reason that admitted scrap Steel Rerolling was the consignment in referred case just with an objection of over sizing which was allowed to be scrapped to bring it inconformity with the required size. The consignment in the referred case had admittedly lost its tensile strength which is not a case here. The remedy under Section 27-A is rightly provided in referred case whereas in the present case it is rightly been refused for the reason that entire consignment comprising of complete used tyres without any cut piece of tyre or scrap.

17. The logic of scraping and mutilation is provided in FBR's letter under heading "Legislative changes" cl. (g) C. No. 6 (1)/2010-CB dt 5th June, 2010 (reported in PTCL 2010 St 305) in the following words:-

"(g) Section 27-A is being amended to restrict the permission for mutilation or scrapping of certain goods, as notified by the Board, imported with scrap consignments in serviceable condition" In the referred case also the consignment was not mis-declared, but scrap only whereas the case in hand is completely different in this respect. If remedy under Section 27-A is provided to the Appellant under present circumstances, the Government Import Policy would become redundant.

18. So far as usage of old tyres is concerned such markets for selling of foreign used tyres are existing widespread. It is not out of place to mention that Pakistan is a country that provides huge potential for investment in tyre business. It is housing sixth largest population automobiles and hence tyres of all sorts. Its huge population is dependent on fuel which is being supplied to the length and breath of this country via oil tankers. Similarly, other goods which are being imported and docked in Karachi and then disbursed across the land via trailers. All these factors including Afghanistan-Pakistan Transit Trade made Pakistan a very lucrative market for tyres. Old foreign tyre market since long bullish in our country to which there is no denial.

19. In view of above discussion the issues therefore answered in affirmative. is dismissed accordingly. The Order-in-Original is legal, just and proper which is upheld. The instant appeal

(Muhammad Sadiq)
Member Technical-II
Lahore

(Ms. Sadaf Yousaf)
Member Judicial-I Karachi

Dissenting Note

While endorsing the appreciation of the issues at paragraphs 1 to 17, scribed by learned Member (Judicial), the undersigned respectfully disagrees to Para 18 and 19/above. In view of above circumstances of the case, the appeal is disposed of in following terms:-

a) The outright confiscation of the impugned goods (used tyres) made under the impugned order is upheld. Nonetheless, the appellant shall be entitled to the release of the other declared goods (scrap tyres cut-in-pieces) on payment of leviable duty & taxes and fulfillment of codal requirements.

b) In the wake of the said confiscation, the personal penalty imposed under the impugned order is annulled.

Sd/-
(Muhammad Sadiq)
Member Technical-II
Lahore

The instant appeal was heard and decided by my predecessors venerable Member Judicial, Customs Appellate Tribunal, Bench-I, Karachi and respectable Member Technical, Customs Appellate Tribunal, Bench-II, Lahore. The respectable Members while deciding the appeal dissented with each other on issues therefore matter was referred to the undersigned for deciding the dissenting note.

I have gone through the issues streamlined by my learned Members and record of the case. The consignments were declared as used tyre cut into pieces 2 and 3 pcs but on examination the consignments were found in two segments consisting on cut and used tyres and uncut tyres. The Honourable Member Judicial accepted the departmental version and rejected the appeal of appellant by upholding the impugned order. The learned Member Technical disagree with the above decision and partially uphold the impugned order in respect of used tyres and allow the release of scrap tyres cut-in-pieces on payment of leviable duty and taxes and fulfillment of codal requirements by annulling the personal penalty.

After in depth study of opinion of both learned Members. I fully agree with the findings of my learned brother Member Technical, Customs Appellate Tribunal, Bench-II, Lahore scribed at sub-para (a) and (b) of the dissenting note. The appeal is disposed of accordingly. The respondent is directed to issue a delay and detention certificate to the appellant.

Sd/-
(Abdul Jabbar Qureshi)
Member Judicial-I/Referee Judge"

Learned counsel for the applicant refers to the discussion undertaken by the learned Tribunal and insists that the conclusion drawn is not based on proper appreciation of evidence, hence this reference.

Learned counsel for the respondent department supports the impugned judgment and states that it is *prima facie* rested on discussion and deliberation of all aspects of the evidence and merits no interference in reference jurisdiction. He states that the description of the consignment is an evidential matter and has already been thrashed out before the learned appellate forum and merits no further interpretation herein.

