

IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. NO. 1064 of 2023

Date

Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Muhammad Abdul Rehman

Applicant: Director, Directorate General,
Intelligence & Investigation Customs),
Karachi,
Through Mr. Khalid Mehmood Rajpar,
Advocate.

Respondents: Umair Ahmed M/s. Umair Trading
Company, Flat NO. 21, Al-Safa Height-
2, Sector F-11, Islamabad & another,
Through Mr. Rehan Kiyani, Advocate.

Date of hearing: 16.08.2024.

Date of Order: 16.08.2024.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant department has impugned Judgment dated 25.02.2023 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-2147 of 2022 proposing the following Questions of Law:-

- “1. Whether consequent upon failure of the 1st Respondent to discharge burden of proof of lawful possession as envisaged under Section 187 of the Customs Act, 1969 and his subsequent request for release of the impugned Black Tea on payment of duty and taxes, the learned Appellate Tribunal has not erred in law to allow the appeal and order for its unconditional release?
2. Whether in consideration of the facts and circumstances of the case, the impugned Black Tea, **(notified item)** is not liable to ought right confiscation under clauses (8) & (89) of sub-section (1) of Section 156 of the Act *ibid*, read with clause (a) of preamble to SRO 499(I)2009 dated 13.06.2009, for violation of the provisions of Section 2(s) and 16 of the Act?
3. Whether the Appellate Tribunal has not erred in law to appreciate that the 1st Respondent (herein) has approached with “**unclean hands**” and was not entitled for any “**equitable relief**”?
4. Whether the Appellate Tribunal while concluding impugned judgment has not erred in law to appreciate that the provisions of Section 162 & 163 of

the Customs Act, 1969, are not applicable for recovery of secreted smuggled goods from open premises”

5. Whether the impugned judgment is not based on mis/non-reading of record, relevant provisions of Customs Act, 1969 and misplaced judgments?
6. Whether the impugned judgment is sustainable under the law?”

Herd Counsel for the Applicant and perused the record. At the very outset, Counsel for the Applicant was confronted as to Question No. 4 which is a legal question and if that is dealt with and decided against the Applicant then no other question is to be attended to. In response he has not pressed the same but has tried to argue the case on merits. However, from perusal of the record and the findings of the Tribunal, it reflects that the premises of the Respondent was searched without fulfilling requirements of Section 162 or 163 of the Customs Act, 1969. This does not appear to be in dispute except the argument that it was an open area. This again is not supported from the seizure report which states that the goods in question were stored at open cargo shed of M/s Usman Godown, Karachi. Merely because the Godown is open, it does not permit a search without following the procedure as provided under Section 162 and 163 of the Act. Since the main question being legal and on which the entire case is dependent, has not been pressed on behalf of the Applicant, we do not see any other question of law being arising out of the order of the Tribunal; hence, the Reference Application is hereby dismissed. Let copy of this order be issued to the Tribunal in terms of Section 196(5) of the Act.

J U D G E

J U D G E

Arshad/