

IN THE HIGH COURT OF SINDH AT KARACHI

Special Custom Reference Application No.450 of 2022
Special Custom Reference Application No.451 of 2022

Date	Order with signature of Judge
	<i>Mr. Justice Muhammad Junaid Ghaffar</i> <i>Mr. Justice Adnan-ul-Karim Memon</i>
Applicant in both SCRA's	Director, Directorate General, Intelligence & Investigation (Customs), Through Mr. Khalid Rajpar Advocate
Respondent	Syed Abdul Rauf & Saleem Through Ms. Dil Khurram Shaheen Advocate.
Date of hearing:	17.1.2024
Date of order:	17.1.2024

ORDER

Muhammad Junaid Ghaffar, J. – Through both these Reference Applications, the Applicant-department has impugned a common order dated 09.5.2022 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal Nos.K-7553/2021 and 7554/2021 and has proposed the following questions of law: -

- i. Whether under the facts and circumstances of the case impugned Cardamom is not liable to outright confiscation in terms of clauses (8) & (89) of sub Section (1) of Section 156 of the Customs Act, 1969, for violation of the provisions of Section 2(s) and 16 of the Act, read with Section 3(1) of the Import and Export Control Act, 1950?*
- ii. Whether in consideration of the facts and circumstances of the case the Respondent No.1 has successfully discharged burden of proof of lawful possession as envisaged under clause (89) of sub-section (1) of Section 156 and 187 of the Customs Act, 1969?*
- iii. Whether the learned Appellate Tribunal while concluding impugned judgment has not indulged into non-reading of evidence and relevant provision of law which occasioned miscarriage of justice?*
- iv. Whether in consideration of facts and circumstances of the case the impugned judgment is sustainable under the law?*

2. Heard learned counsel for the parties and perused the record. From perusal of the record it reflects that the two forums below i.e. the Adjudicating Authority as well as the Appellate

Tribunal have been pleased to hold that the respondent herein in response to the allegation that the goods in question (claimed by the Respondents herein) are smuggled goods has produced a Goods Declaration bearing GD No. *KAPE-HC-220455-31-05-2021* for lawful import of the goods in question. Both the forums below have examined the said GD and have recorded a definite finding of fact to the effect that the GD is found to be genuine and correct and corresponds to the seized goods. This finding cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority for factual determination in tax matters is the Tribunal¹. Here in this matter not only the Customs Tribunal but so also the departments own Adjudicating Authority have come to the same conclusion. It would be advantageous to refer to the observation of the Adjudicating Authority in both these cases, which reads as under: -

“SCRA No.450/2022

- a) *As regards the seized “Cardamom (Elachi) packed in 17 bags weighing 680 Kgs (approx.)”, the respondent has provided a copy of GD No.KAPE-HC-220455-31-05-2021 which shows the Cardamom was legally imported, wherein the description of the goods matches with the seized “Cardamom”. However, the seizing agency has not given any cogent reasons for disproving the same. Therefore, seized goods i.e. Cardamom (Elachi) packed in 17 Bags weighing 680 Kgs (approx.) are ordered to be released to the lawful claimant / owner of the Cardamom (Elachi) packed in 17 Bags weighing 680 Kgs subject to proper verification of GD and other related documents by the case making agency.*

The Show Cause Notice is disposed of in above terms.”

“SCRA No.451/2022

- a) *As regards the seized “Cardamom (Elachi) packed in 09 Cartons weighing 360 Kgs (Approx)”, the respondent has provided a copy of GD No.KAPE-HC-220455-31-05-2021 which shows the Cardamom was legally imported, wherein the description of the goods matches with the seized “Cardamom”. However, the seizing agency has not given any cogent reasons for disproving the same. Therefore, seized goods i.e. Cardamom (Elachi) packed in 09 Cartons*

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

weighing 360 Kgs (Approx) are ordered to be released to the lawful claimant / owner of the Cardamom (Elachi) packed in 09 Cartons weighing 360 Kgs subject to proper verification of GD and other related documents by the case making agency.”

3. In view of the above, since both the forums below have come to the conclusion that the Respondent herein has discharged the initial burden, we do not find any reason to interfere with the finding of fact recorded by them. The proposed questions are not questions of law; rather questions of fact, and are not required to be answered. Accordingly, both these Reference Applications are hereby dismissed. Office to place copy of this order in the connected Reference Application. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE