# *IN THE HIGH COURT OF SINDH AT KARACHI*

***(Extraordinary Reference Jurisdiction)***

## *Special C.R.A. No. 815 of 2017*

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## *Special C.R.A. No. 816 of 2017*

| *Date* | *Order with signature of Judge* |
|---|---|

***Present:***

***Mr. Justice Aqeel Ahmed Abbasi***
***Mr. Justice Mahmood A. Khan.***

**Fresh Case**

**12.11.2019:**

Mr. Shakeel Ahmed, advocate for the applicant(s).

## *ORDER*

1. Since both these References have been filed against the combined judgment dated 19.06.2017 passed by the Customs Appellate Tribunal in Customs Appeal Nos. K-842/2016 and K-843/2016, whereas, common questions have been proposed, therefore, both instant References are being heard and decided through common order.

2. Learned counsel for the applicant, after having read out proposed questions in both the References, has candidly submitted that following ***Question No.2*** is the relevant question of law, which the applicant would press in the instant References as it is a question of law arising out from the combined impugned judgment passed by the Customs Appellate Tribunal in the instant cases. After having read out the precise question and the combined impugned judgment as well as the Order-in-Original passed by the Adjudicating Authority in the instant cases:-

> *"2. Whether the Honorable Customs Appellate Tribunal has erred to consider the fact that the undeclared goods are not to be allowed transit in terms of APTTA Rules, 2010*

> *according to which only those goods are allowed to be transited which are declared in the goods declaration?"*

While confronted the learned counsel to point out any factual error or legal infirmity in the impugned judgment passed by the Customs Appellate Tribunal in the instant cases, learned counsel for the applicant(s) has candidly submitted that there was short declaration in respect of the GD met from the Afghan Transit Scheme, however, since there was no element proposition of duty and taxes, therefore, the conclusion of the Customs Appellate Tribunal in the instant cases, does not suffer from any illegality.

3. We have heard the learned counsel for applicant(s), perused the record with his assistance and also gone through the combined impugned judgment passed the Customs Appellate Tribunal as well as the Order-in-Original passed by the Adjudicating Authority in the instant cases. It will be advantageous to reproduce the relevant finding of the Customs Appellate Tribunal as contained in Para: 6 to 8 of the combined impugned judgment, whereby, the subject issue is dealt with, which reads as follows:-

> *"6. Record has been carefully examined and the arguments putforth from both the sides have been considered. It is seen that appellant is an Afghan National and he had filed an Afghan Transit GD. Scrutiny by respondent revealed upon filing the GD that seventeen items were found in the consignment which were not declared and the three item declared were also found different in quantities compared to appellant's declaration. This irregularity led to issuance of a Show Cause Notice and the impugned Order. We have before us this Order which is found to have seriously erred in concluding that "the respondent (means appellant in context of this order) deliberately undeclared certain items 'imported' in the*

*said consignment to avoid payment of leviable charges on the ascertained amount of duty and taxes so as to deprive government exchequer of the due revenue." This conclusion is factually incorrect as the transit goods in question are not liable to any amount of duty/taxes as against the goods imported into Pakistan for Home consumption or in-bonding. As for the short declaration, the appellant contends that it was a bonafide mistake of the clearing agent's staff as all the items were duly mentioned in the Invoice(s) and the Packing List. This plea is found to carry weight as the department' presumption that 'excess goods' found undeclared would have been removed en-route without crossing over in Transit to Afghanistan has no cogent basis. It is also of significance to mention here that impugned goods had already crossed the border on 04.01.2016 as evident from the on-line message in the system. Therefore, even if the guarantee for safe passage in transit from Pakistan under the rules was to be taken accordingly to the value of goods and duty/taxes leviable eon case of import in Pakistan, under the rules the same would have qualified to be released as the risk coverage has already culminated. Therefore, we are of the considered view that neither there was any malafide established against the appellant Afghan importer nor the goods were dutiable hence no loss to the exchequer had occurred. Especially, in the event of transit having been completed the impugned order is found to have no locus standi.*

*7. Keeping in view the facts on record and circumstances of this case, the appeal is found to have merit hence the same hereby allowed and the impugned order is set-aside.*

*8. As for the respondent Directorate Transit Trade's Appeal No. K-842/2016, essentially filed to have the amount of fine and penalties recovered*

*imposed in terms of clauses (64) and (14) of section 156(1) of the Customs Act, 1969 – the same is found not sustainable on any legal or factual basis due to the facts and observations given in this order, hereabove, hence appeal No. K-842/2016 dated 01.04.2016 is hereby dismissed."*

4. From perusal of hereinabove finding, as recorded by the Customs Appellate Tribunal, it has been observed that admittedly that the goods imported were met to be transported to Afghanistan under Afghan Transit Scheme, whereas, impugned goods had already crossed the border on 04.01.2016 as evident by the online message in the system, which fact has not been disputed by the learned counsel for the applicant(s). Moreover, in respect of consignment, which is not met for home consumption or to be taken up into-bonding warehouse Pakistan, whereas, the GDs to be transported under Afghan Transit Scheme, there is no element of imposition of duty and taxes, unless there is some misuse of pilferage under Afghan transit Scheme. Admittedly, the subject goods were transported to the Afghanistan, therefore, the imposition of any penalty and fine under the circumstances, was not justified.

5. In view of facts and circumstances of the case, we do not find any substance in the instant Reference Applications, which are hereby dismissed in limine. Consequently, the proposed common question is answered in "***NEGATIVE***" against the applicant and in favour of the respondent.

6. Instant Reference Applications stand disposed of in the above terms alongwith listed application(s).

***J U D G E***

***J U D G E***

***A.S.***