

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

12/19

PRESENT

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE YAHYA AFRIDI

AFR

Civil Appeal No. 663 of 2013

(On appeal from the order dated
28.1.2013 passed by Lahore High
Court, Lahore in C.R.67/2010)

Collector of Customs, Lahore

...Appellant (s)

Vs

Umar Khan

...Respondent (s)

For the Appellant (s) : Mr. Muhammad Khalid Chaudhry, ASC.

For the Respondent (s) : Ex-parte.

Date of hearing : 11.01.2019

ORDER

Umar Ata Bandial, J.- The respondent has been served but he neither appeared before the office nor arranged his representation, consequently he was proceeded ex-parte on 15.5.2018 by the office.

2. The only question in issue is as to whether the Reference filed under section 196 of the Customs Act ("**the Act**") by the appellant bore authorization of the Collector of Customs in the terms required by sub-section (1) of the said provision. The material condition laid down in section 196(1) is that a "Reference filed by the Custom-department may be signed by an officer of Custom but not below the rank of Additional Collector or Additional Director authorized by the Collector or Director in writing..... in the prescribed form alongwith the statement of the case to the High Court". In the present case the learned High Court by the impugned judgment came to the conclusion that although the note sheet for the case contained a request for authorization of the Additional Collector for filing a Custom Reference before the

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High Court, the Collector did not as such sign the document in order to comply the statutory requirement that such authorization must be in writing.

3. Accordingly for the said omission the Reference was dismissed as having been filed incompetently by its signatory, the Additional Collector. Learned counsel for the appellant has submitted that the learned High Court has omitted and misread the record. He showed us para 51 of the office note sheet of the case containing the signature of the Collector of Customs and the stamp of his office on 11.05.2010 approving para 48-50 ante. Thereafter, again while approving authorization of the Additional Collector of Customs (HQ) for filing the Custom Reference, signing the power of attorney and letter of authority to the counsel, the Collector signed in approval of para 54 on 14.05.2010 under his office stamp. He submits that the judgment of the learned High Court overlooked these contents of the note sheet and is passed in error.

4. We have perused the note sheet carefully and agree with what the learned counsel has pointed out. Consequently we are inclined to set aside the impugned judgment. The Custom Reference shall be deemed to be pending before the learned High Court and be heard and decided on merits.

5. Having said so we notice that the matter in issue came before the High Court in the year 2010, the impugned decision involving a minor technical issue was taken in 2013 and now the matter is being decided by this Court. The statutory law has in fact taken care of such an objection by an amendment made in sub-section (10) of section 196. This provision was added in the year 2005 and provides as follows:

"Notwithstanding anything contained in this Act where any reference or appeal was preferred with the approval of Collector by the officer below the rank of Collector, and the reference or appeal is pending before appellate forum or the Court, such reference or appeal shall be deemed to have

been preferred and shall be deemed always to have been so preferred by the Collector".

6. The clear purpose and the effect of the said provision is that such technical and superfluous objections are put to rest at the outset so that the matter may be decided on merits. The appeal is allowed with no order as to costs.