

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

S.CR.A. Nos. 1044 to 1080 of 2015

Date

Order with signature of Judge

Hearing of case

For hearing of main case

21.11.2023

Mr. Pervaiz Ahmed Memon, Advocate for the Applicants.

Respondent has been duly served by way of publication vide order dated 27.09.2023.

It appears that the Applicant Department after filing of this Reference Application and pursuant to order dated 30.3.2023 has filed 3 (three) rephrased proposed questions of law on 30.08.2023, wherein question No.3 reads as under: -

“Whether in the facts and circumstances of the case, the learned Customs Appellate Tribunal has ignored that under Section 32, 202, 80 & 79(1)(b) of the Customs Act, 1969 read with Section (6) of the Sales Tax Act, 1990 by holding that customs officers are not empowered to recover the short levy amount of sales tax.”

The above question already stands decided against the Applicant Department by this Court in the case of ***Nestle Pakistan Limited v. The Federal Board of Revenue (2023 PTD 527)*** in the following manner;

27. It is the considered view of this Court that while the insertion of the word taxes in sections 32 and 179 of the Customs Act 1969 confers parallel jurisdiction upon the Customs department to the extent contemplated vide the parent statutes¹, however, in either instance the ambit is circumscribed to imports and that also at the import stage, being prior to or at the time that the import / consignment has been assessed and released per sections 79 / 80 of the Customs Act 1969. Therefore, the notices / constituents⁴⁸ thereof, prima facie related to a fiscal right based on a statutory instrument requiring no factual determination, seeking to assess, recover or adjudicate any alleged short levy of income tax / sales tax, post release / clearance of consignments, are determined to be patently without jurisdiction and illegal on the face of the record.

¹ 47 In the present context being the Income Tax Ordinance 2001 and the Sales Tax Act 1990.

While confronted, learned Counsel for the Applicant submits that as per his instructions the judgment in the case of *Nestle Pakistan (Supra)* has been challenged before the Supreme Court. However, neither any particulars of the said case have been provided; nor we have been assisted in any manner as to whether leave has been granted and or the said judgment has been suspended.

In view of the above, we need not answer question Nos. 1 and 2, whereas, Question No.3 as above is answered against the Applicant Department for the reasons so assigned in the case of ***Nestle Pakistan (Supra)*** and all listed Reference Applications stands ***dismissed*** accordingly. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in connected SCRAs.

J U D G E

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B-K Soomro