

THE HIGH COURT OF SINDH, KARACHI

Special Custom Reference Application No. 717 of 2023

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman**

**Applicant: Director, I & I (Customs) Regional
Office, Karachi through Mr. Khalid
Mahmood Rajpar, Advocate.**

Respondent. Muhammad Shams Alam & another

Date of hearing: 12.11.2024

Date of Order: 12.11.2024

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned judgment dated 21.09.2022 passed in Customs Appeal No. K-1841/2022 by the Customs Appellate Tribunal, Bench-II, Karachi proposing the following questions of law:-

- I. Whether under the facts and circumstances of the case, the learned Appellate Tribunal has not erred in law to allow release of Betel Nuts which was ordered outright confiscation by the Original Authority in terms of clauses (8) & (89) of sub Section (1) of Section 156 of the Customs Act, 1969, for violation of the provisions of Section 2(2) and 16 of the Act, read Section 3(1) of the Import and Export Control Act, 1950?
- II. Whether the learned Appellate Tribunal while concluding impugned judgment has not erred in law and failed to appreciate that the 1st Respondent (herein) has produced irrelevant Delivery Receipt No. DG(CG)/Case-197/2021/6052/WH dated 09.06.2022, which cannot be termed lawful excuse to discharge burden of proof of lawful possession as envisaged under clause (89) of sub-section (1) of Section 156 read with Section 187 of the Customs Act, 1969?

2. Heard learned Counsel for the Applicant and perused the record. The relevant finding of the Tribunal while allowing appeal reads as under:-

10. I have examined the case record and considered the facts of the case brought during the course of hearings. The appellant claimed that the goods were purchased through an auction conducted by Pakistan Coast Guards. He submitted that the goods were delivered on 09.06.2022 and on the next day (i.e. 10.06 2022), these were intercepted by Police. He submitted delivery receipt bearing No.DG/CG/Case-107/2021/6052/WH dated 09.06.2022 bearing the name of the appellant. The same was forwarded to the issuing agency which vide letter No. DG(CG)/9015/22/8885/WH dated 12.09.2022 confirmed genuineness of the delivery receipt. The verification of delivery receipt demonstrates that the goods were duty paid and were in lawful possession of the appellant. The burden of proof in terms of section 187 stands discharged. Hence the goods are ordered to be released unconditionally to the lawful owner.”

3. From perusal of the aforesaid finding of the Tribunal, it appears that the Tribunal has recorded a finding of fact against the Applicant inasmuch as the genuineness of the delivery order / receipt has been confirmed and insofar as the Order of the Tribunal is concerned, such finding cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority for factual determination in tax matters is the Tribunal¹, therefore, we in our reference jurisdiction (prior to Finance Act 2024) cannot upset such finding of fact.

4. In view of the above, no question of law has arisen out of the order of the Tribunal; hence this Reference Application, being misconceived is dismissed in *limine*. along with pending application(s). Let copy of this order be sent to the Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

JUDGE

JUDGE

Ayaz P.S.

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)