

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 336 & 337 of 2016

Date

Order with signature of Judge

HEARING CASE / PRIORITY.

- 1) For orders on office objection & reply at "A".
- 2) For hearing of main case.
- 3) For hearing of Misc. No. 3689/2016.

15.05.2025.

Mr. Pervaiz A. Memon, Advocate for Appellant.

On the last date of hearing, following order was passed:-

"Mr. Muhammad Asif, Advocate holds brief for Mr. Pervaiz Ahmed Memon, Advocate for Appellants and requests for adjournment as he is out of station. However, perusal of impugned order reflects that the same has been passed on the basis of earlier order dated 05.09.2016 passed in Suit No. 1763/2016 reported as (***Umer Spinning Mills vs. FBR & others 2019 PTD 347***), whereas this very issue has also been decided against the department in SCRA Nos. 2072 to 2078 of 2023 vide Order dated 15.10.2024; therefore, Counsel for the Appellants to come prepared on this point.

To come up on **15.05.2025**. Office to place a copy of this order in connected High Court Appeal."

Today, Counsel is not in a position to assist us as to our order dated 15.10.2024 passed in SCRA No. 2072 to 2078 of 2023 wherein, the similar questions regarding exemption under SRO 1125(1)/2011 has already been decided. The finding in the said order reads as under:-

"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."

In view of the above, and notwithstanding the objection regarding maintainability of the Suit as well as the Judgment passed by the Hon'ble Supreme Court in the case of ***Searle IV Solution (Pvt.) Ltd. and others v. Federation of Pakistan and others [2018 SCMR 1444]*** these High Court Appeals are dismissed for the reasons so assigned in our above order.

ACTING CHIEF JUSTICE

J U D G E

Arshad/