

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No.1174 of 2023

Date	Order with Signature of Judge
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Hearing of case (priority)

1. For hearing of CMA No.2807/2023.
2. For hearing of main case.
3. For hearing of CMA No.2808/2023.

28.01.2026

Mr. Ghulam Nabi Shar, Advocate for the applicant.

Mr. Agha Shahid Majeed Khan, Advocate for the respondents.

On 04.12.2025, following order was passed:

"Learned counsel for the respondent adverts to the operative part of the impugned order in the original, which reads as follows:

"Having perused case record and heard both the sides, I observe and order as under 1, Case record clearly shows that the Respondent importer himself approached the Collectorate and sought permission under Section 79(1)(b) of CA 1969, and 27A of CA, 1969, ibid to mutilate and denature the impugned goods Such permission was also duly granted by the Collectorate to the import. In such circumstances, allegations of hoodwinking the Customs authorities are not tenable ii. After such permission was granted it was the responsibility of the Respondent importer to ensure that the impugned goods was duly mutilated accordingly. However, Importer contended that the GD was marked under yellow channel by WeBoc, over which he has no control and this can also be checked from the log report that he was in the process of mutilating the consignment As per record produced by the Collectorate, the goods were found as HR steel sheets of secondary quality and this was also confirmed by the two association as reproduced above iv. Respondent importer also contented that majority of the impugned goods (almost 60%) was mutilated. As it was a huge consignment of 40 containers, further mutilation was in process, and the cutting was abruptly stopped midway by the Collectorate. v. It is also observed that instead of getting the goods examined through the constituted steel committee of the Collectorate the Collectorate opted to obtain report from associations, which is violative of the laid down procedure 6 Based on the above-mentioned observations, it is ordered that the impugned goods of the Respondent importer will be reexamined under the supervision of constituted steel committee and in the presence of the Respondent importer or his representative in case it is established that majority of goods were mutilated (almost 60%), rest of the quantity will also be allowed to be mutilated in that case only and the goods shall be released as scrap after recovery of leviable amount of duties and taxes as scrap. Delay detention certificate may also be issued to respondent importer. Show case notice is disposed of in above terms"

He then referred to the impugned order and draws attention to the follows:

9 We have perused the case record, heard the departmental representative and given due deliberations to the law points involved in the matter. The crux of the case is

- a. Whether the goods declared by Respondent No 1 were in serviceable condition ie HR Steel Plates of secondary quality?
- b. Whether Respondent No 1 has committed an offence under Section 32 of the Customs Act. 19697

10. A critical perusal of the case record reveals that Respondent No.1 had made a request under first proviso to Section 79(1)(b) of the Customs Act 1969 This provision of law is reproduced below

"Provided that if, in case of used goods, before filing of goods declaration, the owner makes a request to an officer of customs not below the rank of an Additional Collector that he is unable for want of full information, to make a correct and complete declaration of the goods, then such officer subject to such conditions as he may deem fit, may permit the owner to examine the goods and thereafter make entry of such goods by filing a goods declaration after having assessed and paid his liabilities of duties taxes and other charges."

11. In light of the above provisions, Respondent No 1 applied for self. examination of the goods to ascertain the actual description of the goods Upon self-examination, he found that the goods were in serviceable condition and applied for mutilation under Section 27A of the Customs Act 1969. This section is also cited below:-

"27A Allowing mutilation or scrapping of goods. At the request of the owner to be made before the filing of goods declaration the mutilation or scrapping of goods as are notified by the Board, may be allowed in the manner as prescribed by the rules and where such goods are so mutilated or scrapped they shall be chargeable to duty at such rates as may be applicable to the goods as if they had been imported in the mutilated form or as scrapped:

Provided that the goods imported in new condition shall not be allowed scrapping and mutilation and shall be classified and chargeable to leviable duty and taxes as new goods."

