

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 804 of 2017

Date	Order with signature of Judge
	Present: Mr. Justice Muhammad Junaid Ghaffar Mr. Justice Mohammad Abdur Rahman,
Applicant :	M/s. Rousch (Pakistan) Power Limited Through Mr. Pervaiz Iqbal Kasi, Advocate.
Respondent :	The Collector of Customs, Model Customs Collectorate of Preventive, Customs House, Karachi, Through Mr. Muhabbat Hussain Awan, Advocate
Date of hearing :	11.03.2025.
Date of Judgment :	11.03.2025.

J U D G M E N T

Muhammad Junaid Ghaffar, ACJ: Through this Reference Application, the Applicant has impugned Judgment dated 06.06.2017 passed in Customs Appeal No.K-1787 of 2015 by the Customs Appellate Tribunal, Bench-III, Karachi, proposing *various* questions of law.

2. Heard learned Counsel for the Parties and perused the record. It appears that a Show Cause Notice was issued to the Respondent, whereby, it was alleged that the Applicant was not entitled to claim any exemption from duties and surcharge on the re-importation of goods, which were sent abroad for repairs, in view of FBR's letter dated 13.08.2012. Such, Show Cause Notice was adjudicated against the Applicant, whereas, Appeal filed before the Tribunal also stands dismissed and the relevant finding of the Tribunal reads as under:-

"7. Final hearing was held on 10.05.2017 when Mr. Pervaz Iqbal, Advocate was presented for the appellant. He argued the case on the given grounds and prayed for setting aside the impugned Orders based

on FBRs clarification, which he contended could not over-rule a sovereign guarantee of the Government of Pakistan. Respondent was represented by Mr. Aurangzaib, PA who defended the impugned order by reiterating its operative part and stating that this matter has been decided afresh upon remand by learned Tribunal and the impugned orders passed upon remand are exhaustive and clear hence the same may be upheld.

8. Record is carefully perused and arguments from both the sides have been duly considered. It is observed that the dispute is the levy / charge of duty on re-importation of certain goods sent for repair after use in Pakistan. The Agreement in question is found to have been correctly interpreted by the respondent and FBR as it does not provide a blanket unending exemption of duty / taxes on goods sent for repair and then re-imported. Record shows Private Power & Infrastructure Board, Government of Pakistan's correspondence with FBR requesting to consider inclusion in the ambit of exemption such levies / tax which are demanded on the impugned goods. However, FBR, having considered the matter had explicitly clarified that goods re-imported after repair are not covered under the exemption given to the project imports, hence the respondent is found to have correctly adjudged the impugned amount in an exhaustive and speaking order. In view of these facts before us we find that the impugned order is lawful and sustainable, the appeal having no merit is therefore dismissed."

3. From perusal of the aforesaid finding of the Tribunal,

it appears that the Tribunal has merely relied upon FBR's letter dated 13.08.2012 and has not made any effort to give its own reasoning. The said letter of the FBR reproduced is under:-

**"GOVERNMENT OF PAKISTAN
REVENUE DIVISION
(FEDERAL BOARD OF REVENUE)**

C.N. 3(6) March./96

Islamabad, the 13th August, 2012

From: Abdul Waheed Marwa,
Secretary

To: The Collector,
Model Customs Collectorate (Preventive),
Customs House, Karachi.

Subject: **EXPORT-CUM-IMPORT SHIPMENT 450 MW ROUSCH
(PAKISTAN) POWER PLANT DECLARATION**

I am directed to refer to Collectorate's Letter No.SI/Misc./1936/2012-AFU dated the 21st May, 2012 on the subject cited above and to say that the issue has been examined. It is clarified that Board's letter of even number dated the 9th August, 2001 is not admissible for goods which are re-imported after repair as the exemption for export-cum-import of goods meant for purpose of repair or refurbishment outside Pakistan, was available before commencing of project and not thereafter.

-Sd-
(Abdul Waheed Marwat)
Secretary (Tariff-II)"

4. It further appears that earlier on 09.08.2001 another letter was issued, whereby, exemption was extended on the re-importation of goods after repair. The said letter is reproduced as under:-

**“GOVERNMENT OF PAKISTAN
REVENUE DIVISION
(CENTRAL BOARD OF REVENUE)

C.N. 36/March./96

Islamabad, the 09th August, 2012

From: Shahanshah Hasnain,
Secretary

To: The Collector of Customs,
(Appraisement) Customs House,
Karachi

Subject: **4MW ROUCH (PAKISTAN) POWER LIMITED POWER
PROJECT – REQUIREMENT OF CONSENT**

I am directed to enclose photo copy of Ministry of Water & Power (PP&II)'s letter No.1(102)PPBD-9003/01/PRJ dated the 9th June 2001, along with its enclosures on the subject cited above and to say that Board is pleased to allow exemption on re-importation of goods after repair / refurbishment as per provisions of clause 13.2 of Article XIII of the Implementation Agreement.

Encl: As above

-Sd-
(S. Shahanshah Hasnain)
Secretary (Machinery)

Copy to Eng. S. Ibrahim Shah, managing Director, Ministry of Water & Power (Private Power and Infrastructure Board), House No.50, Naziruddin Road, F-7/4, Islamabad with reference to letter No.1(102)PPIB-9003/01/PRJ dated the 9th June, 2001.”

5. From perusal of the aforesaid two letters, which are contrary to each other, it reflects that the subsequent letter has on its own inserted words “before commencing of the Project”, which appears to be contrary to the Provisions of Clause 13.2 of Article (XIII) of the Implementation Agreement between the Applicant and Government of Pakistan, whereas, even otherwise any goods which require repair would naturally be after the commencement of the Project and not prior to that. Clause 13.2 of Article (XIII) of the Agreement states that the Applicant shall be entitled to export without restriction

all items of Plant and Machinery and imported by it under Section 13.1 for the purposes of repair or re-furbishment outside Pakistan and to re-import the same without restriction and without payment of Customs Duties and other Surcharges and this Clause does not provide any time limit as stated by the FBR in its letter dated 13.08.2012. Till such time agreement subsists, the exemption of such goods sent abroad for repair would be admissible.

6. In view of above, there is only one Question, which needs to be answered i.e. *“Whether in the facts and circumstances of the case the FBR and respondents erred in interpreting the plain and unambiguous language of sub-Article 13.2?”* and the same is answered in the *affirmative* in favor of the Applicant and against the Respondent. Consequently, the impugned Judgments of the Forums below are hereby *set-aside* and this Special Customs Reference Application is **allowed**. Let a copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*