

IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 879 of 2024

Date	Order with signature of Judge
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Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman

Applicant:	The Collector of Customs (West) Through the Deputy Collector of Customs, Customs House, Karachi Through Mr. Faheem Raza Khuhro, Advocate.
Respondent:	M/s. Agway Trading Corporation Through Mr. Muhammad Yousuf, Advocate.
Date of hearing:	08.04.2025.
Date of Order:	08.04.2025.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Judgment dated 12.09.2024 passed in Customs Appeal No. K-1594 of 2023 by the Customs Appellate Tribunal at Karachi, proposing the following Questions of law:-

- “A Whether the Customs Appellate Tribunal has not erred in law by flagrantly ignoring the conspicuous violation of the very essence of section 79 of Customs Act, 1969 and Rule 108 of Customs Rules, 2001 whereof importer is allowed to self-declare the particulars of goods declaration and self-assess duty and taxes subject to the condition that same is true and correct thereto?

- B Whether the Customs Appellate Tribunal has not erred in law by overlooking the essential fact that the importer cunningly and tactfully did not mention anywhere in uploaded documents that imported goods are "polyester woven velvet shirting suiting fabric"; hence, it was carefully calibrated and conscious attempt to clear the high-value goods through misdeclaring their description of goods so that impugned goods could be assessed on lower value?

- C. Whether the Customs Appellate Tribunal has not erred in law by blowing hot and cold simultaneously by passing two totally contradictory observations; at one place, it is upholding the Collectorate's narrative that goods are actually "Woven velvent shirting / suiting fabric type SS-9000" classifiable under PCT heading 5801.3600 and assessable @ USD 10.75/Kg while at another place, it is remitting the fine and penalty "in toto"

which render the Tribunal's impugned order infructuous and patently infested with grave legal lacuna.

- D Whether on the facts and circumstances of the case the learned Customs Appellate Tribunal has not erred in law by opining that "**Mens Rea (Guilty intention)**" is absent in instant case whereas factually both ingredients of offence namely "**Actus Reus (guilty Act) and Mens Rea (Guilty intention)**" are glaringly visible?
- E. Whether the learned Customs Appellate Tribunal has erred in law by remitting the aptly adjudged redemption fine and personal penalty against the respondent importer, causing loss to the national exchequer, in absolute disregard to the well-settled proposition of law settled by *Hon'ble High Court of Sindh in the case titled Collector Of Customs VS Muhammad Zubair Gheewala Karachi High Court Sindh 2016 PTD 1913* that unless extenuating circumstances exist, the decision of imposing of fine and penalty by the empowered officer, should not be interfered with?

2. Heard learned Counsel for the parties and perused the record. The relevant findings of the Tribunal reads as under:-

"06. Heard arguments from both the sides and examined the case record. The appellant pleaded that there is no evidence with the department that he has made any intentional mis-declaration. Therefore, he is willing to pay duty and taxes on the basis of Valuation Ruling or 90 days data whichever is applicable. The DR reiterated written arguments submitted by respondent.

07. After examining the case and hearing the both sides, we are of the view that mens rea on the part of the appellant is not established. Therefore, it is ordered that goods may be released on payment of leviable duty and taxes on the basis of description of goods as determined by the department and on values as per applicable Valuation Ruling or 90 days data whichever is applicable. The redemption fine and penalty are hereby remitted in toto."

3. After perusal of the above findings of the Tribunal we are of the view that the Tribunal has failed to mention any cogent reasons for setting aside the orders of the forums below and for coming to a conclusion that no case for mis-declaration is made out. We are afraid the Tribunal without any plausible justification could not have come to such a conclusion. The Tribunal's findings that there is no evidence with the department that any intentional mis-declaration has been made cannot be sustained on this basis.

4. Accordingly, we are left with choice but to set aside the impugned Judgment of the Tribunal and remand the matter to the Tribunal to decide the same afresh in accordance with law

after giving cogent reasons if orders of the forums below are to be set aside. Ordered accordingly.

5. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

Arshad/