

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.915 of 2024**

Date	Order with Signature of Judge
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Fresh Case

1. For orders on CMA No. 605/2026 (Urgent)
2. For order on office objection No. 26 and 27
3. For hearing of Main Case
4. For orders on CMA No. 4065/2024 (stay)

09.03.2026

Mr. Faheem Raza Khuhro, Advocate for the Applicant

Operative part of the impugned judgment reads as follows:

“6. Heard arguments from both the sides and examined the case record. According to office objection the instant appeal is barred by time for 42 days. In this context, the learned counsel for the appellant filed an application for condonation of delay supported with an affidavit and contended that impugned Order-in-Original passed by the respondent No.1 was not communicated to the appellant under Section 215 of the Customs Act, 1969 the same was received on 22.01.2024 from the said date our appeal is within time.

7. Keeping in view the reasons mentioned hereinabove, we hereby condone the delay in filing of appeal. The learned counsel of the appellant has pleaded that the recovered / seized goods have been purchased by him from the importer M/s New Quetta Punjab Traders who had imported the goods G D No. 5966 dated 26.10.203, No.5595 dated 20.10.2023, No.5474 dated 18.10.2023, No.4104 dated 22.09.2023, No.6623 dated 4.11.2023, No.5057 dated 11.10.2023, No.5057 dated 11.10.2023 No.195 dated 15.10.2023 duly cleared by the customs after payment of assessed amount of leviable duty and taxes. The respondent Collectorate in its parawise comments has stated that the GDs and cash memos are currently under scrutiny for verification of their authenticity, but till to this date, DR could not rebut the genuineness of the GDs. The learned DR has, however, not been able to rebut the contention of the appellant on any factual ground.

8. It is, thus, found that appellant has discharged his burden of proof under section 187 of the Customs Act, 1969. The counsel for the appellant placed reliance on various judgments of superior courts reported as 2022 PTD 678 (Collector of Customs-Multan vs Amanullah Khan), 2021 PTD 1683 (Additional Director-DIT Karachi vs Imran), 2012 STCPTD 28 (Collector of Customs-Balochistan vs Abdul Sattar), holding that:

'once the person charged with an allegation of goods being non duty paid/smuggled provides documentary evidence to prove legitimate import/ lawful possession thereof, the burden then shifts upon Customs Authorities on production of such documents in terms of S.187 of Customs Act, 1969, to substantiate the goods were non-duty paid/smuggled.'

9. Further in the light of Supreme Court judgment reported as 1995 SCMR 387 (Sikander Karim vs Federation of Pakistan), we are fortified to hold that by submitting relevant GDs and cash memos, the appellant has sufficiently discharged his burden of proof. The relevant portion of the judgment of the Supreme Court is reproduced below:

"If a person is found in possession of an article, import whereof is not banned and it is freely available in the market, a presumption about its lawful import in the country arises unless proved otherwise."

10. In view of above, we are constrained to hold that the department has failed to establish the charge of smuggling of impugned seized goods against the appellant and, therefore, order to release the same unconditionally. The impugned Order-in-Original is accordingly set aside and the instant appeal is allowed.

11. The appeal is disposed of in above terms with no order as to cost."

The judgment has been assailed and the following question of law have been framed:

1. Whether the learned Member of Customs Appellate Tribunal, Karachi was justified to hold that the burden of proof, cast upon the respondents under section 2(s) of the Customs Act, 1969, can be discharged by producing unverified, insufficient and irrelevant documents and shifting onto the Customs Authorities in accordance with law?

2. Whether the learned Customs Appellate Tribunal, Karachi has erred in law and escaped to consider that respondents have failed to provide the documents as mentioned vide Rule 126 of Customs Rules, 2001 nor any Sales Tax Invoice was ever provided to establish that the impugned goods were of locally purchased goods and released smuggled goods in violation of SRO 499(1)/2009 dated 13.06.2009?

Prima facie both questions pertain to the evidentiary aspect of the matter and the same could not be demonstrated to befall in preview of reference jurisdiction in the present facts and circumstances. The learned Appellate Tribunal is the last fact finding forum in the statutory hierarchy and *de novo* appreciation is not merited in reference application. No question of law has been pleaded and articulated before this Court. Reference application is 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.

Judge

Judge