

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Spl. Custom Reference Application No.41 of 2025
a/w. SCRA Nos.42 to 57 of 2025

Date

Order with signature of Judge

- 1) For orders on office objection No.27.
- 2) For hearing of main case.
- 3) For hearing of Misc. No.414/2025.

17.04.2025.

M/s. Sardar Zafar Hussain, Kainat Larik and M. Saddique,
Advocates for Applicant.
M/s. Salman Akram Raja, Basil Nabi Malik and Bilal
Ahmed Khan, Advocate for Respondent.
Mr. Muhammad Abbas, Advocate for Respondent.

Through these Reference Applications, the Applicant / Department has impugned a common judgment dated 19.12.2024 passed in Custom Appeals Nos.K-2424/2024 and other connected matters by the Customs Appellate Tribunal at Karachi, whereby the Appeals of Respondent / Importer in SCRA Nos. 41 to 48 of 2025 and that of Respondent Custom Agent in SCRA No.49 to 57 of 2025 have been allowed. The Appellant has proposed the following questions of law in SCRA No. 41 of 2025 and SCRA No. 49 of 2025:-

Proposed Questions of Law in SCRA No.41 of 2025

- "A. Whether the learned Customs Appellate Tribunal has erred by not considering that the importer has availed the concessionary import quota on import impugned goods under Sr. 9 of Table D of Part-II of 5th schedule to the Customs Act, 1969.?
- B. Whether the learned Customs Appellate Tribunal has erred in law by not considering that the concessionary import of said packing material is admissible only for (in house use) in the manufacturer of specified pharmaceutical substances as approved by the DRAP and is not allowed in case of (toll manufacturing) vide Para-II (1) of preamble to Table D of 5th schedule to the Customs Act, 1969.
- C. Whether the Learned Customs Appellate Tribunal has erred in law not to consider that under Section 79(1) of the Customs Act, 1969 the respondent was required to declare the actual and correct particulars of the goods. As such the action initiated against the respondent under the provision of section 32(1), (2), 79(1) & 209 of the Customs Act was within the provision of law?

- D. Whether in the view of established facts and relevant provision of law the findings of Appellate Tribunal are not perverse for non-reading / or mis-reading of the available record to the detriment of the revenue and the consequent undue benefit to the respondent / importer?"

Proposed Questions of Law in SCRA No.49 of 2025

- "A. Whether on the facts and circumstances of the case the learned Customs Appellate Tribunal has erred in Law by not considering the proposition of law that in terms of Rule 101 & 102 of the Customs Rules 2001, if any wrong doing done willfully by the clearing agent in connivance of his principle than the clearing agent shall also be liable for punishment in terms of Section 32, 209(3) & clause 14 of Section 156(1) of the Customs Act, 1969?
- B. Whether the learned Customs Appellate Tribunal has erred in law by not considering the proposition of law that the submission of wrong documents to the Customs by a person, including the Customs agent, attracts the provision of Section 32 & 32-A of the Custom Act, and clauses (14), (14-A) & (95-A) of Section 156(1) *ibid*.
- C. Whether in the light of facts & circumstances of the case, the learned Customs Appellate Tribunal has erred in law to ignore the established facts which had proved that the respondent clearing agent with the connivance of the importer had mala fide attempted to make a heavy loss to the national exchequer?
- D. Whether in the facts & circumstances of the case the learned Customs Appellate Tribunal has erred in law by not considering the proposition of law that in the presence of first provision to Section 79(1) of the Customs Act, 1969, every clearing agent is required to file a correct declaration under any given circumstances?"

Heard learned counsel for the parties and perused the record. For our own reasons (and not that which have prevailed upon the Tribunal in allowing the Appeals of the Respondent) to be recorded later and subject to what is set out therein by way of amplification or otherwise, the proposed questions are answered against the Applicant and in favour of the Respondent and as a consequence thereof these Reference Applications are hereby ***dismissed*** with pending Applications.

Office to place copy of this order in connected SCRA's.

ACTING CHIEF JUSTICE

J U D G E

Nasir/