IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") No. 562 of 2024

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

Applicant	**:**	**The Collector of Customs (West) Through Ms. Masooda Siraj along with Mr. Javed Hussain, Advocate.**
Respondent	**:**	**M/s. Seminar (Pvt) Limited Through Raj Ali Wahid Kunwar along with Mr. Kashif Khan, Advocate.**
Date of hearing	**:**	**23.01.2025.**
Date of Judgment	**:**	**23.01.2025.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant Department has impugned judgment dated 21.05.2024 passed in Customs Appeal No.K-22/2024 by the Customs Appellate Tribunal, Bench-II, at Karachi proposing various questions of law; however, while allowing this Reference Application vide our short order dated 23.01.2025, the following questions were rephrased and answered accordingly:-

A. Whether in the facts and circumstances of the case, the Tribunal while setting aside the Order-in-Original has correctly interpreted the proviso to sub-section (2) of section 25A of the Customs Act, 1969?

B. Whether in the facts and circumstances of the case, the Customs Appellate Tribunal was justified in remitting redemption fine and penalty imposed upon the Respondent under clause (14) of section 156(1) of the Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009?

2. Learned Counsel for the Applicant has contended that the impugned order has been passed in violation of the proviso to subsection (2) of Section 25-A of the Customs Act, 1969, ("Act") which provides that in case an invoice is retrieved from the consignment, the same shall be the transactional value for assessment purposes, notwithstanding the existence of a Valuation Ruling. According to him, the Tribunal has seriously erred in law by ignoring this provision and has instead accepted

the declared value as transactional value; whereas, the Respondent had indulged into misdeclaration of value warranting imposition of fine and penalty under the Act, and therefore adjudicating authority was fully justified in passing the Order in Original against the Respondent.

3. On the other hand, Respondent's Counsel has supported the impugned judgment and submits that the Applicant Department had acted in violation of proposition of law settled by this Court in ***Urooj Autos***[1] and ***Hasnain Qutbuddin***[2]; whereas, the Applicant department ought to have made further enquiry, including determining the market value of the goods instead of making assessment on the basis of the retrieved invoice. According to him the retrieved invoice was mistakenly placed in the container by the shipper and does not pertain to the Respondents consignment; hence, the Tribunal was fully justified in passing the impugned order and no exception can be drawn to such finding of fact and law which is based on the dicta laid down by this Court as above. He has also relied upon various other cases[3].

4. Heard learned Counsel for the parties and perused the record. It is the case of the Applicant that at the time of conducting examination of the goods in question, an invoice was retrieved from the consignment, which was much higher than the value declared by the Respondent; hence, a Show Cause Notice was issued. The examination report and endorsement to this effect reads as under: -

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[1] The Collector of Customs v. Urooj Autos (2022 PTD 1882)

[2] Special Customs Reference Application No. 347/2018 (The Collector of Customs v. Hasnain Qutbuddin)

[3] Collector of Customs v. M/s NETPAC and others (2023 PTD 710), M/s. Middle East Construction Co., Karachi v. the Collector of Customs, Karachi (2023 SCMR 838), Commissioner of Inland Revenue Lahore v. M/s Sargodha Spinning Mills (Pvt.) Ltd., Faisalabad and others (2022 SCMR 1082), Commissioner of Inland Revenue Lahore v. M/s Sargodha Spinning Mills (Pvt.) Ltd., Faisalabad and others (2022 PTD 1079), and an unreported judgment in SCRA No. 38/2022 (Collector of Customs v. M/s Salman Paper Product (Pvt.) Ltd.

