

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl. Customs Reference Application Nos. 349 of 2018
along with
Spl. Customs Reference Application No. 350 to 358

<i>Date</i>	<i>Order with signature of Judge</i>
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Fresh Case.

- 1.For order on CMA No.2849/2018.
- 2.For hearing of main case.
- 3.For orders on CMA No. 2850/2018

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Applicant : **Director Intelligence & Investigation (Customs)**
Regional Office, Karachi through
Dr. Shah Nawaz Memon, Advocate

Respondents : **M/s Qasim Freight Station**
Port Qasim Karachi

Date of hearing: **09.03.2021.**

Date of Order : **09.03.2021.**

ORDER

Muhammad Junaid Ghaffar, J.- Through these Special Customs Reference Applications, the Applicant/department has impugned a common judgment dated 23.04.2018 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal Nos. K-1011 to 1016, 1195, 1196, 1570 and 1571 of 2017, proposing the following questions of law:

1. Whether the learned Appellate Tribunal miserably failed to apply judicial mind and legal acumen by not keeping in view the true spirit and application of SRO 704(i)/2007 dated 14.07.2007 and Rules 555(d)(i) and 556(b), (i)(ii) and (iii), C(i), (ii), (iii)&(v), D(i) and E(i) of Customs Rules, 2001 issued vide SRO 450(I)/2001 dated 18.06.2001, while the Respondent No. 1 M/s. QFS, PMBQ issued gate passes only on the basis of illegible copies of GDs without having confirmation from Customs/PaCCS and violated the provisions of aforesaid SRO?
2. Whether the learned Appellate Tribunal by dismissing the appeal of the appellant, acted in gross violation of the provision of Section 194-B(i) of the Customs Act, 1969 failed to record any additional evidence and decided the case arbitrarily and ignored the view point of the appellant being final fact finding authority?

3. Whether the learned Appellate Tribunal miserably failed to apply judicial mind and legal acumen by not keeping in view of the true spirit and application of Para-18 of Standing Order No. 01/99-(PQ) dated 02.10.1999 (Annex-B) which does not allow the terminal operation to issue gate passes on the basis of illegible photocopies of GD's without confirmation of its authenticity from the custom/PaCCS?
4. Whether the learned Appellate Tribunal miserably failed to understand and interpret that during the occurrence of crime of illegal removal of goods, the terminal was operating on manual basis and the Respondent No. 1 was under obligation to adhere to and comply with the instructions contained in the aforesaid standing order?
5. Whether the learned Appellate Tribunal while dismissing the appeal of the appellant has failed to consider that noncompliance of instructions contained in para-18 of the Standing Order No. 01/99(PQ) dated 02.10.1999 is violation of the provision of section 79 and 80 and punishable under clause 43 and 47 of section 156(i) of the Customs Act, 1969?
6. Whether under the prevailing facts and circumstances of the case the learned Tribunal badly erred in law by not deciding the appeal of the appellant on merits by taking shelter and invoking procedural rules thereby resulting in miscarriage of justice?

2. Learned Counsel for the Applicant has read out the judgment impugned herein, and submits that the Tribunal has failed to appreciate the relevant law as well as Standing Order No.01/99 dated 02.10.1999, which prescribes various responsibilities and functions of the respondent; hence the impugned judgment be set aside and questions be answered in favour of the Applicant.

3. We have heard the learned Counsel for the Applicant and perused the record. The case of the Applicants appears to be that certain containers were allowed clearance by the respondent, which is an off dock terminal without production of original goods declarations; rather, fake goods declarations were accepted for releasing the containers to the importers and/or their clearing agents. On this department issued show cause notices which were decided by the adjudicating authority in favour of the respondent and to their extent they were vacated. The department then aggrieved, preferred appeal before the Tribunal which has been dismissed through the impugned judgment. It will be advantageous to refer to the relevant findings of the Tribunal which reads as under:-

- “11. The respondents state that the Freight Station was not connected with a computerized system. It is a matter of record that module for inter port movement in WeBOC, dealing with shifting of cargo from ports to off-dock terminals was developed in the year 2013. Prior to application of this module cargo was transferred against K-Rod IGMs or local TPs. The respondents produced a set of documents, which has already been discussed vide para (20) of the Original Order. These documents substantiate the stance of respondents that at the time of alleged removal of goods the terminal was not linked with the Computerized System of Customs and there was no mechanism for them to ascertain that the indices were unclaimed and no GD was filed in the system. In the absence of EDI between Customs and the Terminal operator, reliance on hard copy of GD was inevitable. Much before development of computerized system, computer compatible document were developed and since 2004, number of copies of computer compatible Goods Declaration (GD-1) were reduced to four i.e. Customs Copy, Importer's copy, Clearing Agent Copy and Exchange Control Copy. No copy was generated for custodian of goods. In the non-computerized environment, the terminal operation relied on photocopy of GD and delivery order of shipping company to effect delivery of goods to owner of goods. It is important to record here that customs staff was posted at the terminal who were required to endorse the customs copy of GD before sending it to Manifest clearance department. The customs staff did not raise any objection to authenticity of the GD nor they altered the terminal staff about any possible offence. The gate passes issued by the terminal were duly stamped by SPO Customs. The appellants acknowledge that the customs staff failed to produce record and it was the terminal staff who provided photocopies of GD's. It shows that the terminal staff has been co-operating and have helped the seizing agency in investigation.
12. The present appellants have been reiterating that their concerns were not addressed by the adjudicating authority. Paras (21) to (26) of the Order-in-Original examine the comments of the appellants, as well take stock of the charging provisions of law invoked in the show cause notice. It is important to record here that Freight Station also known as Terminal are approved by the Board under section 9 of the Customs Act, 1969 and their limits are specified under section 10 *ibid.* the goods at such station are discharged in accordance with section 78 of the Act. None of these provisions were found in the show cause notice. The representative of the appellant department was given ample opportunity to bring on record any evidence or fact which could corroborate that the respondents were actively involved in preparation of take GD's or they clandestinely assisted the importer or his agent. The representative could not convince us that respondents were even aware of commissioning of this offence. The appellant department has failed to establish that respondents have in any way acted with malafide intention. The assertions by the appellants are based on suspicion and assumptions without legally sustainable corroborative evidence.

5. From perusal of the record and the relevant findings as above, it primarily appears to be a case wherein factual controversy vis-à-vis genuineness of goods declaration is involved and under our Reference jurisdiction we cannot examine the same. Secondly, it further appears that the off dock terminal operator had not cleared the consignments on its own; rather the customs officials were duly posted over there, and apparently, it was their responsibility to check the goods declaration(s) and point out discrepancies, if any. This is not the case, and it is an admitted fact that no show cause notice was ever issued to the said officials. In the given facts and circumstances of the case, we are of the view that no question of law arises out of impugned judgment of the Tribunal; as the issue is primarily of a factual nature; hence the captioned Special Customs Reference Applications being misconceived are hereby dismissed in *limine*.

6. Let copy of this order be sent to the Customs Appellate Tribunal as required under section 196 (5) of the Customs Act, 1969; whereas office is directed to place copy of this order in all connected Special Customs Reference Applications listed at Serial No. 4 of today's cause list.

J U D G E

Aamir, PS

J U D G E