

## IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Acquittal Appeal No. 58 of 2017

The Director, Directorate General of  
Intelligence & Investigation, FBR,  
Karachi. .... Appellant.

Versus

Mir Alam Jan  
Appraising Officer,  
MCC Appraisement (West)  
Pak Shaheen, Karachi ..... Respondent.

Date of hearing as well  
as short order : 20.08.2019

Appellant through Mr. Ashiq Ali Anwer Rana, Special Prosecutor Customs.  
Respondent through Mr. Mr. Aqil Ahmed, advocate

### J U D G M E N T

**FAHIM AHMED SIDDIQUI, J:-** The appellant impugns the judgement dated 18-10-2017 pronounced by the learned Special Judge (Customs & Television), Karachi in Special Case # 85/2014 (State v/s Mahmoud Yaqub & another), whereby the respondent was acquitted from the charge framed against him on the recommendations of appellant in shape of a Final Report. It is worth mentioning that through the same impugned judgement, the co-accused Mahmoud was convicted and sentenced to till rising of the Court and payment of fine of Rs. 500,000/-

2. The case against the appellant is that the appellant is involved in clearance of imported goods by mis-declaring the descriptions, HS Code, quality and value with the intention of evading duty and taxes leviable thereon. It is the case of the prosecution that M/s. Horizon International, Karachi imported consignments/container No. WHLU 5320287 (40) from Dubai. Said container was intercepted by DG intelligence & investigation-FBR by online

blocking the same. The said consignment was re-examined by the staff of DG at Pak Shaheen Terminal, Kemari, Karachi in presence of witnesses. Upon re-examination, copper tubing (HS Code 7411.1090) weighing 6.757 MT was found, which was neither declared by the importer nor reported by the Customs examining staff. It is pertinent to point out that the said goods were initially seized but subsequently on a petition filed by co-accused Mahmoud Yaqub; the same was released on depositing the differential amount of duty with the Nazir of this Court. The allegations against the respondent are that he did not perform his duties as Appraising Officer diligently and becomes instrumental in evasion of Customs duty by the principal accused.

3. I have heard the learned counsel for the appellant as well as counsel appearing on behalf of the respondent. It is worthwhile to point out that in case of acquittal, the principle of double innocence is available in favour of the acquitted person and to overcast the same; some strong and convincing material is required to be point out from the record. In the present case, the learned trial Judge has discussed the entire evidence available in the record. It is the factual position that some of the prosecution witnesses in their deposition have disclosed that there was no criminal folly on the part of the respondent in respect of the alleged offence. It is a fact that at the time of appraisal, only 5% of the declared goods are to be examined and the deeper examination of the entire consignment is done in selected cases when extraordinary conditions warrant to do so. Besides, from the record it has also established that the importer has imported two consignments/containers and from the second consignment/container, exactly the same quantity of copper tubing was found short and there is likelihood that after examining the containers, the staff handling the containers have wrongly de-stuffed the goods in the two containers. This fact has also come on the record through the mouth of the prosecution witnesses. Even in such a situation, doubt arises in favour of the respondent and the benefit of the same should be extended to

him. Nevertheless, the learned counsel for the appellant has tried to argue the case forcefully but he could not point out any material illegality, irregularity, misreading or non-reading of the evidence in the impugned judgement.

4. In such a situation, I have no hesitation to hold that the instant criminal acquittal appeal is meritless; therefore, through a short order dated 20.08.2019 the same is dismissed and these are the reasons for my short order.

JUDGE

Dated: \_\_\_\_\_