

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

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

Present:

*Mr. Justice Muhammad Junaid Ghaffar*

*Mr. Justice Agha Faisal*

**Special Customs Reference Application No.148 of 2014**

**Applicant:** M/s. Ismat Traders

**Special Customs Reference Application No.149 of 2014**

**Applicant:** M/s. Tanveer Traders

**Special Customs Reference Application No.150 of 2014**

**Applicant:** M/s. Dua Traders

**Special Customs Reference Application No.151 of 2014**

**Applicant:** M/s. Mohsin Traders

**Special Customs Reference Application No.152 of 2014**

**Applicant:** M/s. Asad Corporation

**Special Customs Reference Application No.153 of 2014**

**Applicant:** M/s. R.I. International

**Special Customs Reference Application No.154 of 2014**

**Applicant:** M/s. Saif ur Rehman

**Respondents:** The Deputy Collector of Customs & Others

**For the Applicants** Sardar Faisal Zafar,  
Advocate

**For the Respondents** Mr. Iqbal M. Khurram,  
Advocate  
Ms. Naheed Akhter,  
Advocate

Mr. Kafeel Ahmed Abbasi  
Deputy Attorney General

**Date of hearing:** 27.01.2021

**Date of Order:** 27.01.2021

## **ORDER**

**Muhammad Junaid Ghaffar J.-** Through these reference applications, Applicants have impugned Order dated 18.11.2013, passed by the Customs Appellate Tribunal, Karachi, in Customs Appeals Nos.K-109/2010 and other connected matters in identical terms, proposing the following questions of law, which according to the Applicants purportedly arise out of Order of the Tribunal:-

1. Whether in the facts and circumstances of the case the Customs Appellate Tribunal as well as learned respondents have correctly interpreted and applied the provisions contained in Section-25 of the Customs Act, 1969 read with relevant rules contained in Customs Rules 2001?
2. Whether the facts and circumstances of the case dispute on valuation in subsequent to released/out of charged consignment from customs premises is barred under Section-29 of the Customs Act, 1969?
3. Whether in the absence of invoking section 32 sub-section (2) in the show cause notice penalty can be imposed under section 32 sub-section (3A)?
4. Whether in the facts and circumstances of the case and Order-in-Original passed by the respondent No.1 was barred by limitation in terms of Section 179(3) of the Customs Act, 1969?
5. Whether in the facts and circumstances of the case Order passed by the Customs Appellate Tribunal is in accordance with the provisions of Section-24A of the General Clauses Act, 1887?
6. Whether in the facts and circumstances of the case the Order passed by the Customs Appellate Tribunal is based on mis-reading/non-reading, the material facts and evidence place on record?

2. Learned Counsel for the Applicants has read out the Order and submits that issues raised by the Applicants have not been decided by the Appellate Tribunal.

3. On the other hand, learned Counsel for the Department has supported the impugned Order.

4. We have heard both the learned Counsel and perused the record. After going through the Order of Tribunal, it appears that Appellate Tribunal has not decided the issues raised by both the

parties on its own and by itself with any independent findings and instead has approved the Orders passed by the forums below by holding that they are in accordance with law and do not suffer from any illegality. The relevant portions of the order is as under;

7. After examining the order in original, order in appeal and advance arguments of the parties. The appellant has failed to prove his case. Orders passed by forums below are correct in law and facts, therefore, we hereby dismiss the appeal of appellant having no merits with no order as to cost.

We are afraid this is not the right course to adopt in the facts and circumstances of this case and we are not inclined to appreciate such findings inasmuch as in these matters first the Tribunal was required to decide the issue of fact as it is a case, wherein after clearance of the consignments, the respondent Department pursuant to some Post Clearance Audit had issued Show Cause Notice(s) by making assessment of the Applicants' goods on the basis of available data in terms of Section 25(5) & (6) of the Customs Act, 1969. The Appellate Tribunal has failed to first appreciate proper facts and to arrive at a conclusion that whether the said data or evidence, if any, is applicable to the case of the Applicants or not. Such determination on facts was crucial as the entire case rests on it. The Tribunal after having failed to independently decide the controversy before it 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) or for that matter of the forum below it, 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>.

5. 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) and the forums below 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 Applicants as well as respondents and pass a reasoned and independent order after considering the contention / arguments so raised by the parties before it.

6. Let copy of this order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969. Office is further directed to place copy of this order in all connected files as above.

JUDGE

JUDGE

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

Khuhro/PA