

**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Customs Reference Application No. 123 of 2016

Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Justice Ms. Sana Akram Minhas*

**Applicant:** Director, Directorate of Post Clearance Audit (Customs), Customs House, Karachi. Through Mr. Muhammad Rashid Arfi, Advocate.

**Respondent:** M/s. Century Paper and Board Mills Ltd. Through Mr. Arshad Siraj Memon, Advocate.

**Date of hearing:** 31.08.2023.  
**Date of Order:** 31.08.2023.

**ORDER**

**Muhammad Junaid Ghaffar, J:** Through this Reference Application, the Applicant Department has impugned order dated 01.12.2015 passed in Customs Appeal No. K-814 of 2014 by the Customs Appellate Tribunal, Karachi, and initially had proposed various questions of law. However, on 12.05.2022, this Reference Application was admitted for regular hearing on proposed Questions No. 1 and 3, whereas, another Question was framed by the Court as to the competency of the Applicant regarding maintainability of this Reference Application. These Questions reads as under:-

- "i. Whether the Honourable Customs Appellate Tribunal have not erred in law by not considering that the powers for recovery of short levied amount of duty/tax is vested with Customs authorities in terms of Section 32 read with Section 202 of the Act?
- iii. Whether the learned Appellate Tribunal have not erred in law by not considering that Federal Board of Revenue, vide letter C.No.3(32) TAR-I/90 dated 6<sup>th</sup> August, 2012, ruled that customs authorities are empowered to recover short levied amount of withholding tax?
- iii. Whether under the facts and circumstances of the case the present Special Customs Reference Application has been filed by a competent person?"

Today, at the very outset Respondent's Counsel has relied upon Judgment reported as ***Nestle Pakistan Limited vs. The Federal Board of Revenue (2023 P T D 527)*** and submits that proposed Questions No.1 and 3 are covered by Judgment of this Court, whereby, it has been held that insofar as short recovery of Income Tax, if any, after clearance of an imported consignment is concerned, the Applicant Department or for that matter the Collector of Customs has no jurisdiction to initiate such recovery proceeding or adjudicate the matter. As to the last question framed by this Court, he submits that Director, Post Clearance Audit (Customs), who has filed this Reference Application was not authorized in law to file any such Reference

Application; hence, instant Reference Application is not maintainable and in support thereof, he has relied upon the cases reported as ***Director, Directorate-General of Intelligence and Investigation and others vs. M/s. Al-Faiz Industries (Pvt.) Limited and others (2006 SCMR 129)*** and ***Director-General, Intelligence and Investigation-FBR, Islamabad vs. Sher Andaz and 20 others (2010 PTD 2006)***.

While confronted, Applicant's Counsel is unable to controvert any of arguments of the Respondent's Counsel except that Director Valuation is competent to file Reference Application under Section 196 of the Customs Act, 1969 and the present Applicant, is though Director Post Clearance Audit; however, both are same persons and therefore, this Reference Application is competent. As to the merits of the case he has argued that since classification of goods is involved, therefore, the Applicant department had jurisdiction in the matter.

We have heard learned Counsel for the parties and perused the material available on record. Insofar as Questions No.1 and 3 are concerned, they are admittedly covered by the Judgment passed in the case of ***Nestle Pakistan (supra)***, wherein the Petitioners had impugned respective notices / constituents thereof, issued by the officers of Collectorate of Customs (Adjudication) on the ground that after release / clearance of their import consignments, Adjudication had no jurisdiction to assess, recover or adjudicate any alleged short levy of income tax and sales tax; and the jurisdiction, if any, in this regard vests with the Inland Revenue department, and the Court after a threadbare discussion on the prevalent law(s) was pleased to hold that *"the notices / constituents 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"*. In view of this no further discussion is required; hence, both these questions are answered against the Applicant and in favour of the Respondent.

As to the third question and the very competency of Director Post Clearance Audit to file a Reference Application we would like to refer to Section 196(1) of the Custom Act, 1969<sup>1</sup> (prevalent at the relevant time) which provides that it is only the *Collector* or *Director of Intelligence &*

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<sup>1</sup> "[196 Reference to High Court.—[1] Within ninety days of the date on which the aggrieved person or Collector [or Director of Intelligence and Investigation] [or Director of Valuation], as the case may be, was served with order of the Appellate Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of an Additional Collector [or Additional Director], authorized by the Collector [or Director in writing], may prefer an application, in the prescribed form alongwith a statement of the case, to the High Court, stating any question of law arising out of such order.]"

*Investigation or Director of Valuation*, who were authorized to file Reference Application being aggrieved person(s) within the contemplation of Section 196 *ibid*. The present Reference Application has been filed by *Director, Directorate of Post Clearance Audit (Customs)* and the argument of Applicants Counsel that “Director Post Clearance Audit” and “Director of Valuation” are one and the same person is not only incorrect; but shows ignorance of law on the part of the Counsel. He has not been able to assist us in any manner, either in respect of the merits of the case or regarding competency of the person who has filed this Reference Application. At this juncture, we may take this liberty to observe that the level of assistance provided by Counsel’s appearing for Customs Department in general is not only unsatisfactory but at times is without any basis or support from law.

The Directorate General of Valuation has been defined as a separate Directorate in Section 3D of the Act, since 2007, whereas, the Directorate General of Post Clearance (Audit) is defined as a distinct and independent Directorate in Section 3DD of the Act, since, 2008. We are perplexed and dumfounded on this assertion of the Applicant’s Counsel that both are one and the same and can only hope that in further we will be assisted more appropriately in like matters.

In view of the above Question No.3 is also answered against the Applicant Department and in favour of the Respondent by holding that Applicant was not an aggrieved person within the contemplation of Section 196(1) of the Customs Act, 1969 to file and maintain this Reference Application. Accordingly, this Reference Application is hereby dismissed. Let copy of this order be sent to the Customs Appellate Tribunal, Karachi in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

**J U D G E**

**J U D G E**

Rafiq/P.A.