

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") No. 1747 of 2023

Date Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon**

Applicant: The Collector of Customs, ,
Collectorate of Customs
Enforcement, Customs House,
Karachi,
Through Mr. Ghulam Mujtaba
Saheto, Advocate.

Respondent: Muhammad Nabi
Through Mr. Sardar
Muhammad Ishaque and Mr.
Amjad Hayat Advocates.

Date of hearing: 25.01.2024.
Date of Judgment: 25.01.2024.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant (department) has impugned Judgment dated 12.06.2023 passed by the Customs Appellate Tribunal Bench-II, Karachi, in Customs Appeal Nos.K-2225/2022 & K-2226/2022 proposing the following questions of law;

1. Whether the Customs Appellate Tribunal Karachi is justified to hold that the respondents have successfully discharged the burden of proof in terms of Section 156(2) & 187 of the Customs Act, 1969 by providing the Goods Declaration pertaining to legal import of impugned cloth before the adjudicating authority in accordance with law and the said burden was shifted onto the Customs authorities?
2. Whether the Customs Appellate Tribunal is justified to conclude that the godown of the respondent was searched in violation of section 162 and the prerequisite requirements under section 163 of the Customs Act, 1969 were not complied with in accordance with law when the Apex Court vide Judgment in Civil Petition No. 1884-L of 2004 titled M/s Universal Gateway has held that section 162 be invoked subject to the conditions stipulated under the said section?

3. Whether the applicant not authorized to seize smuggled goods within the municipal area falling under the functional and territorial jurisdiction of the applicant?

2. Heard learned counsel for the parties and perused the record. At the very outset, Respondent's Counsel has been confronted as to the finding of the learned Tribunal to the effect search was not carried out in strict compliance of Section 163 of the Customs Act, 1969 as held by Supreme Court in the case of **Collector of Customs (Preventive) and 2 others Vs. Muhammad Mahfooz** reported as **(PLD 1991 SC 630)**, inasmuch as in the instant case admittedly search warrant was obtained from the concerned Magistrate under Section 162 *ibid*, and in response he submits that in that case the matter be remanded to the Tribunal for deciding the same on merits of the case and as to whether the charge of smuggling under Section 2(s) of the Act was established or not.

3. In view of the above, by consent the impugned judgment of the Tribunal stands set aside. Matter stands remanded to the Tribunal for deciding the same afresh in accordance with law and in light of the above findings. Let copy of this order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Ayaz