

ORDER SHEET

# HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.109 of 2012

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Date

Order with signature of Judge

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**For hearing of main case.**

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11.11.2022

Mr. Iqbal M. Khurram, Advocate for the applicant.

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Through this Special Customs Reference Application (**SCRA**) the following question of law was admitted for regular hearing, vide order dated 21.10.2014:

*“Whether in view of the Section 181 and Section 156(1)(14) of the Custom’s Act read with SRO 499(I)/2009, and the facts and circumstances of the case the Appellate authorities of Section 193 and 194-A of the Customs Act have jurisdiction to waive the fine and penalty”.*

At the forefront, Mr. Iqbal Khurram, counsel for the applicant objects that the Customs Appellate Tribunal (**the Tribunal**) while dismissing the Customs Appeal bearing No.K-441 of 2010 of the department has affirmed the order of the Collector of Customs, Sales Tax & Federal Excise (Appeals) [**Collector of Customs**] without giving any reason for accepting the said order. According to the learned counsel the order of the Tribunal is scanty, sketchy, non-specific and is violative of Section 24-A of General Clauses Act.

None present for the respondent despite proper service of notice.

Perusal of the order of the Tribunal reveals that the Tribunal without discussing the issue in appeal has simply confirmed the order of the Collector of Customs that the said authority has given due consideration to the arguments placed before him. In our view, the Tribunal has totally failed to discuss the reasons in its order as to how it has found the order of the Collector of Customs valid grounds and correct in law which fact, in our view, has rendered the order passed by the Tribunal non-speaking. It is a settled principle of law that an

authority deciding the matter has to discuss the issue and thereafter give its own reasons and findings on the issue posed and henceforth to either allow or dismiss the matter by giving cogent reasons through a speaking order. We are afraid that the order passed by the Tribunal does not appear to be a sound, reasoned and outcome of application of mind as it simply reiterates the Collector's reasons, while allowing the appeal but the reasons for doing so are totally missing in the impugned order. Article 4 of the Constitution of Islamic Republic of Pakistan 1973 and Section 24-A of the General Clauses Act **(the Act)** mandates that matters be decided in a legal and just manner. Hence the authority, while dealing with either judicial or quasi-judicial matters is required to give reasons in support of its decision to fulfill the constitutional responsibility. It is a trite principle of law that any order in violation of Section 24-A of the General Clauses Act is also not to be considered an order in accordance with law. In this regard, we would like to quote the famous judgment rendered in the case of *Mollah Ejahar Ali Vs. Government of East Pakistan (PLD 1970 Supreme Court 173)* wherein a Five Members Bench of the Hon'ble Supreme Court of Pakistan held that:

*"A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved by their proper adjudication."*

In another judgment rendered by the Hon'ble Supreme Court of Pakistan titled *Government of Sindh Vs. Muhammad Juman and another (2009 SCMR 1407)* the Hon'ble Apex Court, while relying upon the judgment of Gouranga Mohan Sikdar Vs. The Controller of Import and Export (PLD 1970 SC 158) and *Mollah Ejahar Ali Vs. Government of East Pakistan supra*, held that:

*"This Court in the cases reported as Gouranga Mohan Sikdar Vs. The Controller of Import and Export (PLD 1970 SC 158) and Mollah Ejahar Ali v. Government of East Pakistan PLD 1970 SC 173 held that the Court must pass a speaking judicial order manifesting by itself that the Court applied its mind to the issues involved in the case. Even section 24-A of the General Clauses Act requires an executive authority to pass the order reasonably, fairly, justly and by rendering reasons".*

It has also been held by a Division Bench of Lahore High Court in the case of *M/s. Poly Pack Ltd. Vs. Customs and Central Excise Appellate Tribunal and others (2005 PTD 2566)* that:

*“It is settled law that “judicial order” must be speaking order manifesting by itself that the Court has applied its judicial mind to the issues and points of controversy involved in the causes. In any case the impugned judgment, which is not a speaking order and devoid of reasons is not sustainable in law being in contravention of law declared by the Supreme Court of Pakistan in various cases, like Adamjee Jute Mills Ltd. v. The Province of East Pakistan and others (PLD 1959 SC (Pak) 272), Gouranga Mohan Sikdar v. The Controller Import and Export and 2 others (PLD 1970 SC 158), Mollah Ejahar Ali v. Government of East Pakistan and others (PLD 1970 SC 173) and Muhammad Ibrahim Khan v. Secretary, Ministry of Labour and others (1984 SCMR 1014)”*

We, in view of the above facts and the established legal position, have come to an irresistible conclusion that the order passed by the Tribunal, by no stretch of imagination, can be considered to be an order fulfilling constitutional obligations and the requisites of Section 24-A of the General Clauses Act. For these reasons, we with the consent of the learned counsel set aside the said order and the matter is remanded to the Tribunal for deciding the same afresh in accordance with law, after granting opportunity of hearing to both the parties, through a well-reasoned and speaking order thereby giving independent valid reasons for accepting or rejecting the contentions posed to it. The instant SCRA stands disposed in the above terms.

JUDGE

JUDGE