

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 2040 of 2023
SCRA 2041 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objections No.8 & 25.
- 2. For orders on CMA No.612/2023.
- 3. For hearing of main case.
- 4. For orders on CMA No.254/2025.

02.12.2025

Mr. Dervesh K. Mandhan, advocate for the applicant.

The sole question of law proposed as follows:

Whether the respondents below have jurisdiction to invoke penal action and impose harsh penalties under the Customs Act, 1969, involving the charges of exporting narcotics?

Per learned counsel, penalty is not warranted since the prosecution against the applicant has been unsuccessful. Be that as it may, he is queried as to what impact it would have on adjudication in the present circumstances, however, he remains unable to assist. The relevant constituents of the impugned judgment read as follows:

- “06. Arguments heard from both the sides and examined the case record. In the instant case the appellant exporter has no defense except that their User-ID has been mis-used for export of the prohibited banned goods i.e. Narcotics (Ketamin) under the garb of Bed Sheets / Comforters. The issuance of “E” Form in the name of appellant exporter has also not been accepted by the appellants and infact attributed to others. Considering the Chapter-XVIA of the Customs Act, 1969, and Chapter-XXI of the Customs Rules, 2001, particularly in Section 155-K, 155-E and 155-Q of the Act, an applicant exporter / importer who opts to use the facility of Automated clearance of the imported / exported goods, through Customs Electronic System i.e. WeBOC, PSW, etc., is responsible for safety and use of the User-ID / Password issued to him. Therefore, the appellants’ grounds of mis-using of ID-Password is nothing but an afterthought fabricated pretext in a bid to isolate themselves from the established charge of exporting banned goods (Narcotics) fraudulently in league with other culprits.
07. The Investigations of the case remained slow and the respondent was repeatedly directed to expedite retrieval of samples and relevant case documents from Hong Kong so that the case comes to a logical end. We are constrained to observe that at present the department lacks the capability to handle such cases, as neither samples of drugs/narcotics detected abroad nor relevant documents like Seizure Report, Laboratory Reports, progress of investigations, court verdict etc, were produced before us. However, the crux of the case remains that contraband Ketamine was smuggled to Hong Kong while concealing the same in a consignment of Bed Sheets/comforters. Under the law as

referred to in para 6 above, the exporter in whose name the User-ID/Password has been issued is solely responsible for its security and misuse. We are constrained to observe that by shifting the blame to others who stuffed the goods in the container, or the owner of goods is someone else, or by attributing "E" Form to someone else does not absolve the holder of User ID/Password of his responsibility under the law.

08. In view of the above, and also considering the facts / circumstances established by the Adjudication Authority, we uphold the impugned Order-in-Original and do not find any merits in the appellants appeals, hence, the same are hereby dismissed."

The observations and findings contained appear to have been rested on evidence and in such regard the learned Appellate Tribunal is the last fact finding forum. Counsel remains unable to displace / distinguish the observations and / or conclusion. In view hereof, question framed does not appear to arise out of the impugned judgment. Accordingly, reference applications are 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. Office is instructed to place copy hereof in the connected file.

Judge

Judge