ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 325 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of main case.

<u>11.08.2026</u>

Mr. Mohabbat Hussain Awan, advocate for the applicant.
Mr. Muhammad Ajmal Khan, advocate holding brief for Mr. Hassan Kamran Bashir, advocate for the respondent.

This reference application has been pending since 2015 without any progress. The operative part of the impugned judgment reads as follows:

> "4. The appellant / importer being aggrieved with the order-in-original 283943 dated 10.11.2014 and filed this appeal before this Tribunal. Mr. Barkat Ali Awan, Advocate for the appellant appeared and argued the case. The learned counsel for appellant focused his arguments as formulated in the grounds of appeal that the show cause notice is based on malafide intention and without jurisdiction as the appellant has imported mineral oil from Dubai with proper product specification sheet which is showing the goods as mineral oil with laboratory test report No J014-00045.002 of SGS, OGC laboratory, Dubai, UAE. The appellant has paid duty and taxes Rs.13,12,464/- as per declaration vide cash memo dated 21.07.2014. The samples were drawn and sent to Customs House Laboratory for examination and confirmation of description and classification of imported goods. On receipt of report, an additional amount of Rs.10,92,471/- was demanded as per Customs Valuation Guide Line which was paid vide cash memo dated 20.08.2014 even then the consignment was not released on plea that the Customs House Laboratory Report is inconclusive and samples were re-drawn and sent to HEJ laboratory for re-examination. The HEJ laboratory reported that the subject product is Mineral Base Oil thus the goods were assessed under HS Code 2710.1993 and another demand of Rs.614.426/- was raised. The appellant complied the same and paid the amount vide cash memo no A-KAPW-001145-05092014 dated 05.09.2014 as to save the consignment from demurrage charges, but the consignment was not released. He further argued that the samples were drawn in absence of appellant and sent to both Laboratories for getting their desired results, which is not warranted under the law and the method of testing as required under international standards of testing was also not observed. The HEJ laboratory report is contradicting with the reports of above both laboratories i.e. SGS, OGC Laboratory, Dubai and Customs House Laboratory, Karachi. For the aforesaid unlawful action of the respondent, the consignment is still lying at the port which is causing financial losses and heavy demurrage on appellant. The liability for delay in release of consignment is fully lies on respondent therefore the appellant deserves to be compensated for demurrage. He further pleaded that the assessment order was passed and countersigned by the Assistant Collector which was appealable order but not appealed by the respondent, if not, the matter may be re-opened by a competent or authorized officer under section 195 of the Customs Act 1969 in failure to do so would render the entire proceedings illegal and

unwarranted under the law as observed by the superior courts and prayed that the impugned order be set aside, ordered for release of consignment with issuance of delay and detention certificate as to save the appellant from financial losses.

5. The Departmental Representatives appeared on behalf of respondent and argued that the appellant/importer electronically filed a GD and declared the goods as mineral oil under PCT heading 2710.1991 at invoice value of US $ 57106/- and paid duty and taxes @ 5% for clearance of goods. On examination and samples were drawn and sent to Customs House Laboratory and subsequently to HEJ Laboratory for confirmation of description and classification of consignment. The both laboratory reports were differed to each other, therefore, the respondent relied on the HEJ report and assessed the consignment under HS Code 2710.1993 @ 10% as Mineral Base Oil for duty and taxes. During the adjudication, the Adjudicating Officer imposed the charge of mis-declaration of description and classification of impugned goods on the appellant/importer as mentioned in the show cause notice are stand established, therefore, the goods were confiscated with option to redeem the same on payment of 35% redemption fine alongwith duty and taxes and penalty of Rs.300,000/- was also imposed on the importer/appellant. The para wise comments were filed by the department wherein mostly the issues alleged as elaborated in show cause notice as well as in the impugned order-in-original.

6. After given careful consideration to the arguments of both parties and perused the case record. The perusal of record reveals that the importer when filed GD alongwith all relevant import documents with laboratory report of SGS, OGC Laboratory Dubai, UAE before shipment of consignment and paid the duty and taxes as applicable on mineral oil. The record reveals that samples were drawn and sent to Customs House Laboratory. The Customs Laboratory reported the nature of goods is "Mineral oil is more than 70% essentially of aliphatic hydrocarbon". From this report, it appears that the consignment is consists on mineral oil. It is not understandable, on first instance, the respondent chosen to confirm the description of goods from the above said laboratory then by saying that the laboratory report is inconclusive, it means that they are denying the reliability of their own laboratory. Even than an additional demand of duty and taxes were raised and the said amount was paid by the appellant, thereafter samples were re-drawn and sent to HEJ Laboratory for second opinion in absence of appellant as alleged. On receipt of HEJ laboratory report a demand of differential amount of duty and taxes were raised by treating the consignment as mineral base oil. The differential amount was also paid but the consignment was not released because in the meanwhile, the impugned order-in-original was passed and goods were confiscated by imposing the charge of mis-declaration which is not warranted as the appellant has complied with all demands of duty and taxes. The imposition of redemption fine for release of goods and penalty on appellant is illegal because there is no revenue loss is remains. The above exercise is indicates malafide of respondent in dealing with the matter. The two laboratory reports SGC, OGC Laboratory, Dubai and Customs House Laboratory confirms the consignment as a mineral oil and only the HEJ Laboratory reported that the given sample results comparable with Pakistan mineral base oil which is creating doubts in mind on the reliability of report.

7. In view of above facts and circumstances, I hereby set aside impugned order-in-original and allow the appeal of appellant with direction to release the consignment forthwith. The department is also directed to issue a delay and detention certificate as to save the appellant from further financial loss because the delay occurred due to unnecessary detention of consignment by the respondents."

. Learned counsel for the applicant when confronted with paragraph 6 of the impugned judgment has made no effort to distinguish or displace the observations contained. The questions of law proposed are prima facie argumentative in nature and/or re-agitate the evidence. Notwithstanding the fact, no case has been made out for denovo of appreciation of evidence in reference jurisdiction, in absence of any cavil to the evidence lead before the Appellate Tribunal and terms thereof no case arises to entertain in reference any further, it has been pending in the docket for 11 years. In view hereof, reference application is dismissed.

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(10) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS