

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRAs 982, 983,984, 985, 986, 987, 988, 989 & 990 of 2024

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection Nos. 26 & 27
2. For orders on CMA No. 4378/2024
3. For hearing of main case
4. For orders on CMA No. 4379/2024

07.11.2025

Mr. Khaliullah Jakhro, advocate for the applicant

Learned counsel states that the SCRA 982 of 2024 is representative of the judgment herein impugned. The operative part of the impugned judgment reads as follows :

“14. The Appellant holds a licence of Private Bonded warehouse vide No. PWL 1-2012 and all the imported kits are stored in the said warehouse. That any goods which are placed in the warehouse are well documented and the revenue is secured under relevant provisions of Customs Act, 1969 by execution of Bond under section 86 and access of the owner to the warehouse goods lodged in warehouse are subject to presence of an officer of customs in terms of section 93 of the Customs Act, 1969. The Appellant submitted that the impugned goods after having been lodged in the warehouse were never prone to cause a loss to the National Exchequer as asserted in the show cause notice and resulting Order in Original. Whereas the impugned show cause notice and resulting Order in Original alleges that the team from the Collectorate of Customs Appraisement (East), Karachi visited the premises of the Bonded Warehouse and it transpired that the goods pertaining to Goods Declaration No. KAPE-IB-67065-12-10-2021 were found missing which confirmed that the said goods have already been illegally removed from the premises of the bonded warehouse. In order to hoodwink this illegal act, the bonder / importer filed Ex-Bond Good Declaration bearing No. KAPE-EB-142366-15-04-2023 with the claim of concessionary SRO 656(I)/2006-10 dated 22.06.2006. On scrutiny of aforesaid Into Bond GD, it transpired that concessionary SRO was not claimed at the time of filing of Into-Bond GD. Further they deliberately delayed the date of gate-in process of In-Bond to avoid payment of penal surcharge in terms of Section 98 of the Customs Act, 1969 and hide the illegal removal. Whereas the record shows that the goods were transferred to the bonded warehouse to the next day of gate-out from the port but could not be gated in to the Bonded Warehouse due to non-availability of space. That as a licensee of the bonded warehouse it was responsibility of the Appellant importer to timely "Gate-in" in the weboc system, the in-bonded goods.

15. We hold that neither there is any legal justification or any plausible reason to place the in-bonded goods outside the premises of designated bonded area on the lame excuse of the Appellant that there was no space available in the bonded area hence goods were not gated in for a period of one year as in-bond GD was filed on 12.10.2021 whereas the "gate-in" date in the Weboc system for the bonded goods has been revealed to be 15.11.2022. Therefore the payment of penal surcharge u/ section 98 of the Customs Act, 1969 would accrue by cut out date of in-bond GD by allowing the specified time span in the relevant provisions of the Customs Act,

1969. However we agree to the contention of the Appellant that impugned goods were never removed and were available in Appellant's factory premises but out of the designated bonded area as this aspect was noted during the inspection of bonded warehoused by the staff of MCC Appraisement (East) and later on all the GDs were "gated in" the WeBoc System on 15.11.2022. That even by the survey report dated 07.02.2023 by the Appraising Officer (Bonds) it is confirmed that impugned goods were available as on the 18.01.2023 which is reproduced below;

**TENTATIVE INSPECTION REPORT
M/S. AL-HAJ FAW MOTORS PVT) LED (PWL01/2012-1**

In compliance with the Assistant Collector of Customs (Bonds) directives an inspection and random stock-taking in respect of consignments lying in the above-referred Private Bonded Warehouse was carried out by the undersigned on 18.01.2023

2. The following observation noted during the random stock taking of M/s. Al Haj Faw Motors Ltd.

1. Stacking is proper
2. Biri card are available on each shipment
3. Record is properly maintained
4. Doors are locked and sealed after clearance of goods.

