IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 638 of 2024

Date	Order with signature of Judge

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Mohammad Abdur Rahman

APPLICANT	:	**Collector of Customs, Collectorate of Customs Appraisement (East)** **Through Mr. Khalil Ullah Jakhro, Advocate.**
RESPONDENT	:	**M/s. Bilal Metals Private Ltd.** **Through Mr. Ahmed Masood, Advocate.**
Date of Hearing	:	**16.12.2024**
Date of Judgment	:	**13.01.2025**

J U D G M E N T

Muhammad Junaid Ghaffar, J :-- Through this Reference Application the Applicant department has impugned judgment dated 27.07.2024 passed in Customs Appeal No.K-2482/2024 by the Customs Appellate Tribunal, Bench-III at Karachi; proposing following questions of law: -

i. *Whether the learned Customs Appellate Tribunal has not erred in law by not considering that under section 79(1) of the Customs Act, 1969 the respondent importer was required to make a correct declaration of the goods, and as such action initiated against the respondent importer under the provisions of section 16, 32(1), 79(1) Customs Act, 1969, read with Para-5 of Import Policy Order 2022 was within the provision of law?*

ii. *Whether the learned Appellate Tribunal has not failed to appreciate that importer/ respondent was guilty of mis-declaration under the provision of section 79(1) (b) read with section 32(1) of the Customs Act, 1969, as they tried to clear banned goods through wrong self-assessment i.e. by declaring origin of goods to be "Bahrain" when actually they were found to be of "Indian Origin", and were this rightly penalized under clause 1, 9, & 14 of section 156(1) of the Customs Act, 1969?*

iii. *Whether in the facts and circumstances of the case and considering the prohibiting provisions of para I (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 confiscated 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 untraceability of the consignee?*

2. Learned counsel appearing on behalf of the Applicant has contended that the Respondent had indulged into a gross mis-declaration of origin of the goods in question by importing banned goods of Indian origin and, therefore, the Tribunal has erred in setting aside the Order-in-Original, and allowing re-export of the goods in question as "Frustrated Cargo" in terms of Section 138 of the Customs Act, 1969 ("**Act**"); hence the proposed questions be answered in favour of the Applicant.

3. On the other hand, learned counsel appearing on behalf of the Respondent has contended that the Respondent is a regular importer of scrap and in this matter a consignment of battery scrap was imported from Bahrain, whereas there is no mis-declaration of quantity as alleged. Per learned counsel, the goods in question have been found to be of different origins and approximately 40% of the consignment is of Indian origin, whereas the case of the Applicant is that they have disowned the same as the consignor has agreed for its re-export. He has contended that the Tribunal was fully justified in allowing the request of the Respondent for re-export of the said portion of the consignment as "Frustrated Cargo" in terms of Section 138, ibid. According to him, the request for re-export in terms of Section 138 of the Act was submitted before issuance of Show Cause Notice and the confiscation of the goods, therefore, no exception can be drawn to the order of the Tribunal. In support of his contention, he has placed reliance on ***Driveline Motors Ltd***[1].

4. Heard learned counsel for the parties and perused the record. Record reflects that Respondent imported a consignment of battery scrap in 4 (four) containers with a total net weight of 108,070 kg and filed Goods Declaration "**GD**" (KAPE-HC-61084-15-03-2024). The origin of goods was declared as Bahrain based on Certificate of Origin issued by the Shipper of the goods. The

[1] Driveine Motors Ltd. v. Federation of Pakistan and others [2022 PTD 363].

GD was referred for examination by the Applicant department, which resulted in detection of 3150 pieces of battery scrap of Indian origin weighing 60,335 kg out of a total weight of 109700 Kgs. (i.e.55%), whereas the remaining quantity of 49365 Kgs was found to be of Korea, U.A.E., Vietnam, China & USA origin. A Show Cause Notice was issued and the Respondent contested the same on merits, whereafter, Order-in-Original was passed on 04.06.2024, whereby the disputed goods in question were outrightly confiscated under Clause 1, 9 & 14 of Section 156(1) of the Act for violation of Section 16, 32(1) and 79(1) ibid read with Para 5 of the Import Policy Order, 2022 notified vide SRO 545(I)/2022 dated 22.04.2022 and in addition thereto, a penalty equivalent to the value of the offending goods was also imposed on the Respondent in terms of Clause 9 of Section 156(1) of the Act. The Respondent being aggrieved preferred further appeal before the Customs Appellate Tribunal, which has been allowed by the Tribunal in the following terms: -

