

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. Nos.955, 956 & 957 of 2024

Date

Order with signature of Judge

Hearing of Case (Priority)

- 1) For orders on office objection Nos.26 & 27.
- 2) For hearing of main case.
- 3) For hearing of Misc. No.4294/2024.

06.03.2025.

Mr. Sardar Zafar Hussain, Advocate for Applicant.
Mr. Arif Ali Manthar, Advocate for Respondent.

Through these Reference Applications, the Applicant / Department has impugned judgment dated 12.09.2024 passed in Custom Appeals No. K-2655/2024, K-2656/2024 and K-2657/2024, proposing various questions of law. All these Reference Applications are being decided through this common order as the finding and conclusion drawn by the Tribunal is worded in a similar manner.

Heard learned counsel for the parties and perused the record. The relevant findings of the Tribunal read as under:-

- “7. In view of all above, we are constrained to hold that, if a consignment is routed through red channel, and there is no misuse of green channel, and the importer wants to send back the goods, being not as per his order, his bona fides stand established. Facts and circumstances of the case, especially appellant’s request to re-export goods do not establish mens rea on his part.
8. The Hon’ble Sindh High Court has laid down the following criteria for the imposition of penalty in the case reported as 2019 CLD 583:-

“Penalty was to be imposed when there existed a guilty mind present with an element of mens rea and penalty disproportionate to gravity of an offence was as much illegal as the act calling for imposition of the same.”

In light of the above judgment and the facts and circumstances of the case, we do not find any element of mens rea in this case on the part of the appellant importer.

9. Therefore, we order that goods be re-examined in the presence of import’s representative and re-assess the GD as per re-examination thereupon duty / taxes be charged accordingly, but the redemption fine and penalty imposed on the appellant is not justified and hereby remitted in toto. Accordingly, the impugned Order-in-Original is hereby set aside and instant appeal is allowed in above terms.”

From perusal of the aforesaid findings, it reflects that the Tribunal has given divergent observations, as initially it has been observed that the bona fide of the Respondent stands established and the Appellant's request to re-export the goods do not establish *mens rea* on his part. At the same time, while concluding the order it has been directed to re-examine the goods in the presence of the importer's representative and thereafter the G.D. be reassessed; however, redemption fine and penalty already imposed has been remitted in totality. If according to the Tribunal, the case of the Respondent was bona fide, then the appeal ought to have been allowed in totality with all consequential benefits and there was no need to order re-examination and re-assessment. At the same time if re-assessment is to be made, then fine and penalty which may be imposed after re-examination and re-assessment cannot be remitted even before the exercise has been carried out. When confronted, Respondent's Counsel has not been able to defend these observations and the order of the Tribunal.

In view of the above, we are left with no choice, but to set aside the order of the Tribunal and remand these matters for decision afresh in accordance with law by way of reasoned order(s) after affording an opportunity of hearing to all concerned. Ordered accordingly. All Reference Applications are ***allowed***.

Since the consignment is still withheld, let the appeal(s) be decided by the Tribunal preferably within forty-five (45) days from the date of receiving of this Order. Let copy of this order be issued to the Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Office to place copy of this order in connected SCRA's.

ACTING CHIEF JUSTICE

J U D G E

Nasir/