Learned counsel relies on judgment reported as 2010 PTD 826 as well as Order dated 28.01.2026 in SCRA No. 1174/2023 in support of his contentions. Learned counsel further states that it is admitted record that the consignment was environmentally dangerous. Learned counsel states that it is an admitted position that the Environmental Protection License of the applicant was suspended at the relevant time. This fact is not denied by the learned counsel or the applicant. Learned counsel relies on judgment of Divisional Bench of this Court dated 20.12.2021 in C.P No. D-6599/2014, which reads as follows:

> 11. The question before us is whether the shredded tyres in its form as imported could be utilized as raw material, and the simple answer is no. It undergoes a process of "burning", which process is primarily utilized by the petitioner through shredded tyres instead of other energies as an alternate of fuel; (other fuel such as diesel, petrol, coal etc. were subsequently added and were not available at the relevant time). Hence these lab reports of Council for Works and Housing Research would not turn anything. Had it been a direct import of tyre ashes as raw material, consequences would have been different. The ultimate suggestion of Mr. Almani that a team of IOCO be directed to assess as to whether the ashes of a tyre were being utilized for the manufacture of cement is also of no help as we are facing a primary question as to whether shredded tyres could come within the definition as provided in the aforesaid SRO to form a raw material, which answer may not be available with IOCO as it requires interpretation of Rule 342(f) of the aforesaid SRO / Rules 2001. Section 342(f) of the Customs Rules, 2001 as it stands today is reproduced as under which still doesn't include shredded tyre as fuel.
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> > *"input goods [including coal, diesel, gas and furnace oil]" means all goods, required for the manufacture of goods meant for export, materials, accessories, sub components, sub-assemblies, assemblies and components, includes unrecorded media for development of software and recorded software used as tools for development of software as approved by the [Regulatory Authority] in the Analysis Certificate."*
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> 12. The availability of analysis certificate for goods manufactured in the manufacturing bond is also of no consequence as there is no cavil that the leftover of the burnt tyres i.e. ashes were being used by the petitioner and the issuance of such certificate would serve no purpose for the purpose of above interpretation. Rule 351 of the Customs Rules, 2001 is reproduced as under: -
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> > 351. Analysis Certificate for goods to be manufactured in a manufacturing bond.- (1) The licensee shall apply to the Regulatory Authority, within fifteen days of issuance of manufacturing bond license, or sixty days before the first export of finished goods, for issuance of an Analysis Certificate as set out in Appendix-III showing the input and output ratio of input goods vis-a-vis finished goods along with wastages. The licensee shall also submit samples of product and its input material.
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> > (2) The Regulatory Authority or the officer authorized by him, in his behalf, shall, after getting input from the Input Output Coefficient Organization (IOCO) or Engineering Development Board (EDB), or any other agency, in this regard, issue an Analysis Certificate within thirty days on receipt of such application, showing the actual quantity of input goods used and wastage occurred in manufacture of one unit of output goods:
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> > Provided that the Regulatory Authority may issue a provisional analysis certificate till the determination of Input to Output Ratio and wastage by IOCO or EDB, as the case may be: Provided further that if there is no change in previously determined input and output ratio, then the Regulatory Authority may uphold the previously determined input-output ratios without sending it to IOCO or EDB.
> > (3)……..
> > (4)…….
> > (5)……

> These certificates may not be relevant for the purpose of interpreting Rule 342(f) at it stood at the relevant time.
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> 13. As a result of the above discussion, this petition is dismissed along with pending applications.

The arguments with respect to the environmental dangers have not been dispelled or distinguished before us. Nothwithstanding the foregoing, it is manifest that the applicant essentially seeks de novo evaluation of evidence.

It remains settled law that the learned tribunal is the last forum of fact in the pertinent statutory hierarchy. The appreciation of evidence was only material before the subordinate adjudication fora and no appreciation of evidence is ordinarily merited before this Court in the exercise of its reference jurisdiction[1]. The learned counsel remained unable to dispel the preponderance of reasoning / record relied upon in the impugned judgment and could not demonstrate that the conclusion reached could not have been rested thereupon.

Since the learned Appellate Tribunal is the last fact-finding forum in the statutory hierarchy, therefore, mechanical de novo adjudication does not fall within the ambit of reference jurisdiction[2]. Since no question of law has been articulated before us to be adjudicated in reference jurisdiction, therefore, this reference application is dismissed in *limine*.

A copy of this decision may 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(10) of the Customs Act, 1969.

Judge

Judge

Ayaz p.s.

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[1] Per *Qazi Faez Isa J* in *Middle East Construction vs. Collector Customs*; judgment dated *16.02.2023* in *Civil Appeals 2016 & 2017 of 2022*; *Collector of Sales Tax vs. Qadbros Engineering Limited* reported as *2023 SCMR 939*; *Army Welfare Trust vs. Collector of Sales Tax* reported as *2017 SCMR 9*; *Pakistan Match Industries (Pvt.) Ltd. Vs. Assistant Collector, Sales Tax and Central Excise* reported as *2019 SCMR 906*; *Commissioner of Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd.* reported as *2022 SCMR 1082*.

[2] Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as *2011 PTD 2577* – Findings of fact cannot be challenged in reference jurisdiction.