

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 755 of 2024

Date

Order with signature of Judge

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

**Applicant : Abdul Malik, through
Mr. Aurangzeb, Advocate**

**Respondent : The Director General,
Intelligence & Investigation-
Customs, through Mr. Khalid
Mehmood Rajpar, Advocate**

Date of hearing : 13.03.2025.

Date of Judgment : 13.03.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, ACJ: Through this Reference Application, the Applicant has impugned Judgement dated 09.08.2024 passed by the Customs Appellate Tribunal Bench-III, at Karachi in Customs Appeal No. K-7410 of 2021 proposing various Questions of law, whereas, after filing of this Reference Application, the Applicant has rephrased Questions of law and has pressed Questions No.3, 4 & 6, which reads as under:-

- "3) Whether under the facts and circumstances of the case, the applicant has satisfactory discharge their burden under section 187 of the Customs Act, 1969, by presenting all relevant record such as paid challans, and sales tax, invoices and whether the fact that these records were not denied by the official of Respondents in their replies before any forum supports the applicant's claim?
- 4) Whether the Impugned Judgment dated 09.08.2024, complies with requirement of section 24-A of General Clauses Act, 1897, by providing adequate reasons for its decision and demonstrating a judicial application of mind in adjudicating the matter?
- 6) Whether the Customs Appellate Tribunal has erred in law and disposed of the controversy involved in case without considering the material produced by the applicant, the Respondent had failed to adduce admissible evidence primary or secondary whatsoever to the effect the impugned goods (cloths) were local or imported?

2. Heard learned Counsel for the parties and perused the record. It appears that the primary issue involved in this matter is that whether the Applicant had discharged its initial burden as contemplated under Section 187 of the Customs Act, 1969 in respect of seized goods as it is the case of the Applicant that they had produced various cash memos and details of different suppliers

and therefore the burden had been discharged. Such stance of the Applicant was accepted by the Adjudicating Authority and Show-Cause-Notice was vacated, whereas Respondent being aggrieved approached the Customs Appellate Tribunal and through impugned Judgment, the Appeal has been allowed and order of the Adjudicating Authority has been set-aside. The relevant finding of the Tribunal reads as under:-

“11 Arguments heard and record perused. The main contention of the appellant (Para-E of grounds of appeal) is that two local looms owners who issued cash memos in the name of Abdul Malik, the respondent have confirmed that the seized fabric cannot be made on local looms, therefore, the cash memos produced by the respondent, Abdul Malik have no relevance with the seized goods. The respondent could not produce any evidence of import of the impugned imported goods. Accordingly, we hold the view that the respondent has failed to discharge his burden of proof under Section 187 of the Customs Act, 1969.”

3. From perusal of the aforesaid finding, it reflects that the Tribunal has concluded that documents so produced as evidence have no nexus or relevance with the seized goods. When confronted, Applicant's Counsel has referred to the documents so placed on record and on perusal of the same, we are of the same view that they do not have any nexus or relevance with the seized goods inasmuch as the documents relied upon are in respect of Yarn and it is the case of the Applicant that finished goods, were produced by local manufacturers from the said Yarn. We are afraid such stance cannot be accepted to discharge initial burden as contemplated under Section 187 of the Customs Act, 1969. Moreover, neither any proper description nor details of the goods is mentioned on the said documents; hence, there is no question of relevance with the seized goods. Accordingly, the proposed Questions are answered against the Applicant and in favour of the Respondent; and consequently, thereof, this Reference Application is **dismissed**. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*