

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 716 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For order on CMA No. 382/2023. (Exemption)
- 2. For order on main case.
- 3. For order on CMA No. 383/2023 (Stay)

09.10.2025

Mr. Khalid Rajper, advocate for applicant

The operative part of the impugned judgment reads as follows:

“8. We have heard the arguments of the parties to the dispute and perused the case record. We do not agree with the contention of the appellant that the customs authorities are not empowered to recover Sales Tax once the imported goods are out of charged / cleared by the customs. The relevant section(s) of Sales Tax Act, 1990, particularly section of ibid duly empowers custom authorities to collect and recover Sales Tax on imported goods. Notwithstanding the above, the main controversy between the parties to the appeal is factual one regarding determination of the exact characteristics of the imported goods. According to the report of the custom lab, the sample produced before them was mineral oil and may qualify as Base oil for the making of conning oil. However, when the report of Industrial Analytical Center located at HEJ Research Institute of Chemistry, University of Karachi (hereinafter called HEJ Lab) is perused, it reveals that attributes of the imported goods could not be confirmed as conning oil due to absence of local & international standards of conning oil. However, the HEJ Lab has confirmed the use of imported goods in the textile machinery /Industries as lubricating agent. The findings of the Industrial Analytical Center are reproduced below:-

“Remarks: It is intimated that the local / international standards of conning oil is not available, therefore we are unable to category this product, however, in the light of test carried out the given sample can be utilized in various textile industries / machineries / processing and also general purpose lubrication.”

9. The above report of the HEJ Lab confirms that the sample sent to them for test by the department had its use in the textile and other industrial processes as lubricating agent. When we see this report of Industrial Analytical Center (HEJ) in the context of SRO 1125(1)/2011, it confirms that the goods in question (even if their exact specification has not been confirmed due to absence of local & international standards of conning oil by HEJ), have use in the textile industry. It is pertinent to mention here that notification in question, as was applicable at the relevant point in time, also granted zero-rating (for manufacturers) and reduced rate of sales tax (for commercial importers) on such goods which are either raw materials or other inputs for five export sectors including textile sector. In other words, as the imported lubricating oil had the functioning of conning oil, as concluded by the HEJ Lab, having use in the textile sector, in our considered opinion the benefit of SRO 1125(1)/2011 could not be denied to the appellants.

10. Another omission which has been noted by this tribunal is that the respondent No. 01 has not discussed the report of the Industrial Analytical Center (HEJ Lab) in the concluding para -8 of the impugned Order-In-Original and has solely relied upon the report of the Customs Lab. We are of the considered view that if the respondent No. 01 had made a comparative analysis of both the reports issued by Customs Lab and HEJ Lab, the conclusion drawn by him would have certainly been different as the HEJ Lab, in categorical terms, had concluded that the imported goods were usable in the textile industry but due to absence of local and standards of conning oil, these could not be confirmed as such.

11. Another reason to arrive at the above conclusion is the known fact that the facilities to test the chemicals at Husein Ebrahim Jamal (HEJ) Lab are of much higher standards than the Customs Lab as this institute has advanced facilities / apparatus and there is no justifiable OF reason to give preference to the reports of the Customs Lab over the HEJ Lab when it comes to the determination of the properties of a chemical/petroleum-based oil.

12. Since this was a factual controversy between the parties as to the specification of imported goods i.e. conning oil as declared by the appellants in their import documents and confirmed by the HEJ to the extent of its use in the textile industry, we are confident in holding that the respondents have not been able to prove that the imported goods are not conning oil as declared by the appellant importer. The instant appeal therefore allowed and the case is disposed of accordingly.”

Per learned counsel the entire controversy is factual in nature and the tribunal is the last fact finding forum in the statutory hierarchy for appropriation thereof. Under such circumstances, no question of law arises out of the order of the tribunal, therefore, the instant reference application is dismissed.

A copy of this order may 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.

Judge

Judge

Ayaz p.s.