

IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application Nos.1920 & 1921 of 2023

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

Hearing of case (priority)

1. For order on office objection
2. For hearing of CMA No.5493/2023
3. For hearing of main case
4. For hearing of CMA No.5494/2023

25.03.2026

Mr. Khalid Mehmood Rajpar, Advocate for the applicant
Rana Sakhawat Ali, Advocate for the respondent

Following question was proposed for determination:

“1. Whether in the facts and circumstance of the case the Appellate Tribunal has not arrived at an erroneous conclusion that the Directorate General is not vested with the powers under Section 25 and 25A of the Customs Act. 1969 (though neither exercised nor invoked) thus issuance of contravention report is without jurisdiction and all subsequent proceedings are unlawful?”

Learned counsel for the respondent points out that this question has been decided against the applicant in favour of the respondent vide order of the Supreme Court dated 03.10.2022 in Civil Petition Nos.896-L and 897-L of 2020 which reads as follows:

“**Qasi Faez Isa, J.** These petitions assail the common order of a Bench comprising of two learned Judges of the Lahore High Court, Lahore passed in Customs Reference Nos. 172 and 173 of 2010, wherein the High Court upheld the judgment of the Customs, Sales Tax and Federal Excise Appellate Tribunal (the Tribunal). The petitioner before us is the Director, Intelligence and Investigation, Federal Board of Revenue, Lahore (‘the Directorate). The personnel of the Directorate had seized certain goods of the respondent, as in their opinion those goods were cleared from Customs on misdeclaration and the requisite duties and taxes were avoided. As a consequence of such misdeclaration the Tribunal, after attending to the facts of the case in paragraph 5, proceeded to consider the powers of the Directorate and held that the Directorate was empowered to seize the goods, but was not vested with powers under section 32 of the Customs Act, 1969 (the Act’).

2. We enquired from the learned counsel for the petitioner whether the Collector of Customs has preferred a petition/appeal against the impugned judgment and the learned counsel was not able to answer the query. After the Tribunal had decided the matter against the Collector of Customs it was for the Collector to assail the same. With regard to the Directorate the Tribunal had simply stated that it has not been granted powers under section 32 of the Act, which is confirmed by Notification No. S.R.O. 486(I)/2007 dated 9 June 2007 (pages 98 and 99 of the paper book) (‘the Notification). To such extent, the impugned decisions of the two forums cannot be faulted. It was correctly held that the Directorate was granted seizing powers under the Notification, but was not granted section 32 powers. Therefore, the Directorate is not an aggrieved party. If the Collector Customs has preferred a petition or an appeal is pending which impugns the same judgment the same will be considered on its own merits. Therefore, without making any observations with regard to merits of the

case, leave to appeal is declined and, consequently, these petitions are dismissed.”

Learned counsel further states that the order was made subject matter of the review applications, however, the said review applications were dismissed vide order dated 17.10.2023 in Civil Review Petition Nos.607 and 621 of 2022 which reads as follows:

“**Qazi Faez Isa, CJ.** Through these two review petitions order of this Court dated 3 October 2022 is sought to be reviewed. The submissions made before us are the very same as were earlier made and attended to while hearing CPLAS No.896-L and 897-L of 2020 filed against two concurrent decisions. No ground for review is made out, and the review petitions are dismissed.”

Learned counsel for the respondent states that the aforesaid authority is squarely binding upon this Court, hence, in mutatis mutandis application thereof, the question framed for determination should be decided in favour of the respondent and against the applicant-department. Learned counsel for the applicant has remained unable to displace or distinguish the contentions as aforesaid, therefore, the question is decided in the manner as sought aforesaid. These reference applications are disposed of.

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