

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A No. 1492 of 2023

Date

Order with signature of Judge

HG OF CASE.

1. For orders on Office Objection No.8.
2. For hearing of CMA No.3694/2024.
3. For hearing of CMA No.1978/2024.
4. For Regular Hearing.

31.10.2024.

Mr. Khalilullah Jakhro, Advocate for the Applicant
Mr. Muhammad Iqbal Riaz, Advocate for the Respondent.

Through this Reference Application, the Applicant has impugned judgment dated 10.04.2023 passed in Customs Appeal No.H-7255/2021 by the Customs Appellate Tribunal, Karachi, proposing following questions of law:-

- “A. *Whether under the law and circumstances of the case, the Customs Appellate Tribunal was justified to appoint its own employee that is “Assistant Private Secretary” to act as a local commission expert for physical verification of silk cloth production unit at Astambol Silk Mills, Swat, and consequently adopted the quasi-function of “Judge, Jury & Executioner” which is against sine qua non necessity of justice?*
- “B. *Whether under the law and circumstances of the Customs Appellate Tribunal was justified to appoint its own employee to conduct verification process to the effect that the subject goods are imported or locally manufactured despite the fact that the person has no expertise/skills to determine the nature of goods. Besides, without prejudice, the person/Commission was appointed without the consent of the respondent and the case has been decided unilaterally?*
- “C. *Whether the Appellate Tribunal was justified to release the seized goods valuing Rs.2.4675 Million and duty taxes involving to the tune of Rs.1.410 Million without considering any documentary trial of sales tax invoices/import documents if any?”*

Heard learned counsel for the Parties and perused the record. Insofar as Questions Nos. (A) and (B) are concerned, it

may be observed that the stance of the Applicant and the contention of their Counsel that Tribunal has no powers in law to appoint a local Commissioner is based on misconception as well as ignorance of law as the Customs Tribunal has been conferred certain powers under the then applicable provision of Section 194-C (6) of the Customs Act, 1969, and it has for the purposes of discharging its functions, the same powers as are vested in a court under the Code of Civil Procedure, 1908(V of 1908), when trying suit in respect of discovery and *inspection*; enforcing the attendance of any person and examining him on oath; compelling the production of books of account and other documents; and *issuing commissions*. This provision fully empowers the Tribunal to appoint any local commission and consider its report for the purposes of final adjudication and decision of an Appeal. As to the objection regarding appointment of a specific person as a Commissioner, which according to the Applicant had no relevant experience for such an exercise, it would suffice to state that this cannot be objected to at this stage as if at all, the Applicant ought to have objected to the appointment of the Commissioner and his competence at the relevant time by seeking an appropriate remedy. Once it has submitted to such an appointment and a report has been placed before the Tribunal, then it was too late for the Applicant to take this objection now. Therefore, the proposed Questions (A) & (B) are answered accordingly against the Applicant.

Insofar as the Question No. (C) is concerned, it appears that the Tribunal after going through the report of the Commissioner and as per available record has given a finding of fact that the goods in question are locally manufactured and not imported; hence, the allegation of smuggling cannot be sustained, whereas per settled law (prior to Finance Act, 2024) such finding cannot be interfered by us in our Reference Jurisdiction as the highest authority for factual determination in

tax matters is the Tribunal¹. Lastly, we have also confronted learned Counsel for the Applicant that as to how the department had come to the conclusion, at the time of seizure of the goods that the “Cloth” in question is imported and smuggled and he could not satisfactorily respond; nor refer to any supporting material or document on record Accordingly, Question No.(C) is also answered against the Applicant and in favor of the Respondent.

In view of the above, the Reference Application is hereby ***dismissed*** with pending applications. Let a copy of this order be issued to the Tribunal as required under Section 196 (5) of the Act.

J U D G E

J U D G E

MUBASHIR

¹ 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)