

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application No. 209 of 2020

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

Applicant: The Collector of Customs,
MCC, Appraisement (East,
Customs House, Karachi
Through Mr. Khalid Rajper,
Advocate.

Respondent: M/s. Assabeqoon
(None present on their
behalf)

Date of hearing: 07.03.2025.
Date of Judgment: 07.03.2025.

JUDGMENT

Muhammad Junaid Ghaffar, ACJ: As per bailiff's report notice stands duly served; but no one has turned up. Service is held good.

2. Insofar as our last order dated 31.01.2025 is concerned, explanation filed by bailiff Mohsin Ali has been examined and we are not satisfied with such response as the conduct so stated in his explanation at the least amounts to inefficiency on his part. Let Show Cause Notice be issued by the competent authority and matter be proceeded against this bailiff in the terms of the High Court Establishment (Appointment and Conditions of Service) Rules 2006.

3. Through this Reference Application, the Applicant has impugned Order dated 21.02.2020 passed in Customs Appeal No. K-511/2012 by Member Judicial-II, Customs Appellate Tribunal Bench-II, at Karachi, proposing various questions of law; however, at the very outset, it appears that the Tribunal has not dilated upon the controversy in hand and has failed to give any reasoned finding on its own. The relevant finding of the Tribunal reads as under:-

10. What has been discussed the legal and factual controversies of the case and observed herein above and interpretation of the legal proposition referred in the prescribed law and to follow the ratio decidendi in the judgments of the Hon'able Superior Courts as well as aforesaid observations made thereon. I am of the considered view that the proceedings in the subject case are infested with patent deficiencies and violations of statutory requirements, regarding issuance of Show Cause Notice, all subsequent proceedings and orders passed thereon tantamount to substantive illegalities, adequate breach of natural justice has been equated with breach of law and super structure built thereon are hereby declared illegal, void, ab-initio. I hereby observed that the impugned orders passed during the hierarchy of the Customs is void, illegal, ab-initio, suffer from legal and factual improprieties, without justification and without jurisdiction having grave legal infirmities, is therefore, vacate the show cause notice and set-aside the impugned orders, passed by the Respondents. The subject appeal is accordingly allowed as pray, with above observation, as no order as to cost.”

4. From perusal of the aforesaid judgment of the Tribunal, it appears that the Tribunal has not dilated upon the facts nor on law and has passed the judgment in a slipshod and perfunctory manner. Such an approach is not only incorrect and not appreciable; but is at the same time, a burden on this Court. Time and again such matters are to be remanded due to such approach of the Tribunal, which amounts to sheer wastage of this Courts time and also burdens the department with additional costs for no fault of theirs. Moreover, per settled law, the highest authority for factual determination in tax matters is the Tribunal¹; therefore, the Tribunal is required in law to determine the facts finally so that none of the parties are prejudiced in further proceedings including Reference Applications before this Court which are to be decided only on questions of law arising out of the order of the Tribunal. The Tribunal's observation does not fulfil the minimum requirements of passing of orders in accordance with law.

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)

5. In view of the above, we are left with no choice but to set-aside the impugned judgment and remand the matter to the Tribunal to decide the same afresh and pass a reasoned order after affording opportunity of being heard to the parties. Ordered accordingly.

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

ACTING CHIEF JUSTICE

J U D G E

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