> *"8. Heard both the sides and examined the case record. The main question before us is whether the importer had knowledge of the various components of the scrap consignment and whether the subject impugned consignment was deliberately misdeclared. Needless to say scrap is an accumulation of various metal parts of different items / products / appliances of various origins. There is nothing on record to establish that an attempt has been made to import ban items or that the importer appellant was in the knowledge that the scrap consignment also contains Indian Origin batteries. The appellant also pleaded that the scrap consignments are invariably examined by the department, therefore, no deliberate attempt can be attributed to him. The counsel for the appellant also referred to this Bench's judgments i.e. Customs Appeal Nos. K-3865, K-7080, K-7081 of 2021 - M/s. Coastex Pvt Ltd and Customs Appeal Nos.K-1006 and K-1007 of 2023 M/s. Swiss Wire and Cables of similar nature where re-export was allowed.*
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> *9. The procedure for dealing with frustrated cargo as provided under Section 138 of the Customs Act, 1969 readwith Chapter VII of Customs Rules 2001, the relevant part of which reflects the qualification of frustrated cargo as per Rule 86 to 89 of Customs Rules, 2001. Section 138 of the Customs Act, 1969, coupled with Customs Rules 2001 stipulates conditions for meatment of goods as "Frustrated Cargo". Generally frustrated cargo is that cargo which is owned by the consignee on account of being different from the contracted specifications, models, standard etc. As such cargo is disowned by the consignee, the title of such goods is not shifted to consignee and remains in favour of supplier. The supplier, who is still*

rightful owner of imported goods is legally authorized to take back his goods. Perhaps, the Respondent ignored the definition of frustrated cargo, provisions of Import Policy Order, and past practice, therefore, his contention that the goods have been examined and found banned cannot be treated as frustrated cargo is legally untenable. The profile of the Appellant / Importer, the context of the case and Import Policy Order leads us to conclude that the case falls within the definition of frustrated cargo.

10. It has further been observed that the plea of re-export can be adjudged on the ground that, if the import itself is not contrary to any law and the supplier still holds the title of the goods, he can ask for re-export of the goods to any party in any country. The revised Kyoto Convention (RK) to which Pakistan is signatory also allows re-export of goods if consignee declines to accept it.

11. The appellant also relied on the judgment of Honourable High Court of Sindh in the case of Driveline Motors Ltd Vs. Federation of Pakistan and Others (2022 PTD 363) in which it was held that:-

> *"The impugned judgment provides in terms of Para 16 that even the consignee refused to accept the cargo (vehicle) vide its letter dated 09.03.2018 and has requested the customs authorities to re-ship the impugned car to the consignor in terms of Section 138 of Customs Act, 1969 read with the relevant Rules. The reasons perhaps are apparent that the consignor was not aware of the Import Policy Order, 2016, which does not permit import of vehicles which is older than three years. Thus, on account of dishonoring the commitments of the consignee, it became a frustrated cargo and the treatment in terms of Section 138 ought to have been provided by the Tribunal.*
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> *We not see any reason to interfere in the impugned judgment dated 20.05.2019 passed by learned Customs Appellate Tribunal, Karachi, and the only question/point of law on the basis of which this Reference was argued and as framed above is answered in affirmative. Resultantly, the Special Customs Reference Application is dismissed and in consequence thereof petition, which is filed for implementation of the impugned judgment, is allowed to the above extent".*

12. In view of factual and legal position discussed above, the impugned Order-in-Original to the extent of present appeal is hereby set aside. The fine and penalty imposed upon the appellant OP A are also remitted. The subject confiscated consignment is allowed to be re-exported at the cost of the appellant. The respondent is also directed to issue Delay and Detention Certificate to the appellant under Section 14-A(2) of the Customs Act, 1969."

