ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 507 of 2024

Date	Order with signature of Judge

FRESH CASE:

1. For order on CMA No.3541/2024 (Urgent).
2. For order on office objections No.1&25.
3. For order on CMA No.2502/2024.
4. For hearing of main case.
5. For order on CMA No.2503/2024.

Dated; 9th October 2024

Mr. Khalilullah Jakhro, Advocate for Applicant.

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1. Urgency granted.

2-5. Through this Reference Application the Applicant department has impugned judgment dated 13.06.2024 passed in Customs Appeal No.K-320 of 2024 by the Customs Appellate Tribunal, Bench-II at Karachi; proposing following questions of law: -

I. *Whether on the facts and circumstances of the case, the learned Tribunal erred in concluding that the applicant did not object to the fitness of the betel nuts purportedly imported in 2017 by another importer, which were used by the respondents in the manufacturing of Sweet Supari, and whether the case of smuggling was made merely on the basis of presumption and flawed business logic, whereas the adjudicating officer, in the original order, discussed the objections raised by the applicant and expressed serious concerns regarding the importation and shelf life of the betel nuts, whether roasted or otherwise?*

II. *Whether the respondents are under the statutory obligation to establish that the finish products were manufactured from the material which was not hazardous and fit for human consumption?*

III. *Whether the learned Member of Customs Appellate Tribunal was justified in holding that the burden of proof cast upon the respondents under section 156(2) and 187 of the Customs Act, 1969 can be discharged by producing unverified, insufficient, and irrelevant documents, thereby shifting the burden onto the Customs Authorities in accordance with law?*

IV. *Whether the learned Member of Customs Appellate Tribunal Karachi erred in law by misreading and not adequately considering the evidence, thereby releasing the smuggled betel nuts in violation of the law and the rules made thereunder?*

Heard learned counsel for the Applicant and perused the record. It appears that pursuant to a Search Warrant under section 162 of the Customs Act, 1969, the Applicant raided the godown of Respondent No.1 and, thereafter, made a Seizure dated 19.12.2023, whereby, some 6305 kgs of Sultan Sweet Supari along with packing material was seized. Based on such seizure, a Show Cause Notice was issued on 22.01.2024 and Order-in-Original No.943/2023-24 was also passed against the Respondent No.1 on 19.02.2024. Respondent No.1 being aggrieved preferred an appeal before the Tribunal and through impugned judgment the appeal has been allowed.

After perusal of the record, at the very outset and before a notice could be issued, Applicant's Counsel has been confronted as to how any substantial question of law; or a mixed question of law and fact arises from the impugned judgment and the learned counsel has argued that the Goods Declaration produced by the Respondent No.1 was much earlier in time as against seizure of the goods and, therefore, the Tribunal was not justified in allowing the appeal. Based on this the only contention of the Applicant's Counsel is that seized goods were smuggled goods, and therefore, the same could not have been released by the Tribunal. However, we are not in agreement with such contention, as time and again he was asked to refer to any provision of law, which requires that a Goods Declaration of a period earlier in time cannot be accepted and he has been unbale to satisfactorily respond.

Moreover, on perusal of the Show Cause Notice, it appears that during the search, numerous cartons of Sweet Supari and rolls of packing material, including packing instruments were found and upon detailed examination it

resulted in recovery of 136 cartons of Sultan Sweet Supari and 130 PP bags of Sweet Supari (without packing) totaling 6305 KGS. It is further stated that Sweet Supari was identified as being manufactured under the name and style of M/s Farooq Products. We are of the view that once the seized goods were found in finished form with a brand name and were not raw in nature, then even otherwise, asking for Goods Declaration in respect of such finished and processed goods was neither relevant nor justified. Lastly, even if some Goods Declaration was produced and was found to be old and irrelevant, the Applicant department could have sought verification of the same and if not, then Respondent No.1 could have been asked to produce the sales tax record or any other purchase receipt, but admittedly it was not done.

Therefore, in the peculiar facts and circumstances of this case, Respondent No.1 had discharged its initial burden as required under section 187 of the Customs Act, 1969 and by conduct the Applicant department has not been able to shift the same upon Respondent No.1; hence, the finding of the Tribunal appears to be in accordance with the available facts and law.

Accordingly, we do not see any reason to interfere with the order of the Tribunal as no substantial question of law; or a mixed question of fact and law is arising therefrom; hence, this Reference Application is hereby dismissed in *limine* along with pending application(s).

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

JUDGE

JUDGE

Farhan/PS