

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**SCRA No. 345 of 2017**

Date	Order with signature of Judge
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- 1) For hearing of CMA No.2388/2017.
- 2) For hearing of CMA No.1109/2024.
- 3) For regular hearing.

**22.04.2025.**

M/s. Jam Zeeshan and Samiur Rehman, Advocates for the Applicant.

Mr. Muhabbat Hussain Awan, Advocate for Respondent.

Mr. Muhammad Rashid Arfi, Advocate for Respondent.

Through this Reference Application, the Applicant has impugned judgment dated 07.06.2013 passed in Customs Appeal No.K-1307 of 2015 by the Customs Appellate Tribunal at Karachi proposing the following questions of law:-

- “(a) Whether the used quay cranes imported by the Applicant were entitled to the benefit under Serial No.16 of S.R.O. 575(I)/2006 dated 05.06.2006 (“SRO 575”)?
- (b) Whether the benefit under Serial No.16 of SRO 575 could be denied to the Applicant because of the failure of the Board of Investment and / or the Federal Board of Revenue to issue the required certification before the arrival and clearance of the quay cranes?
- (c) Whether the Respondent No.2, being an office of customs, has jurisdiction to recover advance income tax under the Income Tax Ordinance 2001 and sales tax under the Sales Tax Act, 1990 after the goods have already been cleared?”

Heard the learned counsel for the parties and perused the record. It appears that the Applicant imported two units of used “quay cranes” complete with spreader, standard accessories, fittings and spares etc. and claimed exemption under Serial No.16 of S.R.O. 575(I)/2006 dated 05.06.2006, whereas the concerned Collectorate released the consignment by granting the benefit of the exemption so claimed. Subsequently, the Post

Clearance Audit generated a contravention report, and a show cause notice was issued on 01.04.2015 on the ground that the Applicant had failed to fulfill a mandatory requirement of a valid approval issued by Board of Investment for availing the exemption as required under the said SRO. The show cause notice was adjudicated and against such Order-in-Original dated 22.06.2015 an appeal was filed which also failed, hence this Reference Application.

The only ground which has prevailed upon the Adjudicating Authority as well as the Customs Appellate Tribunal for denying the claim of the Applicant was that though the certificate was produced from Board of Investment; but that was a belated effort as it was issued subsequent to the clearance of consignment. Record reflects that insofar as the Applicant is concerned, much prior to the importation of the goods in question, several representations were made which fact has not been denied and in fact FBR vide Office Memorandum dated 22.08.2013 responded to the Board of Investment by holding that the goods in question are eligible for benefit of Serial No.16 of SRO 575. As to the finding of the forums below that the certificate was produced after release of the consignment it would suffice to observe at the very outset the Clearance Collectorate had never objected or demanded production of such certificate; rather had allowed clearance of the goods in question. In that case the Applicant cannot be penalized for delay on the part of Board of Investment or for that matter, the Engineering Development Board or FBR. Once it has been produced for which an application was already pending, the exemption cannot be denied on this ground alone.

In view of hereinabove facts and circumstances of this case, the proposed questions (a) and (b) are answered in favour of the Applicant and against the Respondent and consequently thereof we need not answer question (c). This Reference

Application is ***allowed***, and the order(c) of the authorities / Tribunal are hereby ***set aside***. Let copy of this order be issued to the Tribunal in terms of Section 196(10) of the Customs Act, 1969.

**ACTING CHIEF JUSTICE**

**J U D G E**

Nasir/