

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
S.C.R.A. No. 757 / 2015

Date

Order with signature of Judge

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**HEARING OF CASE.**

- 1) For hearing of CMA No. 2492/2015.
- 2) For hearing of CMA No. 602/2023.
- 3) For regular hearing.

**27.08.2024.**

Mr. Umer Ilyas Khan, Advocate for Applicant.  
Mr. Khalilullah Jakhro, Advocate for Respondent.

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Through this Reference Application, the Applicant has impugned order dated 08.05.2015 passed in Customs Appeal No. K-1213 of 2014 by the Appellate Tribunal Bench-II at Karachi proposing various Questions of Law; however, on perusal of the impugned order, it reflects that the Tribunal has not given any independent findings of its own and has just maintained the order of the lower forum by observing that the Appellant could not point out any illegality or infirmity in the impugned order.

We are afraid this is not the right course to adopt in the facts and circumstances of this case and we are not inclined to appreciate such findings inasmuch as in these matters first the Tribunal was required to decide the issue of fact and so also the legal questions so raised by the Applicant, such as the show cause notice is defective as it does not mentions any offence or appropriate sections. The Appellate Tribunal has failed to first appreciate proper facts as well as law, which determination was crucial as the entire case rests on it. The Tribunal after having failed to independently decide the controversy before it has approved the finding of the Adjudicating Authority in a slipshod and cursory manner which does not seems to be appropriate and in accordance with law. It is by now settled that the Tribunal is the last fact-finding

forum in these matters, and therefore, it was incumbent upon the Tribunal to decide the controversy on its own and in an independent manner after considering the contention so raised by the parties before it. A mere approval of order of the Adjudicating Authority in the above manner cannot be sustained and approved by this Court. If the relevant facts are not taken into consideration or deliberated, and the reasons for or against have not been weighed, the Tribunal would then not have decided the appeal. Any purported order or judgment without deciding the appeal would be a nullity in law. It is for this reason that if the Tribunal fails to advert to a question of law or fact raised before it or before any other forum under the relevant statute, it is treated as a question of law for the purposes of a reference application before the High Court<sup>1</sup>.

In the circumstances, we are of the view that the only question which arises out of the order of the Tribunal is that “*whether in the facts and circumstances of the case the Tribunal was justified in deciding the Appeal before it by mere approval of the findings of the Adjudicating Authority without its own independent findings*” and the same is answered in negative; in favor of the Applicant and against the Respondent. Consequently, thereof, the impugned order cannot be sustained and is accordingly set aside. The matter is remanded to the Tribunal to decide it afresh after giving opportunity of hearing to the Applicants as well as respondents and pass a reasoned and independent order after considering the contention / arguments so raised by the parties before it.

Let copy of this order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969.

**J U D G E**

**J U D G E**

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<sup>1</sup> (2015 PTD 936) WATEEN TELECOM LTD. V COMMISSIONER INLAND REVENUE

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