5. Before proceeding further and responding to the argument of the Respondent's Counsel that since request for re-export of the banned goods was made prior to the issuance of show cause notice; hence, no exception can be drawn as to permitting re-export of the goods, it would be advantageous to refer to Section

138 of the Act read with Chapter VII (Rules 86 to 89) of the Customs Rules, 2001, ("Rules") which reads as under: -

> ***"138. Frustrated cargo how dealt with**.- (1) Where any goods are brought into a customs-station by reason of inadvertence, misdirection or untraceability of the consignee, [or where consignee has dishonored his commitments] [an officer of Customs not below the rank of Additional Collector of Customs] may, on application by the person-in-charge of the conveyance which brought such goods or of the consignor of such goods and subject to rules, allow [change of consignee name for clearance under section 79 or] export of such goods without payment of any duties (whether of import or export) chargeable thereon, provided that such goods have remained and are exported under the custody of an officer of customs.*
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> *(2) All expenses attending to such custody shall be borne by the applicant."*

Chapter VII
Frustrated Cargo

> *86. Frustrated cargo will be such goods as are brought into a customs-station by reason of inadvertence or mis-direction or where the consignee is untraceable or has dishonored his commitments and the consignor wishes to have it re-shipped to him.*
> *87. The master of the vessel or his authorized agent or the consignor of the goods himself or through his authorized agent shall apply in writing or electronically where Pakistan Customs Computerized System Customs Computerized System is operational to the Collector of Customs concerned for permission to re-export the frustrated cargo.*
> *88. On receipt of an application, the Collector of Customs shall satisfy himself with reference to the relevant import manifests and other documents that the goods are 'frustrated cargo' as provided in section 138 of the Act.*
> *89. If the Collector is so satisfied, he would permit re-export of the frustrated cargo under Customs supervision without payment of duties (whether of import or export) chargeable thereon.*

6. From perusal of the aforesaid provision it reflects that when any goods are brought into a customs-station by reason of *inadvertence*, *misdirection* or *untraceability* of the consignee, [or where *consignee has dishonored his commitments*], an officer of Customs not below the rank of Additional Collector of Customs may, *on application by the person-in-charge of the conveyance* which brought such goods or *of the consignor of such goods* and subject to rules, allow either a *change of consignee name* or *export of such goods* without payment of any duties chargeable thereon, provided that such goods have remained and are

exported under the custody of an officer of customs. This means that there are certain conditions which are to be met first before any application is allowed under Section 138 of the Act. Either the goods have been shipped to Pakistan inadvertently; or due to any misdirection. There could be another situation wherein the consignee is untraceable. And lastly, the consignee has dishonored his commitment to receive goods and has asked the consignor to take it back on its own. Similarly, Rule 86 provides that frustrated cargo will be such goods as are brought into a customs-station by reason of inadvertence or misdirection or where the consignee is untraceable or has dishonored his commitments and the consignor wishes to have it re-shipped to him. Then the *master of the vessel* or his *authorized agent* or the *consignor of the goods himself* or through his *authorized agent* shall apply in writing or electronically where Pakistan Customs Computerized System Customs Computerized System is operational to the Collector of Customs concerned for permission to re-export the frustrated cargo. Rule 88 further provides that the Collector of Customs then shall satisfy himself with reference to the relevant import manifests and other documents that the goods are 'frustrated cargo' as provided in section 138 of the Act and upon being so satisfied permit re-export of the frustrated cargo under Customs supervision without payment of duties (whether of import or export) chargeable thereon.

7. It may be pertinent to note that insofar as the contemporary law i.e. Indian Customs Act, 1962 and for that matter, the common law[2] is concerned, there are no specific analogous provision to section 138 of the Act. Over there, a generic and an akin definition to the maritime law is used. It mostly relates to settlement of disputes between the contesting parties who are variance as to whether any frustration clause can be invoked while interpreting the contract between them. It does not cater to

[2] Barring The Law Reform (Frustrated Contracts) Act 1943. This law does not deal with any procedure as to how customs must deal with frustrated cargo.

