

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 1233 / 2023 along with
S.C.R.A. No. 1234 & 1235 / 2023

Date _____ Order with signature of Judge _____

HEARING / PRIORITY.

- 1) For hearing of main case.
- 2) For hearing of CMA No. 2946/2023.

28.11.2023.

M/s. Sardar Zafar Hussain & Faheem Raza,
Advocates for Applicants.

M/s. Muhammad Adeel Awan, Abdul Moiz Jafri,
Advocates for Respondents.

Mr. Muhammad Arif Khan, Chairman Customs Appellate Tribunal.
Mr. Kazim Raza, Registrar, Customs Appellate Tribunal.
Mr. Muhammad Siddiq Brohi, Registrar, Customs Appellate
Tribunal.

Mr. Tariq Aziz Assistant Collector Customs, SAPT.
Mr. Asghar Zafar, Deputy Director Valuation.

On 07.11.2023 following order was passed: -

“It appears that through these Reference Applications, the Applicant department has impugned judgment dated 07.04.2023, passed by the Customs Appellate Tribunal in Appeal No.K-2268/2022 and other connected matters, whereby, the respondent’s Appeal has been allowed.

At the very outset, learned counsel for the department has referred to order dated 28.09.2023 passed in SCRA No.1193 of 2023 (*The Director General Customs Valuation v. Prime Trading*) and other connected matters by a Division Bench of this Court, wherein it was noted that para-10 & 11 of the impugned order refers to an altogether different description of goods, whereas, the controversy which was decided in favour of the Respondent was in respect of another type of goods. The impugned order in that Reference was set aside and matter was remanded with certain directions to the Chairman of the Tribunal.

Today, it has been noticed that in the instant matters though a different order passed by another different Bench has been impugned, however, para-10 & 11 of both the orders are verbatim same, and while confronted, Respondent’s counsel submits that impugned order of the Tribunal has been rectified vide order dated 18.10.2023. Admittedly, the Rectification order has been passed after passing of the setting-aside order dated 28.9.2023 by this Court, whereas, we have gone through the order of Rectification as well and are not satisfied that any such order of Rectification could be passed in such a manner. In fact, an impression is gathered that it has been done to undo the effect of the order of this Court. Such conduct on the part of the Tribunal must be deprecated. It further appears that the two Members of the Bench which has passed the order impugned before us had failed to appreciate the facts before them which reflects that the orders are being passed by the Members of the Tribunal without appreciating the true and correct facts and with proper application of an independent

mind. Rather, appears to be an act of copy pasting the facts, at least. This cannot be appreciated as it burdens the work of this Court, whereas, per settled law, the Tribunal is the last fact finding forum under the Tax hierarchy.

In view of the above facts and circumstances of the case, we are compelled to issue notice to the Chairman of the Tribunal to be in attendance before us along with relevant record of both the set of orders of the Tribunal as above and shall assist the Court as to the formation of Benches as well as conduct of the Members while hearing the Appeals specially in respect of Orders in Revisions and Valuation Rulings.

To come up on **28.11.2023** to be taken up at **11.00 AM**.

Office is directed to place copy of this order connected SCRA's."

Today, the learned Chairman of the Customs Appellate Tribunal is in attendance and has filed a statement along with various documents including orders / notifications and submits that insofar as the orders in question are concerned, being Chairman of the Tribunal, he has no control on such conduct of the Members of the Tribunal who are passing orders on the judicial side independently and he cannot interfere; nor monitor the orders so passed by the respective Judicial and Technical Members of the Benches at Karachi. To that extent, we agree and are also of the view that the Chairman cannot interfere in the independent exercise of powers by the respective Members. However, there has to be some monitoring and case management on the administrative side by his office so that some uniformity is achieved by the Members of the Tribunal in dealing with similar or identical matters. It is a matter of record that the order impugned in these Reference Applications is in respect of Valuation Ruling bearing No. 1681/2022 dated 22.07.2022, whereas, in another set of Appeals which came before us in SCRA No. 1193/2023 (***The Director General Customs Valuation v. Prime Trading***) and other connected matters the same Valuation Ruling was impugned and though two different Benches had dealt with the same Valuation Ruling; but an identical verbatim order has been passed, as if the said order has been passed by the same Member. In fact, in reality it is not so. It does not appeal to a prudent mind that two different Members of the Tribunal,

though dealing with same Valuation Ruling can pass a verbatim same order, and also commit the same mistake on facts in the same Para 10 & 11 as had been done by the earlier bench.

On the last date of hearing, we had confronted the Respondent's Counsel and were informed that a rectification order has been passed on 18.10.2023 in the instant matter and the mistake pointed out by this Court in the earlier order stands rectified. However, we have noted in our last order that such rectification order appears to be an attempt by the Tribunal to nullify our order dated 28.09.2023 passed in respect of the same Valuation Ruling SCRA No. 1193/2023 by setting aside the order of the earlier bench of the Tribunal. Even otherwise, on perusal of the rectification order we are not fully satisfied that any such order could be passed in such a manner. We do also deprecate the conduct of the Tribunal on this account.

Accordingly, we are left with no choice but to set aside the impugned order of the Tribunal dated 07.04.2023 passed in Customs Appeal No. K-2268/2022, K-2303/2022 and K-537/2023 and remand the same to the Tribunal with directions to the Chairman of the Tribunal that henceforth, he shall exercise his powers under Section 194C of the Customs Act, 1969, and all matters pertaining to a challenge to Order(s) in Revision passed under Section 25D of the Customs Act, 1969, in respect of Valuation Ruling(s) shall, be heard by a larger Bench (of at least 3 Members) preferably, to be presided by the Chairman himself, with one Judicial Member and one Technical Member. The choice of Members is left to the discretion of the Chairman himself. If for some special and extra-ordinary reasons, the Chairman himself cannot preside, then, he may reconstitute the Bench, but it shall still remain a larger Bench of at least 3 Members. It is further directed that all possible efforts be made by the Tribunal's office that

matters pertaining to one Valuation Ruling be preferably decided together by the same Bench so that the errors and mistakes as noted by this Court shall not reoccur. With these directions and observations, all listed Reference Applications are ***allowed / disposed*** of, whereas, a separate order is being passed in the petitions fixed today along with these cases.

Let a copy of this order be issued to the Chairman, Customs Appellate Tribunal, Karachi for information and necessary compliance. Office to place copy of this order in connected SCRAs.

J U D G E

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Arshad/