

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 465 of 2016
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DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on CMA No.2606/2016.
- 2. For hearing of main case.
- 3. For orders on CMA No.2607/2016.

28.10.2025

Mr. Muhammad Khalil Dogar, advocate for the applicant.

These reference applications are pending since 2016. Per learned counsel numerous appeals have been decided vide common judgment, with distinct, independent facts and circumstances. He states that the judgment has not appreciated the facts and circumstances of each case independently and prima facie devoid any independent reasoning or deliberation. Following questions of law had been proposed for determination:

- i. Whether particulars (description/quantity/value) concealed in “GDs” but found in the “Invoices” (which were not even submitted with the GDs but retrieved at a later stage) could furnish protection to the respondent/ importer against an action under Section 32 despite the straight-forward language of Section 79(1)(a), which requires "filing of true declaration of goods giving therein complete and correct particulars of such goods..."?(emphasis supplied). Whether the impugned order, based upon such premise, is sustainable under the law? (emphasis supplied)
- ii. Whether an Invoice not furnished for customs clearance and self-assessment in terms of Section 79(1)(b) not being in relation to description/ quantities/ values therein it could be deemed a document supporting the GD in terms of Section 79(1)(a), despite the two being at variance as regards the stated particulars? Whether such Invoice, deliberately suppressed in the self-assessment process, could be deemed a customs document in repelling the allegation as to "mis-declaration" at appellate stage of the adjudication proceedings?
- iii. Whether the learned Tribunal is justified in holding that there was no "collusion" and "mens rea" on the parties' part despite the present appellant having furnished the corroborative evidence comprising of record obtained from them which not only established their complicity in the offences of concealment, mis-declaration and fiscal fraud, but also proved their having prior knowledge as to the consequences thereof under the Customs Act?
- iv. Whether the leaned Tribunal in holding that the officers of the DG I&I-FBR are competent to invoke those provisions of the Customs Act only as are stated in SRO 486(I)/2007 dated: 09.06.2007 did not deliberately ignore the preamble of the said Notification which states that the said officers could "invoke all the relevant provisions" of the Customs Act "if so warranted"? (emphasis supplied)

- v. In continuation of the preceding question, whether the learned Tribunal exhibits proper understanding and appreciation of SRO 486(I)/2007 dated 09.06.2007 in arriving at the above-referred finding on account of equating those provisions as are the "duties and functions" of the said officers with those provisions as are the "offences" (including mis-declaration) under the Customs Act?
- vi. Whether the learned Tribunal's finding as to the officer of the DG I&I-FBR not being empowered for the purposes of Sections 32, among others, is not contrary to the Order dated 23.08.2007, passed by the Division Bench of this Honourable Court in SCRA No. 154/2005 and thus in violation of Article 201 of the Constitution of 1973 thereby rendering the impugned order *Per Incuriam* and not sustainable under the law?
- vii. Whether the impugned order is not devoid of legal sanctity being contradictory to the order passed a day earlier (on 14.12.2015) in a different appeal, wherein the actions of the DG I&I-FBR as regards invocation of Section 32 of the Customs Act were found to have been "justified" by the same Bench of the learned Tribunal? Whether being patently unsafe and manifestly malafide on such count and on the stated premise, the impugned order could be allowed to remain in field?
- viii. Whether the impugned order is not outright illegal, on account of attributing to the detecting agency, and thus being based upon, such contention as are neither proven from the pleadings nor the record viz. that assessable value, in terms of Section 25, had been "determined" under primary valuation method and secondary valuation methods had not been resorted to?
- ix. Whether the "values" evidenced in the contract(s)/invoice(s), retrieved from the importer during investigation, leave any scope for resort to any methods, primary or secondary, under Section 25 of the Customs Act, notwithstanding the learned Tribunal's without-context purported reliance on the decision in the *Saadia Jabbar* Case and the provisions of GATT, 1994?
- x. Whether the learned Tribunal did not indulge in deliberate non-reading of the contract under lying the subject imports, which clearly postulated restrictions on the usability/ disposition of the goods thereby bringing the import transactions within the purview of the proviso (a) to Section 25(1) of the Customs Act, 1969, and warranting outright rejection of the importer's "declared value" as the "true transaction value"?
- xi. Whether the learned Tribunal's analysis of the concept of "transaction/ actual value for customs assessment purpose" in terms of Section 25 of the Customs Act and Articles VII and VIII of the GATT, could be deemed legally sound on account of deliberate omission the contents of Paragraph 2(1) of the Interpretative Note to the Article VII, which provides for addition of "...any abnormal discount or other reduction from the ordinary competitive price..." in such value?
- xii. Whether the notion of the goods being "free of cost" could be justified through the finding that their "... price is already covered in the composite price for the entire goods..." and whether such "notion" and such "finding" are not incompatible with each other and even otherwise not contrary to the "requirement" of the goods being "sold for export" in terms of Section 25(1)?
- xiii. Whether the learned Tribunal in holding misplaced the departmental stance of treating the "List Price" as the "assessable value" failed to appreciate the reasons and significance of the parties resorting to the modus operandi of improvising repeatedly the manner in which the so-called "List Price" was represented in the successive contracts under which imports were made?

- xiv. Whether legal sanctity could be attached to the impugned Order, wherein (i) untrue statements/ observations are made as to how the department proceeded with the appeal hearings; (ii) departmental contentions are deliberately omitted from mention; and (iii) such material is referred which was not even put forth by the parties for the learned Appellate Tribunal's consideration?

Learned counsel further states that questions pleaded only arises because appropriate treatment had not been given to the law invoked in the impugned order.

The Appellate Tribunal is the last fact finding forum in the statutory hierarchy, therefore, it is incumbent upon the same to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed to be emphasized by the Supreme Court in judgments reported as 2019 SCMR 1626. This High Court has consistently maintained that the Appellate Tribunal is required to possess independent reasons and findings and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgment has also maintained that if the impugned order is discrepant in the manner as aforesaid even grant to remand the matter for adjudication afresh. Reliance is placed on judgment dated 10.12.2024 in ITRA 342 of 2024.

We are of the considered view that the impugned judgment could not be treated to be a speaking order prima facie devoid of relevant discussion and deliberation. It is seen that the same has been rendered without elaborating crucial issue of nature of goods having ever been determined. The reports relied upon by the department had not been referred to by the Appellate Tribunal and any discussion therein. In view hereof, the impugned judgments are hereby set aside and the matter is remanded back to the Appellate Tribunal for adjudication afresh.

A copy of this decision may also be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969. Office is instructed to place copy hereof in the connected files.

Judge

Judge