

*ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.214 of 2022*

<i>Dated</i>	<i>Order with signature of Judge</i>
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1. For hearing of CMA No.1393 of 2022
2. For regular hearing.

14.11.2024

Mr. Ghulam Hyder Sheikh, Advocate for the Applicant.
Mr. Muhammad Khalil Dogar, Advocate for the Respondents.

Through this Reference Application, the Applicant has impugned judgment dated 26.01.2022 in Customs Appeal No.K-2036/2016 passed by the Customs Appellate Tribunal, Bench-I Karachi, proposing the following questions of law:

- i. Whether the Appellate Tribunal has erred in law to retain the penalty and failed to consider the applicant's contentions?
- ii. Whether the Appellate Tribunal has erred in law and facts and failed to appreciate that it was a case of difference in opinion on a PCT heading and as such the order passed by the Adjudicating Authority treating it as a case of misdeclaration and imposition of penalty is not maintainable under the law?

2. Heard the learned counsel and perused the record. It appears that a show cause notice was issued to the Applicant alleging misdeclaration due to change in classification of the goods and thereafter on 02.09.2016 an Order-in-Original was passed upholding the allegations leveled in the show cause notice. The said Order-in-Original was impugned by the Applicant and the Tribunal has dismissed the Appeal in the following terms:

“4. The above order issued after due diligence and detail reconciliation of record at length and with consent of both the rival parties. The order-in-original is well warded and covered each and every aspect raised in the show cause notice. We appreciate the efforts of the Adjudicating Officer.

5. Therefore, in view of above, we do not find any cogent and plausible reason to interfere with the impugned order-in-original. The appeal is rejected for the reasons recorded above. No order to costs.”

3. From perusal of the aforesaid finding of the Tribunal it appears that the Tribunal has not given any independent finding or reasoning to sustain the order of the adjudicating authority and therefore the order of the Tribunal cannot be sustained. It may further be observed that the order impugned before the Tribunal was of the first authority and not even of the appellate authority, therefore, the Tribunal ought to have given its own reasoning while dismissing the appeal. When confronted, the respondents counsel submits that the matter be remanded to the Tribunal.

4. Accordingly, in view of the above and by consent the impugned order of the Tribunal dated 26.01.2022 in Customs Appeal No.K-2036 of 2016 passed by the Customs Appellate Tribunal, Bench-I Karachi is set aside and the matter is remanded to the Tribunal to decide the appeal afresh in accordance with law after affording proper opportunity of hearing to all concerned. Let a copy of this order be delivered to the Appellate Tribunal as required under Section 196(5) of the Customs Act, 1969.

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