

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

Special Customs Reference Application No.526 of 2020
Special Customs Reference Application No.599 of 2020

Date	Order with signature of Judge(s)
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SCRA No.526 of 2020

Hearing of Case/Priority

1. For orders on office objections No.6 & 26.
2. For hearing of main case.
3. For hearing of CMA No.2116/2020.

SCRA No.599 of 2020

Hearing of Case/Priority

1. For orders on office objection No.25.
2. For hearing of main case.
3. For hearing of CMA No.2363/2020.

15.02.2021

Mr. Muhammad Khalil Dogar, advocate for the applicant in SCRA No.599 of 2020.

Dr. Shah Nawaz Memon, advocate for the applicant in SCRA No.526 of 2020.

Mr. Sarfaraz Khan Marwat, advocate for the respondent No.2.

Mr. Munim Masood, advocate for the respondent No.3.

Mr. Abdul Jabbar, Registrar and Mr. Kazim Raza, Private Secretary, Customs Appellate Tribunal-II, Karachi.

On 01.02.2021 following order was passed:

“Let notice be issued to the Assistant Registrar, Customs Appellate Tribunal, Bench-II, Karachi with directions to be present in Court on the next date of hearing along with relevant record pertaining to Custom Appeal No.K-1095/2020 including the orders of the Chairman, if any, for fixation of the appeal at Islamabad. To come up on 15.02.2021.”

Today, Mr. Abdul Jabbar, Registrar, Customs Appellate Tribunal-II, Karachi is in attendance and has placed before us the original record/file of the Custom Appeal No.K-1095 of 2020, which was pending before the Customs Appellate Tribunal-II, Karachi.

Dr. Shah Nawaz Memon, advocate submits that the matter was assigned to Bench-II at Karachi, when suddenly an application was filed by the respondent No.1, which was fixed for hearing at Islamabad and was then decided on the same date without affording opportunity of any hearing to the applicant.

On perusal of the original file, it reflects that the respondent No.1 moved an urgent application, on which the then Chairman, Appellate Tribunal, through an autographic order directed to fix the same before the Single Bench-I, Headquarters, Islamabad. Thereafter, the matter was taken up for hearing on 25.08.2020 and order was passed on 01.09.2020, without affording any opportunity of hearing the applicants.

We have not been assisted in any manner as to how the Chairman, Appellate Tribunal, can assign the matter for hearing at Islamabad, as apparently the appeal was never transferred from Bench-II, Karachi, to any Bench at Islamabad and, as per the impugned order, it remained with Bench-II at Karachi, but was dealt with at Camp Office at Islamabad. In our considered view, perhaps the rules of the Customs, Excise and Sales Tax Appellate Tribunal (Procedure) Rules, 2006¹, do not permit such act by the Chairman Appellate Tribunal. Record reflects that such order has been passed on an urgent hearing application and not on a proper transfer application moved on behalf of Respondent No.1. Moreover, Mr. Muhammad Khalil Dogar, advocate, in his reference application which is also against the same impugned order, has referred to the diary sheet at page 51, dated 25.08.2020, which reads as under:

“Arguments heard. Judgment reserved. In the meanwhile, the respondents are directed not to auction or destroy the seized goods till the decision of the appeal. The respondents are further directed to file para wise comments of the case within a week.”

Perusal of the aforesaid diary sheet reflects that the arguments were heard, judgment was reserved but at the same time respondents were further directed to file para wise comments in the case within weeks' time. We are unable to understand as to how such order can be sustained as on the one hand, matter was reserved for judgment and on the other; directions were given to file comments. If that be the case, then the matter could not have been reserved and was required to put up for hearing again.

Be that as it may, since the applicants in both the reference applications have not been heard, nor record reflects that they were given any proper opportunity of hearing, whereas, appeals lying with

¹ SRO 897(I)/2006 dated 1.9.2006

Bench-II at Karachi were suddenly assigned to Islamabad Camp Office without any assigning or transfer order for hearing by another Bench, as required in terms of Rule 4² of the Custom Appellate Tribunal Rules, 2006, and the impugned order was passed in absence of the applicant, therefore, the same cannot not be sustained in law. Accordingly, the impugned order dated 01.09.2020 passed in Custom Appeal No.K-1095 of 2020, is hereby set aside and the matter is remanded to the Customs Appellate Tribunal Bench-II at Karachi, for hearing the matter afresh and decide the same in accordance with law, after providing proper opportunity of hearing to all concerned.

Reference Applications are allowed in the above terms. Office to send copy of this order the Assistant Registrar of Bench-II, Customs Appellate Tribunal, Karachi in terms of s.196(5) of the Act and its compliance as directed.

JUDGE

JUDGE

Khuhro/PA

² Distribution of work among the Benches;(1) A Bench shall hear and decide such appeals and applications relating thereto made under the Act as the Chairman may, by general or special order, assign.
(2) When for any reason a Bench is not functioning, the Chairman may transfer and appeal or an application from such Bench to any other Bench.