

**IN THE HIGH COURT OF SINDH, KARACHI****Special Customs Reference Application No. 148 of 2020**


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Date Order with signature of Judge

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**Present: *Mr. Justice Muhammad Junaid Ghaffar***  
***Mr. Justice Agha Faisal***

**Applicants:** The Collector of Customs  
Through Mr. Khalid Mahmood Rajpar,  
Advocate.

**Respondents:** M/s. Abdul Nasir Shah & another through  
Mr. Muhammad Ishaque, Advocate.

**Date of hearing:** 18.02.2021.

**Date of Order:** 18.02.2021.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through This Reference Application, the Applicant has impugned Judgment dated 12.12.2019 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-1079/2019 proposing the following questions of law:-

- i. Whether on the facts and the circumstances of the case, the learned Member Judicial-I has erred in law by concluding that the legality of locally purchased goods can be established without Sales Tax invoice?
- ii. Whether the respondent is, per-contra, under statutory obligation to produce the title of ownership in terms of Rule 126 of Customs Rules 200, issued under Section 211 of the Customs Act, 1969?
- iii. Whether the express provisions of Section 168 of the Customs Act, 1969, create any bar to conduct enforcement operations in the municipal area?
- iv. Whether on the facts and the circumstances of the case, the respondent has succeeded to establish his right to ownership in respect of smuggled cloth before the adjudicating officer in legal maxim 'ubi jus ibi remedium';?
- v. Whether the learned Customs Appellate Tribunal has justified by deciding the case to the extent that the power vested to the learned Tribunal were exercised reasonably, fairly, justly and for advancement of the purpose of enactment in terms of Section 24-A of General Clauses Act, 1897, and whether the learned Tribunal has recorded the department's objection or view point presented during the course of hearing?

2. Learned Counsel for the Applicant has read out the Order passed by the learned Tribunal and submits that smuggled goods have been ordered to be released, which could not have been done; hence, the impugned order be set-aside. On the other hand, Respondent's counsel submits that entire record including purchase receipts were presented before the Tribunal which proves that these are not smuggled goods, and therefore, this Reference Application is liable to be dismissed.

3. We have heard both the learned Counsel and perused the record. The operative part of the order passed by the learned Tribunal reads as under:-

“5. I have heard arguments of both the parties and gone through the record of the case with their able assistance.

“6. The appeal of the appellant is only to the extent of seized 15000 Yards cloths. The appellate provided purchase documents, the respondent at the time of seizure as well as at the time of confiscation of cloth produce the evidence/receipt but the Seizing Agency as well as Adjudicating Officer did not consider the same. He also appended the receipt with this appeal as well as provided the same at the lower stage. The respondents not verified the receipt neither brought evidence on file to rebut the same. It was the duty of the seizing agency as well as the Adjudicating Officer to thrash out all the evidence available on the record and also discuss the same in his order but the Adjudicating Officer failed to rebut or accept this evidence of the appellate.

“7. In view of above, I accept the appeal and modify the Order-in-Original No.241/2019-20 dated 03.09.2019 of the Collector Customs (Adjudication-I), Customs House, Karachi to the extent of cloth of the present appellant which is to be released un-conditionally to the appellant. The appeal stands disposed of.”

4. Perusal of the aforesaid finding reflects that though the Tribunal has come to a conclusion that the Adjudicating Officer had failed to discuss or record an independent finding to the extent of the respondents' claim; but at the same time, instead of remanding the matter to the adjudicating authority, the appeal has been allowed. This has been done by the Tribunal without even recording its own finding of fact as to the claim of the Respondent that he had purchased the goods from open market and was in lawful possession of the same. Moreover, on perusal of the order passed by the adjudicating officer, it further appears that various respondents had contested the matter before the said officer, and though their arguments/contentions have been reproduced along with the

comments of the applicant; but while passing the Order-in-Original, the case of each respondent has not been discussed in any manner. The order has been passed in a cursory and generalised manner and without attending to the case of each respondent, therefore, the proper course which was required to be adopted by the Tribunal was either to record its own finding of fact to the extent of the contesting respondent; or to remand the matter to the adjudicating authority for denovo consideration. This has not been done; as a consequence, thereof, the impugned order cannot be sustained.

5. In view of hereinabove facts and circumstances of the case, the proposed questions of law to the extent of the present respondent are answered in favour of the applicant and against respondent; the matter, after setting aside of the impugned order, is remanded to the adjudicating officer who shall decide the case of the present respondent after examining the material already placed on record with an opportunity of hearing through a reasoned order. Let such exercise be carried out by the concerned officer preferably within a period of 60 days from the date of receipt of this order.

Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

**J U D G E**

**J U D G E**

Hyder/PA