12. Mutilation and scrapping of goods is covered under Rules 592 to 597 of the Customs Rules, 2001 The goods were accordingly mutilated and scrapped. Subsequently, Respondent No. 1 filed the subject GD for clearance of the scrap. Upon information, the goods were marked for examination where it was found that the goods were not completely scrapped whereas a huge quantity was found to be in serviceable condition.

13. The Appellant sought an expert opinion from the Pakistan Steel Melters Association (PSMA) and Pakistan Association of Large Steel

Producers (PALSP) who vide their letter dated 18.04.2020 confirmed that the goods were Hot Rolled Steel Plates of Secondary quality and that the goods cannot be declared as Iron & Steel Scrap In light of this report, the contravention was prepared against Respondent No. 1. The adjudicating authority, however, in the impugned Order, ordered that if the 60% of the goods have been mutilated then remaining 40% may also be allowed to be mutilated and cleared as scrap He also withdrew the charges of misdeclaration

14. In this backdrop, we would like to refer to the very essence of Section 32(1) of the Customs Act, 1969, which provides that:

"32. False statement, error, etc (1) If any person, in connection with any matter of customs-

(a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or

(b) makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer, or

(c) submits any false statement or document electronically through automated clearance system regarding any matter of Customs

knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty of an offence under this section"

15. The declaration made on the Goods Declaration was 'Iron and Steel Re-rollable Scrap. Through this GD the entire lot of 40 containers was self-assessed and duty and taxes was accordingly paid on scrap goods However, it was revealed through examination and the report of the Associations that the goods were HR Steel Plates of secondary quality The provisions of Section-32(1) clearly provide that if any person makes or signs or causes to be made or signed or delivers or causes to be delivered to an officer of customs any declaration, knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty of an offence under this Section. In the instant case, Respondent No. 1 was given ample opportunities by the Customs authorities under Section 79(1)(b) and 27A with the objective to facilitating him to get the goods scrapped and clear accordingly However, despite department's facilitation, he tried to play dirty by filing a wrong declaration to clear the HR Steel Plates in the garb of iron and steel re-rollable scrap by taking advantage of aforesaid provisions of law.

16. We tend to agree with the contention of the Appellant that how Respondent No. 1 was not sure about the nature of the goods which were imported against an L/C and contained in 40 containers. Even otherwise, when he was given permissions as laid down under the Customs law with the trust that he will comply with the law, he instead breached that trust and tried to get the serviceable items cleared in the garb of scrap His action is fully covered under the provisions of Section 32(1) of the Customs Act, 1969, as he did so knowingly and having belief that his declaration. description of the goods was false in a material particular.

17. In view of the foregoing deliberations, we are convinced that Respondent No. 1 has committed an offence under the provisions of Section 32(1) of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13 06 2009 and his act attracts penal clauses of Section 156(1) of the Customs Act, 1969. The impugned Order passed by the learned Respondent No. 2 is devoid of any material evidence. The impugned order also does not ponder upon the pre-requisites of Section 32(1) which are otherwise fulfilled while applied to the instant matter.

18. We, therefore, impose a penalty of 20% of the value of the offending goods on M/s Associated Rolling Milis (respondent No 1) under Clause (14) of Section 156(1) of the Customs Act, 1969, for violation of the provisions Section 32 of the Act ibid. The importer is ordered to pay amount of duties and taxes leviable on offending goods as presented at the time of filing of the instant GD.

19. Based on the above observations, we are constrained to allow appeal. Accordingly, the answers to Questions (1) and (1) are given in the affirmative in favour of Appellant and against the Respondents The impugned order is modified to this extent only

Learned counsel for the respondent states that the entire deliberation is evidentially in nature and does not give rise to any questions of law to be determined in reference jurisdiction. Learned counsel for the applicant seeks time to assist. To come up after four weeks."

Today, learned counsel for the applicant admits that the determination is factual in nature and does not identify any question of law. In view of the foregoing coupled with the law that the learned Tribunal is the last fact-finding forum in the statutory hierarchy, no question has been articulated to be addressed by this Court in reference jurisdiction. Therefore, this reference application is dismissed.

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

Asif