

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**S.C.R.A. No. 709 of 2019**

Date

Order with signature of Judge

**Hearing of Case (Priority)**

- 1) For hearing of main case.
- 2) For hearing of Misc. No.3358/2019.

**25.02.2025.**

Ms. Masooda Siraj, Advocate for the Applicant.  
Mr. Rana Sakhawat Ali, Advocate for Respondent.

Through this Reference Application, the Applicant / Department has impugned order dated 07.08.2019 passed in Customs Appeal No.K-224/2019 by the Customs Appellate Tribunal, Karachi, proposing the various questions of law.

Heard learned counsel for the parties and perused the record. As per available record the Respondent imported a consignment of Refrigerant Gas R-32 which according to the Applicant / Department was not importable without fulfillment of certain conditions hence a Show Cause Notice was issued and the Order-in-Original was passed whereby the goods in questions were confiscated out rightly and in addition thereto a penalty equal to three times the value of the goods also imposed. The Respondent preferred appeal before the Collector of Customs (Appeals), who after observing that the Respondent had not only mis-declared the description but also failed to fulfill the requirements of Import Policy Order specially Serial No.18 of Appendix-B, Part-I, but at the same time after imposing redemption fine of Rs.50,000/- allowed re-export of the goods in question. The Respondent was satisfied with such order of the Collector of Customs (Appeals), however, the Applicant preferred further appeal before the Customs

Appellate Tribunal and through impugned order the Tribunal has dismissed the appeal.

On perusal of the order of the Collector of Customs (Appeals) it reflects that insofar as the Order-in-Original is concerned, the same was maintained to the extent that this was a case of mis-declaration and importing an item which was restricted and not freely importable. However, at the same time the order of out rightly confiscation was modified by imposing a redemption fine and then permitting re-export.

In our considered view, the Collector Appeals was not justified in doing so inasmuch as until and unless the Order-in-Original was set aside on merits no further order could have been passed including that of re-export. Imposition of redemption fine by itself confirms that the Respondent was involved in mis-declaration and the goods were liable for confiscation. Insofar as the Tribunal's order is concerned though an observation has been made as to the jurisdiction of the Applicant / Department, however, the said question was never raised by the Applicant whereas the Respondent had not challenged the order of the Commissioner's Appeals.

In view of hereinabove facts and circumstances of this case, the order of the Commissioner's Appeals and that of the Tribunal cannot be maintained; hence, they are set aside. However, considering the peculiar facts and circumstances of this case, once the goods have been confiscated out rightly the imposition of penalty to the extent of three times of the value of the goods does not seem to be proper and justified, hence to that extent the same is remitted. The proposed questions are re-phrased i.e. whether in the facts and circumstances of the case the Collector of Customs (Appeals) was justified in permitting re-export of the goods in question after imposing redemption fine and the same is answered in negative in favour of Applicant and against the Respondent.

This Reference Application is allowed in these terms. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

**ACTING CHIEF JUSTICE**

**J U D G E**

Nasir/