

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.73 of 2009
(Collector of Customs Vs. Alhaj Ajab Khan)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Zulfiqar Ahmad Khan

Date of hearing : 27.01.2022.

For the applicant : Mr. Iqbal Khurram, Advocate.

For the respondent : Nemo.

ORDER

IRFAN SAADAT KHAN, J. Through this Special Customs Reference Application (**SCRA**) certain questions of law, said to have arisen from the order of the Customs, Excise and Sales Tax Appellate Tribunal (**the Tribunal**) in Custom Appeal No.176 of 2008, dated 11.11.2008, have been proposed for the opinion of this Court. Hence, this Court admitted the case for regular hearing to consider the question of law that whether Member Technical can adjudicate a question of law keeping in view the decision given in the case of Muzzamil Ahmad Vs. Collector of Customs (2009 PTD 266).

2. Briefly stated, the facts of the case are that the respondent is an individual who electronically filed goods declaration and sought its clearance. The Customs Department, however, detected certain discrepancies that the items which were banned and were not

importable were imported by the respondent. Action thereafter was taken against the respondent for mis-declaration, attempting to deprive the government from its legitimate revenue. Thereafter Order-in-Original, dated 11.05.2007, was passed against the respondent, against which an appeal was filed and the Appellate Authority vide order in appeal dated 19.02.2008 upheld the treatment of the Adjudicating Authority. An appeal thereafter was preferred before the Tribunal and the Single Member Technical, after hearing the appeal on 04.11.2008, vide order dated 11.11.2008, decided the same partially in favour of the respondent by ordering release of the old and used Fork Lifter against 30% redemption fine beside payment of duty and taxes leviable thereon under Section 181 of the Customs Act, 1969.

3. Mr. Iqbal Khurram Advocate has appeared on behalf of the applicant and stated that Member Technical had no jurisdiction to decide the question of law placed before him, as the said question could only be decided either by a Judicial Member or by a Divisional Bench comprising of Judicial Member and the Member Technical. He, therefore, states that since the order is not in accordance with law, the matter may be referred to the Tribunal for passing an appropriate order thereon. In support thereof, he placed reliance on the decision given in the case of Collector of Customs Vs. Syed Rehan Ahmed (PTCL 2017 CL 1) and decision given in Special Customs Reference Application No.03 of 2009 (authored by one of us, namely, Irfan Saadat Khan, J).

4. Nobody has appeared on behalf of the respondent despite proper service.

5. We have heard the learned counsel for the applicant /department at some length and have also perused the record and the decisions relied upon by him.

6. In our view, the question with regard to deciding the question of law by a Member Technical stands squarely covered by the above referred decision of the Hon'ble Supreme Court of Pakistan, which clearly envisages that the legislature does not want a Single Member Technical to be prevented from hearing case that involves decision in relation to a question of law. We, therefore, hold that the Member Technical is fully empowered under the law to decide a question of law and answer the question in affirmative that a Member Technical can adjudicate upon question of law in accordance with law. With these findings, the instant SCRA stands dismissed.

JUDGE

JUDGE

Karachi:

Dated: .02.2022.