any such procedure for re-export of frustrated cargo. In such cases the frustration stops the contractual clock from running. Section 1(2) of the said Act provides for return of payments made before the frustration of the contract subject to a discretion in the court to allow such payments to be retained in whole or in part to cover the expenses incurred by the payee in performance of the contract. Similarly, section 1(3) gives the court the power to order a suitable payment to be made when one party has conferred a 'valuable benefit' on the other, due to its performance of the contract prior to the date of frustration. Such performance will only constitute a 'valuable benefit' in the light of the other party's position after the frustrating event[3]. The conditions therein are not that stringent in treating a cargo as "frustrated cargo" and perhaps it is of no help in deciding the controversy in hand. In shipping terms, frustrated cargo refers to goods or shipments that cannot be delivered to their intended destination due to unforeseen circumstances or obstacles. This might occur for various reasons, such as, Customs or Documentation Issues, Refusal of Delivery; Port or Border Restrictions; Carrier or Logistics Problems; Delays, misrouting, or other operational issues with the carrier which may impede the shipment, Force Majeure; Unclaimed Cargo. In terms of section 138 of the Act, a consignee is barred in law to act in any manner for re-export of the frustrated cargo, however, it is not so strictly, in international terms and a consignee can claim goods to be frustrated cargo under certain circumstances, but it depends on the specific situation and the terms of the shipping contract. The various instances in which frustration clause can be invoked in international maritime law are when delivery becomes impossible or the consignee cannot take it for several reasons, including sudden regulatory changes which have been imposed after the goods have been shipped; the goods are no longer fit for their intended use. At the same time the consignee cannot arbitrarily claim goods as frustrated cargo as it must prove

[3] BP Exploration Co (Libya) v Hunt [1974] 1 WLR 783; affirmed in [1983] 2 AC 352

Impossibility of performance. The consignee must not be responsible for the frustration (e.g., failure to prepare necessary documentation). So in essence, one needs to keep in mind this basic and important difference in the Act and Rules, viz a viz dealing with frustrated cargo generally.

8. In this matter, admittedly, Respondent's case is not that of misdirection, inadvertence or untraceability, but that of dishonor to the extent of confiscated goods on the ground that it is the fault of the shipper as scrap of Indian origin has been shipped, which is not importable in Pakistan. It may be noted that such restriction on the import of Indian origin goods was already in vogue when the goods were shipped to the Respondent. It may also be of relevance that insofar as invoking section 138 of the Act is concerned, for that a formal application must be filed before the Additional Collector of Customs, concerned, either by person in charge of the Vessel carrying such goods, or by the consignor. We may clarify that the Act or the Rules do not permit any other person to seek re-export of the same, whereas in cases wherein the consignee has dishonored his commitment, then the consignee cannot even act as an attorney or agent of the consignor. In fact, all four situations wherein a cargo can be deemed to be a frustrated cargo under section 138 ibid, there does not appear to be any role which could be assigned to a consignee in getting such permission of re-export officially from the Customs department. At best, in case of inadvertence or misdirection, may be, the person in whose name such shipment has been made can act as an attorney of the consignor to seek re-export of the goods. Nonetheless, since in this matter, this issue is not directly in hand, we need not delve upon this issue any further and leave it to be finally considered in an appropriate case. However, for the present purposes, it is a matter of record that no such application was ever filed before the Additional Collector concerned as mandated under the Act and the Rules,

either by the consignor, or even by the Respondent. In fact, the Respondent never took this plea until filing of Appeal before the Tribunal, and when the Order-in-Original is examined specially the response of the Respondent, it appears that before the Adjudicating Authority, no such plea, not even alternatively, was ever raised. It would be relevant to refer to the reply of Respondent to the Show Cause Notice, which reads as under: -

