

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 383 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No. 20
2. For order on CMA No.3091/2018
3. For hearing of main case
4. For order on CMA No.3092/2018

28.10.2025

Mr. Pervaiz Ahmed Memon, advocate for the applicant

This reference application is pending since 2018 without any progress; despite seven years have been lapsed even notice has not been sought till date. The impugned judgment appears to have been rested entirely on appreciation of evidence as denoted herein below :-

10. We have heard arguments of the learned Department Representatives of Appellant Department and the Respondent Party in detail and also perused relevant record. It has been noticed and observed that the charges mainly evolve around the smuggling of mobile phones in violation of restriction in terms of Sections 2(s), 16 and 32 of the Customs Act, 1969 punishable under clauses (8), (70) and (89) of Section 156(1) read with Import & Export (Control) Act, 1950. In the Show Cause Notice, it is referred that, the restrictions imposed by the Hon'ble Supreme Court of Pakistan on the import of mobile phones are subject to proper IMEI numbers and PTA's Type Approval Certificates, as per decision in Suo Moto case No.16/2011 followed by the decision taken in Second Task Force Meeting communicated by the Board vide letter dated 25.02.2014. The Appellant Department also contends that the seized Mobile Phones carry Model as J110F whereas the Goods Declaration No.LAFU-HC-5559 processed and cleared by the MCC, Lahore as produced by the Respondent Party indicates the same as J110H which reflects that the aforesaid Goods Declaration is not the relevant Goods Declaration. During the hierarchy of the proceedings in accordance with the laid procedure, the activity conducted for verification of import documents has been concluded and finalized by the Appellant Department. The verification of documents with reference to the IMEI numbers and PTA's Type Approval Certificates are being verified even otherwise the reconciliation of IMEI numbers of the seized mobile phones are conducted and report was submitted which revealed the following outcome:-

- a) The list of IMEI numbers of each cell provided by the Assistant Collector Mr. Muhammad Asim Awan AFU Lahore has been tallied with the list of IMEI numbers available on seized record which transpired that the same stand reconciled in toto.
- b) However the model numbers and country of origin are not identical viz-a-viz imported cell phones and the cell phone so seized in this case. The differences of models numbers of cell phones and country of origin are further fortified by the fact that as per PTA Type Approval Certificate and the copies of GD (importer) provided by the importer indicate the country of origin as China whereas the seized cell phones are Vietnam origin.

11. According to the aforesaid report, it is admitted by the Appellant Department that the goods/ seized mobile phones stand reconciled in toto with reference to the IMEI numbers. It is important to mention here that IMEI numbers are issued by the manufacturers for the identification of mobile phone/ equipment just like chassis number of a vehicle. IMEI means "International Mobile Equipment Identification" which is infact related to the precise identity of the equipment (mobile phone). Every user being owner of each mobile phone (of any brand and origin) has its separate identity. The sole purpose of PTA certificate is to register a mobile phone under some specific IMEI number, tagged or embossed on each mobile phone. The Hon'ble Supreme Court of Pakistan in Suo Moto Case No.16/2011 passed the judgement and made observations about the

significance and relevance of IMEI numbers and their certification by the Pakistan Telecommunication Authority (PTA), through PTA Type Approval Certificate with regard to legality/ legitimacy of the imported mobile phones. After getting the aforestated certification of IMEI numbers by the PTA, each equipment (mobile phone) is clothed with an independent legal identity which can never be lost till it is scraped. The study of the Show Cause Notice dated 21.06.2016 itself reveals that it has relied on the significance of I.M.E.I numbers and PTA Type Approval Certificate as observed and emphasized by the Hon'ble Supreme Court of Pakistan in Suo Moto Case No. 16/2011. Regarding the origin, the Examination Report of the Customs Officer on the Goods Declaration No.LAFU-HC-5559 dated 27.10.2015 confirms that the consignment contained two sets of Mobile phones (i) J-110H (No./Quantity 1150) with I/O as Vietnam and (ii) J500H (No./Quantity 2700) with I/O China. The seized quantity/ number of Mobile Phones in this case are 900 Mobile Phones. Therefore, the contention of the Appellant Department "That the copy of Goods Declaration No.LAFU-HC-5559 dated 27.10.2015 processed from AFU, MCC, Lahore reflected the origin of purportedly imported mobile phones "I.O China", whereas the origin of seized mobile phones is 'made in Vietnam by Samsung'," is absolutely incorrect and groundless because here the dispute is regarding J-110 and not J500. Regarding difference in the last alphabet i.e. J110H and J110F as contested by the Appellant Department, the Respondent Party's defence plea is that the same owes to difference in country of import. Here, it is suffice to say that the I.M.E.I Numbers List issued by the PTA and submitted by the Respondent Party to the MCC, Lahore at the time of filing of the Goods Declaration No.LAFU-HC-5559 dated 27.10.2015 does not highlight either "H" or "F". It simply indicates the Model of mobile phones as "J110". The said List as available on record has been duly attested by the same Inspector, Customs of MCC, Lahore who examined the consignment under reference. The date of examination and the date of attestation is also the same i.e. 28.10.2015. Therefore, the benefit of doubt goes to the credit of the Respondent Party without any controversy.

12. In view of the above, we are of the considered opinion that the impugned Order-IN-Original (No.339/2016-17 dated 29.11.2016) does not suffer from any legal infirmity instead the same is a lawful Order. We are, therefore, constrained to uphold the impugned Order and dismiss the Appellants' Department's Appeal on merit being without any substance.

The six questions of law have been pleaded by the applicant in this reference application are prima facie argumentative in nature and / or seek to agitate disputed question of fact. It is settled law that the Tribunal is the last fact-finding forum in the statutory hierarchy, therefore, no case arise for *denovo* appreciation of evidence. Since no question of law have been articulated for determination of this court this reference application is hereby dismissed in *limine*.

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