

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

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal**

Special Customs Reference Application No.609 of 2022

Collector of Customs
Versus
Kazim Raza @ Qarikazim Raza & another

Along with

Constitutional Petition No.D-7234 of 2022

M/s Falcon Oil Filling Station
Versus
Federation of Pakistan & others

Date	Order with signature of Judge
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SCRA No.609 of 2022

1. For hearing of main case
2. For hearing of CMA 3378/22

C.P. No.D-7234 of 2022

1. For hearing of Misc. No.30608/22
2. For hearing of main case

Dated: 31.03.2023

Ms. Afsheen Aman for applicant in SCRA No.609/2022 and for respondent/department in CP No.D-7234/2022.

M/s. Saiyed Younus Saeed and Darvesh Mandan for petitioner in CP No.D-7234/2022.

Qazi Ayazuddin Ansari, Assistant Attorney General.

Mr. Ghulam Hyder Shaikh for respondent in SCRA No.609/2022.

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Muhammad Shafi Siddiqui, J.- The Special Customs Reference Application has been filed by the applicant department in response to a judgment passed by the Customs Appellate Tribunal, Karachi Bench-I dated 23.06.2022 whereas connected petition is filed for its implementation.

Heard the counsel and perused record.

The conclusion drawn by the Appellate Tribunal is as under:-

“05. Heard arguments of both the sides and examined the case record. The appellant has mainly contended that the respondent has failed to discharge burden of proof within 07 days given to him by the department. The appellant further argued that the photocopies of documents of Form-J, OMC agreement of dealership and authorization were managed afterwards and were not produced at the time of interception but the appellant did not produce any evidence contrary to the bonafides of these documents. The respondent pleaded that he has produced all documentary proofs of bonafide purchase of the goods from M/s Byco at the time of adjudication and that it has also been established through Hydrocarbon Development Institute of Pakistan test report that the seized goods are as per specifications of the Government of Pakistan. Hence, the burden of proof has been discharged. Accordingly, the Collector (Adjudication) while deciding the case has held that the goods have not been found to be smuggled. The appellant has pleaded that the Collector (Adjudication) has violated the provisions of the Customs Act, 1969, rules and procedures made thereunder by ordering de-sealing of the premises. The appellant has, however, not specified the provisions of the Customs Act, 1969, that have been violated by allowing de-sealing. We are constrained to observe that when the Collector (Adjudication) has held that the seized goods have not been found to be smuggled, then the premises cannot be kept sealed under the provisions of Customs Act, 1969.”

Applicant proposed following questions:-

- I) *Whether the learned Customs Appellate Tribunal erred in law to dispose of controversy in the impugned judgment by not considering that the respondents have absolutely failed to provide the Form-K to the applicant without which the respondents are not allowed to keep store and otherwise sale out the legal petroleum products in accordance with law?*
- II) *Whether the learned Bench of Customs Appellate Tribunal, Karachi has erred in law and deliberately ignored to call the primary or secondary evidence pertaining to photocopies of documents provided by eh respondents and released the smuggled High Speed Diesel in violation of certain provisions of law?*
- III) *Whether on the facts and the circumstances of the case, the respondents are under statutory obligation to*

discharge burden of proof cast upon them in terms of section 156(2) read with section 187 of the Customs Act, 1969, where the goods are seized under section 2(s) ibid and whether that burden was shifted on the customs authorities in accordance with law?

IV) Whether the provisions of section 2(s) have rightly been interpreted by the learned Customs Appellate Tribunal, Karachi and correctly appreciated whilst passing the impugned judgment dated 23.06.2022?

None of the proposed questions, as proposed by the applicant, are triggered out of the conclusion drawn by the Appellate Tribunal, reproduced above. The conclusions drawn by the Appellate Tribunal are all dependent on the evidence that was available, and/or perhaps not available, on the basis of which judgment was rendered and the last resort to such appraisal is Tribunal per M/s Middle East¹. We are exercising powers with limited jurisdiction under the reference and cannot reappraise such questions of facts and conclusions drawn, which are only dependent on evidence. Since no question of law is arising out of the judgment/conclusion drawn by the Appellate Tribunal, this Reference does not arise at all and hence is dismissed.

Since the connected petition is filed for implementation of the order of the Appellate Tribunal, we deem it appropriate to allow the petition. Order accordingly. Let compliance of the judgment of the Appellate Tribunal be made accordingly.

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

¹ Civil Appeals No.2016/2017 of 2022 order dated 16.02.2023.