

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application No.826 of 2015

Collector of Customs
Versus
M/s Samad Enterprises

Date	Order with signature of Judge
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1. For orders on CMA 2636/15
2. For hearing of main case

Dated: 30.08.2021

Ms. Masooda Siraj for applicant.

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Collector of Customs has filed this Special Customs Reference Application on 17.08.2015 and has proposed certain questions of law. However, since then the applicant has not cared to pursue the matter as it has been fixed twice out of which on 18.11.2015 request was made on behalf of applicant's counsel to reframe questions of law and since then it is pending. The reframe questions of law were however proposed on 22.09.2016, which are as under:-

- A. Whether in term of SRO 1125(I)/2011, the manufacturer of plastic sector can avail the exemption/concession of tax?
- B. Whether, as a last forum to determine the facts, the Appellate Tribunal has erred in law not giving findings on facts as per the record available before them?
- C. Whether on the facts and circumstances of the case and considering the mandatory conditions of the SRO 1125(I)/2011, the Appellate Tribunal has extended the exemption to a manufacturer who is not related to the five (05) specified sectors?
- D. Whether less payment of revenue to the exchequer, through self-assessment in terms of Section 79(1) read with section

32(1) of the Act, is not an untrue/misstatement in terms of Section 32 of the Act?

We have heard learned counsel for applicant and perused material available on record.

SRO No.1125(I)/2011 gave concession to manufacturer, importer, exporter and wholesale dealers of textile, carpets, leather, sports and surgical goods. SRO provides that the federal government is pleased to notify the goods specified in column (2) of the table of the said SRO under relevant PCT Heading numbers mentioned in Column No.3 of the table including the goods or class of goods mentioned in the conditions stated in the said notification, to be the goods on which sales tax shall, subject to the said conditions, be charged at zero-rate or as the case may be, at the rate of five per cent, wherever applicable, as provided therein.

The applicant's case is that in view of facts of the case the Appellate Tribunal erred in law by misreading to the effect that the respondent importer is a textile manufacturer within the meaning of the subject SRO.

In this regard it is pertinent to note that the tax payer registration certificate filed by the applicants itself disclose that the principal activity of the respondent was manufacturing of plastic products and other activities are import, export and manufacture of other textile N.E.C. The subject SRO in column (2) provides zero rating for textile and articles thereof excluding monofilament, sun shading, nylon fishing net, other fishing net, rope of polyethylene and rope of nylon, tyre cord fabric. Respondent's case does not fall within the excluding components. The description provides concession with regard to goods specified in the aforesaid column under respective PCT Headings. Perusal of impugned judgment also reveals that the Tribunal

inquired from the applicant as to the evidence in rebuttal and/or to prove that the respondent do not have business of textile or the one other than textile but they failed to produce any evidence. Registration certificate is a comprehensive evidence, which is filed by applicant. The status in terms of registration certificate, which is filed by the applicant itself, covers the case of the respondent as being a manufacturer of textile products. In consequence whereof the goods imported shall be subject to the said SRO. Since the conditions as required under subject SRO is fulfilled, no other view could be taken than the one taken by Appellate Tribunal.

Notwithstanding above, the show-cause notice is without jurisdiction on the count that the customs authorities have not been conferred with the powers of adjudication as far as Sales Tax Act, 1990 and the Income Tax Ordinance, 2001 are concerned. Customs Authorities have powers to collect sales tax/income tax etc. at the import stage in the capacity of collecting agents on the basis of registration certificate and the status is being adjudged by the registration authority itself.

In the absence of any evidence which could contravene the requirements of the subject SRO, no other view is deducible as these are questions of facts alone, which are thus answered accordingly in favour of respondent and against the applicant.

Special Customs Reference Application as such is dismissed in limine along with listed application.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Bench-II, Karachi, as required by section 47(5) of Sales Tax Act, 1990.

Judge

Judge