

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Customs Reference Application No.924 of 2017

Collector of Customs  
Versus  
M/s Sports One International Trading Co. & another

Date	Order with signature of Judge
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1. For orders on CMA 3923/17
2. For hearing of main case

**Dated: 25.08.2021**

Ms. Masooda Siraj along with Mr. Nadeem for applicant.

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This Special Custom Reference Application is filed in respect of concurrent findings of two forums i.e. Collector of Customs (Appeals) Karachi and Customs Appellate Tribunal, which findings emanates from the assessment orders.

Brief facts are that respondent No.1 imported a consignment of food supplement and filed Goods Declaration; the goods were however at one point of time released provisionally under section 81 of the Customs Act, 1969 subject to a final determination within the scheme of ibid provision of law. The customs officials however did not determine it under section 81 finally within the time frame provided under the law i.e. Section 81(2) of the Customs Act. However, they passed order under section 81(5) after lapse of about one year and seven months. The said order was assailed in appeal by respondent No.1 and they were successful as no order could have been passed under section 81(5) of the Customs Act, 1969 for adjustment, refund or recovery of amount when no order under section 81(2) has been passed and the belated order too without any rational or reasoning. The department, being aggrieved of it, approached the Tribunal however nothing was achieved by them and

ultimately their Appeal was dismissed by the Tribunal hence this Reference Application was filed on the proposed questions as under: -

1. Whether the word provisional assessment has been rightly read and interpreted by the Hon'ble Tribunal in terms of Section 81 Sub-Section 4 of the Customs Act, 1969?
2. Whether in view of the law requiring the provisional assessment to be treated as final in terms of Section 81 Sub-Section 4 of the Customs Act, 1969 and such an assessment of attained finality be questioned by the importer or an aggrieved party?
3. In view of the legal position that a provisional assessment means the amount of duty and taxes paid or secured against bank guarantee or pay order who shall be liable to discharge the burden of finalization of assessment?
4. In case where strict compliance of Section 25 of the Customs Act, 1969 has been made and order passed accordingly by the authority concern, can the order be interfered with in an appeal without examining the goods and/or assessment sheet?
5. In terms of explanation to Section 81 of the Customs Act, 1969 can the Collector sitting in appeal over rule the finding of assessment?
6. Whether the Appellate Tribunal failed to take into consideration the explanation to Section 81 of the Customs Act, 1969, while passing the impugned order?
7. Whether the impugned order is perverse, illegal and without any lawful substance?

We have heard the learned counsel and perused material available on record and it appears that none of the questions, as referred above, arises out of the decision of the Tribunal. The only question that may at the best could arise is whether the customs officials were justified in finalizing the provisional order after a lapse of about one year and seven months.

Section 8(2) of the Customs Act, 1969 restricts this exercise beyond six months. Hence, there is a harmony in the order of the

Collector of Customs passed in Customs Appeal No.K-1269 of 2016 whereby powers of the customs officials were restricted in passing orders beyond six months and hence provisional assessment was considered final leaving the respondent at liberty to withdraw the security provided at the time of provisional release. The order was maintained by the Appellate Tribunal. This being a precise question of litigation before the lower forum, no concrete question of law for the determination of this Court in this Reference Application is made out. Indeed it is a settled principle of law and no further deliberation or adjudication is required.

Furthermore, perusal of record reveals that this reference application is pending since 2017 and the department/applicant has not cared to have it fixed even once.

In view of above, this Special Customs Reference Application is dismissed in limine along with listed application. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal, Bench-II, Karachi, as required by section 47(5) of Sales Tax Act, 1990.

**Judge**

**Judge**