Sd/-
(Nasir Iqbal)
Appraising Officer (Bonds)

16. That the above Survey Report categorically reflects that the goods for which the impugned Order in Original was issued were available in the bond and the impugned goods were neither pilfered nor utilized in manufacturing. The Respondent department however at the stage of proceedings in Customs Tribunal distant itself from the above survey report as follows;

"It is respectfully submitted that the report submitted by the bonder is of routine check, the report furnished by AO Nasir Iqbal was perused and found as Tentative Inspection Report, however, the above 'named Appraising Officer vide letter dated 30.09.2023 was required to clarify the Bu position as against the report referred herein above. Subsequently, the above named Appraising Officer vide his reply dated 12.10.2023 has categorically stated that the purpose of visiting the premises of M/s. Al-Haj Faw Motor (Pvt.) Limited was to conduct tentative inspection/random stock taking to check proper staking, Bin cards on consignments, boundary area and gate etc. The above named has also shared his observations with regard to inspection of the said premises which read that custom bonded area has no independent boundary wall and customs goods were lying with finished goods. Consequently, M/s. Al-Haj Faw Motor (Pvt) Limited, Karachi was directed to construct independent boundary wall for warehoused goods with the further directions to close extra gates and to keep open only one gate for In-bonding & Ex-bonding of customs goods. It has further been stated' by the above named Appraising Officer that he had never checked the goods lying in the warehouse nor audited the same. Whatever has been stated by Mr. Nasir Iqbal, Appraising Officer in his letter sufficiently negate the reliance placed by both the accused Directors on Tentative Inspection Report and confirms improper warehousing of imported goods and ex-bonding thereto. In which, it is mentioned that the same was carried on random basis. Whereas, the inspection report of the constituted team-is based upon the receipt of credible information regarding illegal removal of the goods from the respective bonded warehouse by the bonder importer. It is pertinent to mention here that said report after carrying out the physical stock taking of the bonded premises was found incorrect and the goods were found missing and illegally removed from its bonded area."

17. However the above seems only an afterthought and an attempt to damage control. We confronted the DR as to why the survey report was not disowned earlier but at this stage and what disciplinary action was taken

against the survey officer, he was clueless therefore we have decided to reject the Department's stance being an afterthought.

18. That it is on record that Appellant had deposited monthly verification reports alongwith details of in-bond and ex-bond GDs regularly. That as the vehicles were produced after filling ex bond GD's which can be confirmed from the monthly production shared with the Engineering Development Board of Ministry of Industries. This information was required by the MCC (East) through letter dated 27th June 2023. The required information was submitted to the MCC (East) on 8th July 2023 so there is no case of illegal removal before ex-bonding of goods, though the infirmity of "gate-in" date remains there indicating an illegal effort of the Appellant to avoid the penal surcharge. This illegal act of Appellant needs appropriate legal action in form of penalty. By summing up we hold that:-

i. Appellant shall not be denied the concessionary rate of duty under SRO 656(I)/2006 dated 22.06.2006 and the stance of department to charge the statutory duty on his ex-bond goods is rejected

ii. Respondent Department has not established any pilferage of goods.

iii. The Appellant has been found indulged in irregularity of delayed "gate in" on purpose with a view to avoid penal surcharge, therefore, his malafide is proved.

iv. We order to calculate the penal surcharge with effect from the date the goods were in-bonded without any consideration of delayed "gate in" activity of Appellant

v. The penalty has to be proportional to the illegality involved in the case therefore penalty is reduced to Rs: 500,000/-.

vi. The clearing agent M/s. International Impex (CHAL 986) have not been found involved in all the cases as neither they filed any of the ex-bond GDs nor they were found or alleged to be party to any delayed gate in effort, therefore, they are absolved of all the charges leveled against them and penalty imposed on clearing agent in each case is waived off"

The aforementioned extract prima facie demonstrates that the findings have been rested on appreciation of evidence and based thereupon the learned Tribunal has clearly observed that the respondent department has not established any pilferage of goods. It is also observed that the Tribunal has confronted the DR as to why survey report was not disowned earlier and what disciplinary action has been taken against the survey officer, however, the DR had remained unable to assist. While the learned counsel insists that the finding has not been appreciated in its proper perspective, respectfully we are sitting in the reference jurisdiction and it is settled law that the learned Tribunal is the last fact-finding forum in the statutory hierarchy. The questions of law proposed have been considered and they are prima facie argumentative and / or seek to agitate disputed question of fact, not amenable in reference jurisdiction. Under such circumstances and in view hereof no questions of law are articulated before this Court, therefore, these reference applications are dismissed in *limine*.

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.

Office is instructed to place copy of this order in connected matters.

Judge

Judge