

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 2049 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.9 & 25.
2. For orders on CMA No.638/2023.
3. For hearing of main case.
4. For orders on CMA No.639/2023.

27.01.2026

Mr. Mohammad Abbas, advocate for the applicant.

This reference is pending since 2023 without any progress. Even notice has not been sought / issued till date. The operative part of the impugned judgment reads as follows:

“I have examined the case record, considered the grounds of appeal verbal arguments advanced by the learned counsel of the appellant as well as departmental representative during the proceedings. A reading of Show Cause Notice, in the very beginning of the opening paragraph of impugned Order-in-Original shows that the locus stand of the respondent department is that importers having the principal Appraiser on the clearance of Zinc Sulphate 33% in Granule form (Feed grade) by irregular petition of duty taxes, meaning thereby only manufacturers of poultry feed were entitled to said exemption and no other category of registered persons. A Plane reading of referred SROs makes it crystal clear that no condition general or special is attached for the duty / tax free import of item under consideration Similarly it is also a misreading and misconstruction of said SROs on the part of respondent department that the said exemption is available to manufacturers of poultry feed only. The impugned audit observation is based on presumptions and surmises which is not tenable in the eyes of law. A tax is imposed through the express provisions of law and not on the basis of some presumption or legal chicaneries. In view of the above the impugned order is set aside as referred audit observation is devoid of any merit and the instant appeal is accepted.

7. The Respondent Department has submitted memorandum of cross objections/para-wise comments in reply to the memo of appeal, which are taken on record that in the light of submissions made above the contents of Para (1) are incorrect hence vehemently denied. That in the light of submissions made above the contents of Para (2) of grounds of Appeal require no comments. That in the light of submissions made above the contents of Para (3) of grounds of Appeal require no comments. That in the light of submissions made above the contents of Para (4) are incorrect hence vehemently denied. That in the light of submissions made above the contents of Para (5) of grounds of Appeal require no comments. That in the light of submissions made above the contents of Para (6) are vehemently denied. It is submitted that M/s. Sungro (Private) Ltd. (NTN #3837239-8), (STRN# 0300383723919), 19-C Khyaban-e-Sarwar, Dera Ghazi Khan having their principal business activity as wholesale and retail trade; repair of motor vehicles and motorcycles/retail sale in non-specialized stores and registered as Importer/ Exporter/