> "Assessment Alert: **Misdeclaration of Invoice. Declared Invoice Value USD 2,267, Found Invoice Value USD 45,793.40**. Found invoice copy forwarded to Custom House Group. GD No. 62782-31-10-2023. Invoice Found. Examined the goods in the light of GD and found description: Textile Nylon Fabric in Roll, Assorted Colors, Net Weight: 2287 Kgs Approx, Brand: Not Shown, Origin: Taiwan. Checked weight 100% and found weight 2,350 kgs, vide Weight Slip No. 315892, dated 01-11-2023. Group may check all aspects in the light of ER/IPO/IPR conditions, etc. Images are attached"

5. The Respondent furnished response to the Show Cause Notice whereafter Order-in-Original was passed and the goods were confiscated with an option to redeem the same under Section 181 of the Act read with SRO 499(I)/2009 dated 13.06.2009 upon payment of fine equal to 35% of the Customs value with penalty of Rs.500,000 (Rupees five hundred thousand only). In addition, thereto, the assessment was ordered to be made based on retrieved invoice in terms of proviso to sub-section (2) of Section 25A of the Act. The Respondent being aggrieved preferred appeal under Section 194-A of the Customs Act, 1969 before the Customs Appellate Tribunal and through impugned order, the appeal of the Respondent has been allowed and the action taken by the Applicant department has been set-aside. The relevant finding of the Tribunal reads as under:-

> "8. We have perused the case record, heard both parties and given due deliberation to the facts and law involved therein. The main question revolves around the following questions: -
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> i. Whether the value has been suppressed by the Appellant as against the retrieved invoice? and
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> ii. Whether the invoice retrieved from the Container is the actual invoice to be relied upon for Customs assessment purposes within the contemplation of Section 25 of the Customs Act, 1969, read with pronouncements of higher judicial fora?
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> 9. A transaction value is bound by the bilateral contracts effected between the buyer and the seller. The value for Customs assessment is governed by Section 25 of the Customs Act, 1969. Primary method of valuation is covered under Section-25(1) of the Customs Act, 1969, which reads: -
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> > "price actually paid or payable for the goods when sold for export to Pakistan."
>
> 10. In the instant case, the transaction value of the goods is US$ 2,366.62 as shown on the invoice uploaded by the Appellant. The case has been made out on

the basis of a retrieved invoice from the container which mentions the value of my the consignment as US$ 45,793.40.

13. In the above backdrop, we are concerned with the applicable value for assessment purposes when an invoice of higher value is retrieved found from the consignment. In fact, if the Respondent department had doubt about the correctness of the transaction value in the wake of the retrieved invoice, they could have opted for secondary methods of valuation to check the authenticity of the transaction value ice. Identical Goods Value Method, Similar Goods Value Method, Deductive Value Method, Computed Value Method or Fall Back Method of Valuation as contained under Subsection (5) to (9) of the Customs Act, 1969. Indeed, none of the valuation methods provides for the determination of value on the basis of an irrelevant invoice provided so retrieved. In the instant matter, the Respondent department has not bothered to evaluate the declared value on the touchstone of Section 25 of the Customs Act, 1969. The Respondent department has even not bothered to give any plausible argument for rebuttal of the stance of the Appellant to reject its transaction value and accept the value of the retrieved Invoice. Thus, arriving at a value; which is in utter violation of the laid down provisions of law and rules, is against the pronouncements of the higher judicial fora.

14. The reliance of the Respondent department is on the judgment of hon'ble Supreme Court of Pakistan in the case of Junaid Traders vs. Additional Collector of Customs (Appraisement-1), (2012 SCMR 1876). The hon'ble Apex Court had the declared value as against the higher value of the retrieved invoice on the ground that the uploaded invoice had been found as 'bogus' and accepted the value mentioned on the retrieved invoice. In the instant case, no evidence has been provided by the Respondent department to establish that the uploaded Invoice was bogus, fake or fictitious.

15. We would also like to refer to the judgment of hon'ble Sindh High Court in the case of Collector of Customs vs. Urooj Autos (SCRA No. 491 of 2016 wherein the hon'ble Court, in response to the following question framed by Applicant Collectorate, had answered in the negative:

> “Whether in terms of Rule 389 of the Customs Rules, 2001, and the law settled by the Hon'ble Supreme Court of Pakistan in the case of Junaid Traders v. Additional Collector of Customs, Appraisement-1 (2012 SCMR 1876) the Appellate Tribunal has erred in law to scrap the actual value invoice found from the respondent importer's container?"

