

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Special Custom Reference Application No. 569 of 2011**

Date

Order with signature of Judge

**HEARING /PRIORITY CASE.**

- 1) For hearing of main case.
- 2) For hearing of CMA No. 2037/2011.

**20.03.2025.**

Mr. Abdul Ghaffar, Advocate for Applicant.  
Mr. Sardar Zafar Hussain, Advocate for Respondent.

Through this Reference Application, the Applicant has impugned Order dated 16.06.2011 passed in Customs Appeal No. K-631 of 2010 by the Customs Appellate Tribunal at Karachi proposing the following Questions of Law:-

- i) Whether the Show Cause Notice dated October, 2009, under Sections 32(3) read with Section 81(3) of the Customs Act, 1969, in respect of G.D. No. KAPR HC-3926 dated 14.07.2008 is not maintainable and barred by time?
- ii) Whether in the facts and circumstances of the case the observation of the CESAT to the effect that "instance case does not fall within the ambit of Section 81 of the Customs Act, 1969" is contrary to the records of the case?
- iii) Whether the goods allowed clearance provisionally under Section 81 of the Customs Act, 1969, attained finality as per the claim after the expiry of the period provided under Section 81(2) of the Customs Act, 1969?
- iv) Whether there is any procedure provided under Section 81 of the Customs Act, 1969, which was not followed in the present case as held by the Tribunal?
- v) Whether the objection of Appraisal Collectorate at the time of import of the goods regarding the question of identification at the time of re-export of goods which is exclusively under the jurisdiction of export collectorate is illegal, arbitrary, mala fide and against the preamble of the Notification.
- vi) Whether the incharge of export station on being satisfied in terms of the Notification that the goods temporarily imported in the case and have been duly consumed in the manufacture of the goods, allowed the export of goods in terms of clause (x) of SRO 1065(1)/2005 and thereafter the Collector of Customs on being satisfied in terms of clause (xi) allowed the discharge and return of the indemnity bond, the show cause notice and the impugned orders in these circumstances are maintainable?
- vii) Whether the Order-in-Original passed in the case on 14.11.2009 under Section 81(3) of the Customs Act, 1969, in respect G.D. No.KAPR HC-3926 dated 14.07.2008 is time barred by time and is illegal, arbitrary and not maintainable?

- viii) Whether the Customs, Excise and Sales Tax Appellate Tribunal, Karachi, and the Collector of Customs (Appeals) exercised their jurisdiction illegally, arbitrary and mala fidely while deciding the title appeal.”

Heard learned Counsel for the parties and perused the record. Insofar as proposed Questions No. (i), (ii), (iii) & (iv) are concerned, admittedly, for the present purposes, these are not relevant inasmuch as in this matter, a Show Cause Notice has been issued under Section 32(3) of the Customs Act 1969, after clearance of the consignment and therefore, the objection regarding final assessment being time barred in terms of Section 81 of the Act is misconceived pursuant to Judgment of Hon'ble Supreme Court in the case of **Collector of Customs Port Muhammad Bin Qasim, Karachi Vs. Messrs Mia Corporation (Pvt.) Ltd. Islamabad (2024) 130 TAX 552 (S.C.Pak)**; hence, these Questions are answered against the Applicant.

Insofar as the Question on merits i.e. *Whether the goods so imported for re-export purposes were entitled to exemption in terms of SRO 1065(I)2005 dated 20.10.2005* is concerned, it is a matter of fact that after provisional release of the consignment in question, and pending clarification from FBR the goods have been exported and after export the Applicant approached the concerned department for discharge of indemnity bond and post dated cheques which have been returned. This act on the part of the department affirms that the objection regarding goods not being identifiable at the time of re-export is mis-conceived, otherwise, the indemnity bond and post-dated cheques ought not to have been released. Such an act is an admission that the Applicant was entitled for the exemption and the initial objection at the time of import of goods was not correct.

Insofar as the clarification of FBR is concerned, the same does not appear to be correct inasmuch as the Respondent department has by itself released the securities to

the Applicant, whereas such an interpretation or direction is not binding of the officer of customs while discharging quasi-judicial duties functions.

In view of such position, the above question i.e. *Whether the goods so imported for re-export purposes were entitled to exemption in terms of SRO 1065(I)2005 dated 20.10.2005* is answered in favor of the Applicant and against the Respondent. Consequently, thereof, the order passed by the forums below are hereby set aside and this Reference Application is **allowed**. Let 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 JUSTICE**

**J U D G E**

Arshad/