

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

**Special Custom Reference Application Nos. 2072 to 2078 of 2023**

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection No.14 & 25.
2. For order on CMA No.682/2023 (Exemption).
3. For hearing of main case.
4. For order on CMA No.683/2024 (Stay).

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**Dated; 15<sup>th</sup> October 2024**

Mr. Pervaiz Ahmed Memon, Advocate for Applicant in  
all SCRAAs.

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1. Deferred.
2. Exemption granted subject to all just exceptions.

3&4. Through these Reference Applications the Applicant department has impugned a common judgment dated 08.09.2023 passed in Customs Appeal Nos.K-2712 of 2020 and other connected matters by the Customs Appellate Tribunal, Bench-II at Karachi; proposing following questions of law: -

1. *Whether in the light of facts and circumstances of the case the Appellate Tribunal erred in the law and facts by not considering the admitted position that the imported goods i.e. Raw and Ginned Cotton was not admissible for exemption under SRO 1125(1)/2011 dated: 31-12-2011, in the light of amending SRO 154(I)/2013 dated 28-02-2013, which has excluded raw and ginned cotton from the purview of SRO 1125(1)/2011 dated 31-12-2011 through condition (ii) of the said SRO?*
2. *Whether the learned Appellate Tribunal has erred in law not to consider that the Customs Appellate Tribunal vide its order passed in Customs Appeal No. 1525/2016 categorically confirmed that Customs authorities are very much empowered to collect and recover the short paid levied sales tax. It is further submitted that considering the law settled by this Honourable Court in the case of M/s. Al-Haj Industrial Corporation (Pvt) Ltd., Peshawar V/s. Collector of Customs, Appraisement (2004 PTD 801), and in the light of Section 6 of the Sales Tax Act, 1990, read with SRO 232(1)/199 dated 10-03-2199 the answering respondent's officers are empowered to recover short levied sales tax in the same manner as specified for the recovery of the Customs Duty?*

3. *Whether the learned Appellate Tribunal has erred in law not to consider that Appellant has filed HCA No. 321/2016 before the Divisional Bench against the Judgement of the referred Suit passed by the single judge, which has been dismissed by the Division Bench in the HCA No. 321/2016 vide judgment dated 03.08.2017?*
4. *Whether the learned Appellate Tribunal has erred in law not to consider that in terms of Sections 79(1), 80, 32, of the Act, read with Section 6 of the Sales Tax Act, 1990, sub-section (5) & (6) of Section 148 of the Income Tax Ordinance, 2001, the appropriate officer is not only authorized to collect but also to recover other taxes i.e. Sales Tax & Income Tax in the same manner and at the same time, as if it were a duty of Customs. Moreover, the Ministry of Law & Justice had clarified vide their letter No.F-242/2012-Law-I dated 11-07-2012 which is further confirmed by the Federal Board of Revenue, vide its letter C. No.3/32/Tar-1/90 dated 06-08-2012 that customs authorities are empowered to recover short paid amount of levies at import stage?*
5. *Whether the Honourable Appellate Tribunal erred in law not to consider that in terms of Section 79(1)(b) of the Customs Act, 1969 an importer is not only a "Declarant" but also an "Assessor". In view of this position, the government has trusted respondent to declare the correct particulars of the goods in all respect and self-assess his due duties and taxes. In the instant, this trust was broken by the respondents?*
6. *Whether in the light of facts / circumstances of the case the Customs Appellate Tribunal has erred in law not to consider that in view of amended provisions of Section 6 of the Sales Tax Act, 1990, and Section 32,179 & 202 of the Customs Act, 1969. The Custom officer is authorized to collect and recover the sales tax?*
7. *Whether the learned Appellate Tribunal has erred in law, not to consider the order passed by the Honourable Supreme Court of Pakistan in the case of Collector of Sales Tax & Central Excise, Lahore v/s. Zamindara paper & Board Mills, etc. (PTCL 2007 CL 260) & Supreme Court's order dated 10-11-2003, in the case of Sadruddin Alladin v/s. Collector of Customs in Civil Petition No.775-k/2003, wherein it was held that merit of the case cannot be scrapped on sheer technicalities?*

At the very outset the Applicant's Counsel has been confronted as to the proposed Question No.1, which stands decided against the Applicant department by a learned Single Judge of this Court in Suit No.2131 of 2016 vide order dated 05.10.2016, against which though an appeal was preferred and was also allowed by the learned Division Bench of this Court in the case reported as ***The Collector,***

***Model Customs Collectorate and 2 others v. Messrs Naveena Industries Ltd. and others [2017 PTD 2123].***

However, the said judgment of the learned Division Bench stands set-aside by the Hon'ble Supreme Court of Pakistan in the case reported as ***Searle IV Solution (Pvt.) Ltd. and others v. Federation of Pakistan and others [2018 SCMR 1444]*** and resultantly the judgment of the learned Single Judge stands affirmed on merits, hence no case is made out and learned Counsel could not controvert such factual position. In fact, the Tribunal has also allowed the appeal of the Respondents based on the said judgment of the learned Single Judge.

Insofar as proposed Question No.2 is concerned the same also stands decided against the department in the case reported as ***Nestle Pakistan Limited v. The Federal Board of Revenue [2023 PTD 527]*** and when confronted, he submits that the said judgment has been impugned before the Hon'ble Supreme Court of Pakistan.

Be that as it may, since the proposed Question Nos.1 & 2 stands decided against the Applicant department as noted hereinabove, therefore, no case for indulgence is made out. Both these Questions are answered against the Applicant department and in favour of the Respondents and as a consequent thereof, remaining questions needs not to be answered. Accordingly, these Reference Applications are hereby ***dismissed*** in limine with pending application(s). Let copy of this order be sent to the Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

**JUDGE**

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