

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
Special Customs Reference Application No. 19 of 2024

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

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**Fresh Case.**

1. For order on office objection No. 01, 22 & 25.
2. For orders on CMA No. 62/2024 (Exemption)
3. For hearing of main case.
4. For orders on CMA No. 63/2024 (Stay)

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**30.08.2024.**

Mr. Pervaiz Ahmed Memon, Advocate for Applicant.

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1. Deferred.
2. Granted.

3-4. Through this Reference Application, the Applicant Department has impugned judgment dated 25.09.2023 passed in Customs Appeal No. H-619/2023 by the Customs Appellate Tribunal, Karachi proposing the following questions of law:-

- i. Whether in consideration of the facts and circumstances of the case impugned 15000 liters of HSD alongwith Vehicle is not liable to out outright confiscation in terms of clauses (8) & (89) of sub Section (1) read with subsection (2) of Section 156 & 157(2) of the Customs Act, 1969, for violation of the provisions of Section 2(s) and 16 of the Act ibid, read with clause (a) of preamble to SRO 499(1)/2009 dated 13.06.2009?
- ii. Whether in consideration of the facts, circumstances and evidences on record the Appellate Tribunal has not arrived at an erroneous conclusion in holding that impugned consignment is locally purchased?
- iii. Whether the 1st Respondent (herein) by way of producing irrelevant documents/invoices has discharged burden of proof of lawful possession as envisaged under clause (89) of sub-section (1) of Section 156 of the Custom Act, 1969, in respect of impugned smuggled/non-duty paid HSD?
- iv. Whether on consideration of the facts and circumstances of the case the impugned judgment as passed by the Appellate Tribunal is not perverse, arbitrary, unjust and thus liable to be set aside?

Heard learned Counsel for the Applicant and perused the record. It appears that the Applicant's case is that the seized goods i.e. High-Speed Diesel "HSD" was of imported or foreign origin; hence smuggled. Based on that Show Cause Notice was adjudicated against the Respondent and the first appeal preferred was also dismissed. However through impugned judgment, the

Tribunal has decided the appeal in favour of the Respondent and the relevant finding is as under:-

"10. The Bench has asked the appellant to furnish Sales Tax Invoices to substantiate their claim of local origin. In compliance of order, he has produced Sales Tax Invoices issued by M/s Cnergyico PK Limited vide Nos.420220473 dated 15.02.2022, No.420220474 dated 15.02.2022, No. 420220486 dated 28.02.2022 alongwith delivery advice note dated 25.02.2022 and copies of the same supplied to the respondent department for verification from M/s Cnergyico PK Limited. In compliance of directions, learned DR has produced copy of letter issued by M/s Cnergyico PK Limited alongwith lab test reports. Para 1 and 2 of the letter is reproduced as under:

"We refer to your notice bearing reference No. 74(1)/DCI/I&I-Hyd/Seiz-FIR/2021-22/387 dated September 6, 2023 through which you have required Cnergyico PK Limited (the company) to verify the genuineness of sales tax invoices numbers 420220473 and 420220474 both dated February, 2022, and 420220486 dated February 28,2022. Further, you have also required the Company to submit lab test reports/ specifications related to the aforementioned sales tax invoice.

2. In this connection, we authenticate the confronted sales tax invoices and their contents as having been issued to our customer M/s Jinn Petroleum (Private) Limited. We also enclose the requisite corresponding lab test reports with all the details sought vide your notice dated September 6, 2023 mentioned therein as Annexure to this letter."

From perusal of the aforesaid observation of the learned Tribunal, it reflects that the matter was referred for confirmation of the Sales Tax Invoices produced by the Respondent to the local refinery and such invoices were affirmed along with test report with further confirmation that oil in question was supplied by the Refinery to the Respondent. In that case, we do not see as to why this Reference Application has been filed as a finding of fact has been recorded by the Tribunal based on confirmation carried out through Departmental Representative. No case for indulgence is made out; nor we are required to answer the proposed questions; hence this Reference Application is dismissed in *limine* with pending applications.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of Section 196(5) of Customs Act, 1969.

**J U D G E**

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