16. The Hon'ble Court has aligned with the observations of the Tribunal in the above-cited case that when a clarification letter was provided by the supplier of the goods, it was incumbent upon the department to get the goods verified from the market in spite of assessing the goods on the basis of an invoice retrieved from the container. The Tribunal further observed that the method of assessment and the imposition of the duty and the taxes was not in accordance with law, as mentioned either under Section 25 or under Section 25A of the Act, 1969, and thus the importer was not liable to be punished under the provisions of Section 32 and 156(1)(14) of the Act, 1969. Likewise, in the instant case the supplier has categorically held that the value as declared by the Appellant was the correct value, hence, in light of the above judgment, the supplier's clarification has a legal strength.

17. From the above deliberations, we are of the considered view that once a second invoice comes into the picture, and it differs from the declaration of the importer, the same does not become an authentic source for assessment rather It

creates doubts about the truthfulness of the declaration of the importer. Now, it is the duty of the department to sift the wheat from the chaff i.e. to collect the evidence that lead to the genuineness of the particulars of the retrieved invoice rather than merely relying on it blindly. The Customs authorities must keep in mind that when on the one hand an unjust enrichment applies to a taxpayer, on the other hand, illegitimate revenue collection applies to the government functionaries as well. If a transaction is genuine and is duly supported by all requisite documents then the same cannot be questioned merely on the basis of a document retrieved from the container, without establishing its authenticity within the parameters of the provisions of Qanun-e-Shahadat Order, 1984.

21. Further, as regards the charge of misdeclaration is concerned, we observe that the charge of misdeclaration can only be made on the declaration of the importer if the same is against the law and norms prevailing in the importing country. The importer is not responsible for the act or omission of the exporter. If the exporter/foreign supplier has mistakenly placed a wrong invoice, the same cannot be made the basis for implicating the Appellant for the charge of misdeclaration. Rather the same should be scrutinized on the basis of legal provisions as well as evidence available on record as discussed supra.

22. After due deliberations in the foregoing paras, we are of the considered view that the subject impugned Order has been passed on a misunderstanding of the valuation law and is devoid of merits in light of the observations made in the preceding paras Hence, we are left with no option but to allow the instant appeal and set aside the Impugned Order in toto. Accordingly, the answer to both the questions framed above are given in the negative in favour of the Appellant and against the Respondent Department.

23. As regards Customs Appeals Nos. K-23/2024 filed by the Clearing Agent M/s Roman Traders. we do not find any violation of provisions of Sections 32, 208 and 209 of the Customs Act, 1969, on account of the allegation of connivance with the importer for evasion of duty and taxes by misdeclaration of value of the Subject Product, therefore, the charges of connivance as well as the imposition of penalty on the Clearing Agent are also declared to be unlawful, hence remitted in full, Accordingly, this appeal is also allowed.

24. Judgment passed and announced accordingly."

6. From perusal of the finding of the Tribunal as above, it seems that it is entirely based on the observations of this Court in ***Urooj Autos*** (Supra). The question that whether the said observations of this Court in the cited case are of any relevance for the present purposes or not will be dealt with later in this opinion; however, insofar as the case of the Respondent is concerned it is not in dispute that the invoice retrieved from the container was admitted to the extent that the same was placed in the container by the shipper of the consignment. It is further case of the Respondent that when the shipper was

approached, it was informed that the same was placed in the container inadvertently. This response is available in the reply furnished by the Respondent before the adjudicating authority and also placed before us by the Respondent through statement dated 17.01.2025 and reads as under:-

