

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Special Customs Reference Application No.253 of 2024**

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

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**Hearing of case**

- 1) For orders on office objection No.25
- 2) For orders on CMA No.1075 of 2024
- 3) For regular hearing

**10.03.2025**

Mr. Khalid Mehmood Rajpar, Advocate for Applicant  
M/s. Muhammad Faisal Qasmi & Najeebullah Khoso,  
Advocates for Respondent.

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**MUHAMMAD JUNAID GHAFFAR ACJ.**- Through this Reference Application, the Applicant has impugned Judgment dated 13.01.2024 passed in Customs Appeal No.K-1869 of 2023 by the Customs Appellate Tribunal, Bench-II, Karachi, proposing the following Questions of law:-

- i) Whether in the facts and circumstances of the case the Appellate Tribunal has not erred in law to hold that the Appellant (1<sup>st</sup> Respondent herein) by producing auction documents has discharged burden of proof of lawful possession as required under Section 187 of the Customs Act, 1969?
- ii) Whether the impugned judgment as passed by the Appellate Tribunal without having been adduced purported purchase invoice as evidence and analyzing its admissibility, is not erroneous, perverse and outright illegal, thus liable to be set-aside?
- iii) Whether in the facts and circumstances of the case, the **Milk Powder** is not liable to **outright confiscation** under clause (89) of sub Section (1) read with subsection (2) of Section 156 of the Customs Act, 1969, for violation of the provisions of Section 2(s) & 16 of the Act *ibid*, read with clause (a) of preamble to SRO 499(I) 2009 dated 13.06.2009?

2. Heard learned Counsel for the Parties and perused the record.

It appears that the goods in question were seized on the allegation of smuggling and Respondent replied to the Show Cause Notice with some documents claiming that the goods in question were

auctioned by Pakistan Coast Guard to one Muhammad Saleem from whom the Respondent had purchased. This stance of the Respondent was rejected and addressed by the Adjudicating Authority in the following manner:-

“6. I have examined the case record brought before me and have perused written as well as verbal submissions of the respondent and the department. The issue in hand is whether the impugned seized goods comprising of 350 bags of skimmed milk powder of Iran origin weighing 8750 kgs were smuggled one or otherwise and whether the respondent/ claimant of the seized goods has been able to discharge burden of proof of lawful possession of the impugned goods alleged to be smuggled as required under Clause (89) of Sub-Section (1) read with Sub-Section (2) of Section 156 of Customs Act, 1969. In this case, the claimant's counsel produced two sets of different documents to justify possession of the impugned goods but upon scrutiny both these sets of documents proved to be not relevant to the seized goods. The auction documents issued by Pakistan Coast Guard Karachi in favor of a successful bidder, Muhammad Saleem son of Muhammad Sadiq, against auction of 318 bags of Iran origin milk powder has not relevance with the seized Iran origin skimmed milk powder, as quantity and weight of the auctioned goods do not match with the seized goods. Moreover, the brand of the auctioned milk powder is also not mentioned in the delivery order/ receipt. These auction documents belonged to a successful bidder, Muhammad Saleem son of Muhammad Sadiq, whereas the claimant of goods (respondent) is Ahmed Shah son of Habib Ullah. Quantity of auctioned of skimmed milk powder (318 bags) does not match with the seized quantity, i.e. 350 bags weighing 8.750 kgs. Moreover, no document is available which could show any link of the respondent with the aforesaid successful bidder Muhammad Saleem. The other challan dated 26.07.2023 related to Customs Gadani showing payment of duty and taxes against 325 bags of skimmed milk powder in compliance of Order-in-Original No.107/2023, dated 21.07.2023, is also not relevant, as the quantity and weight of the goods mentioned in the said challan is different from the quantity of the seized goods. Moreover, no concrete documentary evidence pertaining to the transportation of the said goods from Gaddani to Karachi and place of storage of the same is available on record which could show that the seized skimmed milk powder were the same which had been released from Gadani Customs about 42 days before the interception of the seized goods. The staff of Mochko Police Station, Karachi had intercepted Iran origin Khaza skimmed milk powder when the same were being unloaded at a farmhouse situated at main Hub River Road, Mochko, Karachi on 01.09.2023, whereas according to aforesaid Challan issued purportedly in compliance of Order-in-Original No.107/2023 dated 21.07.2023, a total of 325 bags of Iran origin skimmed milk powder were purportedly released by Collectorate of Customs (Enforcement), Khuzdar at Gaddani on 26.07.2023, i.e. 42 days before the date of interception. The different quantity purportedly released goods and date of release show that those goods were different from the seized goods and that documents of those consignment was being used to give legal cover to the smuggled/ seized goods. These inconsistencies and contradictions make it clear that the documents submitted by the counsel of the respondent have no relevance with the seized goods and contention of the seizing agency is correct that submission of two different sets of documents related to auction conducted by Pakistan Coast Guards and adjudication at Gadani is nothing, but an afterthought meant to cover up the act of smuggling under the cover of aforesaid irrelevant documents. It is accordingly held that the claimant has failed to discharge burden of proof of lawful possession of the impugned goods by way of producing relevant / legal import documents or any other instrument to establish legitimate import or lawful possession of the impugned goods. The contention of the respondent's counsel in this regard has no weight and is accordingly rejected. In this regard, the seizing agency has rightly placed reliance on the judgment of the Honorable Supreme Court of

