

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application No. 393 / 2019

Date Order with signature of Judge

HEARING / PRIORITY

- 1) For hearing of CMA No. 4022/2022.
- 2) For hearing of CMA No. 2159/2019.
- 3) For hearing of main case.

20.03.2025

Mr. Sardar Faisal Zafar Advocate for Applicant.
Ms. Masooda Siraj, Advocate for Respondent.

There are two questions of law involved in this matter. First that “*Whether any short levy of Anti Dumping Duty can be recovered in terms of Section 32 of the Customs Act, 1969*” and the second that “*Whether any short levy of Income Tax and Sales Tax can be recovered by issuing a Show Cause Notice under Section 32 of the Customs Act, 1969*”. Both these questions are already answered against the department and in favor of the Importers. The first Question has been answered by this Court in the case of **Muhamad Saleem Bikiya**¹ and followed vide order dated 14.03.2024 in SCRA No. 1581 to 1591 of 2023 in the following terms:-

“On the last date of hearing the following order was passed:-

- “1) Granted.
- 2) Granted subject to all exceptions.
- 3 & 4) On perusal of the proposed questions, including Question No. 2, it appears that it has already been answered against the Applicant department in the case of *Muhamad Saleem Bikiya*² whereby it has been held that Anti-Dumping Duty is not a Customs Duty; therefore, how any short levy of the same can be made good in terms of Section 32 of the Customs Act, 1969. Counsel to come prepared as to why these Reference Applications have been preferred as once the controversy stands decided by this Court, it amounts to sheer wastage of Courts time and burdens the exchequer as well.

To come up on **14.03.2024**. Office shall place copy of this order in all connected files.”

Today Counsel for the Applicant is not in position to controvert the fact that insofar as Question No. 2, which is the moot question in these Reference Applications, already stands decided against the department, whereby, it has been held that Anti-Dumping Duty per se is not a Customs Duty; and therefore, any short recovery of the same cannot be made good under Section 32 of the Customs Act, 1969.

In view of such position, Question No.2 i.e. ***Whether by virtue of statutory amendments in Section 32 and 179 of the Customs Act, 1969,***

¹ Per Munib Akhtar J in Muhammad Saleem Biklya & Others vs. Pakistan & Another reported as 2018 PTD 2026.

² --do--

through Finance Act, 2012 and 2014, read with Section 202 of the Customs Act, 1969, the Customs Authorities are not empowered to recover short levied amount of Anti-dumping duty through the process of quasi-judicial proceedings? is answered against the Applicant and in favor of the Respondents and as a consequence thereof remaining questions are not required to be answered. All these Reference Applications are dismissed in Limine along with pending applications.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in the connected Reference Applications as above.

As to the second the Question i.e. “*Whether any short levy of Income Tax and Sales Tax can be recovered by issuing a Show Cause Notice under Section 32 of the Customs Act, 1969*” is concerned it already stands decided against the Applicant Department by this Court in the case of ***Nestle Pakistan Limited v. The Federal Board of Revenue (2023 PTD 527)*** in the following manner;

27. It is the considered view of this Court that while the insertion of the word taxes in sections 32 and 179 of the Customs Act 1969 confers parallel jurisdiction upon the Customs department to the extent contemplated vide the parent statutes³, however, in either instance the ambit is circumscribed to imports and that also at the import stage, being prior to or at the time that the import / consignment has been assessed and released per sections 79 / 80 of the Customs Act 1969. Therefore, the notices / constituents 48 thereof, prima facie related to a fiscal right based on a statutory instrument requiring no factual determination, seeking to assess, recover or adjudicate any alleged short levy of income tax / sales tax, post release / clearance of consignments, are determined to be patently without jurisdiction and illegal on the face of the record.

Accordingly, both the above questions are answered against the department and consequently thereof this Reference Application is ***allowed***. The impugned order(s) stand set aside. Let copy of this Order be sent to Customs Appellate Tribunal in terms of Section 196(5) of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

Arshad/

³ 47 In the present context being the Income Tax Ordinance 2001 and the Sales Tax Act 1990.