> "The Collector of Custom
> Adjudication, Karachi
>
> Hearing Date 07-12-2023
>
> **Subject: Response to Show Cause Notice No: CN-1798276-08112023**
>
> All allegations against the Respondent in respect of the existence of an irrelevant invoice are vehemently denied as being false, frivolous and without any substance. The Respondent never violated any of the provisions of the Customs Act 1969. In the instant case, the respondent imported the subject consignment against a valid Bank contract. After arrival of the vessel, the respondent received all the related documents from the contracted Bank, i.e. copy of commercial invoice, packing list, bill of lading, certificate of origin, EIF form. Thereafter the documents were handed to the nominated Clearing Agent. He after detailed scrutiny filled Goods Declaration. All particulars of the imported goods were declared truly as per contract and the documents received from the Concerned Bank. After adding 15% insurance and others levies, the Value was declared as US$ 2366.82. On physical examination, the concerned officer reported that an invoice showing the higher value US$ 45,793 is found from the container. As the transaction was realized through normal banking channel and the concerned bank issued EIF form for the declared amount therefore the purported found invoice has no relevance with the actual invoice. It is submitted that on perusal of both the invoices it is observed that a remarkable difference in both invoices can be observed.
> The font of both invoices is quite different. In column 2 of the uploaded actual invoice, it is written as "scheme of colors" whereas other details are not mentioned, whereas in found invoice these words are written. ***After information regarding the existence of the found invoice, the respondent at once contacted the shipper. After detailed inquiry, he informed the importer that "during the logistics and shipping process their staff erroneously attached a wrong invoice instead of actual transactional Value US$ 2267.00.*** This is ample proof that the respondent never misdeclared the value. Considering the provisions of Section 25(1), the declared value is actual transactional value. The found invoice has no relevance to this invoice.
> The imported goods are assessable as per VR. No sign and stamp are affixed on the found invoice by the concerned officers nor any musheernama is prepared.
> If we consider the Value as per found invoice this comes to US$ 20 per kg whereas Value as per VR is maximum 11$ per kg. This is also proof that the found invoice has no relevance to the imported goods. Under the aforesaid circumstances, the element of "mens rea" is absent. In view of the above stated facts and legal provisions, it is humbly prayed to the honorable Adjudicating authority to vey graciously vacate the SCN in favor of the Respondent as the same is issued without considering the legal provisions of law."

7. From perusal of the above response of the Respondent, it appears that firstly it is the case of the Respondent that the goods in question were imported against a valid Bank Contract;

however, no such Bank Contract has been placed on record; nor any details of such a Bank Contract are mentioned on the invoice relied upon by the Respondent; nor it has been so disclosed in the Goods Declaration. It further appears that the value declared in the invoice relied upon by the Respondent was US$ 2366.82; whereas the value shown on the retrieved invoice was US $ 45,793.00 (a difference of 1919%). The Respondent also disputed as to the contents of the invoice and the difference which according to it justifies that the said invoice does not belong to the Respondent. In reply it is further stated that after receiving information regarding existence of an invoice in the container, the shipper was contacted and after detailed enquiry, *"the Shipper informed the Respondent that during the logistics and shipping process, their staff erroneously attached a wrong invoice instead of the actual transactional value invoice"*. Though not relevant or of any significant consequence; but still, there is nothing on record as to the said statement of the shipper. No document whatsoever has been shown to us which can verify any such stance of the shipper so relied upon by the Respondent. From this response, nowhere the Respondent has denied that an Invoice was retrieved from the consignment; rather such fact is admitted that the retrieved invoice was placed by Respondents shipper, and it is not its case that it was done so by anyone else. Therefore, the question that the retrieved Invoice was not the actual transactional value invoice is then to be investigated on the basis of this admitted fact and the available record. From perusal of the retrieved invoice and the invoice produced by the Respondent, it reflects that the contention of the Respondent that the said invoice does not belong to the Respondent is misconceived and not maintainable. The retrieved Invoice is in the name of "Design Mecca Ltd. A6, 4F HOP Hing Building, 704 Castle Peak Road, Kowloon, HK TRL:852-28-49-47-71", which Company is in fact the shipper of the goods in question in the

name of present Respondent. This is clearly reflected from Bill of Lading available on record; wherein, the name of the Shipper and the Consignee as well as notify party reads as under:-

