ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 520 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of main case.
2. For orders on CMA No.3912/2017.

18.09.2025

Mr. Muhammad Abbas, advocate for the applicant.

This reference application is pending since 2017 and even notice has not been sought / issued till date. Briefly stated, a show cause notice was issued to the respondents dated 14.12.2015, alleging that the applicant had deliberately, willfully and with malafide intention claimed / availed inadmissible exemption of duty and tax to defraud, deprive the government of its revenue. The notice was adjudicated vide Order-in-Original dated 05.04.2016 and the allegations were found to be substantiated from the evidence. The pertinent constituents of the order are reproduced herein below:

> "5. I have gone through the case record and considered written / verbal arguments of both ides. The Federal Board of Revenue vide amending notification CGO 09/2013, dated 04.10.2013 has confirmed that VRLA batteries are locally manufactured. Similarly, the local manufacturing status of impugned goods has been re-confirmed by the Engineering Development Board vide letter No.EDB-PL/01/14-Tech.II dated 06.12.2014. Therefore, the imported goods do not qualify for exemption from payment of Customs duty and Sales tax under 5th Schedule to the Customs Act, 1969 and Table III to the 6th Schedule to the Sales Tax Act, 1990. Furthermore, serial No. 110 of Table-I of the 6th Schedule of Sales Tax Act, 1990 and Schedule II of Income Tax Ordinance 2001, allow exemption only when ''dedicated use' is confirmed by Alternate Energy Development Board (AEDB). Since 'dedicated use' is not confirmed by the AEDB in the case, Income Tax exemption is also not available. In view of the above, the charges leveled in the Show Cause Notice stand established. The importers are, therefore, directed to deposit the evaded amount of duty and taxes amounting to Rs.2,060,817/- into the Government Treasury (along with default surcharge to be calculated at the time of payment) failing which action is to be initiated against the respondents under Section 202 of the Customs Act, 1969 read with Chapter XI (Recovery Rules) of the Customs Rules, 2001 notified vide SRO 450(I)/2001 dated 18.06.2001. A penalty of Rs.200,000/- (Rupees two hundred thousand) is also imposed on the importer for violation of the aforementioned provision of law."

The matter was escalated before the learned Customs Appellate Tribunal and the earlier order was upheld vide judgment dated 05.07.2017. The operative part is reproduced herein below:

> "06. Record has been carefully examined and arguments are considered. It is an established practiced backed by conscious policy of discouraging imports of all such finished goods, including batteries which are locally manufactured by the indigenous industry. Hence all exemptions to plants, machinery and equipment are essentially and historically tied to the crucial condition that only the goods which are not locally manufactured are allowed the benefit of concession and exemption of tax. To regulate and enforce this policy, across the board and universally without any exceptions, a Custom General Order No.11 of 2007 is in the field which lists all such goods which are locally manufactured hence not admissible to any exemption. This CGO is an active and vibrant instrument wherein all such goods which are, on any given point of time, not being locally manufactured are detected from its purview and likewise any new article, if available through local production

> the same is included in that CGO. To keep transparency and professional ascertainment of this crucial aspect of local availability of manufactured goods, the Federal Government has assigned the duty of such inclusion and Development Board, an expert technical body working out of FBD, Administrative Control. The industrial concerns including the appellant, are well aware of this arrangement which is taking care of the bonafide interest of all the stakeholders fairly and efficiently.
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> 07. It is therefore essential and pivotal for any article to qualify exemptions if the same is not being locally manufactured. Therefore, I find that the impugned order being solely based on this local availability condition the impugned goods had been correctly and lawfully denied claimed exemptions of customs duty, sales tax and income tax. Other violations are also found to have been evidently established against the appellant hence I find no reason to interfere with impugned Order which is based on the fact of local manufacturer of the impugned goods. Appeal having failed is, therefore, dismissed."

The concurrent orders are against the applicant and the present reference was preferred in 2017, however, no notice was sought / issued till date. The crux of the learned counsel arguments is that the evidence was not appreciated by the department / adjudication fora in its proper perception, hence, the orders may be set aside. He argued that the consignment did in fact qualify as not been locally manufactured and even otherwise additional sales tax was sought to be recovered pursuant to a notice issued by the Customs hierarchy.

The Appellate Tribunal is the last fact finding forum in the statutory hierarchy and it has concluded, based on evidence, as to whether the goods in question could be locally manufactured or otherwise. The appreciation of evidence was only material before the subordinate adjudication fora and the learned Tribunal was the last forum in such regard. No appreciation of evidence is merited before this Court in its reference jurisdiction.[1] Insofar as the recovery of sales tax by the Customs department / hierarchy is concerned, the issue has been decided in a recent judgment of Supreme Court dated 05.09.2025 in *Director of Post Audit Clearance vs. Nestle Pakistan Limited (Civil Petition 70K of 2023)* and connected matters.

In view hereof, no question of law has been demonstrated / articulated before us to merit consideration, hence, this reference application is dismissed in *limine*.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge

Khuhro/PS

[1] Per *Qazi Faez Isa J* in *Middle East Construction vs. Collector Customs*; judgment dated *16.02.2023* in *Civil Appeals 2016 & 2017 of 2022*.