

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRAs 1085, 1086, 1087, 1088, 1089 and 1090 of 2023

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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- 1. For orders on office objection
- 2. For hearing of CMA No.2328/2023
- 3. For hearing of main case

25.11.2025

Mr. Shahid Ali Qureshi, advocate for the applicant
Jam Zeeshan Ali, advocate for respondent

These reference applications are pending since 2023 and the following questions were proposed for determination:

- 1. Whether the Valuation Advice offered by the Directorate General of Valuation in this case falls within the ambit of the Section 25A (1) of the Customs Act, 1969?
- 2. Whether the impugned Judgment passed by Honorable Customs Tribunal renders Section 25A (2A) of the Customs Act, 1969 as redundant?
- 3. Whether Honorable Customs Appellate Tribunal has misconstrued Sections 25(9), 25(11) and 25AA of the Customs Act, 1969 by ignoring the following statement in Valuation Advice made by the Directorate General Valuation that "after carefully considering aspects of the issue, based on reference values received from local refineries, international market prices as available on international publications like ICIS etc., import data, the Collectorate is therefore advised to finalize the GDs at the value provisionally assessed by the Collectorate".
- 4. Whether the Honorable Customs Appellate Tribunal has erred in law by stating that: 'Application average of ninety days data in absence of proof of under-invoicing like retrieval of original invoices of higher value or any confirmation from the principal /supplier of higher values is not acceptable.' Additionally, by stating the aforementioned, whether it has misconstrued and misinterpreted the Valuation Rules No. 107(a) and 109 under the Customs Rules 2001, put into effect vide. S.R.O. 450(1)/2001 dated 18.06.2001?

Per department's learned counsel six appeals have been decided by a common judgment; devoid of any independent deliberation and / or discussion. Even otherwise he states that the impugned judgment has been rendered in a perfunctory manner with nothing more than reproduction and ends with a dissonant conclusion. Learned counsel states that the same is not befitting the last fact-finding forum in the statutory hierarchy. Learned counsel for respondent disputes the aforesaid and relies upon the judgment reported as 2019 PTD 1776.

Heard and perused. It is considered illustrative to reproduce the entire discussion and findings, post reproduction, upon which all these judgments have rested, as follows:

05. Heard arguments from both the sides and examined the case record. At the outset, we are surprised to note that the Valuation department without giving any calculations arrived at the same value that was provisionally assessed by the clearance Collectorate, which in turn was the value given in a complaint forwarded by the FBR to the Collectorate.

Hence, application of relevant provisions of law to determine the value has been found to be missing. Application of average of ninety (90) days data in the absence of any proof of under-invoicing like retrieval of original invoices of higher value or any confirmation from the principal/supplier of higher values is not acceptable under the law. As regards the contention of the appellant that access to ICIS is not available because of costly membership fee, we are constrained to observe that keeping in view the huge quantum of imports of POL products in the country, the department should have access to ICIS directly or through Oil Marketing Companies (OMCs) operating in Pakistan. However, the Collector of Appeals in Para-7 of the impugned Order-in-Appeal has made a comparison with ICIS prices that proves that no under-valuation has been committed by the respondent.”

It is prima facie apparent that six independent appeals have been concluded vide one paragraph and then cyclostyled across the board.

The Appellate Tribunal is the last fact finding forum in the statutory hierarchy, therefore, it is incumbent to render independent deliberations and findings on each issue. The manner in which the appeals in general are to be addressed has been emphasized by the Supreme Court in *Pak Refinery vs. Barrett Hodgson* reported as 2019 SCMR 1626.

This High Court has consistently maintained that the Appellate Tribunal is required to proffer independent reasons and findings and in the absence thereof a perfunctory order could not be sustained. Reliance is placed on judgment dated 02.10.2024 in SCRA 1113 of 2023 and judgment dated 27.08.2024 in SCRA 757 of 2015. Earlier Division Bench judgments have also maintained that if the impugned order is discrepant in the manner as aforesaid, the correct course is to remand the matter for adjudication afresh. Reliance is placed on judgment dated 10.12.2024 in ITRA 343 of 2024.

We are of the considered view that the impugned judgment/s could not be considered to be speaking order/s and is / are *prima facie* devoid of relevant independent discussion and deliberation. The entire judgment comprises essentially of reproduction and is crowned with a cyclostyled conclusion. Therefore, no case is set forth to sustain the impugned judgment/s and the same are hereby set aside; the matter is remanded back to the Appellate Tribunal for adjudication afresh expeditiously; preferably within three months. Pending the aforesaid, it is expected that the department would not take any coercive action against the respondent arising herefrom.

A copy of this decision may also 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. Office is instructed to place copy of this order in connected matters.

Judge

Judge