

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 200 of 2019
SCRA 201 of 2019

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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- 1. For orders on office objection.
- 2. For orders on CMA No.1491/2019.
- 3. For hearing of main case.
- 4. For orders on CMA No.1492/2019.

02.10.2025

Mrs. Masooda Siraj, advocate for the applicant.

These reference applications were filed back in 2019 and even notice has not been sought / issued till date. On 02.10.2024, following order was passed:

“02.10.2024

Ms. Masooda Siraj, Advocate for Applicant.

Counsel is not fully prepared. At her request time allowed. To come up on 06.11.2024. Office shall place copy of this order in connected file.”

On 06.11.2024, following order was passed:

“06.11.2024

None present for Applicant.

None present for the Applicant. In the interest of justice, adjourned. Office shall place copy of this order in connected file.”

Today learned counsel is present and states that exemption allowed to the respondent was an unmerited.

The exemption sought is with respect to LEDs. Fifth Schedule to the Customs Act, 1969 has been placed before us that specifically refers to item 24 thereof, the items for promotion of renewable energy technicalities and LEDs is specifically mentioned in sub-item 2. Learned Appellate Tribunal has dealt with controversy and observed as follows:

“9. In the impugned Order-in-Original No.201/2016-2017 the learned Adjudicating Officer has mainly relied on the subject of the Fifth Schedule of the Customs Act, 1969, to decide the case. The subject of the Fifth Schedule is as under:-

“Imports of Plants Machinery, Equipment and Apparatus, including capital goods for various industries / sectors.”

10. According to the learned Adjudicating Officer the above quoted subject restricts the benefit provided only to "Industrial set up" and not for "commercial sell outs." While reaching this conclusion learned adjudicating officer failed to appropriate the last word "Sectors" of the subject. This word broadens the scope of exemption beyond "Industries" and extends to relevant sectors as well. This fact is supported by various serial numbers of part-I of the Fifth Schedule of the Customs Act, 1969 which provided exemption to items like "Agricultural Machinery", "Irrigation, Drainage and Agro-chemical Application Equipment" with the condition if used for "agriculture sector" Similarly exemption under Table-I of Fifth Schedule is also available to items like "Disposable Medical Devices", "PV Modules" and parts of "PV Modules", etc with conditions indicated against each item. All these items are not for any specific industry. This amply concludes that exemption under the Part-I of the Fifth Schedule of the Customs Act, 1969 was not restricted to Industries only, hence it will not justified to restrict the scope of benefit provided under S.No.24 to various items only if imported by an Industry.. The aspect is further strengthened by the fact that no condition is attached to the import of item indicated at S.No.24 of the Fifth Schedule. Import of items under S.No.24 are even excluded from the condition (ii) of Part-I of the Fifth Schedule which required that the Chief Executive, or the person next in hierarchy duly authorized by the Chief Executive or head of the importing company shall certify in the prescribed manner and format as per Annex-A that the imported items are for the company's bonafide requirements." Hence we are convinced that benefit of S.No.24 of Part-I of the Fifth Schedule was available to commercial importers as well.

11. Now the issue to be answered is whether the imported item qualify the criterion of "Promotion of Renewable Energy Technologies? For the determination of this aspect, Alternative Energy Development Board (AEDB) is the appropriate forum. That is why Secretary (Tariff-II), FBR, on 9th October, 2015, sought clarification from AEDB whether SMD, LED lights with or without ballast with fittings and fixtures, having specification of 50% Htz, 85-265 volts (of various watts) can be operated on the renewable energy technologies? A copy of this letter was also endorsed to Ministry of Water & Power. In reply to his query Mr. Muhammad Saleem, Chief (A & A) ENERCON of Ministry of Water and Power clarified as under:-

"Reference your office memorandum C.No. 1 (56)March/95/139-159-R dated 9th October, 2015 on the subject cited above, it is stated that our national grids are AC based and the power thus produced from any source either renewable/non-renewable has to be converted and synchronized with AC parameters for and utilization. Further, the SMDs/LEDs lights with or without ballast with fittings and fixtures having specification of 50/60 Hz in case of Pakistan its 50 Hz and AC Voltage 85V265V (of various watts) can be operated on renewable energy technologies.

2. The proposition that the import of LED/SMD irrespective of their use on renewable source or not, on or off-grid in any form, should be zero-rated was also spelled out by ENERCON vide letter No. ECF/MT/ECM/Summer-2015 dated May 18, 2015 sent to Secretary, Ministry of Commerce. Subsequently, an office memorandum dated May 26, 2015 was issued by Ministry of Commerce requesting the Federal Board of Revenue to include the same in ongoing exercise on review of concessionary regime SROs. (copies of letters enclosed).

3. The above referred viewpoint was proposed/suggested keeping in view the benefits and advantages of the energy efficient technology and to highlight the significance of their environmental friendly attributes.

4. In view of the foregoing, it is requested that immediate attention may be given to resolve the matter as proposed.

12. The Director (Solar) of Alternate Energy Development Board through letter dated 21.10.2015 also in reply to the above referred query clarified that SMD/LED operating on alternate current (AC) can be used / operated by the electricity generated through either conventional or renewable technologies.

13. On the issue Sales Tax the learned Collector (Adjudication) has again mis-interpreted the exemption available under Table-3 of the 6th

Schedule to the Sales Tax Act, 1990. While concluding wrongly that exemption under the said Table-3 of 6th Schedule is only available to imports of plants for setting up different industries, industrial setups, projects etc the learned adjudicating officer did not appreciate the fact that items mentioned at S.No.2 of the said schedule of the Sales Tax Act, 1990, such as "Disposable Medical Devices", "Cannulas", "Manifolds", "Intravenous Cannula (I.V catheter)" etc are not required for setting up of any industry. Hence, the benefit claimed in the instant case was rightly granted by the field Collectorate at the time of import.

14. The appellant had in the instant case declared the correct description and tariff heading of the imported items while claiming the benefit of Fifth Schedule to the Customs Act, 1969 and 6th Schedule to the Sales Tax Act, 1969, which was approved / allowed by the field Collectorate after due scrutiny. Hence, the answering respondent had no statutory backing to report contravention subsequently.

15. In the light of above discussion we find impugned Order-in-Original as devoid of merit. Accordingly, these appeals are accepted and impugned Orders-in-Original No.201/2016-2017 dated 03.09.2016 and O-n-O No.237/2016-2017 dated 22.10.2016, are set aside."

It appears that the learned Appellate Tribunal has appraised evidence independently and bolstered by conclusion provided in such regard by the Alternative Energy Development Board. Under such circumstances, counsel is queried as to what question of law arises from, as the question remain either argumentative in nature or require denovo proposition of evidence, that could not be provided in the reference jurisdiction. In view hereof, it is observed that no question of law articulated to consider, hence, these reference applications are dismissed in limine. Office is instructed to place a copy hereof in the connected file.

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.

Judge

Judge