

**JUDGMENT**  
**IN THE HIGH COURT OF SINDH, KARACHI**

**Present**

Muhammad Shafi Siddiqui, J  
Agha Faisal, J

**Spl CRA No.132 of 2015**

*[Collector of Customs v. M/s General Food Corporation, Karachi]*

**Spl CRA No.133 of 2015**

*[Collector of Customs v. M/s Al-Naseeb Traders, Karachi]*

For the Applicant	Mr. Muhammad Khalil Dogar, Advocate
For Respondent	Nemo
Date of hearing	<u>06.09.2021.</u>
Date of Judgment	<u>06.09.2021.</u>

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**JUDGMENT**

**Muhammad Shafi Siddiqui J.**- On a complaint of Karachi Chambers of Commerce & Industry, Director General Intelligence & Investigation-FBR as reported vide its contravention report, led to issuance of show cause notice dated 25.6.2013. The respondent being an importer and distributor of bottled or canned fruits has imported the consignment and claimed exemption of sales tax under Sr.No.15 to be read with Table 1 Note 1 to the Sixth Schedule of Sales Tax Act, 1990.

The Director General Intelligence & Investigation-FBR and respondent No.2 assuming the official powers of the Director General Post Clearance Audit conducted audit post clearance of the goods declaration of the respondent under Section 26A, in the absence of jurisdiction and authority. Sovereign authority of Director General Post Clearance Audit is undertaken by respondent No.1 and thus would tantamount to undermining the authority having jurisdiction and would tantamount to a parallel jurisdiction.

The contravention report prepared appears to be under Section 32 and 80 of the Customs Act 1969 when a false statement/error of the nature of the fiscal fraud has occurred while declaration is being made for the release of the goods for home consumption. The amended version of Section 32 would not come into play as goods having been imported prior to crucial amendment carried out in the year 2014. Section 79 set the machinery for submitting the goods declaration which later in terms of Section 80 empowered the customs officer to complete the assessment of the goods for levying duties and taxes as required under the law at the stage of initial clearance.

Once the assessment order is passed and clearance of the goods under Section 80 is made, the consignment then is out of charge and then such assessment is not liable to be intervened unless the recourse as available under law is invoked before a Collector Appeals for reopening of the assessment etc. In addition to this the amended section 38 of the Sales Tax Act, 1990 and insertion of Section 230 of the Income Tax Ordinance, 2001, the customs officials including respondent No.1 cannot be deemed to have been appointed as officer of Inland Revenue. Thus the contravention so prepared is without jurisdiction and the authority. The Collectorate of Customs does not enjoy the authority of collecting sales tax and income tax of the regime under discussion, once the goods are out of charge. They do the act as an agent at import stage in the capacity of collecting agent and can recover the avoided or short paid customs duty and other taxes levied but not once the goods are out of charge.

The Tribunal reached to a just conclusion that the provision of Sections 80(2)&(3) and Section 32(3) of the Customs Act have been followed without any mandate of law.

The tribunal has reached to a conclusion on preponderance of evidence/facts which not even agitated before us.

Following proposed questions are thus answered against the appellant in favour of the respondent :

*"2. Whether in the facts and circumstances of the case, the learned Customs Tribunal has erred in law by not considering that the Collectorate has throughout been charging sales tax at statutory rate on under reference goods and all other importers have been regularly paying sales tax on the said item?"*

*4. Whether in the facts and circumstances of the case, the learned Customs Tribunal has not erred in law by directing the changes for inclusion of item in clearance system for clearance thereof against exemption under Sr.No.15 of Sixth Schedule, which is arbitrary and contrary to legal provision of Sixth Schedule to Sales Tax Act, 1990?"*

The Spl CRAs are dismissed.

Copy of this order be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act 1969.