> *"02. Our clients recently imported 108.070 kgs of battery scrap from Bahrain vide GD No.KAPE-HC-61084- 15-03-2024. During examination the customs examination staff reported battery scrap of Korean, UAE, Vietnam, China and USA origins as well as 3150 pieces of battery scrap of Indian origin. The subject Show Cause Notice is in respect of 3150 pieces of battery scrap of Indian origin alleging our clients for importing goods in violation of legal provisions contained in sub-paragraph (2) of clause (a) of paragraph 5 of import policy order 2022 notified vide SRO.545 (1)/2022 dated 22-04-2022 and as to why Indian origin battery scrap may not be confiscated.*
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> *03. We have examined this issue in detail and find that customs staff has misunderstood the issue and have incorrectly invoked the provisions of sub-paragraph (2) of clause (a) of paragraph 5 of the Import Policy Order, 2022 as it applied to finished goods only and does not apply to scrap of batteries imported from any other country. As would be seen from the examination report of the shipment that battery scrap relating to several other countries has also been imported from Bahrain. It is unbelievable that the importers first shipped battery scrap from Korea, UAE, Vietnam, China and USA and India from these countries to Bahrain and then imported this battery scrap to Pakistan. In a similar case relating to M/S Sana Plastic Industries (Pvt) Ltd the Customs Appellate- Tribunal Bench-II, Karachi has held in Customs Appeal No.K-231/2020 that plastic printed film waste meant to be used for re-cycling or fuel purpose can not be held as goods of Indian origin.*
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> *04. Besides, Explanatory Notes provide that for the purpose of subheadings 8549.11 to 8549.19 "spent primary cells, spent primary batteries and spent electric accumulators" are those which are neither useable as such because of breakage, cutting-up, wear or other reasons nor not capable of being recharged. In this case battery scrap originating from several countries has been imported from Bahrain which is not useable for their original purpose as such batteries are not rechargeable and can only be used for extraction of metal for export as well as local industries.*
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> *05. It is also pertinent to inform that the goods are important in the shape and condition of scrap which contains batteries of several other countries and it was not our mens ria or malafide intention to import any prohibited goods.*
>
> *06. Since our clients are a reputable company its raw materials are released in terms of Entry 57 Part I of Appendix B of Import Policy Order, 2022 which specifically deals with release of waste and scrap of exhausted batteries of automobile if imported by industrial consumers subject to the condition that the importer provides to customs authorities (a) a certificate from the concerned Federal or Provincial Environment Protection Agency that they have adequate manufacturing facility and (b) authorization specifying quantitative entitlement for the import of waste and scrap of electric accumulators issued by the Federal or Provincial Environment Protection Agency. Our clients have been certified by the Provincial Environment*

Protection Agency for this purpose and authorized for import battery scrap up to 40,000 MT/Year.

07. In view of the explanations provided above, it is requested that Show Cause Notice may kindly be vacated being without any justification whatsoever and goods released at the earliest so that manufacturing schedules of our clients are not disturbed.

Thanking you,

For: Ideal Tax Management"

9. From perusal of the aforesaid reply submitted by the Respondent, it reflects that Show Cause Notice has been contested on legal as well as factual grounds; but it was never pleaded that the subject confiscated goods may be treated as "Frustrated Cargo" in terms of Section 138 of the Act. On the contrary, the act of the supplier, whereby Indian origin goods have been shipped, was justified on the ground that the shipment of such battery scrap always comprises different origins, with a further plea that it does not appeal to a prudent mind that first Indian origin goods are shipped to Bahrain and then to Pakistan. However, it is clear and appears to be an admitted position that before the Adjudicating Authority no such plea was ever raised. As to the correspondence between the Respondent and the consignor for re-export of the cargo so placed on record by the Respondent in this Reference Application, it seems that it is mere communication exchanged between the Respondent and the shipper of consignment as to some mistake in shipment of Indian origin batteries. It would be advantageous to refer to the said correspondence, which reads as under: -

RESPONDENT'S LETTER

"Date: 27-03-2024

M/s. Maple Leaf Packaging & Waste
Metallic Trading L.L.C.
United Arab Emirates.

Subject: Re-Exportation of Indian Origin Scrap Batteries

Dear Mr. Saleem Vohra,

We would like to inform you that the battery scrap shipment received from you includes batteries manufactured in India. According to Pakistan's import policy, Indian products, including scrap batteries, are prohibited from being imported.

We had placed an order for scrap batteries, however, upon inspection, we found that approximately 3,150 batteries were made in India. This is a violation of our contract. Consequently, we will be re-exporting these batteries.

Please respond at your earliest convenience, as we are facing significant issues at the customs station.

Best regards."

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SHIPPER'S LETTER

"Date: 02-04-2024

M/s. Bilal Metals (Private) Limited,
Karachi, Pakistan.

RE: ***Re-Exportation of Indian Origin Scrap Batteries***

Dear Mr. Furqan Pirani,

We were not aware of your import policy. You can re-export these scrap batteries back at your own expense. Please let us know when you will be shipping these scrap batteries to us.

Thanks"

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 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 & 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 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 sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Dated: 13.01.2025

JUDGE

JUDGE

Farhan/PpS