

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 396 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	<ol style="list-style-type: none">1. For hearing of CMA No.1628/20.2. For hearing of CMA No.1629/20.3. For hearing of main case4. For hearing of CMA No.1630/20.

25.11.2025

Mr. Muhammad Rashid Arfi, advocate for applicant.

Following questions of law had been proposed for determination:-

- i. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in law to release the confiscated foreign origin Betel Nuts by ignoring the provisions of Section 2 (s) of the Custom Act 1969 which was in commercial quantity on payment of duty and taxes where no import or legal purchase documents were provided/ produced by the claimant/owner of the impugned goods?
- ii. Whether the Hon'ble Customs Appellate Tribunal, Karachi has jurisdiction to release the smuggled/confiscated foreign origin goods falling under the provisions of Section 2(s), 16, 164 and 171 of the Custom Act 1969 read with Judgment passed by the Hon'ble Supreme Court of Pakistan in the identical case of smuggled confiscated goods reported as 2017 SCMR 585?
- iii. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in appreciating the fact that allowing release of Betel Nuts without considering the fact that the impugned Betel Nuts have become no more fit for human consumption and release of Betel Nuts at present condition is injurious to health?
- iv. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in law to release the Betel Nut without fulfilling the requirements of the S.No.6 of the part-I of the appendix-B of the Import Policy Order 2016 read with S. NO. 13 ibid which requires Phytosanitary certificate issued by the competent authorities of the country of origin/export confirming that the exported goods are free from infestation; and are fit for human consumption and liable to be destructed under the provision of S.No. 34(a)(1) of the Customs General Order No. 12 of 2002?

Learned counsel places on record order dated 29.10.2024 in SCRA No. 387/2020 and other connected matters, which reads as follows:-

“Pursuant to order passed on 28.03.2024, Publication has been affected, but no one has turned up on behalf of any of the Respondents. Accordingly, serviced is held good against these Respondents.

Through these Reference Applications the Applicant (department) has impugned order dated 19.06.2019 passed by the Customs Appellate Tribunal in Customs Appeal No.183, 186, 187, 189,

190, 716, 943, 1036, 1344 & 1337 of 2019 and Customs Appeal No. 480 of 2020 proposing the following Questions of Law:-

- a. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in law to release the confiscated foreign origin Betel Nuts by ignoring the provisions of Section 2 (s) of the Custom Act 1969 which was in commercial quantity on payment of duty and taxes where no import or legal purchase documents were provided / produced by the claimant / owner of the impugned goods?
- b. Whether the Hon'ble Customs Appellate Tribunal, Karachi has jurisdiction to release the smuggled / confiscated foreign origin goods falling under the provisions of Section 2(s), 16, 164 and 171 of the Custom Act 1969 read with Judgment passed by the Hon'ble Supreme Court of Pakistan in the identical case of smuggled confiscated goods reported as 2017 SCMR 585?
- c. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in appreciating the fact that allowing release of Betel Nuts without considering the fact that the impugned Betel Nuts have become no more fit for human consumption and release of Betel Nuts at present condition is injurious to health?
- d. Whether the Hon'ble Customs Appellate Tribunal, Karachi has erred in law to release the Betel Nut without fulfilling the requirements of the S.No 6 of the Part-I of the appendix-B of the Import Policy Order 2016 read with S.No 13 ibid which requires Phytosanitary certificate issued by the competent authorities of the country of origin/export confirming that the exported goods are free from infestation; and are fit for human consumption and liable to be destructed under the provision of S.No. 34(a) (1) of the Customs General Order No. 12 of 2002?"

Heard learned Counsel and perused the record. The Relevant findings of the Tribunal while allowing the Appeals is as under:-

“6. Arguments heard record perused. I observed that as per contention of case making agency the seized Betel Nuts were brought into the country through illegal routes without payment of duty and taxes whereas the appellants / claimants contended that these were locally purchased from the open market even then they are agree to pay the leviabale customs duty and taxes on the impugned Betel Nuts although they are not involved in any sort of customs offence nor they are importers. As such no evidences were brought on record or provided by the seizing agency that the seized Betel Nuts were anyway unfit for human consumption. The second issue of seized vehicles which were confiscated by the adjudicating authorities with option to redeem the same on payment of 20% redemption fine equal to the value of the impugned vehicles in terms of Interim Order C. No. 1040/2018/PCG dated 13.11.2018. The learned counsel for the appellants / claimants of betel nuts has provided copies of orders passed by the Adjudicating Authorities for release of Betel Nuts and copies of release orders wherein Betel Nuts were released on payment of leviabale duty and taxes and fine but the cases of appellants were dealt separately and not allowed the release on payment of duty and taxes being a freely importable goods.

7. After giving conscious thought on the subject matter and going through the legal / factual aspects and departmental practice in dealing the subject goods for clearance, I came to conclusion that there are substantial patent legal infirmities based on adequate breach of natural justice and law in the impugned orders passed during the hierarchy of the customs as such, I hereby pass the order and direct the respondents to release the subject Betel Nuts to the aforementioned claimants / appellants against the payment of leviabale customs duty and taxes on the value of the goods to be determined by the respondent department along with

the payment of fine of Rs. 50,000/- by each appellant / claimant as envisaged under serial No.1 (i) of Section 156 (1) of the Customs Act, 1969. The appeals of appellants / claimants of betel nuts are disposed off in above terms and I hereby upheld / maintain the impugned orders to the extent of impugned vehicles only.”

From perusal of the aforesaid findings of the Tribunal and the record available before us, it reflects that the Respondents had in fact conceded that the goods are smuggled as they have shown their willingness to pay the leviable duty and taxes on the goods in question. If not, then they ought not to have volunteered to make payment of the duties and taxes involved. Record further reflects that the Tribunal has acceded to such request and thereafter, released all the goods in question upon payment of duty and taxes including a fine of Rs. 50,000/- while exercising powers under Section 156(1) of the Customs Act, 1969. Insofar as the imposition of fine is concerned, the Tribunal cannot act or perform the duties of the adjudicating authority as the goods were confiscated out rightly. Secondly, since the Respondents have failed to discharge the burden of proof as required under Section 187 of the Customs Act, 1969 and had agreed to pay the duty and taxes, then the Tribunal could not otherwise release the smuggled goods falling under Section 2(s) of the Customs Act, 1969 as they were to be confiscated out rightly. In the case of **Collector of Customs, Peshawar**¹, it was held by the Supreme Court that the requirement to give option to pay fine in lieu of confiscation in respect of confiscated goods is not absolute and is subject to the Notification issued by FBR under Section 181, and the order of the Tribunal for imposition of redemption fine in lieu of outright confiscation of smuggled goods was held to be unlawful and in violation of section 181 *ibid*.

In view of the above, the proposed Questions are answered in favour of the Applicant and against the Respondents. As a consequence thereof, the impugned Judgment is set aside. Let copy of this order be sent to the Tribunal in terms of Section 196(5) of the Customs Act, 1969.”

Learned counsel states that these questions have already been decided in favour of the applicant and against the respondent, therefore, this reference may be decided for the same reasons and upon the same terms. Order accordingly.

A copy of this order 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

Ayaz

¹ 2017 SCMR 585