

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRAs 1006, 1007, 1008 & 1009 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection
- 2. For hearing of CMA No.1699/2023
- 3. For hearing of main case

24.11.2025

Sardar Zafar Hussain advocate for thea applicant
Mr. Pervaiz Iqbal Kasi, advocate for respondent

Vide order dated 24.09.2025 the sole question proposed for determination was recorded. The order reads as follows:

“24.09.2025

Mr. Muhammad Faheem, advocate for the applicant

Learned counsel only presses question No.4.2 in SCRA 1006 of 2023, which is reproduced herein below :

“4.2. Whether an Officers of Customs, is lawfully empowered to recover, short paid/non-paid amount of Sales Tax and Income Tax?

To such extent, issue notice to the respondent for a date to be fixed by the office after two weeks. Office is instructed to place copy of this order in connected matters”

On 17.11.2025 learned counsel for the respondent pointed out that the word taxes was included in Section 32 of the Customs Act, 1969 in 2014, whereas, the present matters pertain prior to the said time. Under such circumstances he sought to distinguish the judgment of the 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. Learned counsel relied upon judgment reported as 2025 PTD 571 to demonstrate that prior to amendment as aforesaid, the Nestle case judgment did not apply and instead the matter was squarely decided in favour of the respondent department. It is considered illustrative to reproduce operative part of judgment relied upon as follows:

“The subject consignment, as imported by the respondent, pertains to the regime prior to the amendments carried out in Section 32 of the Customs Act, 1969. The main controversy was that custom authorities acting as a collecting agent of customs, excise, sales tax have jurisdiction under the law and accordingly respective Tribunals were operating and functioning in the like manner. The show-cause notice for short levy of the respective taxes under income tax, sales tax and excise etc. are to be independently resurrected in their own regime. The

customs at the time of import acted as a collecting agent however once the goods have been released then the respective/concerned department would act on their own hierarchy for the recovery of these taxes.

Income Tax Ordinance, 2001 as well as Sales Tax Act, 1990 provides a specific procedure for collection of taxes and have their respective forums for enforcing and recovering the short payment made by the importers. Hence, the recovery of un-collected taxes could not be entrusted upon customs officials once the goods have been imported and out of charge. This was however a situation prior to the amendment carried out under section 32 of the Customs Act, 1969 on the basis of which the subject show-cause notice was issued on 21.02.2014, which was issued on the basis of a contravention report of 10.12.2012 regarding concessional rates in income tax at the rate of 3% on the import of raw material. Thus prior to 2014 before the amendment was carried out in section 32 the object could not have been legitimately carried out. The proposed moot question No.1 i.e. "Whether the Appellate Tribunal has not erred in law by not considering that the powers for recovery of short levied tax is vested to customs authorities in terms of Section 32 read with Section 202 of the Customs Act?, as such is answered in negative in favour of respondent and against the applicant, leaving the remaining questions, as proposed by the applicant redundant. Resultantly this Special Customs Reference Application is dismissed along with listed application.

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 196(5) of Customs Act, 1969"

Upon being so confronted learned counsel for the applicant remained unable to distinguish or displace the authority so cited. In view hereof and in *mutatis mutandis* application of the binding judgment cited above, the question framed for determination is decided against the applicant and in favour of the respondent. These reference applications are disposed of accordingly.

A copy of this decision may also 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 matters.

Judge

Judge