

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

SCRA No.110 of 2018 : The Collector of Customs vs.
Muhammad Sabir

SCRA No.111 of 2018 : The Collector of Customs vs.
Farman Ullah

CP No.D-8435 of 2018 : Muhammad Sabir vs.
Federation of Pakistan & Another

CP No.D-8436 of 2018 : Farman Ullah vs.
Federation of Pakistan & Another

For the Applicant : Dr. Shah Nawaz Memon,
Advocate, alongwith Ms. Fozia Tunio
Advocate

For the Petitioners : Mr. Asad Raza Khan, Advocate

Mr. Kafeel Ahmed Abbasi,
Deputy Attorney General

Date of Hearing : 15.04.2021

Date of Announcement : 15.04.2021

JUDGMENT

Muhammad Junaid Ghaffar, J. Through listed Reference Applications the Applicant has impugned order dated 22.12.2017 passed in Customs Appeal No.K-796 and 796 of 2017, proposing various questions of law; however, at the very outset and after briefly hearing the learned Counsel and after going through the record we have noticed that the respondents in whose favour, the Tribunal has passed the impugned order had never appeared before the adjudicating authority as reflected from the Order-in-Original No. ONO-677395-29042017 and 677381-29042017, and the Tribunal has considered materials and documents which were never presented before the original authority and based on that has overturned a finding of fact recorded at the original stage including at the time of examination of the consignment. In that

case, we are of the view that the Tribunal instead of considering the same and giving its findings ought to have remanded it to the original authority for examining the contention of the respondents, whereas, even otherwise, the order-in-original was an ex-parte order. In the circumstances, the impugned order of the Tribunal and ONO's as above are hereby set-aside and the matter is remanded to the adjudicating authority before whom the respondents shall appear and place all material and documents which they had relied upon before the Tribunal; whereafter, the said authority shall pass appropriate order-in-original in accordance with law preferably within a period of 60 days from today.

2. The Reference Applications are allowed in the above terms, whereas, Connected Petitions filed by respondents stands disposed of in these terms.

JUDGE

JUDGE