

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

Special Customs Reference Application No.311 of 2017

Director Intelligence & Investigation-FBR
Versus
M/s Al-Wahab Traders & another

Date	Order with signature of Judge
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1. For orders on CMA 2310/17
2. For hearing of main case.
3. For orders on CMA 2311/17

Dated: 04.10.2021

Mr. Kashif Nazeer for applicant.

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Heard.

This Special Customs Reference Application has been filed on the following five questions:-

1. Whether the Customs Appellate Tribunal, Karachi not erred in law by not taking into consideration the provisions of Section 187 of Customs Act, 1969 regarding burden of proof and to ask the appellants to present documents of lawful import in respect of the impugned goods i.e. Petroleum products?
2. Whether the Customs Appellate Tribunal, Karachi not erred in law by setting aside the impugned Order-in-Original and show-cause notice on merely technical grounds?
3. Whether the Customs Appellate Tribunal, Karachi not erred in law by not taking into consideration the fact that the seized goods do not have any relevance with the import documents submitted by the respondent and that the same has been proved through the lab report on record?
4. Whether the Customs Appellate Tribunal, Karachi failed to appreciate that the Order-in-Original was passed in accordance with the provisions of Section 179 of Customs Act, 1969?

5. Whether the Customs Appellate Tribunal, Karachi not failed to appreciate that the show-cause notice in the case was issued strictly in accordance with the provisions of the Customs Act, 1969?

In earlier round of litigation respondent No.1 filed a petition bearing No.D-3766 of 2013 wherein following order disposing of the said petition was passed on 01.10.2013:-

“Accordingly in view of what has been stated by the learned counsel for respective contesting parties and entirely without prejudice to their respective cases whether as made out in the pleadings filed in the present petition or otherwise, this petition is disposed of in terms of proper show-cause notice shall be issued to the petitioner within 10 days from today. Petitioner shall file his reply within two weeks of receipt of show-cause notice. A date of hearing shall be fixed within 10 days of filing of the reply to the show cause notice and from that onwards the proceedings with regard to the show-cause notice including the hearing and order to be made thereon must be concluded within a further period of three weeks. Any party aggrieved by the order made to the show-cause notice shall of course be entitled to avail remedy in accordance with law. Petition stands disposed of accordingly.”

It appears that there were directions of this Court for issuing a show-cause notice in ten days' time, from the date of order, which admittedly was not complied in letter and spirit as the same were issued belatedly. Even the time was not requested to be extended in the said case. In fact the entire schedule following show-cause notice was also given which was time bound. Furthermore, those belated notices were in fact served at different addresses i.e. addresses other than those disclosed in tax-payer registration certificate, goods declaration, invoice and/or NTN certificate. Even the address was not the one as mentioned in the memo of above referred petition, as admitted. Thus, alleged seizure is without lawful notice as required under the provisions of Section 171 of the Customs Act, 1969 and/or the directions, reproduced above.

Whether or not the burden was discharged by the respondent in terms of goods declaration filed, as the seized goods were not claimed to be those which were disclosed in the goods declaration, such question is not arising out of the impugned order. Even otherwise it is apparently a question of fact as identity of the seized goods is to be scrutinized on the basis of evidence and/or the goods declaration that was submitted to claim that the seized goods were not the smuggled goods. This was not even the case of the applicant before the Appellate Tribunal as the Appellate Tribunal decided the controversy on the strength that the show-cause notice was required to be issued in terms of the directions of this Court, as referred above, which directions were not complied with in letter and spirit.

Thus, in view of above the questions, as framed, though are not being arising out of the impugned order, are answered in negative i.e. in favour of the respondent and against the applicant. In consequence thereof this Special Customs Reference Application is dismissed.

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 196(5) of Customs Act, 1969.

Judge

Judge