

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

SCRA 554 of 2017 : Parco Pearl Gas (Private) Limited vs.
SCRA 555 of 2017 : Deputy Collector of Customs & Others

For the Applicant : Mr. Salman Aziz, Advocate

For the Respondents : Mr. Muhammad Rashid Arfi, Advocate

Date of hearing : 20.01.2023

Date of announcement : 20.01.2023

ORDER

Agha Faisal, J. The applicant submits that the determinant question herein is whether post release / clearance of consignments, Customs department had any jurisdiction to assess, recover or adjudicate any alleged short levy of sales tax. This question was framed for adjudication in both references under consideration, being question (d), and it is to this extent that these references were agitated.

2. Briefly stated, the representative facts are that show cause notices, dated 13.08.2015, were issued to the applicant seeking recovery of allegedly short levied sales tax and default surcharge and in the reply to the said notice the defense with respect to jurisdiction was specifically pleaded by the applicant in paragraph 4.1.12 thereof. Adjudication proceedings resulted in the order in original dated 16.12.2015 and order in appeal dated 01.04.2016, hence, this reference.

3. While various questions had been proposed on behalf of the applicant, the arguments before us were confined to the issue demarcated in the opening paragraph supra. Respectfully, we do hereby reformulate the question to be answered herein as "*Whether in the facts and circumstances of the case the Customs department had jurisdiction to assess, adjudicate and / or recover any short levy of sales tax, once the import / consignment has been assessed and*

released per sections 79 / 80 of the Customs Act 1969". Therefore, we hereby reformulate¹ the question to be answered herein, in terms of the verbiage supra.

4. Per the petitioner's learned counsel, this question had already been answered by this Court in the case of *Nestle*² and the learned departmental counsel articulated no cavil in such regard.

5. Therefore, in reliance upon the reasoning and rationale stated in *Nestle*³, we do hereby answer the question framed for determination herein in the negative, in favor of the applicant and against the respondent department. Therefore, these reference applications are disposed of accordingly.

6. 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

¹ *A. P. Moller Maersk & Others vs. Commissioner Inland Revenue & Others* reported as 2020 PTD 1614; *Commissioner (Legal) Inland Revenue vs. E.N.I. Pakistan (M) Limited, Karachi* reported as 2011 PTD 476; *Commissioner Inland Revenue, Zone-II, Karachi vs. Kassim Textile Mills (Private) Limited, Karachi* reported as 2013 PTD 1420.

² *Nestle Pakistan Limited vs. Federation of Pakistan & Others (CP D 5482 of 2017 and connected petitions)*; yet unreported judgment dated 15.11.2022. ("*Nestle*")

³ Binding upon us per the *Multiline* principles.