

IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.303 of 2024

Date _____ Order with signature of Judge _____

PRESENT:
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

HEARING OF CASE:

1. For hearing of CMA No.1263/2024.
2. For Regular Hearing.

Dated; 31st January 2025

Mr. Khalid Mehmood Rajpar, Advocate for Applicant.
Mr. Rana Sakhavat Ali, Advocate for Respondent.
Mr. Kazim Raza, Registrar Customs Tribunal present in
Court.

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ORDER

Muhammad Junaid Ghaffar, J : - Through this Reference Application the Applicant has impugned Judgment dated 07.02.2024 passed in Customs Appeal No.K-24 of 2024 by the Customs Appellate Tribunal, Bench-I, Karachi; proposing various questions of law, however, for the present purposes it is Question No.1, which can decide the entire controversy. The same reads as under: -

“Whether in consideration of value of goods, involvement of duty and taxes, both over rupees five million, the impugned judgment as passed by the Member Judicial-I, Customs Appellate Tribunal, sitting signally is not without jurisdiction, lawful authority and violative of the provisions of sub Section (3) of Section 194-C of the Customs Act, 1969?”

2. Heard learned counsel for the parties and perused the record.

3. On 05.12.2024, following order was passed: -

“Let notice be issued to the Registrar Bench-I, Customs Appellate Tribunal, Karachi to assist the Court as to proposed Question No.1 as it is the case of the Applicant that the matter has been decided by a Single Member of the Tribunal, whereas, it ought to have been decided by the two Members Bench as the value and amount of duties and taxes is more than Rs.5.00 Million. The Registrar shall file his

response with explanation as to how the matter was placed before the Single Bench as against the propose questions.

Adjourned to 13.12.2024. Interim order passed earlier to continue till the next date of hearing.”

4. Today, the Registrar, Customs Appellate Tribunal has affected appearance and placed on record his report dated 12.12.2024, wherein, it is stated that initially the matter was placed before a Division Bench of the Tribunal and on 24.01.2024 following order was passed: -

“24.01.2024.

*Mr. Afzal Bhatti, Advocate, present for Appellant.
Mr. Babar, I.O present for Respondent.*

Case called. Both parties are present. Appeal is filed within time. Appeal is admitted for regular hearing Copy of the memo of appeal is handed over to the Respondent Respondent is directed to file para-wise comments on the next date of hearing. Learned counsel for the appellant pointed out that the amount involved in this appeal is less than fifty million. Therefore, appeal falls under the jurisdiction of single Member Bench. Office is directed to place the subject appeal before the Honourable Chairman for appropriate order. Case is adjourned to 31.01.2024.”

5. Perusal of the aforesaid order of the Tribunal reflects that the Division Bench has referred the matter to the Chairman for placing it before a Single Member merely on the assertion of the Respondent's Counsel and has not given its findings as to why the matter has to be referred to a single Member Bench instead of a Division Bench, as fixed by the office of the Tribunal. In this matter, the amount of duty and taxes involved and as mentioned in the show cause notice is admittedly above five million and when confronted, today learned counsel for the Respondent submits that the Respondent had claimed a part of seized goods, and the duty and taxes involved in respect of such goods is less than five million. However, we are not in agreement with such contention, as firstly the Division Bench of the Tribunal has not passed any reasoned order for placing the same before a Single Member Bench; and secondly it is not the assertion of an Appellant or the claimant of the goods before the Tribunal, which can determine the jurisdiction of a Single Member or Division

Bench of the Tribunal. It is in fact dependent upon the Show Cause Notice and the Order-in-Original wherein the said amount is adjudicated and therefore, instant matter could not have been heard and decided by a Single Member Bench of the Tribunal.

6. In view of hereinabove facts and circumstances of the case, the proposed question is answered accordingly, the impugned order of the Tribunal ***stands set aside*** and the matter ***stands remanded*** to the Tribunal, which shall be heard by a Division Bench of the Tribunal and be decided in accordance with law after providing an opportunity of hearing to all concerned. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of Subsection (5) of Section 196 of the Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS
