

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA 622 & 624 of 2020

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

02.02.2023.

Mr. Muhammad Bilal Bhatti, advocate for the Applicant

Mr. Ghulam Shabir, advocate for Rrespondent

Through these Reference Applications the applicant department has impugned judgment dated 04.06.2020, passed in Customs Appeal No.H-393/2020 & 800/202 by the Customs Appellate Tribunal Bench-II Karachi. Though Reference Application has been admitted for questions No.2 & 3, however, after perusal of the impugned judgment it has been noticed that the Tribunal has merely relied upon the legal provisions while allowing the appeal, whereas, no factual determination has been made as to discharge of burden upon the respondent under section 187 of the Customs Act, 1969, inasmuch as the Applicants case is that the goods in question were smuggled goods. In our considered view without recording such finding of fact and consideration of the documents and material placed on record by the Respondent no legal conclusion could be drawn. The Tribunal ought to have looked into the documents first and record a finding of fact that such documents pertain to the goods in question and only then it could have been held that they were not smuggled goods. While confronted, Respondent's counsel is unable to controvert; rather concedes that the matter be remanded to the Tribunal to decide it afresh on this issue.

Accordingly, by consent both these Reference Applications are allowed. The impugned judgment dated 04.06.2020 passed by the Tribunal in the above appeals stands set aside. Matter is remanded to the Tribunal with direction to decide the same in the light of the above observation in accordance with law preferably within a period of 90 days from today.

Let copy of this Order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office is directed to place copy of this order in connected matters.

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