

ORDER SHEET

**IN THE HIGH COURT OF SINDH, KARACHI**

**Special Customs Reference Application Nos. 259 to 269 of 2012 (11 cases)  
Ibrahim Fibres Limited v. Customs Appellate Tribunal & Others**

<i>Date</i>	<i>Order with signature of Judge</i>
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Hearing/Priority.

- 1.For order on CMA No. 1594/2014.
- 2.For hearing of main case.
- 2.For hearing of CMA No. 1816/2012

**15.12.2020.**

**Mr. Pervez Iqbal Kasi, Advocate for the applicant.**

**Mr. Shakeel Ahmed, Advocate for the respondents.**

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Listed Special Customs Reference Applications have been filed by the Applicant impugning judgment dated 12.06.2012 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K.502 of 2011 and other connected matters (11 cases) and the applicant has proposed various questions of law as per the statement of the case in terms of section 196 of the Customs Act, 1969.

Learned counsel for the applicant has read out the order of the tribunal and submits that the learned tribunal has not given any independent findings; but has relied upon the order of the Collector (Appeals) and has affirmed the same without giving any reasons of its own. According to him this has resulted in serious miscarriage of justice as the Tribunal was required to decide the matter with its own independent findings.

On the other hand, while confronted with the above, learned counsel for the department has though made an effort to justify the impugned order; but has not been able to satisfactorily respond. He has argued that that the finding of the Collector (Appeals) reproduced by the Tribunal in its order be treated as the finding of the Tribunal.

We have heard both the learned counsel and perused the record. The finding of the learned tribunal in the impugned order is contained in paragraph 6 & 7 which reads as under:-

“6. We have heard the arguments advanced by both of the parties and perused the case record carefully. We have also perused the impugned order in appeal and found that the same has been passed after taking into consideration all the grounds taken up by both the parties. The operative part of the said order is reproduced below for ready reference:-

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7. A perusal of the above order in appeal reveals that the same lacks no infirmity. The learned counsel for the appellant has also failed to point out any illegality in the said impugned order. In view of these circumstances, we do not find any reason to interfere with the impugned order in appeal. The appeals are, therefore, dismissed being without any merit.”

Perusal of the aforesaid findings reflects that the tribunal has failed to independently decide the controversy before it and has approved the finding of Collector (Appeals) in a slipshod and cursory manner which does not seem to be appropriate and in accordance with law. It is by now settled that the tribunal is the last fact finding forum in these matters, and therefore, it was incumbent upon the tribunal to decide the controversy on its own and in an independent manner after considering the contention so raised by the parties before it. A mere approval of Appellate order of Collector (Appeals) in the above manner cannot be sustained and approved by this Court. If the relevant facts are not taken into consideration or deliberated, and the reasons for or against have not been weighed, the Tribunal would then not have decided the appeal. Any purported order or judgment without deciding the appeal would be a nullity in law. It is for this reason that if the Tribunal fails to advert to a question of law or fact raised before it or before any other forum under the relevant statute, it is treated as a question of law for the purposes of a reference application before the High Court<sup>1</sup>. This is a matter involving dispute of classification of goods in question (Titanium Dioxide); that as to whether it is classifiable under HS Code 2823.0010 as claimed by the Applicant or under HS Code 3206.1100 as per the respondent department. This ought to have been decided after considering the factual as well as legal

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<sup>1</sup> (2015 PTD 936) WATEEN TELECOM LTD. V COMMISSIONER INLAND REVENUE

issues involved; including but not limited to, the General Rules for Interpretation of the Customs Tariff (First Schedule to the Customs Act) and the Explanatory Notes to the Harmonized Commodity Description Coding System published by the World Custom Organization, Brussels, which is also part of the Customs Tariff under the Pakistan Rules.

In the circumstances, we are of the view that the only question which arises out of the order of the Tribunal is that “*whether in the facts and circumstances of the case the Tribunal was justified in deciding the Appeal before it by mere approval of the findings of the Collector (Appeals) without its own independent findings*” and the same is answered in negative; in favor of the Applicant and against the Respondent. As a consequence, thereof, the impugned order cannot be sustained and is accordingly set aside. The matter is remanded to the tribunal to decide it afresh after giving opportunity of hearing to the applicant as well as respondents and pass a reasoned and independent order after considering the contention / arguments so raised by the parties before it.

At this juncture learned Counsel for the Applicant has prayed for restraining the Respondent department from taking any coercive measures for recovery of the amount in question. Ordinarily, such a request ought not be entertained; however, since the matter is being remanded to the Tribunal which is admittedly non-functional at present, such request appears to fair and justifiable. Accordingly, the Respondents are restrained from taking any coercive measures for recovery of the amount in question till the Appeals are finally decided by the Tribunal. Let copy of this order be issued to the tribunal in terms of section 196(5) of the Customs Act, 1969.

All these Special Customs Reference Applications are allowed / disposed of in the above terms. Office to place copy of this order in all connected files.

*J U D G E*

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Aamir, PS