

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications No. 685 of 2024

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman,

Applicant: The Collector of Customs,
Jinnah International Air Port,
Air Freight Unit Karachi.
Through Mr. Muhammad
Rizwan Saeed, Advocate.

Respondent No.1 M/s. New Iraq Enterprises
Through Dr. Shahab Imam,
Advocate.

Date of hearing: 25.02.2025.

Date of Order: 25.02.2025.

ORDER

Muhammad Junaid Ghaffar, J: On 13.01.2025 the following order was passed:-

“It appears that the controversy as raised in this matter regarding permission to re-export the goods under Section 138 of the Customs Act, 1969 by the Custom Appellate Tribunal has been decided by this Court today in **SCRA No. 638/2024 [Collector of Customs, Collectorate of Customs Appraisalment (East), v. M/s. Bilal Metals Pvt. Ltd.]**. Both learned counsel are directed to go through the same judgment and assist the Court on the next date.

To come up on 21.01.2025. Interim order, passed earlier, to continue till the next date of hearing.

2. Today Respondent’s Counsel submits that the Tribunal was fully justified in passing the impugned order, whereas, the Shipper of the goods in question has also approached this Court in some other proceedings seeking re-export of the goods under Section 138 of the Customs Act, 1969. He has also placed reliance on judgment dated 26.04.2022 passed by this Court in ***ARA Detergents & Chemicals FZE***¹.

3. Heard learned Counsel for the parties and perused the record. The Applicant has impugned judgment dated 14.05.2024 passed in Customs Appeal Nos. K-463/2024 by the Customs Appellate Tribunal Bench-III, Karachi; whereby, while

¹ SCRA No. 22/2022 The Collector of Customs (Enforcement) v. ARA Detergents & Chemicals FZE, maintained vide Order dated 13.07.2022 passed by the Honourable Supreme Court in C.P Nos.2051 & 2052 of 2022 (the Collector of Customs (Enforcement), Karachi v. M/s. Ara Detergents & Chemicals FZE

allowing the appeal, the request of the Respondent seeking re-export of the goods as frustrated cargo under Section 138 of the Act has been allowed. The Respondent is a consignee of the goods and today learned Counsel has contended that the said goods were disowned by the Respondent and a request for re-export was also made on such ground. The controversy as to whether a consignee, who has disowned the goods can seek re-export of the goods under Section 138 of the Act or ***Bilal Metals Private Ltd.***², wherein, at para-8 it has been observed as under:-

8. In this matter, admittedly, Respondent's case is not that of misdirection, inadvertence or untraceability, but that of dishonor to the extent of confiscated goods on the ground that it is the fault of the shipper as scrap of Indian origin has been shipped, which is not importable in Pakistan. It may be noted that such restriction on the import of Indian origin goods was already in vogue when the goods were shipped to the Respondent. It may also be of relevance that insofar as invoking section 138 of the Act is concerned, for that a formal application must be filed before the Additional Collector of Customs, concerned, either by person in charge of the Vessel carrying such goods, or by the consignor. We may clarify that the Act or the Rules do not permit any other person to seek re-export of the same, whereas in cases wherein the consignee has dishonored his commitment, then the consignee cannot even act as an attorney or agent of the consignor. In fact, all four situations wherein a cargo can be deemed to be a frustrated cargo under section 138 *ibid*, there does not appear to be any role which could be assigned to a consignee in getting such permission of re-export officially from the Customs department. At best, in case of inadvertence or misdirection, may be, the person in whose name such shipment has been made can act as an attorney of the consignor to seek re-export of the goods. Nonetheless, since in this matter, this issue is not directly in hand, we need not delve upon this issue any further and leave it to be finally considered in an appropriate case. However, for the present purposes, it is a matter of record that no such application was ever filed before the Additional Collector concerned as mandated under the Act and the Rules, either by the consignor, or even by the Respondent. In fact, the Respondent never took this plea until filing of Appeal before the Tribunal, and when the Order-in-Original is examined specially the response of the Respondent, it appears that before the Adjudicating Authority, no such plea, not even alternatively, was ever raised.”

² SCRA No. 638/2024 (Collector of Customs, Collectorate of Customs Appraisalment (East) v. M/s. Bilal Metals Private Ltd.),

4. Insofar as Respondent is concerned, no such order could have been passed by the Tribunal in favour of the Respondent as a consignee seeking re-export of the goods as frustrated cargo under Section 138 of the Act. As to placing reliance on the case of **ARA Detergents & Chemicals FZE** (Supra) maintained by the Honourable Supreme Court, it would suffice to observe that the facts of that case are materially different as against that of the present case. In that case the *shipper* had come forward to seek re-export of the goods disowned by consignee and not the *consignee* itself, and that is what we have held in the case of **Bilal Metals** (Supra). Therefore, any order of the Tribunal including a consequential relief of permitting re-export under Section 138 of the Act was peculiar to such facts and is not relevant to the case of the present Respondent.

5. In view of hereinabove facts and circumstances of this case, the proposed questions is rephrased as under: -

- i. *Whether in the facts and circumstances of the case the Tribunal was justified in setting aside the Order-in-Original and allowing re-export of the goods under section 138 of the Customs Act, 1969 when the consignee had disowned such goods?*

6. The above Question is answered in **negative**. Consequently, thereof, the impugned order of the Tribunal stands set-aside. This Reference Application is **allowed** accordingly. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

Ayaz