ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 34 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

<u>Fresh case.</u>

1. For order on office objection No. 21 & 24.
2. For orders on CMA No. 353/2019. (Exp)
3. For hearing of main case.
4. For orders on CMA No. 354/2019. (stay)

<u>28.08.2026</u>

Mr. Ghulam Hyder Shaikh, advocate for the applicant.

This reference is pending since 2019 without any progress. Even notice has not been sought till date. The only issue agitated by the applicant is that of penalty. The penalty appears to have been imposed *inter alia* on account of tempering having been proven with corporate guarantee. Even though the quantum was reduced by the learned Tribunal, the reference has still been preferred challenging the same and has been kept pending for seven years. Learned counsel is also not aware of the reduced quantum of penalty has been paid.

In adjudication, the issue of penalty was addressed as follows:-

"16. Having gone through record of the case, charges leveled against the respondents, written replies/arguments on behalf of all sides also heard the verbal arguments during the course of hearing, I conclude and observe as under:

a). The allegations of tempering the corporate guarantee against respondents is apparent and established on the basis of evidences brought on record by the case making Collectorate. Stance of M/s. BGP Pakistan International that they are not aware of any tempering in the corporate guarantee by way of altering the period from two (2) years to (5) five years is neither acceptable nor has any force of law. Similarly, the excuse of having no knowledge of specific provisions of laws, rules and procedures is also very surprising especially in view of the fact that the respondent is a professional company working in Pakistan for the last two decades. 1, therefore, impose a personal penalty of Rupees 3,000,000/- (Rupee Three Million Only) on the respondent M/s. BGP Pakistan International under Clause 14 of Table 2 Section 156 (1) of the Customs Act, 1969. A personal penalty of Rupees 1,000,000/- (Rupee One Million Only) is also imposed on the respondent clearing agent M/s. Internal Moving and Trading Company under Clause 14 of Table 2 of Section 156(1) of Customs Act, 1969 as no plausible justification has been offered by the respondent clearing agent to rebut allegation leveled against him in show cause notice.

b) It was only and only due to timely action and detection by Anti-Corruption Cell of Federal Investigation Agency-Karachi that the illegal act of using fake and forged Corporate Guarantees by the respondents was unearthed. The efforts, role and timely action by the team of Anti-Corruption Cell of FIA is much worth appreciating."

The applicant remained unable to displace the aforesaid liability in appellate proceedings and no effort has been made to do the same before us today. Even though the quantum of penalty was reduced by the learned Tribunal, the same has still not been paid on the pretext of pendency of this reference for seven years.

The penalty has been imposed upon appreciation of evidence and no cavil in such regard has been articulated before us. Even otherwise no case is made out for de novo reappraisal of the matter in the presence of the evidentiary aspect of the matter. Since no question of law meriting invocation of reference jurisdiction has been raised, this reference application is dismissed in *limine* with pending applications being devoid of merits with costs of Rs.100,000/- to be paid in the account of High Court Clinic within one week hereof.

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(10) of the Customs Act, 1969.

Judge

Judge

Ayaz p.s.