

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Customs Reference Application No. 403 to 409 of 2018

Date

Order with signature of Judge

**HEARING CASE (PRIORITY)**

- 1) For orders on office objection No. 13 & 20.
- 2) For hearing of main case.
- 3) For hearing of CMA No. 3251/2018.

**16.04.2025.**

M/s. Jam Zeeshan & Sami-ur-Rehman Khan,  
Advocates for Applicant.  
Mr. Khalil Ahmed Dogar, Advocate for Respondent.

These Reference Applications are in respect of four different orders-in-originals ("ONO's") bearing No. 520/2013-14, 462-A/2013-14, 462-B/2013-14 and 509/2013-14 and various Questions of Law have been proposed on behalf of the Applicant. However, the precise issue involved appears to be that whether the goods in question are "*other alloy steel*" or "*non alloy steel*" which was required to be determined based on Lab reports. It appears that while passing ONO No. 520/2013-14, 462-A/2013-14 and 462-B/2013-14 though the matter was adjudicated against the Applicant; however, no fine and penalty was imposed, and the department being aggrieved approached the Tribunal for imposition of fine and penalty. Similarly, the Applicant also approached the Tribunal in respect of all four ONO's. The Tribunal, by way of a common Judgment dated 17.07.2018 (impugned herein) has dismissed all the Appeals of the Applicants, whereas the Appeals in respect of three ONO's 520/2013-14, 462-A/2013-14 and 462-B/2013-14 were allowed and while doing so, these ONO's have been set aside. Interestingly, the department has not preferred any Reference against setting aside of the three ONO's inasmuch as they had only challenged non imposition of fine and penalty and not the order on its merits. The observations of the Tribunal in concluding paragraph reads as under: -

"18 In view of the aforesaid discussion we are of the considered opinion that appellant importer have not been able to establish that the goods were "*over alloy-steel*" The examination of test report reveals that reports of M/s. KRL applicable in

all appeals are categorical and conclusive. The report by M/s. PSL. is clear in as much as it confirms that goods are "non alloy steel" The documents pertaining to sale, produced by the appellant importers defy their declaration. It is therefore abundantly clear that importers have made untrue declarations before Customs with a purpose to get the goods cleared against lower rate of duty and taxes at the cost of national exchequer. The goods in Customs Appeal Nos. K-1137/2014, K-505/2014 and K-1138/2014 are conclusively confirmed by KRL as non-alloy, therefore, these appeals fails. The departmental Customs Appeals Nos. K-515/2014 and K-492/2014 are successful and Order-in-Original No. 520/2013-14, 462-A/2013-14 and 462-B/2013-14 are Z set aside. The importer's Customs Appeal No. K-546/2016 has been evaluated in detailed vide paras supra. The same also fails and departmental Customs Appeal No. K-516/2014 is therefore successful. The Customs department is at liberty to proceed in accordance with the show cause notices in all cases except in Order-in-Original No. 509/2013-14, which is hereby confirmed."

Since issue against an identical fact stands remanded to the original authority in respect of three ONO's as they stand set-aside (fully) and no Reference has been preferred by the department against it, we deem it appropriate that the case pertaining to the fourth ONO No. 509/2013-14 shall also be remanded to the same authority for a decision afresh in accordance with law.

In view of such position, the order of the Tribunal impugned in question is hereby set aside in all these Reference Applications and the matter shall be deemed to be pending before original authority for a decision afresh in accordance with law after opportunity of hearing to all concerned. Till such time the orders are finally passed by the adjudicating authority the guarantee / security already furnished by the Applicants shall not be encashed.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969 as well as the Respondent department for compliance. Office to place copy of this order in the connected Reference Applications.

**ACTING CHIEF JUSTICE**

**J U D G E**

Arshad/