

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 643 of 2019
SCRA 685 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

- 1. For orders on office objection
- 2. For orders on CMA No.3147/2019
- 3. For hearing of main case
- 4. For orders on CMA No.3148/2019

08.12.2025

Ms. Masooda Siraj, advocate for the applicant along with Agha Saeed, Director Customs Intelligence Karachi and Mr. Rahat Nasim, Assistant Director, Customs Intelligence, Karachi.

On 24.11.2025 following order was passed :

“24.11.2025

Mrs. Masooda Siraj, advocate for the applicant.

- 1. Deferred.
- 2. Exemption granted subject to all just exceptions.

3&4. These reference applications are pending since 2019 without any progress. Even notice has not been sought / issued till date. Counsel was confronted with paras 16 and 17 of the impugned judgment and requested to demonstrate any infirmity arising there from. Prima facie, the same appears to have been rested on appreciation of the law and follows decided authority of the Supreme Court, counsel merely seeks time.

These matters have clogged the docket for six years and there is no apparent reason to sustain the same. Let applicant, Director, Directorate General, Intelligence & Investigation (Customs), Karachi, be present in court on the next date of hearing to assist. To come up on 01.12.2025. Office is instructed to place copy hereof in the connected file”

On 01.12.2025 following order was passed :

“01.12.2025

Mrs. Masooda Siraj, advocate for the applicant
Mr. Rahat Naseem, Assistant Director

Mr. Agha Saeed, Director Intelligence Karachi is present, however, remains unable to assist. To come up on 08.12.2025. Office is instructed to place copy of this order in connected matter”

Today learned officer is present and once again remains unable to demonstrate any infirmity in the operative part of the order identified per the order dated 24.11.2025. It is considered illustrative to reproduce the relevant findings herein below :

13. We have given due consideration to the submissions of both parties and carefully perused the case record. It is imperative to first sort out the factual controversy and then proceed to answer legal questions raised in the instant appeal. It is an admitted fact that the appellants had initiated a hotel project to be constructed in Karachi in the year 2006. The appellants also had a franchise agreement with M/s Sofitel Hotels Chain for this purpose. In pursuance to the said conceived project and franchise agreement with the world-famous chain of hotels, the appellants started import of machinery, equipment and other goods from the worldwide sources for construction of the hotel.

14. It is also an admitted fact that the appellants availed the concessionary rate of custom duty and exemption of sales tax in terms of serial No. 8 of the Table to SRO 575(1)/2006 after fulfilling all the requisite conditions of the said notification including the permission from the Ministry of Tourism. The imported consignments were cleared by the clearing agent of the appellants on the basis of information and documents provided by their principals availing the concessions / exemptions of duties and taxes. These facts have not been denied by the Departmental Representative.

15. The controversy started when the Directorate of Customs Intelligence prepared a contravention report intimating to the Customs Authorities that the facility of concessionary rate of custom duty and exemption of sales tax / income tax was misused by the appellants as the proposed hotel project was abandoned and instead a shopping mall (Ocean Mall) was being constructed by the appellants. Accordingly, the Collector of Customs (Adjudication- I & II) issued Show Cause Notices containing the allegation of misuse of facility of concessions provided under the aforesaid notification. It is pertinent to mention here that prior to the issuance of Show-Cause Notice, the appellants, somehow, managed to make the payment of duties and taxes on the goods other than machinery, equipment which enjoyed concession / exemption under serial No. 23 of the said notification as this exemption was available to all the importers of machinery and equipment without any condition. The learned Adjudication Officers did not agree to the contention of the appellants that benefit of serial No. 23 of the notification be extended to them on import of machinery and equipment as the same was still in field and payment of duties and taxes on other goods be accepted as the discharge of their liability. The Adjudicating Collectors, however, cleared the clearing agent from the charges of connivance and collusion and no penalty was imposed on him.

16. The main controversy in the subject appeals revolves around the admissibility of the concessions under serial No. 23 of the Table to SRO 575(1)/2006. We have carefully considered the provisions of serial No. 23 of the Table to the said notification. This serial No. 23 provided concessionary rate of custom duty and exemption of sales tax at the relevant point in time to all the importers on import of machinery and equipment. Further this concession under serial No. 23 was without any condition meaning thereby that any person could avail this concession on import of machinery and equipment. In case this exemption was available to every importer, how it could be denied to the present appellants especially when this concession was in field at the time of import of their consignments of machinery and equipment. Even if the appellants did not claim the exemption at the time of import due to envisaged project of hotel and claim of concession under serial No. 08 of the Table to SRO 575(1)/2006, its benefit could not be denied to them in the light of the judgment of the Supreme Court of Pakistan in the case of M/s Gatron Industries Pvt. Limited Versus Federal of Pakistan reported as 1999 SCMR 359 wherein it has categorically been held that any exemption under a notification shall remain available to the taxpayer as long as the said exemption holds the field. To our mind, the alternate exemption on import of machinery and equipment should have been allowed to the appellants by the Adjudicating officers and duties and taxes should have been demanded on rest of the goods. By respectfully following the dictum of the Supreme Court of Pakistan, we hold that the appellants were entitled to concessions of duty and taxes under serial No. 23 of SRO 575(1)/2006 on import of machinery & equipment. As far as imposition of penalty on the appellants by the adjudicating officer is concerned, we remit the same as no case of misdeclaration in terms of section 32(2) of the Customs Act, 1969 is established against them. The DR has, however, pointed out that the appellants have not made the payment of surcharge on admitted payments of duties and taxes made by them voluntarily on import of goods other than machinery and equipment. This contention of DR carries weight. We therefore, order to recover the amount of surcharge in terms of section 202A of the Customs Act, 1969 on late payment of duties and taxes on items which are not covered under serial No. 23 of the Table to SRO 575(1)/2006 as was applicable at the relevant point in time.

17. Without prejudice to our findings contained in Para (16) above, we appreciate the learned counsel of the appellants for raising valid law points regarding jurisdiction of the Directorate General of the Intelligence & Investigation (FBR) and application of the provisions of section 32(2) of the Customs Act, 1969 in these

appeals. However, as the appellants had themselves approached the Appraisement Collectorates and voluntarily made the payment of duties and taxes on the import of goods other than machinery and equipment, the legitimate revenue of the state should not suffer on these legal and technical intricacies. Both these appeals are disposed off in the aforesaid manner.

Since despite repeated opportunities no question of law arising here from could be articulated, therefore, these reference applications are dismissed.

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

Judge

Judge

Amjad