ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 196 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For order on office objection.
2. For order on CMA No. 813/24. (Exemption)
3. For hearing of main case.
4. For order on CMA No. 814/24.

24.11.2025

Mr. Muhammad Khalil Dogar, advocate for applicant along with Dr. Waqar Ahmed Chachar, Deputy Collector (Export).

This reference has been pending since 2024 without any progress. On 13.11.2025, learned counsel had sought time to obtain instructions. On the last date, i.e. 21.11.2025, following order was passed:-

> **"21.11.2025**
>
> Mr. Muhammad Khalil Dogar, advocate for applicant.
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> Admittedly, the pleaded questions of law are argumentative in nature and seek to agitate disputed questions of facts, for which the final arbiter is learned Tribunal. On the last date, time was sought to obtain instructions. Same is the case today.
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> To come up on 24.11.2025."

Today, Dr. Waqar Ahmed Chachar, Deputy Collector (Export) is present. He is confronted with the findings of the learned Tribunal to demonstrate any infirmity arising out from it, warranting interference in reference jurisdiction, he is unable to do so. It is considered illustrative to reproduce the findings hereinbelow:-

> "6. Heard both the sides and examined the case record. It is an admitted fact that the appellant has been issued Show Cause Notice on the basis of alleged violations that were outcome of an audit. The appellant contended that it is not a case of section 32(2) of the Customs Act, 1969, rather a Show Cause Notice may have been issued under section 32(3A) ibid. if not time barred. He further contended that the Show Cause Notice has been issued under section 32(2) to circumvent the time barred issue, because the time prescribed under section 32(3A) at the time of issuance of the impugned Show Cause Notice was three (03) years and the Show Cause Notice has been issued beyond three years by invoking section 32 (2) which is not applicable. For ease of reference both the sections are reproduced below.
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> *32. (2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty or charge has not been levied or has been shortlevied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within [five] years of the relevant date, requiring him to show cause why he should not pay the amount specified in the notice.*

> *32(3A) Where, by reason of any inadvertence, error or misconstruction, any duty or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within [three years] of the relevant date requiring him to show cause why he should not pay the amount specified in the notice*

7. The contention of the respondent as mentioned in para 5 above that section 32 (2) read with section 32(1) are attracted because of concealment of actual facts, manipulation and mis-statement etc. on the part of the appellant was rebutted by the appellant on the ground that the respondent has not placed on record any evidence to prove the same and it is just a sweeping statement. He further contended that the respondent is trying to cover the 80:20 ratio formula introduced by him subsequent to sanction of refunds. The appellant further contended that judgments of the Superior Courts cited by the respondent are not applicable to this case because he deliberately and intentionally invoked irrelevant provisions of law to escape the time bar in the relevant section i.e. 32 (3A) of the Act. We agree with the appellant's contention and hold that section 32(2) is not applicable in this case because no false statement or document as per section 32(1) has been submitted by the appellant and section 32(3A) has not been invoked despite the fact that the Show Cause Notice is outcome of an audit, therefore, the Show Cause Notice suffers from an incurable legal infirmity and all consequent actions lack any legal basis.

8. As regards facts of the case, we are surprised to observe that out of a total of Rs.303.61 million refunded to the appellant, Rs.236.49 million (77.89%) had been found to be inadmissible subsequently as a result of an audit. The question arises as to why such refund was sanctioned in the first place, and what criteria was adopted at the time of sanctioning of refunds and why a different criteria was adopted subsequently at the time of audit. Nothing to this effect has been explained in the Show Cause Notice. It is an admitted fact that the extent of repayment of Customs Duties for imported PTA was Rs.5.37/Kg and Rs.1.27/Kg in case of PTA manufactured M/s Pakistan PTA limited, despite the fact that both PTAs did not have any distinguishable characteristic in the manufacturing of Polyester Staple Fiber (PSF).

9. In para 7(c) of the impugned Order-in-Appeal, it is sated that the appellant failed to provide relevant documents i.e. inventory register, bin cards and consumption record. We are of the view that as these documents were not prescribed in the relevant notification, absence of the same does not prove any mens rea on the part of the appellant. The subject para further states that the appellant provided copies of GDs which only prove that PTA was imported but no proof of its consumption for manufacturing of PSF and export. The learned counsel for the appellant pleaded that all the documents were provided at the time of filing of 38 refund claims and the department, after necessary verifications and due diligence sanctioned Rs.303.61 million. We find no reason to disagree with him because the respondent himself processed the refund claims and sanctioned the refund.

10. The appellant pleaded that the contention of the department that if there was no distinction of consumption of imported or locally procured raw material, then there would have been no two rates i.e. Rs.5.37/Kg and Rs.1.27/Kg separately. The appellant pleaded that by this contention, the respondent has proved nothing because respondent himself has not pointed out any distinction, and certainly there is no characteristic distinction. We agree with the contention of the appellant.

11. We also agree with the arguments of the appellant at para 4 (17) above, that when the conditions of the relevant SRO 412 were met, the law could not be re-written ex-post facto by circumventing Article 114 of Qanun-e-Shahadat by resorting to “ratio formula”.

12. It is observed that the crux of the matter is that imported and local PTA are indistinguishable in every characteristic manner. The said notification also without mentioning any distinguishing characteristic allows repayment of customs duty on imported PTA @ Rs.5.7/Kg and on local PTA @ Rs.1.27/Kg, if it is used for production of PSF (in case if 100% imported PTA used in the process) and (in case if 100% local PTA manufactured by Pak PTA Ltd. used in the process. The contention of the appellant that the whole case is on a fundamental mis-conception by the department that local and imported PTA is used in 80:20 ratio

to produce PSF is found to be tenable. It is observed that the condition / language of the SRO that "in case if 100% imported PTA used in the "process" or if (in case 100% local PTA manufactured by Pak PTA Ltd. used in the process) is not practically possible in a process industry, where the imported and locally manufactured PTA are absolutely indistinguishable. Hence, in our view this is the origin of the whole controversy. Accordingly, we hold that the appellant is entitled to repayment on the basis of his import documents of PTA which have been made basis of refund at initial stage. We do not find the department at liberty to make any calculation on the basis of 80:20 ratio subsequently and raise demand consequently.

13. In view of the above legal and factual position, we hold that section 32(2) of the Customs Act, 1969 is not applicable in the instant case and Show Cause Notice suffers from an incurable legal lacunae. Refund was sanctioned to the appellant on meeting the conditions of SRO 412 prevalent at the time of filing of refund. Any subsequent change in criteria Formula etc. cannot be made applicable retrospectively. Accordingly, the Show Cause Notice is vacated, the impugned Order-in-Appeal is set aside and the instant appeal is allowed with no order as to cost.

14. Judgment passed and announced accordingly."

Learned counsel was confronted as to the preponderant applicability of Section 32(3A) in instance of audit etc. and he remained unable to assist as to how in presence of specific statutory provision, same could be disregarded. Be that as it may, he remains unable to demonstrate and / or articulate any question of law arising out of the impugned judgment meriting in reference jurisdiction, therefore, reference is dismissed in *limine.*

A copy of this order be sent to Chairman FBR, Secretary Revenue and Attorney General of Pakistan at Islamabad. A copy 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.

Judge

Judge

Ayaz p.s.