

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.100 of 2025

Date	Order with Signature of Judge
------	-------------------------------

Hearing of case (priority)

1. For order on office objection
2. For hearing of main case
3. For hearing of CMA No.1070/2025

24.03.2026

Mr. Khalid Mehmood Rajpar, Advocate for the applicant
Mr. Muhammad Sarfaraz Ali Metlo, Advocate for respondents No.1 and 2
a/w. Athar Hussain and Zeeshan Ali Haideri Metlo Advocates.

The operative part of the impugned order reads as follows:

"8. We have perused the case record and heard both parties to the dispute. The perusal of the case record shows that the subject matter pertains to the seizure of allegedly smuggled items relating to ophthalmology including lenses, medicines, surgical items, machinery and equipment for invasive procedures such as Cataracts and Glaucoma ("Subject Goods") from the premises of the Appellant. In order to answer whether the subject goods were duty/taxes paid or otherwise, it is imperative to frame the following core questions: -

- (i) Whether the Appellants have shifted the burden of proof under Section 187 of the Customs Act, 1969 concerning legal procurement of the seized goods?
- (ii) Whether the confiscation of goods was unjustified in the presence of documentary evidence provided by the Appellants?

9. In order to provide findings / answers with reference to the above questions, it is imperative to refer to the connected legal provisions of the Customs Act, 1969, specifically Section 187 of the Act *ibid*. The said section is reproduced below: -

"187. Burden of proof as to lawful authority etc. When any person is alleged to have committed an offence under this Act and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, license or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, license or other document shall lie on him:

Provided that any person, alleged to have committed an offence under this Act, shall bear the burden of proof that any property owned by him in his name or someone else name was not acquired from the proceeds of such crime:

Provided further that the procedure for forfeiture of such property shall be ed by the Board under the rules."

10. Where a person is found to be in possession of certain goods, which fall under a prohibited category then he is bound by the law in terms of the provisions of Section 187 reproduced above to show that he possesses lawful authority in this behalf to hold such goods. The evidential burden is initially to be retired by the offender in a Customs offence, who has to produce material to *prima facie* discharge the burden of proof. Once evidence / proof is produced, thereafter, the same shifts to the Customs department to controvert / rebut it. On the said premise the Appellants were duty-bound to discharge their burden of

proof by producing the documents showing lawful possession of the seized goods. The Show-Cause Notice lists down 112 items, which had been recovered from the premises of the Appellant. The Schedule of Seized Goods appended thereto provides the description of each item and its found quantity. Now, in terms of Section 187 reproduced supra, it was incumbent upon the Appellant to establish that the subject goods were legally procured by it and the same were duty/taxes paid. In this connection, the Appellant has produced before this Tribunal a plethora of documents including copies of import Goods Declarations (GDs), Invoices, Cash Memos providing details of goods procured by the Appellant, as annexed with the memo of appeal from Page 37 to Page 327 thereof.

11. A critical scrutiny of the above said documents shows that the ES Subject Goods are covered by these documents provided by the Appellant. The Appellant has also made a reference on each copy of GDs, Invoices and Cash Memos correlating the same with the respective Serial No. of the list of items seized as mentioned in the Show-Cause Notice, thereby verifying their lawful procurement by the Appellant. By producing these documents, the Appellant shifted the burden onto the Respondent department under Section 187 of the Act *ibid*. It was then incumbent Upon the Respondent department to have reconciled these documents with the seized goods in order to verify the same, however, no such exercise was conducted by the Respondent department. The respondent department has merely termed these documents as irrelevant' without giving any plausible basis or without providing a reconciliation statement.

12. As regards the status of the Appellant importer, it is observed that the Appellant is *prima facie* a licensed importer of Medical Devices. The license to import medical devices has been issued by the Drug Regulatory Authority of Pakistan vide License No. ELI-00310 dated 22.10.2018. A copy of the same was provided by the Appellant which was annexed with the memo of appeal. The Respondent department has raised no objection/as to its authenticity. Therefore it is an admitted position that the appellant is a license holder as well as importer of these and the like items and has infact provided a hefty bunch of import documents which clearly exhibit the appellant as consignee / importer of the said medical equipment/goods.

13. In the light of the foregoing deliberations, the Respondent department's claim to the extent that the Subject Goods were smuggled remains unsubstantiated, as no proof of smuggling has been placed on record by them whereas the goods have been seized at the premises possessed by the appellant in Karachi city. The place of seizure is far removed from the border or any unauthorized route. It is very hard to connect the place to any act of storing smuggled items when viewed in the light of large number of import documents covering the bulk of seized items. The import documents authenticate lawful custom clearance of the subject seized goods as the Appellant has successfully brought on record plenty of documentary evidence proving legal procurement of the Subject Goods through lawful imports by no one but himself. The goods have passed through entire customs clearance process. Hence, in the presence of the above mentioned documents, which the Respondent Department has not been able to prove false, the question of the Subject Goods being smuggled becomes baseless. The parwise comments filed by the Respondent / Department fail to provide rebuttal. Merely sweeping aside The substantial evidence and claiming it to be irrelevant without providing proper reconciliation/renders the allegations unsubstantiated as brought forth by the Respondent. There had to be proper response on the large number of evidential documents. However the Respondent has not come up clearly with the rebuttal. Therefore, in the absence of any plausible counter material against the lawful import of goods, the confiscation of the goods is held illegal and without lawful authority.

14. Based on the above case scenario, the Question Nos. (i) and (ii) framed above are decided in the affirmative in favour of the Appellants and against the Respondent Department Accordingly, the instant appeal is allowed and the Impugned Order is set side. The seized goods are liable to be returned to the Appellant forthwith.

15. The impugned Order-in-Original No.1342/2023-24 dated 13.06.2024 is modified to the above extent.

16. Judgment passed and announced accordingly.”

Four questions have been proposed for determination. The first two prima facie seek de novo agitation of controversial facts / evidence which is perhaps not amenable for adjudication in reference jurisdiction. Question No.3 is argumentative in nature and once the matter has been held in favour of the respondents on the basis of evidence no case could be articulated as to how penal consequences could ensue. Question No.4 appears formal in nature and a bare perusal of the impugned judgment demonstrates that it is in fact a reasoned order and the fact that one party is aggrieved by the conclusion does not render the same in negation of Section 24A of the General Clauses Act, 1897. No question of law has been articulated arising herefrom, therefore, this reference application is dismissed.

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

JUDGE

JUDGE

Asif