SHIPPER DESIGN MECCA LTD. A6, 4F HOP HING BUILDING, 704 CASTLE PEAK ROAD, KOWLOON, HK TRL:852-28-49-47-71	
CONSIGNEE SEMINAR PVT LTD. SEMINAR ROAD, NEKAPURA, SILAKOT, PAKISTAN TEL: 92523542603 ATTN: MR. TAHIR NTN NO. 19-02-0679554-4**	
NOTIFY PARTY SAME AS CONSIGNEE	
VESSEL/VOYAGE NO. YM WELLBEING/0027W	
PORT OF LOADING KAOHSIUNG, TAIWAN	PLACE OF RECEIPT KEELUNG, TAIWAN
PORT OF DISCHARGE KARACHI, PAKISTAN	PLACE OF DELIVERY KARACHI, PAKISTAN

8. The date of the invoice as well as the number is same and not only this, the name of the Vessel carrying the cargo is the same. It is also a fact that the Marks & Nos. as mentioned on both the invoices are same and reads as under.

Marks & Nos
SEMINAR (PVT) LTD
P.O. NO ; 4
23
ORDER NO : DM30708
FABRIC CODE:
W23NP3001MB
SYLE: S.P. FABRIC
COLOR CODE:
QUANTITY: YDS
R/NO:
MADE IN TAIWAN

9. When the documents including the invoice(s) as well as the Bill of lading are perused, it clearly establishes a nexus with each other. It reflects that initially the goods were shipped from Taiwan by the manufacturer in the name of a Company in Hong

Kong, which is ***Design Mecca Ltd. A6, 4F HOP Hing Building, 704 Castle Peak Road, Kowloon, HK TRL:852-28-49-47-71***, which is the consignee in the retrieved invoice, whereas the said Company in Hong Kong has apparently sold / shipped the goods to the present Respondent as is reflected from Bill of Lading on record bearing No. 3KHI23093575 S/O No: C704 (a house bill of lading issued by M/s Wagon Martime S.). This company in Hong Kong is the seller to the Respondent and this link of the two invoices in question along with the Bill of Lading establishes that the retrieved invoice is the actual invoice showing the value on which the goods have been sold and is the true transactional value. Therefore, mere denial by the Respondent that this invoice was placed inadvertently does not appear to be correct; nor justified and the burden as to the invoice being that of the Respondent has not been discharged fully. Therefore, it is in this context that the value mentioned on the retrieved invoice has to be looked into for assessment purposes and the relevant provision dealing with this situation is the proviso to subsection (2) of Section 25A of the Customs Act, 1969, which reads as under:-

> **[25A. Power to determine the customs value**.- (1) .....
> (2).....
>
> Provided that where the value declared in a goods declaration, filed under section 79 or section 131 or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under sub-section (1), such higher value shall be the customs value.]

10. It is not in dispute that for assessment of the goods in question, a Valuation Ruling issued under Section 25A of the Act, exists. In fact, in the impugned order at Para 10(iv), the Tribunal has itself recorded this fact as to the contention of the Respondent that in any case the assessment of the goods in question ought to have been made on the basis of Valuation Ruling. Section 25A under which a Valuation Ruling is issued, starts with a non-obstante clause, and provides that

notwithstanding the provisions contained in Section 25, the valuation of goods imported and exported shall be determined by the Director Valuation by following the assessment methods as laid down in Section 25 of the Act. It further appears that prior to the year 2017 i.e. un-amended Section 25A was silent to the effect as to how an assessment has to be made if an invoice of a higher value is retrieved from the consignment; or if the declared value is higher than the value already determined and notified under Section 25A ibid. However, in 2017 a proviso has been added, which provides that where the value declared in goods declaration or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under subsection (1) of Section 25A, then such higher value shall be the customs value. Therefore, the arguments of the Respondent's Counsel that even if an invoice is retrieved from a consignment, the assessment ought to have been made on the basis of methods provided under Section 25 of the Act is misconceived as in the instant matter, undeniably there exists a Valuation Ruling of the goods in question. In fact, the Applicant Department was barred by law to resort to the assessment methods so provided under Section 25 of the Act. This argument might have been attractive if the Valuation Ruling of the goods was not in field.

