

**ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI**

Special Customs Reference Application No.322 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
-------------	---------------------------------------

Hearing of case [Priority]

1. For hearing of CMA No.167 of 2023
2. For orders on office objection No.6
3. For hearing of main case
4. For haring of CMA No.1833 of 2022 [Stay Application]

25.04.2025

M/s. Zia-ul-Hassan & Jahangir, Advocates for Applicant
Mr. Mirza Nadeem Taqi, Advocate for Respondent

Through this Reference Application, the Applicant has impugned Judgment dated 20.04.2022 passed in Custom Appeal No.K-1381 of 2019 by the Customs Appellate Tribunal Bench-I, Karachi, proposing various Questions of law.

2. Heard learned Counsel for parties and perused record. Before we advert to answer the Questions of law so proposed, on perusal of record, it reflects that a Show Cause Notice was issued, wherein, it was alleged that some excess quantity of goods has been imported; however, the Adjudicating Authority passed order in favor of the Applicant and the Show Cause Notice was vacated. The department being aggrieved had filed an Appeal before the Tribunal, which has been allowed and the relevant finding of the Tribunal while allowing the appeal, which is a matter of concern for us, is as under:-

“6. Heard both sides and examined the case record. The appellant argued that the impugned goods are ductile pipes and are used as such i.e. with the cement coating inside and such coating cannot be considered as tare weight by any stretch of imagination. In his support, he showed pictures of the impugned goods and it was observed by this bench that the cement lining / coating was inseparable and an integral feature of the ductile pipes and protective internal lining. The argument of the respondent that cement coating is tare weight has been found to be

absolutely baseless and factually incorrect and not sustainable. We are of the considered opinion that tare weight is the weight of any empty container or the packing material used in transportation of goods. Hence, we agree with the contention of the applicant and hold that leviable duty/taxes on excess of 386 metric ton are recoverable from the respondent. The excess weight is more than five (05) percent of the declared weight, therefore, the goods are liable to confiscation. However, option under SRO499(I)/2009 dated 13.06.2009 is given to redeem the same on payment of Redemption Fine of 20% of the Customs value as per clause 1(a) of the Table in the above mentioned notification. As the mens rea of the respondent stands established with respect to mis-declaration of weight, therefore, a penalty of Rs.2.0 million is imposed on the importer.

7. We are surprised to observe that the department has not raised any issue of mis-declaration of value in the Show Cause Notice, but the adjudicating authority has ordered in the impugned Order-in-Original that the declared value should be accepted instead of US\$ 1/kg as assessed by the department. This uncalled for order regarding value in the impugned Order-in-Original has been found to be beyond Show Cause Notice and is set aside being *void ab initio* and the appellant is directed to collect duty / taxes at US\$ 1/kg as assessed by the department. The total duty / taxes so far paid are Rs.193 million approximately on 2269.84 metric ton, which *prima facie* appear to be calculated at US\$ 0.80/kg. The appellant is accordingly directed to ensure recovery of different amount.”

3. From perusal of the above finding, it reflects that the Tribunal has assumed the role of an Adjudicating Authority by not only confiscating the goods on its own, but has also imposed fine of 20% and thereafter, has also imposed penalty of Rs.2.0 Million. Not only this, the Tribunal has further noted that as to why mis-declaration of value was not alleged in the Show Cause Notice. We are afraid, the Tribunal has acted in excess of his Authority and jurisdiction as firstly, it cannot assume the role of Adjudicating Authority and secondly the Tribunal cannot go beyond the scope of Show Cause Notice and ask the department as to why the mis-declaration of value was not alleged.

4. In view of such position, judgment of the Tribunal cannot be sustained and is therefore **set-aside** and the matter stands remanded to Adjudicating Authority, who shall pass an appropriate order afresh in accordance with law and after affording opportunity of hearing to all concerned. The Adjudicating Authority shall pass an order on the basis of

allegations leveled in the Show Cause Notice and without being influenced by the observation of the Tribunal, as above. This Reference Application is **allowed** in these terms. Let a copy of this order be issued to the Tribunal in terms of sub-section (10) of Section 196 of Customs Act, 1969 and to the concerned Respondents / Adjudicating Authority for compliance. The fate of amount secured by way of Bank Guarantee lying with the Nazir of this Court shall be subject to outcome of the order of the Adjudicating Authority.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*