

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Special Customs Reference Application Nos.554 & 555 of 2022**

Date

Order with signature of Judge

PRESENT:

***Mr. Justice Muhammad Junaid Ghaffar***

***Mr. Justice Mohammad Abdur Rahman***

HEARING / PRIORITY CASE:

1. For order on office objections No.1 & 18.
2. For Regular Hearing.
3. For hearing of CMA No.3094/2022.

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**Dated; 29<sup>th</sup> January 2025**

Mr. Manzar Hussain, Advocate for Applicants in both SCRA's.

Mr. Khalid Mehmood Rajpar, Advocate for Respondents in both SCRA's.

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**ORDER**

**Muhammad Junaid Ghaffar, J : -** Through both these Reference Applications the Applicants have impugned a common Judgment dated 02.06.2022 passed in Customs Appeal Nos.K-7166 and 7167 of 2021 by the Customs Appellate Tribunal Bench-I, Karachi; proposing the following questions of law:-

- I. Whether the Honorable Tribunal erred in law and failed to appreciate that the Applicant filed its declaration strictly as per import documents and as such in the absence of mensrea the imposition of fine and penalty was contrary to the law and provisions of section 32 of the Act of 1969?*
- II. Whether Section 32 can be invoked in a case when the instant consignment consisting of old and used goods is admittedly bought in lot through auction and such consignments are invariably examined by the clearance collectorate before it is assessed and released?*
- III. Whether the Honorable Tribunal correctly appreciated the facts and provisions involved in the instant case?*

2. Heard learned counsel for the parties and perused the record. It reflects that the consignments in question imported by the Applicants were examined by the respective Collectorate and were assessed to the customs duty and taxes, but were

intercepted by the Respondents<sup>1</sup> after they were released and the respective Show Cause Notice(s) were issued alleging mis-declaration of quantity, description, as well as classification and subsequently, both these Show Cause Notices were adjudicated vide order(s) dated 26.03.2021, whereby, as to classification of one of the items, matter was referred to the Classification Committee and the contention of the Applicants was partly accepted. As to the alleged excess quantity of some category of goods, it was held that the same was mis-declared and, therefore, such goods were confiscated with an option to redeem the same on payment of 20% fine and penalty of Rs.50,000/-. Applicants being aggrieved approached the Customs Appellate Tribunal, and the appeals were dismissed through impugned judgment.

3. It is an admitted position that the finding of the Adjudicating Authority recorded in favour of the Applicants was never impugned any further by the Respondents and now the only issue before us in these Reference Applications is whether the allegation regarding mis-declaration of quantity in respect of some of the items can be sustained, and if so, then fine and penalty has been rightly imposed or not. Perusal of the Show Cause Notices reflects that though the quantity of used computer LCD panel of assorted brands has been found in excess, however, at the same time, there are two other items, which were declared in the Goods Declaration by the Applicants, but on actual examination they were not found, whereas the case of the Applicants is that the goods in question being old and used (computers and LCD panels) were purchased through an auction lot on "as is where is basis", and it was not possible for them to declare description and quantity of each item as required by the Respondents in the Goods Declaration.

4. Since, it is not in dispute that certain items were found less as to the declaration, whereas the goods in question were old and used; therefore, even if, some quantity was found in excess,

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<sup>1</sup> Directorate of Intelligence and Investigation (Customs)

a case of willful mis-declaration cannot be sustained. Moreover, the goods in question were examined by the Customs Department and the declaration made by them was accepted and were ordered to be released, whereas it is nowhere alleged in the Show Cause Notices that the said examination was an outcome of any collusion and connivance between the Applicants and some Customs officers. In that case, again it would be too harsh to sustain imposition of fine and penalty.

6. In view of hereinabove facts and circumstances of the case, the proposed questions are answered in favour of the Applicants and against the Respondents. As a consequence, thereof, the impugned judgment of the forums below ***stands modified***, and it is held that the Applicants were not liable to pay the fine and penalty so adjudged in the Order-in-Original. Both Reference Applications are allowed to this extent. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of Subsection (5) of Section 196 of the Customs Act, 1969.

**JUDGE**

**JUDGE**

\*Farhan/PS\*

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