

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

SCRA No. 1113 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

Hearing of case

1. For hearing of CMA No.2504 of 2023
2. For regular hearing

02.10.2024

Mr. Khalid Mehmood Rajpar, advocate for the applicant
Mr. Amjad Hayat, advocate for the respondent

Through this Special Customs Reference Application, the Applicant has impugned judgment dated 06.02.2023, passed in Customs Appeal No.K-2229 of 2022 by the Customs Appellate Tribunal, Bench-I, Karachi, proposing *various* questions of the law; however, after briefly hearing the learned counsel appearing on behalf of the parties and on perusal of the Tribunal's judgment, it has transpired that the Tribunal has failed to give its own findings or reasoning in passing the impugned judgment and after recording the contention of the respondent's counsel in paragraph-13, has passed the impugned judgment in a slipshod manner without adjudicating as to what was the ground which prevailed upon the Tribunal to decide the matter in favour of the respondents.

Time and again, we have noted that the Tribunals (Customs as well Inland Revenue) are passing orders / judgments in such manner, which is becoming a cause of concern for this Court, as such cases are to be heard in detail and then remanded to the Tribunal for passing appropriate orders afresh after fulfilling the minimum requirements of Section 24A of the General Clause Act, 1897.

We are afraid this is not the right course to be adopted by the Tribunal and we cannot appreciate such findings; rather compelled to deprecate it. While hearing the Appeal, the

Tribunal was required to decide the issue of facts as it is a case, wherein there appears to be some dispute regarding production of a certificate by the Respondent. The Respondent was required to fulfill pre-condition of furnishing implementation agreement with the Federal Government prior to 15.1.2022. There is no finding on this, either in the affirmative or otherwise. Until this question of fact is thrashed out, no decision could be made by the Tribunal as to the entitlement of the Respondent to claim exemption of duties and taxes. We are compelled to state that the Appellate Tribunal has failed to first appreciate proper facts and without doing so, has allowed the Appeal of the Respondent. Such determination on facts was crucial as the entire case rests on it. The Tribunal in Para 13 of the impugned order has given detailed facts, but a minute examination of it reflects that in fact it is all, but the contention of the Respondent. Nowhere, the Tribunal has given its own findings, either in respect of facts or for that matter, law. While recording its conclusion in Para 14, in a slipshod and cursory manner the Appeal has been allowed which does not seem to be appropriate and in accordance with law. It is by now settled that the tribunal is the last fact-finding forum in these matters, and therefore, it was incumbent upon the Tribunal to decide the controversy on its own and in an independent manner after considering the contention so raised by the parties before it. If the relevant facts are not taken into consideration or deliberated, and the reasons for or against have not been weighed, the Tribunal would then not have decided the Appeal. Any purported order or judgment without deciding the Appeal would be a nullity in law. It is for this reason that if the Tribunal fails to advert to a question of law or fact raised before it or before any other forum under the relevant statute, it is treated as a question of law for the purposes of a Reference Application before the High Court¹. Therefore, the Tribunal is to

¹ (2015 PTD 936) WATEEN TELECOM LTD. V COMMISSIONER INLAND REVENUE

remain careful and cautious while deciding the Appeals and should not pass stereotype orders, like the one in hand.

In view of the above, we are left with no choice but to **set-aside** the impugned judgment as above. *Ordered accordingly.* The matter is remanded to the Tribunal with directions to decide the Appeal afresh, in accordance with law by way of a speaking and reasoned order, after affording opportunity of hearing to all concerned. Let such exercise be carried out preferably within a period of ninety [90] days, whereas the **Chairman of the Tribunal is directed not to place this matter before any of the two Members of the Tribunal,** who have passed the judgment in question. Reference Application stands **disposed** of in these terms.

Let a copy of this order be issued to the Tribunal as required under Section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Qurban/PA*