

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

**Special Custom Reference Application No.1193 of 2023 along with  
S.C.R.As. No.1194, 1195, 1196, 1197 & 1198 of 2023**

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Date	Order with signature of Judge
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1. For hearing of main case
2. For hearing of CMA No.2836/2023

**28.09.2023**

Mr. Sardar Zafar Hussain, Advocate for Applicants in all SCRAs.  
Mr. G.M. Bhutto, Assistant Attorney General.  
Mr. Abdullah Jan holding brief for Mr. Muhammad Adeel Awan,  
Advocate for Respondent in SCRA Nos.1193 & 1195 of 2023.  
Mr. Muhammad Saad Shafiq Siddiqui, Advocate for Respondent in  
SCRA Nos.1194, 1196, 1197 & 1198 of 2023.  
Mr. Tariq Aziz, Principle Appraiser SAPT along with Mr. Rahat  
Naseem, Assistant.

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Though on the last date of hearing we had heard Applicants Counsel, and today matter was fixed for arguments by Respondents Counsel; however, on perusal of the record including the impugned order, it appears that the controversy before the Tribunal was in respect of Valuation Ruling bearing No.1681 of 2022 dated 22.07.2022, which pertains to two products, namely, ***Electrolyte Tin Plate (ETP)*** and ***Tin Free Sheet (TFS)***, whereas, the Tribunal while setting aside the Valuation Ruling through the Impugned order has decided the controversy in respect of an entirely different product i.e. ***Steel Wire Rods***.

We are unable to understand as to how the Tribunal could have set-aside a Valuation Ruling, which is in respect of an entirely different product in this manner. In para 10 of the impugned order it has been stated that *“In our view, the controversy at hand revolves around the determination of the Customs Value of the imported **Steel Wire Rods**”*. Again in Para 11 it has been stated that *“The DR could not come up with a satisfactory answer as to why the ‘value addition’ at the rate of 5% for **Low-Carbon Wire Rods** is applied when the goods are imported in same manner as produced by the manufacturer abroad as per settled/agreed grades and specifications with the Appellants and that the prices of the contracted goods are for the products imported into Pakistan in the same manner and form.”*

While confronted, learned Counsel<sup>1</sup> for some of the Respondents has argued that the order in question is otherwise correct in law, therefore, it ought to be upheld, whereas, a rectification application has also been filed before the Tribunal.

To this we may observe that filing of a rectification application by itself warrants remand of the matter after setting aside the impugned order. In our considered view, this does not even appear to be some typographical mistake as contended by the Respondents Counsel, for which a rectification application could be filed. To us it seems that the Tribunal has not applied its mind on the facts in hand before them, and therefore, even if law has been considered and correctly applied, it is of no help.

We may observe that it is now settled law that the highest authority for factual determination in tax matters is the Tribunal<sup>2</sup>. Therefore, any lapse / mistake on the part of the Tribunal like the one in hand, can seriously prejudice the interest of any of the parties before it, and therefore, without adverting to the proposed question(s) and their adjudication, we are compelled to set-aside the impugned Order of Tribunal dated 20.02.2023 passed in Custom Appeal No.K-2095 of 2022 and other connected matters on this ground alone and remand the same to the Tribunal with directions to the Chairman of the Tribunal not to fix these matters before any of the Members, who have passed the impugned Order in question and shall constitute a separate special Bench for adjudication of the dispute in hand.

Let a copy of this order be issued to Chairman of the Tribunal through its Registrar for information and compliance. Office to place copy of this order in connected matters.

**J U D G E**

**J U D G E**

*FAIZAN/*

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<sup>1</sup> Muhammad Saad Shafiq Siddiqui, Advocate

<sup>2</sup> 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)