

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No. 598 of 2020

Date	Order with signature of Judge
<u>Hearing Case (Priority).</u>	

- 1) For hearing of main case.
- 2) For hearing of CMA No. 1269/22 (Stay)

02.03.2023.

Mr. Khalid Rajpar, Advocate for Applicant.

None present on behalf of Respondent though duly served.

Through this Reference Application, the Applicant has impugned Order / Judgment dated 30.05.2020 passed in Customs Appeal No. H-403/2020 and other connected matters. However, for the present purposes, this Reference Application is only in respect of the said Appeal. The Applicant department has proposed the following questions of law:-

1. Whether the learned Appellate Tribunal while concluding impugned judgment has indulged into non-reading of evidence and antecedents of the case which occasioned failure of justice?
2. Whether in view of the facts and circumstances of the case, the learned Appellate Tribunal was justified to hold that the 1st Respondent herein has discharged evidential burden of lawful of possession in terms of Section 187 of the Customs Act, 1969?
3. Whether under the facts and circumstances of the case, impugned AR Copper Coated Aluminum Magnesium Wire is liable to confiscation in terms of clauses (8) & (89) of sub Section (1) of Section 156 of the Customs Act, 1969, for violation of the provisions of Section 2(s) and 16 ibid?
4. Whether the learned Appellate Tribunal while concluding impugned judgment has erred in law to allow seven customs appeals by way of impugned common judgment involving distinguishable facts, questions of law and evidences without discussing the merits of each case separately?

We have heard the Applicant's Counsel and perused the record. It appears that the learned Judicial Member of the Tribunal has decided seven (7) different Appeals by one common order, without discussing any facts individually, merely by applying the law. Such practice and conduct

on the part of the Tribunal does not appear to be a correct approach. More so, when the allegation is in respect of the goods being allegedly smuggled; as for that, at least, the documents being relied upon by the respondents ought to have been examined individually and after determination of such facts, law and the precedents of the Courts can be taken into consideration. It is further noted that neither the Show Cause Notices are identical, nor the issue; whereas, the Appeals pertain to all different persons, and therefore, the order of the Tribunal cannot be sustained in law.

Accordingly, the proposed questions are answered in favour of the Applicant and against the Respondent. The impugned Order / Judgment dated 30.05.2020 passed in Customs Appeal No.H-403/2020 stands set-aside; Reference Application is allowed; matter stands remanded to the Tribunal to decide the same afresh after recording its finding as to the individual facts of concerned Respondents with opportunity of hearing to the parties, in accordance with law.

This Reference Application stands allowed. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Judge

Judge

Ayaz P.S.