

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 330 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
1. For order on office objection No. 25.	
2. For order on CMA No. 1433/24.	
3. For hearing of main case.	
4. For order on CMA No. 1434/24.	

28.10.2025

Mr. Faheem Raza Khuhro, advocate for applicant.

The impugned judgment is *prima facie* rested on appreciation of evidence as is discerned from the operative part of the impugned judgment, which reads as follows:-

“06. Record of the case has been examined and heard arguments put forth by both sides at length. The counsel for the appellant pleaded that the appellant firm is registered as manufacturer of Sweet Supari under the name and style of "Bombay Sweet Supari". The appellant filed necessary registration documents alongwith the memo of appeal and this fact neither challenged nor disputed by the respondent. The respondent also did not challenge that appellant firm is a regular importer of the betel nuts. The respondent also did not challenge the Sales Tax Returns showing import of betel nuts, manufacturing of sweet supari and sale of the same as well as balance stock shown in each Sales Tax Return. The only objection raised by the respondent is that during the period September 2022 to February 2023, the appellant firm imported 80,800 Kgs. betel nuts through three GDs No. KAPE-HC-46515-22-09-22, KAPW-HC-76468-14-12-2022 and KAPW-HC-94134-25-01-2023 whereas record shows that 117456 Kgs. betel nuts had been consumed from September 2022 to March 2023 and further 45000 Kgs betel nuts were also lying in the premises. Hence, the quantity was found to be in excess of the imported and consumed goods. The learned advocate for the appellant pointed out that Sales Tax Return for the month of August, 2022 shows closing balance of the betel nuts worth Rs 13,50,40,670/- which is the value of 2,12,589/- Kgs. betel nuts (Approx.) at the rate of Rs. 635/Kg and if the quantity of import through these three GDs is counted, then during the period from September 2022 to February 2023 the appellant firm possessed a total quantity of 293389 Kgs. out of which a quantity of 188283 Kgs. betel nuts were consumed and 45000 Kgs. were seized by the raiding party as claimed by the respondent. The relevant Sales Tax record was provided by the appellant to which no objection was raised by the DR. Hence, it is clear that there was no excess quantity of betel nuts.

07. The appellant challenged the finding/conclusion drawn by the Adjudicating Authority in Para 9 of the impugned Order-in-Original according to which sales during the period from July 2022 to 7th March 2023 comes to 167436 Kgs, whereas during above period import was 132100 Kgs. The learned counsel argued that it is not known that on the basis of which document the learned Adjudicating Officer drew the above conclusion that during the above period the sale was 167436 Kgs. The counsel for the appellant argued that while reaching the above conclusion regarding weight of the manufactured and sold commodity, the learned adjudicating officer again completely ignored the opening and closing balance of the betel nuts/raw material as shown in the Monthly Sales Tax Returns of the months of May, June and July 2022.

08. We are constrained to observe that the respondent could not produce any evidence which could prove that the appellant was in possession of smuggled betel nuts for manufacturing sweet supari. The appellant by producing the import GDs and Sales Tax Returns successfully discharged his burden under Section 187 of the Customs Act, 1969 and that he is running lawful business from the three declared addresses as mentioned in NTN. The counsel for the appellant

cited the judgment of the Hon'ble High Court of Sindh M/s. Kamran Industries vs Collector of Customs (PTCL 1996 CL.1) wherein it has been held that initial evidentiary burden of proof under section 187 of Customs Act, 1969 falls on the accused and that the accused only needs to show some evidence to prima facie discharge his evidential burden and thereafter the same will shift on Customs Authorities. He accordingly pleaded that he has discharged burden of proof under section 187 *ibid.* by producing Goods Declarations for the impugned goods which have not been found to be fake or fabricated. Hence, now the burden is on the respondent to prove that the goods have been smuggled into the country. The learned counsel for appellant further pleaded that it is imperative to clarify that clause 89 of Section 156(1) of the Customs Act, 1969 is not applicable in the instant case. On the contrary, respondent has failed to establish and prove that these are smuggled goods liable to confiscation under Section 2(s) of the Customs Act, 1969.

09. We are also constrained to observe that in the instant case neither the impugned goods are notified goods nor they have been intercepted and seized at any unauthorized route, hence, the "reason to believe" for the seizing agency to raid a manufacturing facility that is being run on bonafidely imported betel nuts/raw materials is conspicuously missing.

10. In view of all above, the seized goods are hereby released unconditionally. The impugned Order-in-Original is set aside and the instant appeal is allowed.

11. Judgment passed and announced accordingly"

The questions of law that were proposed sought to agitate factual controversy and / or were argumentative in nature. Upon so confronted, learned counsel sought time to obtain instructions. He has appeared today and once again remained unable to demonstrate any question of law arising from the impugned judgment and only his plea is that the evidence has not been properly appreciated by the learned Tribunal; hence *de novo* appreciation is merited by this Court. Respectfully, the learned Tribunal is the last fact-finding forum in the statutory hierarchy and *de novo* appreciation of evidence would not merit in the reference jurisdiction of this Court. Counsel remained unable to articulate any question of law, therefore, this reference application is dismissed in *limine*.

A copy of this order 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