Pakistan in Civil Appeal No.1050/2009 titled M/s. Collector of Customs Peshawar vs. Wali Khan etc. wherein it was observed by the Honorable Court that “the confiscated goods were admittedly of foreign origin and there was no proof that they were lawfully imported into Pakistan, the burden of which according to clause 89 as mentioned above, was on the respondent. When confronted, learned counsel for the respondent failed to provide any concrete evidence except contending that these goods are easily available in the market and can be purchased from anywhere. Thus, the respondent has failed to prove that the confiscated goods were not smuggled goods. Therefore, the forums below have erred in holding that the confiscated goods were not notified and thus do not fall within the purview of section 2(s) of the Customs Act.”

3. The Respondent being aggrieved filed further appeal before the Customs Appellate Tribunal and the Tribunal has overturned the finding of the Adjudicating Authority in the following terms:-

“6. We have examined the case record and heard both parties to the dispute. The appellant has averred that the seized goods were brought through auction held by Pakistan Coast Guard, Karachi. The delivery order bearing No.DG(CG)/9015/23/10062/WH dated 10.08.2023 was furnished as proof of purchase. The owner of goods (Saleem Cigarette Store) vide invoice dated 25.08.2023 sold 318 bags of milk powder to Mr. Khyal Muhammad. The appellant further argued that the delivery order issued by Pakistan Coast Guards was valid upto 30.08.2023. whereas police recovered goods from a farmhouse and handed over to the department on 01.09.2023. The circumstances surrounding the seizure strengthen appellant’s assertion regarding procurement of goods through the above referred auction documents.”

4. From perusal of the aforesaid finding of the Tribunal, it appears that the same has been arrived at without proper application of mind and without dilating upon the finding of Adjudicating Authority vis-a-vis auction of the goods to someone else as well as quantity of the seized goods and non-mentioning of brand of the product in question. The Tribunal being the last fact finding forum ought to have applied its mind before giving the opinion on the facts as recorded by the Adjudicating Authority and not in a manner, as it has done as above.

5. In view of the above, the impugned Judgment is set-aside; and as a consequence thereof, this Reference Application is **allowed** and the matter is remanded to the Tribunal for deciding afresh after considering the finding of the Adjudicating Authority as

recorded in Paragraph-6 in the Order-in-Original and thereafter pass a reasoned order in accordance with law. If needed, the Tribunal can also seek verification of the auction reports so relied upon by the Respondent.

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

**ACTING CHIEF JUDGE**

**JUDGE**

Qurban/PA\*