

IN THE HIGH COURT OF SINDH AT KARACHI  
Special Customs Reference Application (“SCRA”) No.49 of 2022

Date	Order with signature of Judge
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PRESENT:  
**Mr. Justice Muhammad Junaid Ghaffar, ACJ**  
**Mr. Justice Mohammad Abdur Rahman, J**

HEARING OF CASE:  
1. For order on office objection.  
2. For hearing of CMA No.273/2022.  
3. For Regular Hearing.  
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**Dated; 29<sup>th</sup> April 2025**  
Mr. Khalid Mehmood Rajpar, Advocate for Applicant.  
Mr. Ali Murad Gulzar, Advocate for Respondent.  
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**ORDER**

**Muhammad Junaid Ghaffar, ACJ** : - Through this Reference Application the Applicant has impugned Judgment dated 07.10.2021 passed in Customs Appeal No.H-1236 of 2020 by the Customs Appellate Tribunal Bench-I, Karachi; proposing the following questions of law: -

- 1. Whether under the facts and circumstances of the case impugned non-duty paid/ smuggled foreign origin Zinc Ingots are not liable to outright confiscation in terms of clauses (8) & (89) of sub Section (1) of Section 156 of the Customs Act, 1969, for violation of the provisions of Section 2(s) & 16 of the Act, read with SRO 499(I)/2009 dated 13.06.2009?*
- 2. Whether the impugned judgment passed by the learned Appellate Tribunal being based on misreading/non reading of evidence, relevant provisions of the Customs Act, 1969 and misplaced distinguishable case law, is sustainable under the law?*
- 3. Whether in view of the facts and circumstances of the case burden of proof of lawful possession (lawful excuse) as envisaged under clause (89) of Sub Section (1) of Section 156 read with Section 187 of the Customs Act, 1969, lies on the respondent who failed to discharge it?*
- 4. Whether the Appellate Tribunal has not erred in law by ignoring the visit report of the Department regarding physical verification of the Unit conducted on the directions of the Appellate Tribunal wherein, the visiting officer reported that the unit has no facility, capacity or machinery as manufacturing unit as per Section 2(pa) of the Customs*

*Act, 1969 read with Section 2 (17) of the Sales Tax Act, 1990?*

5. *Whether the Appellate Tribunal has not erred in law by ignoring that the unit was not in possession of the documents as mentioned in Section 26 of the Customs Act, 1969?*
6. *Whether the Appellate Tribunal has not erred in law by ignoring that the legal document for movement of goods from one country to another is Goods Declaration as per Section 79 of the Customs Act, 1969 whereas, the inland movement of the goods from one point to another is done through Sales Tax Invoice as per Section 23 of the Sales Tax Act, 1990 with the irrelevant GD, which the respondent failed to produce?*

2. Heard learned counsel for the parties and perused the record.

3. The precise case of the Applicant is that the goods in question i.e. Aluminum / Zinc Ingots are smuggled goods, whereas the stance of the Respondent is that these were manufactured by them through local scrap. It appears that during pendency of the appeal before the Tribunal, a Local Commission was appointed and a report was furnished, whereas the Tribunal based on the said report has allowed the appeal by setting aside the order passed by the forums below. The said report of the Commission reads as under: -

**PHYSICAL VERIFICATION REPORT & ADDITIONAL  
COMMENTS.**

*It is respectfully submitted that, during the hearing process on 2.08.2021 this Honourable Customs Appellate Tribunal has been pleased to direct to conduct physical verification regarding M/S Quetta Star aluminum & Lead casting unit Quetta at the given address situated at Sabzal Road, Rakshani builder, Goclown no.98, Zargoan town, Quetta, its capability and installed Infrastructure to produce/manufacture zinc/silver ingots etc.*

*In compliance of above directives a joint team of officers of Directorate of Intelligence and investigation-customs Sukkur and Regional Office Quetta, in association with representative of M/S Quetta Star aluminium & Lead casting unit Quetta conducted verification exercise on 03-09-2021, and report is submitted in the honourable Appellate tribunal on 10-9-2021*

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During the course of verification following discrepancies were also observed, which can lead to conclusion that, so called manufacturing unit has meagre infrastructure or capability to produce/manufacture zinc/silver ingots.

(i) During verification it has been found that, as per registration documents submitted by the claimant for the registration in FBR of M/S Quetta Star Aluminium & Lead Casting Unit, having the principal activity as Manufacturing/Casting of Metals/Casting of Non-ferrous metals whereas, on the FBR's web portal online NTN 7999246-1, it has principal activities as, Other service activities/Services/Brokerage.(Encl.)

(ii) Although manufacturing unit does not physically exist at the given address, yet claimant has produce the Purchase order of dated 2-Jul-2020, pertaining to Vohra Metals Industries Private limited Lahore showing therein to send 5000Kgs of Aluminium Alloy Adc-12 for Inspection of material for further order, whereas, another letter they have produced of dated 15-Jul-2020, pertaining to the Vohra Metals Industries Private limited Lahore in which they have written to send us Five to Fifteen metric ton of Aluminium Alloy Adc-12, and it is also mentioned that price of the material is not decided between the parties. whereas, it's also shocking that the letter head of a private Limited company is not mentioning any contact no & address and all the letters are written in capital letters. This clearly shows that this purchase order is also arranged and afterthought.

(iii) No infrastructure, machinery, manufacturing equipment and labour was found or installed to establish that activity of manufacturing process was being performed in the so called unit. Whereas, during the inspection two ingots having the Mark of RML & SANAT ALUMINUIM were also found in the so called unit, this clearly shows that these ingots were arranged before the inspection. The representative was asked about these two others names marked on the ingots placed in the so called unit However, he couldn't explain the reason behind the existence of the said ingots to the verification team.

(v) The representative has also taken the stance that all the ingots confiscated, having the mark of M/S Quetta Star Aluminium & Lead Casting Unit. However 799 ingots were confiscated, out of them 293 ingots are having no any mark, and 6 out of total seized/confiscated ingots having another marks as RML, This clearly shows that goods are not manufactured but arranged in the so called unit.

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*In view of the above, it is submitted that so called unit has no facility capability or machinery to work as manufacturing unit and claimant of the under referred goods is trying to misguide Honourable Appellate Tribunal under the garb of fake and after thought documents and objects.*

Sd/-  
ALI AHMED TALPUR  
PRINCIPAL APPRAISE.  
INT & INY-FAR SUKKUR

4. From perusal of the aforesaid report, it clearly reflects that insofar as the manufacturing ability of the Respondent is concerned, it has been reported that no manufacturing unit exists, whereas there is no infrastructure, machinery, manufacturing equipment and labour available on the premises of the Respondent. In that case, the Tribunal appears to have misdirected itself by allowing the appeal of the respondent based on such report. Insofar as the Respondent is concerned, they are not aggrieved by the said report of the Commission and, therefore, same has attained finality. This is otherwise a finding of fact duly recorded and approved by the Tribunal which cannot be interfered with or disturbed in this Reference jurisdiction.

5. In view of hereinabove facts and circumstances of the case, the proposed Question No.1 is answered in favour of the Applicant and against the Respondent, whereas the remaining questions need not be answered. Accordingly, the impugned judgment passed by the Tribunal is hereby **set aside**. As a consequence thereof, this Reference Application is **allowed**. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of Subsection (10) of Section 196 of the Customs Act, 1969.

**ACTING CHIEF JUSTICE**

**JUDGE**