

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 1628 of 2023

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman,**

Applicant : **Director, Directorate General, I & I
(Customs) Karachi Through
Mr. Khalid Mehmood Rajpar, Advocate**

Respondent : **Azhar Ali,
Through Mr. Imran Iqbal Khan,
Advocate.**

Date of hearing : **15.01.2025.**

Date of Judgment : **15.01.2025.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Special Customs Reference Application, the Applicant has impugned judgment dated 12.07.2023 passed by the Customs Appellate Tribunal Bench-II, at Karachi in Customs Appeal No. K-897/2023 proposing the following questions of law:-

- i. Whether the Appellate Tribunal being the last fact-finding forum under the hierarchy of the Customs Act, 1969, did nor err in holding that the appellant (1st Respondent herein) has discharged burden of proof of lawful possession in respect of impugned "Curtain & Sofa Cloth" in terms of Section 187 of the Customs Act, 1969?
- ii. Whether in consideration of the facts and circumstances of the case, the Appellate Tribunal has not indulged into mis/ non-reading of import documents which has caused serious mis-carriage of justice? Whether such deliberate omission does not render the Appellate Tribunal's judgment perverse and unsustainable?
- iii. Whether on consideration of the facts and circumstances of the case the Appellate Tribunal has not erred in law to set aside the show cause notice and order-in-original passed by the Collector of Customs (Adjudication)?

2. Heard learned Counsel for the parties and perused the record. It appears that the Applicant made a seizure of the goods on the allegation of smuggling and thereafter Show Cause Notice was issued and Order-in-Original was passed; whereby, the goods were confiscated outrightly. The Respondent being aggrieved preferred

appeal before Tribunal and through impugned order, the appeal has been allowed. The relevant finding of the Tribunal as to discharge of burden under Section 187 of the Customs Act, 1969 reads as under:-

“17. The Appellant also produced before this Tribunal copies of GDs through which their local supplier A.A. International had imported the subject fabric and a copy of Annex C along with the Sales Tax Return filed by the supplier M/s A.A. international. Annex C clearly shows the supply of fabric to the Appellant by M/s A.A. International. This transaction is reflected in the Sales Tax Return of M/s A.A. International. This fact suggests that the subject goods were procured by the Appellant legally. This leads us to conclude that in light of the provisions of leads us to conclude that in light of the provisions of Section 187, the initial burden of legal possession of the seized goods had been discharged by the Appellant and shifted onto the Department.

19. In fact, the burden of proof is an evidential burden requiring the offender to only establish a prima facie case and the ultimate burden or legal burden is on the Customs authorities to prove the case against the accused beyond a reasonable doubt. The record of the case shows that the department has not made any efforts to get the documents verified from the seller from whom the Appellant is claiming to have procured the seized goods. The department failed to rebut the veracity of documentary evidence produced by the Appellant and also did not forward any plausible reasons to dislodge substantiated goods from evidential invoices, the Appellant raising a probable defense, benefit of the doubt is created and extended in the Appellant's favour. Accordingly, the balance of probability shifts in favour of the Appellant, as the respondent failed to discredit the veracity of the Invoices and the Sales Tax Return along with its Annexure C supplied by the Appellant, besides failure to establish that the goods are smuggled within the context of Section 2(s) and 16 of the Customs Act, 1969.”

3. From perusal of the aforesaid finding it appears that a finding of fact has been recoded against the Applicant as to veracity and genuineness of the documents, including Sales Tax Invoices, Goods Declaration and even Sales Tax Returns relied upon by the Respondent and it has been observed that the Respondent has discharged the burden under Section 187 of the Customs Act, 1969. We have confronted the Applicant's Counsel as to whether on this finding of fact and genuineness of documents, any application for rectification was moved and he has replied in negative. Since a finding of fact has been recorded which is primarily based upon documentary evidence submitted by the Respondent, to which there is no denial, whereas such finding cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority

for factual determination in tax matters is the Tribunal¹, therefore, no exception can be drawn to such finding nor same can be disturbed in cases instituted prior to 01.07.2024 when Section 196 of the Act was amended.

4. In view of the above, the proposed questions are answered against the Applicant and in favour of the Respondent. Consequently, this Reference Application being misconceived is hereby ***dismissed***. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

J U D G E

Ayaz /PS

J U D G E

¹ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)