

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 182 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

- 1. For hearing of main case.
- 2. For hearing of CMA No.2145/2025.

02.10.2026

Sardar Zafar Hussain, advocate for the applicant.
Mr. Ghulam Nabi Shar, advocate for the respondent.

Following question is proposed for determination:

- A. Whether in the facts and circumstances of the case and considering the prohibiting of para 1(d) of SRO 499(1)/2009 dated 13.06.2009 issued under section 181 of the Customs Act, 1969, the learned Customs Appellate Tribunal has not erred in law by allowing re-export of the out-rightly confiscate banned Indian Origin goods as frustrated cargo under section 138 ibid when those banned goods were not brought into by reason of inadvertence, misdirection or intractability of the consignee?

Learned counsel for the applicant submits that the same is squarely covered in favour of the applicant by virtue of judgment in the case of Bilal Metals reported as 2025 PTD 508 relevant constituents whereof reproduced herein below:

“10. When the correspondence as above as well as the response given to the Adjudicating Authority is examined in juxtaposition with the findings of the Tribunal, it reflects that the Tribunal has allowed the Appeal by merely referring to section 138 of the Act and Rule 86 of the Rules in respect of Frustrated Cargo. In our considered view, the Tribunal has seriously erred in law as well as facts in passing the impugned order by treating the cargo as frustrated cargo inasmuch as apparently no case within the contemplation of Section 138 of the Act has been made out. Section 138 deals with altogether different situation, and it is the consignor/shipper, who must come forward when consignee has dishonored his commitment. In this case, it is the consignee i.e. Respondent, who has obtained order from the Tribunal for re-export of confiscated cargo in terms of Section 138 of the Act and that too after its claim on merits was rejected in adjudication proceedings. A consignee who has once dishonored its commitment, as stated in the memo of Appeal before the Tribunal, can no longer claim any title or lien on the goods of which re-export is being sought as Frustrated Cargo. It is only the in-charge of the conveyance i.e. 'vessel' or in alternative, the 'consignor/shipper', who can come forward with a proper request under section 138 of the Act. Moreover, as noted earlier, no such request was ever made by the Respondent or for that matter, by the consignor before the concerned Additional Collector or the Adjudicating Authority for treating the goods in question as "Frustrated Cargo" and to permit re-export of the same. In view of such position, the impugned order to this extent cannot be sustained. It is also of relevance to note that the Tribunal was not

hearing any appeal against rejection of an application under Section 138 of the Act, as in fact, there is no appeal provided against such an order. The Tribunal was hearing an Appeal filed under Section 194A(1)(a) of the Act against an order of outright confiscation of goods and imposition of penalty by the Adjudicating Authority under Section 179 *ibid*. Neither the said order had anything to do with grant or rejection of an application filed under section 138 of the Act; nor it could have been a matter of appeal so preferred by any of the aggrieved A parties. The Tribunal has seriously fallen in error while exercising such jurisdiction

11. As to placing reliance on the case of Driveline (*Supra*), by the learned Counsel for the Respondent, it will suffice to observe that material facts in that case were not akin to the case in hand. In that case firstly, the consignee had never claimed the Vehicle by filing a GD; rather, disowned it. Secondly, the consignor had come to the Customs seeking re-export of the Vehicle as the consignee had dishonored its commitment. And lastly, a finding of fact was recorded by the Court that it was a case of 'untraceability' of the consignee. Therefore, based on these distinguishing facts, the said judgment does not apply to the case in hand.

12. Lastly, insofar as the imposition of penalty is concerned, we may observe that the consignment in question was of battery scrap of different origins (Korea, U.A.E., Vietnam, China and USA) and was shipped from Bahrain as one consignment and, therefore, a possibility of shipment of batteries of different origins cannot be ruled out, as finally B the goods are scrap for all practical and legal purposes. It may also be of relevance to observe that the goods in question, even if they had been released, were not supposed to be directly consumed or sold in the market as the Respondent is running an approved Industry and uses battery scrap for extracting lead for its further use in various industries. In that case, though an order of outright confiscation is a correct approach as done by the Adjudicating Authority in terms of the proviso to Section 181 of the Act read with clause (d) of SRO 499(I)/2009 dated 13.6.2009. Moreover, (though not before the Adjudicating Authority, but at least) before the Tribunal it has been contended that the said portion of the confiscated goods is disowned / dishonored as it has been wrongly sent to the Respondent, whereas the consignor has shown its willingness to take it back as "frustrated cargo". In that case, the Respondent is no more concerned with the goods and upon it dishonor, sustaining such a heavy penalty to the extent of total value of offending goods would be too harsh and will not serve the ends of justice. The Respondent in this case, has already suffered due to the act of its consignor in shipping banned goods to it, therefore, while maintaining the outright confiscation of the disputed goods, the penalty is remitted.

13. In view of hereinabove facts and circumstances of this case, the proposed questions are rephrased as under:

- i. Whether in the facts and circumstances of the case the Tribunal was justified in setting aside the Order-in-Original and allowing re-export of the goods under section 138 of the Act when neither any application was filed before the concerned Additional Collector by the consignor or the in-charge of the vessel carrying such goods?
- ii. Whether in the facts and circumstances of the case the imposition of penalty upon the Respondent under clause 9 of Section 156(1) of the Act was justified?

14. Both the above Questions are answered in negative. Consequently, thereof, the impugned order of the Tribunal stands

set-aside, whereas in view of the answer to Question No.2 as above, the penalty imposed by the Adjudicating Authority stands remitted. This Reference Application is allowed accordingly. Let copy of this order be C sent to the Customs. Appellate Tribunal Karachi, in terms of subsection (5) of Section 196 of Customs Act, 1969.”

Learned counsel for the respondent does not dispel the fact that goods were in fact of Indian origin, however, states that it was inadvertent error which had been communicated to the department. He refers to the reproduction of the email dated 17.04.2025, in paragraph 16 of the impugned judgment. Learned counsel for the applicant states that the GD was filed on 05.04.2025 and as per ONO the illegal consignment was discovered upon examination. Learned counsel states that email under reference is prima facie a belated after thought and it finds no mention in original proceedings. He states that the prima facie prohibited items were imported into the country and the manner in which the same are to be dealt with is contained in the law, as interpreted by the Division Bench judgment of the High Court cited supra, He further states that the said judgment is squarely binding upon this court, therefore, in mutatis mutandis application thereof, the question be answered in favour of the applicant department and against the respondent. Plea is well reasoned. Order accordingly.

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(10) of the Customs Act, 1969.

Judge

Judge