

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

S.C.R.A. 129, 130, 131, 132, 133, 134, 135, 136 & 137 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on CMA No.1772/2025
- 2. For hearing of main case
- 3. For hearing of CMA No.1773/2025

09.10.2025

Sardar Zafar Hussain, advocate for the applicant

Mr. M. Awais Kazi, Senior Manager Materials for the respondent company.

These reference applications impugned judgment dated 26.06.2025 rendered by the learned Customs Appellate Tribunal Karachi in Customs Appeal No.K-2464 of 2024 to 2472 of 2024, essentially the questions proposed are as follows :

Whether the learned Customs Appellate Tribunal has erred in the law by holding that customs officers are not empowered to recover the short levy amount of sales tax while disparaging vires of sections 32, 202, and 179 of the Customs Act, 1969 read with Section (6) of the Sales Tax Act, 1990 which in fact profusely empower the Customs Officer to recover the quantum of sales tax and income tax?

Whether the learned Customs Appellate Tribunal failed to appreciate that the legislature had added the words "other taxes" in Section 179 vide Finance Act, 2012 and "taxes" in Section 32 vide Finance Act, 2014 which crystalizes the intent of the legislature meaning thereof that customs officer was duly invested with the power of recovering the sales tax and income tax pertaining to imports?

Per learned counsel the controversy is squarely clinched in favour of the department vide judgment of Supreme Court passed on 05.09.2025 in Civil Petitions No. 70-K to 72-K of 2023 (The Directorate of Post Clearance Audit through its DG, FBR, Islamabad vs. Nestle Pakistan Limited, Islamabad and others. Upon Notice Mr. M. Awais Kazi, Senior Manager Materials for the respondent company is present and states that in the context of pharmaceuticals the sales tax is to be levied on the basis of active pharmaceuticals ingredients and not otherwise, therefore, the case of the respondent is not covered by the aforementioned judgment.

Head and perused

The impugned judgment has been perused and the findings are reproduced herein below :

8. This issue pertains to the recovery of Sales Tax by the Customs Authorities post-clearance. Before pondering the merits of the case, it is imperative to first deliberate upon the question of jurisdiction. The very question of jurisdiction of powers of Customs authorities to recover the escaped amount of Sales Tax post clearance, has been answered by the Hon'ble Sindh High Court in the case of Nestle Pakistan Limited vs. Federal Board of Revenue and others reported as 2023 PTD 527 wherein the Hon'ble Court has held as under: -

"28. In view hereof, these petitions were allowed, in Court at the conclusion of the hearing, in terms of our short order dated 15.11.2022, operative constituent whereof is reproduced herein below:

"For reasons to be recorded later on these petitions are allowed to the extent that the officers of Collectorate of Customs (Adjudication) have no jurisdiction to recover or adjudicate any short levy / recovery of sales tax and income tax once the imported consignments have been assessed to duty and taxes in terms of section 80 of the Customs Act, 1969 and are released / cleared from Customs. The impugned show cause notices, only to this extent are held to be issued without lawful authority and jurisdiction and are hereby set-aside; however, the proceedings, if any, in respect of short levied sales tax and income tax can be initiated by the Officers of Inland Revenue Department, strictly in accordance with law. Office to place copy of this order in the connected petitions as above."

9. Clearly, the Hon'ble High Court has categorically held that Customs authorities have no jurisdiction to recover or adjudicate any short levy or recovery of Sales Tax and Income Tax once the imported goods have been assessed to duty and taxes and cleared from Customs for home consumption. In the instant matter, too, the goods were assessed and cleared for home consumption. Therefore, I, under Article 201 of the Constitution of Pakistan, am bound by the dictum of law settled by the Hon'ble Sindh High Court in the above cited case and to answer the question framed above in the negative in favour of the Appellant and against the Respondent Department.

10. As the question of jurisdiction has been given in the negative against the Respondent Department, I do not feel it necessary to ponder upon the merits of the case as the same will be an otiose exercise in the light of the judgment of Hon'ble Supreme Court of Pakistan reported as PLD 2005 Supreme Court 842 (Khyber Tractor (Pvt) LTD v Pakistan through the Ministry of Finance) wherein the hon'ble apex court has laid down the following principle where the issue of jurisdiction is involved: -

"Question of the jurisdiction of a forum is always considered to be very important and any order passed by the Court or a forum, having no jurisdiction, even if it is found to be correct on merits, is not sustainable jurisdiction of a court lays down a foundation stone for a judicial or quasi-judicial functionary to exercise its power /authority and no sooner the question of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings, is bound to crumble down."

11. Based on the foregoing deliberations, the instant Appeal is allowed and the Impugned Order as well as the Show-Cause Notice are set aside, being not maintainable on the point of jurisdiction.

12. The findings of this judgment shall mutatis mutandis apply to the rest of the eight appeals bearing Nos. K-2465 to 2472/2024. Accordingly, these appeals are also allowed and their respective Orders-in-Original and Show-Cause Notices impugned herein are set aside.

Respectfully the entire judgment is only predicated on the question of whether any short levy of sales tax and / or income tax can be recovered by the Customs Department. The Hon'ble Supreme Court has already decided the matter and it is considered appropriate to reproduce the operative paragraph of the judgment referend to supra which reads as follows :

The phrase "Including recovery" which has been inserted by Finance Act 2015 in Sales Tax Act section 6 is not meaningless either. If on the scrutiny, upon post clearance security of goods

any error is surfaced, it must immediately be referred to the Officer of Inland Revenue, who may then exercise powers under the relevant Statute, which has its own machinery to assess and adjudicate. In case the short paid is assessed and adjudicated by officers of Inland Revenue, it can be entrusted to customs for "recovery" from consignments being imported, based on the assessment and adjudication made by the concerned Officer of Inland Revenue under the relevant statutes.

In view of the binding nature judgment cited supra and in mutatis mutandis application thereof questions framed for determination are answered in favour of the applicant department and against the respondent and as consequence thereof impugned judgment is set aside and these reference applications are disposed of accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Office is instructed to place copy of this order in connected matters.

Judge

Judge