11. As to placing reliance on the judgments of this Court by the Respondents Counsel, firstly, the facts of the present case are materially different because the retrieved invoice has been admitted having been placed in the consignment by the Shipper at Taiwan; but a plea has been taken that it was done inadvertently. These facts are not germane to the facts available in the said cases so relied upon by the Respondent's Counsel. Nonetheless, we have examined and perused the cased relied upon by the Respondents Counsel and with respect are unable to subscribe to the views so taken in these judgements as they are not supported by the Act or any rules in

field. In ***NETPAC*** (Supra), firstly, it was not proved or established that the retrieved invoice had in fact any relation or concern with the Importer; hence, any finding recorded therein, has no relevance with the case in hand. Even otherwise, the finding at Para 13 of the said judgment to the effect that "it was incumbent upon the department to substantiate their assessment by making confirmation from the shipper or ascertain its market value or to examine the value declared by similar consignments as in absence of these parameters the retrieved invoice loses its significance" does not find any support from the relevant provision of the Act as discussed hereinabove. The law is clear in this regard and does not require the department to carry out any such exercise, once an invoice has been retrieved. It is only that whether the invoice is applicable and has relevance and concern with an Importer or not. There can't be a situation that despite retrieval of an invoice and its direct relevance with the Importer, any other method of assessment can be applied except making assessment based on the said invoice. We may further observe that for the present purposes the relevant provision of law is not under challenge before us. In the case of ***Hasnain Qutbuddin*** (Supra), there was a finding of fact that the department had miserably failed to correlate the difference between the two invoices. We are afraid in that case further observations of the Court are not relevant for the present purposes, whereas again the Court had made similar observations as in the case of ***NETPAC*** (Supra) which we have already discussed hereinabove. The case of ***Urooj Autos*** (Supra) again is not relevant as despite certain observations by the Court as to the merits of the case as well as law, the case was decided against the department primarily on the premise that the Tribunal had determined the facts finally, which could not be interfered by this Court in its' Reference jurisdiction. Therefore, any reliance on this case is of no help wither. Even otherwise, post Finance

Act, 2024, the relevant provision i.e. Section 196[4] of the Act, under which a Reference Application can be filed, has been materially amended and now this Court has to decide even a question of fact arising out of order of the Tribunal; therefore, the ratio of the cases cited by the Respondent's Counsel is not applicable insofar as the present case and facts available are concerned.

12. On the other hand, Respondent's case is fully covered by the observations of the Honorable Supreme Court in the case of ***Junaid Traders***[5] wherein, the Hon'ble Supreme Court has been pleased to hold that once an Invoice has been retrieved from the container then it is a case of misdeclaration and concealment of material facts, and therefore, the Customs Authorities while making assessment and initiating further proceedings were fully justified in law.

13. Lastly, the Tribunal in its impugned order at Para 21 and 22 has allowed Respondents Appeal in totality, whereas at best the case of the Respondent was that the assessment ought to have been made on Valuation Ruling, existence of which is not denied nor was under challenge at any stage of the proceedings by way of any Revision under Section 25A of the Act, hence, on this ground as well the impugned order cannot be sustained.

14. In view of hereinabove facts and circumstances this Reference Application was allowed through a short order on 23.01.2025 by answering the questions as above in ***negative***; in favour of the Applicant and against the Respondent, and by

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[4] [196. Reference to High Court. -- (1) Within thirty days of the order of the Appellate Tribunal under sub-section (3) of section 194B, the aggrieved person or any officer of Customs not below the rank of Deputy Collector or Deputy Director, authorized by the Collector or Director in writing, may file a reference, in the prescribed form, along with a statement of the case, before the High Court, stating any question of law or a **"mixed question of law and fact"** arising out of such order:

[5] Junaid Traders v. Additional Collector of Customs 2012 SCMR 1876

setting aside the impugned order. These are the reasons thereof. Let copy of this order be issued to the Tribunal in terms of section 196(5) of the Act.

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