

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application Nos. 1291 & 1339 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For order on office objection.
2. For hearing of main case.
3. For hearing of CMA No. 3077/23.

02.12.2025

Mr. Khalid Mehmood Rajper, advocate for applicant.
Mr. Pervaiz Iqbal Kasi, advocate for respondent.

The question framed for determination was as follows:-

“Whether the Appellate Tribunal’s conclusion that the Customs Authorities are not empowered to recover the Sales Tax is not erroneous being based upon non-reading of Section 32(1) & (2) read with Section 179 and 202 of the Customs Act, 1969 and Section 6 of the Sales Tax Act 1990?

Per learned counsel for the applicant, the question is squarely covered in favour of the department by the Supreme Court in the case of *Nestle Pakistan Limited* reported as 2025 SCMR 1974. Learned counsel further states that identical matters have already been determined including order dated 18.11.2025 in SCRA No. 213 of 2019, which reads as follows:-

“18.11.2025

Ms. Masooda Siraj, advocate for the applicant
Messrs. Muhammad Aslam and Saima Syed, advocates for respondent

On 21.10.2025, following order was passed :

“21.10.2025

Ms. Masooda Siraj, advocate for the applicant
Learned counsel proposes following question of law for determination :

Whether in holding that the applicant detecting agency was not vested with the jurisdiction to made out a case for evasion of sales tax, the learned Appellate Tribunal has not ignored Section 179 of the Customs Act, 1969, which provides for adjudication as to, among others, recovery of taxes?

She states that the issue is squarely covered in favour of the department by virtue of recent 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.

The reference application is admitted; notice to the respondent for 04.11.2025, through first two modes as well as courier. Learned counsel to place tracking report of courier on record”

Per learned counsel for respondent the question proposed is not covered by the 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.

Heard and perused

Prima facie perusal of judgment of Supreme Court demonstrates that the question is squarely decided. It may be pertinent to reproduce operative part of the order which is reproduced herein below :

26. The word "taxes" was added via Finance Act, 2014. This amendment does not discuss the possibility of adjudication. This only relates to the issuance of notice to understand if the amount of duty/taxes/charges has not been levied or has been short-levied or has been erroneously refunded or by way of inadvertence error or misconstruction. Only on reaching such an understanding should the matter be referred to Inland Revenue for further adjudication, as short levy or no levy as for occasions discussed in sub-section (2) and (3) at the import stage, was the customs officer's duty/liability, and this is to keep their statutory performance clear.

27. The Directorate of Post Clearance Audit forms a part of the Customs department/the Federal Board of Revenue. The entire ambit of its functions, powers and jurisdiction has been expressed through various statutory instruments, including inter alia SRO No.886(1)/2012, SRO No. 500(1)/2009 and Customs General Order No. 03/2009.

28. None of the above-mentioned statutory instruments vest in the petitioner-Directorate or its officers, any jurisdiction with reference to the Sales Tax Act or the Income Tax Ordinance.

29. Similarly, no conferment of powers and/or functions has been done viz. the Directorate in relation to the above statutes either.

30. Section 179 of the Customs Act which deals with powers of adjudication attempted to cover the recovery of taxes not levied/short levied, etc. but this is the machinery showing modalities and operations of officers of Customs without "actual" conferment of powers from the Special Law which has its own machinery and only in absence of such forums in relevant Special Law, on special conferment of jurisdiction, the machinery of 179 could be made effective, provided section 6(1) may also be revisited by legislature which then would show the intention. Missing link of conferring jurisdiction thus cannot be read into, as the legislature was conscious of such special jurisdictions within Special Laws. It is, however, very relevant to mention and notwithstanding above analysis, the impugned notice does not reflect sections 32/179. Section 179, for the purpose of confiscation of goods or recovery of duty or other taxes discuss the powers of customs officers in terms of amount of duties, but this itself does not assume jurisdiction of another statute, nor it can, being a Special Law for customs. The missing link is about conferring the jurisdiction from main statutes. I agree with the treatment given to sections 132 and 179 of Customs Act in the impugned judgment.

31. Despite the addition of the word 'tax/taxes' in provisions of the Customs Act including inter alia sections 32 and 179 the said insertion does not sink with adjudication until and unless the Customs department and the officials thereof are "conferred" or "empowered" and/ or "vested" with the required jurisdiction to adjudicate and then recover the alleged escaped taxes post clearance of goods, as per the terms of section 148 of the Income Tax Ordinance, 2001 and/or section 6 of the Sales Tax Act, 1990, then to be read with sections 32 and 179 of the Customs Act.

32. In continuation to the above, and despite the proposition that redundancy may not be attributed to the legislature, it is of paramount importance that there be no intendment/presumption viz. in a taxing statute either; no words may be imported therein. The legislature, in making the above-referred amendments to the Customs Act, has not conferred upon the department any "jurisdiction to adjudicate" once the goods have exited the import stage. The legislature knows it better that the conferment of jurisdiction for adjudication has to be specific, and they have not done it purposely.

33. Nothing restricted the legislature to have clearly bestowed the jurisdiction of one Special Law to another Special Law (post clearance of goods). Once the goods in question obtain clearance from the relevant authorities and exit the Port, the import stage stands concluded and with it the jurisdiction of the Customs authorities for subject taxes. Thereafter, the jurisdiction to conduct any assessment/adjudication of short levy of said taxes on imports vests back with the officers of Inland Revenue, who have been duly empowered by the Sales Tax Act and/or the Income Tax Ordinance and the statutory notifications passed thereunder.

34. Although any short levy/short payment of "customs duty" may be adjudicated by the Customs department in line with the provisions of the Customs Act, the same cannot be done for Sales Tax Act/Income Tax Ordinance.

35. Indeed, that provisions of Customs Act in respect of calculation, payment and recovery of sales tax would only be applicable if no specific provisions were provided for the same in the relevant statutes, Despite this settled principle the recent amendments were not made to overcome such understanding of law hence intention is obvious that no shifting of jurisdiction post clearance of goods since similar provisions are available in the relevant laws and no other view is possible.

Conclusion

36. Notwithstanding the amendments discussed and their effects, I conclude that such amendments cannot be interpreted to have taken over the special jurisdiction under relevant provisions of law post clearance of goods and the parallel jurisdiction conferred upon custom department was only to the extent of import stage which is contemplated in the Special Laws.

37. With this understanding of law, the present CPLAs together with the listed CMAs are dismissed and leave to appeal is refused.

In view of the foregoing, proposed question is decided in favour of the applicant department and against the respondent and the reference application is 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.”

Learned counsel for the respondent remains unable to distinguish or displace the binding authority cited supra. In view hereof, the question framed is decided in favour of the applicant department and against the respondent, these reference are disposed of accordingly.

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

Judge

Judge

Ayaz p.s.