

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Customs Reference Application ("SCRA") No. 633 of 2020

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Date Order with signature of Judge

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

**Applicant:** Director, Directorate General,  
I&I (Customs), Hyderabad  
Through Mr. Zulfiqar Ali Arain,  
Advocate.

**Respondent No.1:** M/s. Smart Power System  
Private Limited.  
Through Mr. Naveed Anjum  
and Sufiyan Altaf, Advocates.

**Date of hearing:** 01.02.2024.  
**Date of Judgment:** 01.02.2024.

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application, the Applicant (department) has impugned Judgment dated 04.06.2020 passed by the Customs Appellate Tribunal, Karachi, in Customs Appeal No.H-990/2017 proposing the following questions of law;

- i. Whether in consideration of the facts and circumstances of the case the learned Customs Appellate Tribunal while concluding impugned judgment has indulged into non-reading/mis-reading of evidence and failed to take into account that the 1<sup>st</sup> Respondent (herein) has relied upon irrelevant import/auction documents to legalize the impugned smuggled/non-duty Diesel Generators?
- ii. Whether burden of proof of lawful possession as envisaged under clauses (89) of Sub Section (1) of Section 156 read with Section 187 of the Customs Act 1969, can be discharged on the basis of irrelevant import/auction documents?
- iii. Whether in view of the facts and circumstance of the case, the impugned generators are liable to outright confiscation for violation of the provisions of Section 2(s) & 16 punishable under clauses (8) and (89) of sub Section (1) of Section 156 of the Customs Act, 1969?
- iv. Whether the impugned judgment which is merely based upon respective parties' contentions without showing any assessment of evidence on record, can be deemed a safe legal decision maintainable under the law?

2. Heard learned Counsel for the parties and perused the record. It would be advantageous to refer to finding of the Tribunal recorded in the impugned order, which reads as under:-

“8. I have gone through the record of the case as well as verbal arguments submitted by the appellant are that the goods in question are freely importable and he has purchased the same from open market. He produced the sale purchase receipt which are available on record. During the course of previous hearings, the departmental representative was directed to verify confirm the veracity of the sale/ purchase receipt from seller, but despite of so many directions since 2018, the departmental representative has not verified the same nor any statement has been filed in this regard to show that why they did not comply the directions to verify the sale/ purchase receipt nor submitted any report or statement/ rebuttal regarding veracity of sale/ purchase receipt, therefore, the malafide has been shows on the part of respondent department, which resulted the huge financial loss of the appellant, therefore, the appellant has been able to justify the purchase of goods from open market, and proved his case that the goods do not fall under the definition of Section 2(s) of the Customs Act, 1969.

9. In view of the above, the impugned Order-in-Original is set aside and the appeal is hereby allowed.”

3. Perusal of the aforesaid finding of the Tribunal reflects that the initial burden, if any, on the Respondent as contemplated under Section 187 of the Customs Act, 1969, was discharged (though to a certain extent only) by stating and producing the sale/purchase receipt from Seller. Once the Respondent offered a reasonable explanation as to the possession of goods in question, which is either acceptable or raised a doubt, in that case the burden was shifted upon the prosecution to establish the case<sup>1</sup>. The law is further settled that the burden of proof is shifted in terms of section 187 of the Customs Act, 1969 upon furnishing of documents of purchase upon the Customs authorities and has to be discharged satisfactorily by them<sup>2</sup>. Record reflects that despite so many directions of the Tribunal, departmental representative failed to verify such receipt / document. In that case the Applicant department is not justified in insisting that the burden as above was not discharged in accordance with Section 187 *ibid* as the

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<sup>1</sup> Collector of Customs v Naimatullah (2003 PTD 2118)

<sup>2</sup> Muhammad Gul v Member Judicial Appellate Tribunal (2013 PTD 765)

receipts are not relevant or fake. This could have been agitated only if the directions of the Tribunal had been complied with and a contrary finding was recorded.

4. In view of the above, no case for indulgence is made out. Accordingly, all questions are answered against the Applicant and in favour of the Respondent. As a consequence thereof, this Reference Application is dismissed. 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*