

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application No.23 of 2016

Collector of Customs
Versus
M/s Cargo Aviation System

Date	Order with signature of Judge
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1. For orders on office objection No.17.
2. For hearing of main case

Dated: 14.09.2021

Mr. Iqbal M. Khurram for applicant.

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Heard.

Respondent No.1, being a clearing agent, had no role in alleged offence and consequently an attempt was made to loop the clearing agent without any cogent reason or evidence. The attempt of the applicant in maligning and/or involving the clearing agent to be in collusion/connivance with the importer in commission of the alleged offence is a futile attempt particularly in absence of any evidence. The applicant's counsel is unable to support the contention that there was any connivance/collusion or deliberate attempt on the part of the clearing agent in filing subject mis-declaration. The clearing agent cannot be believed to have such information unless a contrary/concrete evidence is available.

On the above background, out of seven proposed questions, the applicant's counsel during course of argument has pressed for first three questions, which are as under:-

1. Whether in the light of facts and circumstances of the case and considering that the respondent clearing agent had made

an attempt to evade foreign exchange of US \$.11127.90 (Rs.11,65,091/-) through self-assessment in terms of Section 131(1)(a) of the Act, the Appellate Tribunal erred in law to set aside the Order-in-Original under section 179 of the Act, by ignoring the provisions of Section 16, 32(1), 32(2) and (32)(A) of the Act read with Customs Agents Rules notified vide SRO 450(I)/2001 dated 18.06.2001?

2. Whether in the presence of admitted position of law and facts that in the prescribed manner as envisaged under sections 131 and 209 of the Act read with Customs Agents Rules notified vide SRO 450(I)/2001 dated 18.06.2001, the respondent clearing agent filed Goods Declaration (G.D) and scanned all documents especially "Form-E". Upon verification from the issuing Bank M/s United Bank Limited, Avari Tower Branch (0598), Karachi that the "Signature on E-Form along with my stamp is also fake. Mentioned customer does not have any account in our branch as well. So kindly abjure the E-Form and do not process it". The Appellate Tribunal erred in law to let the respondent clearing agent free without payment of penalty amounting to Rs.100,000/-.
3. Whether in the presence of admitted law and facts that respondent clearing agent filed goods declaration on behalf the exporter, which covers that acting on behalf of any persons tantamount to acting himself. Whether, the Appellate Tribunal erred in the law and did not consider the facts of the case that the case is subjudice before Special Judge of Customs, Karachi?

We have perused the above three questions and are of the view that the same do not arise out of the impugned order. As far as imposition of fine is concerned, there is no reason to believe that there was any connivance/collusion or deliberate attempt on the part of the clearing agent vis-à-vis for such mis-declaration, hence there was no justification for imposing penalty in the sum of Rs.100,000/- and the same was rightly found unsustainable by the Tribunal. No interference as such is required in respect thereto.

Although all the three questions do not appear to be the questions of law as the same require concrete evidence, there is nothing on record to support the arguments in relation to the proposed three questions, which otherwise do not require any interference. All the three questions are thus answered in negative in favour of respondent and against the applicant.

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

Judge

Judge