

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application No.524 of 2022

Date	Order with signature of Judge
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1. For orders on office objections.
2. For regular hearing.
3. For hearing of CMA No.2835 of 2022 (stay)

07.04.2025.

Mr. Faiz Durrani, Advocate along with Mr. Ghulam Mohammad, Advocate for the Applicants.
Ms. Afsheen Aman, Advocate for the Respondents.

Through this Reference Application, the Applicant has impugned Order dated 25.07.2022 passed in Customs Appeal No.K-2812/2020 and Customs Appeal No.K-2813/2020 by Custom Appellate Tribunal Bench-I, at Karachi proposing various questions of law, however, it appears that the main question i.e. (***Whether the Customs Appellate Tribunal has not erred in law by not considering that the powers for recovery of short levied amount of Sales Tax / Income Tax is vested with Customs authorities in terms of Section 32 read with Section 202 of the Act?***) already stands decided against the Applicant Department by this Court in the case of ***Nestle Pakistan Limited v. The Federal Board of Revenue*** (2023 PTD 527) in the following manner;

27. It is the considered view of this Court that while the insertion of the word taxes in sections 32 and 179 of the Customs Act 1969 confers parallel jurisdiction upon the Customs department to the extent contemplated vide the parent statutes¹, however, in either instance the ambit is circumscribed to imports and that also at the import stage, being prior to or at the time that the import / consignment has been assessed and released per sections 79 / 80 of the Customs Act 1969. Therefore, the notices / constituents⁴⁸ thereof, prima facie related to a fiscal right based on a statutory instrument requiring no factual determination, seeking to assess, recover or adjudicate any alleged short levy of

¹ 47 In the present context being the Income Tax Ordinance 2001 and the Sales Tax Act 1990.

income tax / sales tax, post release / clearance of consignments, are determined to be patently without jurisdiction and illegal on the face of the record.

In view of the above, we need not to answer the remaining questions, whereas, the Question as above is answered in favour of the Applicant and against the Respondent Department for the reasons so assigned in the case of ***Nestle Pakistan (Supra)*** and instant Reference Application stands ***allowed*** accordingly by setting aside the orders of the forums below.

Let copy of this Order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of Customs Act, 1969.

Acting Chief Justice

Judge

*Farooq PS/**