

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 614 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on CMA No.2482/2020
- 2. For hearing of main case
- 3. For orders on CMA No.2483/2020

07.11.2025

Mr. Muhammad Khalil Dogar, advocate for the applicant

This reference application is pending since 2020 without any progress. The concluding paragraph of the judgment reads as follows :

In view of the above the request of the Appellant for re-exportation of offending goods at Sr. No. 3 & 4 in the light of re-examination report dated 14.07.2020 seems to be reasonable and well under the warrant of law and policy on the subject. Thus the present appeal is disposed off with order that the non-offending goods at Sr. No. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14, as per re-examination report dated 14.07.2020 are immediately released and the offending goods at Sr. No. 3 & 4 also as per re-examination report dated 14.07.2020 are allowed to be re-exported in view of the Ministry of Commerce Office Memorandum dated 11.07.2017 and 14.05.2018 also FBR's clarification dated 18.07.2017 subject to the fulfillment of all relevant provisions of law/rules relating to export process and further read with Customs General Order 2 of 2005 dated 08.02.2005. Hence, keeping in view all such submissions made above and on the strength of judgment passed by the superior courts and in conformity in observation made thereon, I am of the considered view that the proceedings in the subject case are infested with inherent infirmities and substantive illegalities, tantamount to violation of the prescribed law, in utter disregard to the principals of natural justice. Hence the impugned orders passed during the hierarchy of Customs are hereby declared null and void ab-initio, therefore said aside and subject non-offending goods at Sr. No. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 as per re-examination report dated 14.07.2020 are allowed to be immediately released to the Appellant/importer and subject offending goods at Sr. No. 3 & 4 as per re-examination report dated 14.07.2020 are allowed to be re-exported in view of the Ministry of Commerce Office Memorandum dated 11.07.2017 and 14.05.2018 read with FBR clarification dated 18.07.2017. the Respondent No. 2 is further directed to issue delay and detention certificate for availing waiver of port demurrage at port and container detention charges of the shipping line accordingly, and also refund the duty and taxes at import stage immediately with no order as to cost. Compliance report shall be submitted to Registrar Islamabad & Karachi within a week.

Insofar as first portion of the findings is concerned regarding re-export, no cavil has been articulated. Insofar as second finding is concerned, regarding non-offending goods, learned counsel submits that the evidence has not been properly appreciated. His attention is drawn to paragraph 16 of the impugned judgment which reads as follows:

“That without prejudice to the above contention of the Appellant/importer it is contended that, I am convinced to release the second category of alternators for generators at Sr. No. 1, 2, 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14 as reflecting in the re-examination report dated 14.07.2020. I am also of the view, that it is misleading in the re-examination report dated 14.07.2020 deposed before the Respondent No. 1 learned Collector of Customs (Appeals) Karachi dated 14.7.2020 by the Examining Officer namely Ashfaq Ur Rehman & Appraising Officer namely Taha Sher Behan of Respondent No 2/ Customs department at Port Qasim Karachi that packages Numbers 1 to 6 are identical in nature. In fact, packages 1 to 5 & 6 have no labels of markings except small sticker pasted showing frame type and serial number. No origin or make depicting them to be of Indian making is pasted or inscribed”

He is confronted as to the existence of the relevant re-examination report, however, he states that the same has not been filed. At his juncture counsel merely seeks time. This reference application has clogged the docket for more than five years and even today learned counsel remained unable to assist and merely seeks time. It appears that the applicant is not interested in proceeding with the matter. Accordingly, in view of judgment of the Supreme Court in the case of C.I.R. vs. Rafeh Limited reported as PLD 2020 SC 518, this reference application is dismissed for non-prosecution.

A copy of this decision 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

Amjad