Distributor/ Wholesaler Retailer/ other had importer a consignment of the aforesaid impugned goods, which were prima facie fertilizers and as such not entitled for the exemptions of Customs duty and Sales tax under SRO 567(1)/2006 dated 05.06.2006 and SRO 1007(1)/2005 dated 26.09-2005 cleared through MCC Appraisalment (West), Karachi vide GD No KAPW-HC-162063 dated 06.06.2014. This resulted in the evasion of duty and taxes to the tune of Rs. 2,467,496/- (Custom Duty Rs. 538,990/-, Sales Tax Rs. 1,811,006/-, and Income Tax Rs. 117,500/-), That in the light of submissions made above the contents of Para (7) are incorrect hence vehemently denied. It is submitted that in the light of above described facts, it is evident that M/s Sangro (Private) Ltd, 19-C Khyaban-e-Sarwar, Dera Ghazi Khan did not consume Zinc Sulphate 33% (Granule) (Feed Grade) as an ingredient of poultry feed rather they availed irregular exemption of duties/taxes to the tune of Rs.2,467,496/-(Custom Duty Rs. 538,990/-, Sales Tax Rs. 1,811,006/-, and Income Tax Rs. 117,500/-), That in the light of submissions made above the contents of Para (8) are incorrect hence vehemently denied. That in the light of submissions made above the contents of Para (9) are incorrect hence vehemently denied. That in the light of submissions made above the contents of Para (10) are incorrect hence vehemently denied. That in the light of submissions made above the contents of Para (11) of grounds of Appeal require no comments. That in the light of submissions made above the contents of Para (10) are incorrect hence vehemently denied. It is submitted that M/s. Sungro (Private) Ltd. (NTN #3837239-8), (STRN# 0300383723919), 19-C Khyaban-e-Sarwar, Dera Ghazi Khan having their principal business activity as wholesale and retail trade; repair of motor vehicles and motorcycles/retail sale in non-specialized stores and registered as Importer/ Exporter/ Distributer/ Wholesaler Retailer/ other had importer a consignment of the aforesaid impugned goods, which were prima facie fertilizers and as such not entitled for the exemptions of Customs duty and Sales tax under SRO 567(1)/2006 dated 05.06.2006 and SRO 1007(1)/2005 dated 26.09-2005 cleared through MCC-Appraisalment (West), Karachi vide GD No.KAPW-HC-162063 dated 06.06.2014. This resulted in the evasion of duty and taxes to the tune of Rs. 2,467,496/- (Custom Duty Rs. 538,990/-, Sales Tax Rs. 1,811,006/-, and Income Tax Rs. 117,500/-). It is also submitted that law on exemption of duty/taxes on import and supply of Zinc Sulphate (feed grade) is very clear. There is no bar on import of Zinc sulphate (feed grade) by importers other than manufacturers of poultry/animal feed. However, the intention of the legislation is unambiguous when its use was restricted to poultry/ animal feed. Therefore, it has no use except to be consumed in manufacturing of poultry/animal feed. From the perusal of the profile, it is apparent, that the importer has no facility of manufacturing of poultry/animal feed. As per law, the importer was required to supply the imported Zinc Sulphate (feed grade) to poultry/animal feed sector. But, the importer has failed to furnish such details which renders exemption availed at import stage invalid. It is urged that imports exemptions should be made as per Order-in-Original. Further, the directorate requests to this forum kindly make an Order to appellant for payment of all taxes along with penalty as per Order-in-Original.

8. Arguments heard from both the sides and examined the case record. The appellant has admitted before the Adjudication Authority that he is registered with the FBR as a wholesaler, retailer and repair of motor vehicles & motorcycles, and imported the impugned goods as a commercial importer. However, he contended that the imported consignment was supplied to the manufacturers of the poultry feeds. The respondent pleaded that SRO 57(1)/2006 dated: 05-06-2006, allows exemption / concession of customs duty subject to certain conditions and restrictions, as specified in the preamble RIBUN paragraphs 2, 3 and 4 as well as in column No. (5) of Table to the aforesaid SRO

The said notification was amended periodically and the impugned imported goods / raw material, i.e. Zinc Sulphate of PCT Heading 2833.2940, * Was inserted in the Sr. No. 4 of Table-I of the SRO 567(1)/2006, vide SRO 483(1)/2009 dated: 13-06-2009, through Budget 2009-2010 / Finance Act, 2009. Serial No. 4 of Table-I of the said covers raw materials used as an "Input for Poultry Sector". Hence, to avail this concession the importer shall qualify to be a manufacturer of poultry sector. The respondent also pleaded that apart from the exemption of custom duty, the appellant importer has also unlawfully availed the exemption of Sales Tax vide Sr. No. 5 of Table-II of SRO 1007(1)/2005 dated 26-09-2005. The exemption of Sales Tax was also subject to the condition that the raw material (ingredients) should be for manufacturers of poultry feeds. The contention of the appellant that the impugned goods were supplied to manufacturers has not been supported by the provisions of the said notification.

9. In view of the above, we are convinced that the appellant importer has no case on merits and availed the exemption unlawfully through self-assessment in terms of Sections 79(1) and 32(1) of the Act read with Sections 3(1)(b) and 6 of the Sales Tax Act, 1990. Accordingly, the impugned Order-in-Original is upheld and the instant appeal is dismissed.

10. Judgment passed and announced accordingly.”

The judgment appears to be rested on the due appreciation of facts, circumstances and applicable law and nothing has been articulated before this court distinguished or displaced the same. Despite repeated request learned counsel remains unable to articulate an question of law meriting adjudication in reference jurisdiction arising out of the impugned judgment, facts and circumstances. In view hereof, 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