

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Customs Reference Application ("SCRA") Nos. 39 of 2009

Date	Order with signature of Judge
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Present: *Mr. Justice Muhammad Junaid Ghaffar, CJ*  
*Mr. Justice Agha Faisal, J*

**APPLICANT** : **M/s. Hinopak Motors Ltd,**  
Through Mr. Khalid Jawed Khan,  
Advocate along with Mr. Uzair Shoro,  
Advocate.

**RESPONDENT** : **Model Customs Collectorate**  
**(Appraisement) Customs House,**  
**Karachi**  
Through Ms. Masooda Siraj, Advocate.

**Date of hearing** : **26.08.2025.**

**Date of Judgment** : **26.08.2025.**

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, CJ:-** Through this Reference Application the Applicant has impugned Order dated 06.01.2009 passed in Customs Appeal No. K-641 of 2007 by the then Customs, Excise and Sales Tax Appellate Tribunal, Bench-I, Karachi proposing various questions of law and vide Order dated 17.03.2009, notice was ordered on the following three questions of law: -

- i. Whether the Tribunal has himself interpreted wrongly applied Section 25 of the Customs Act, 1969 read with Customs rule 2001 to the facts and circumstances of the case?
- ii. Whether the Tribunal has erred in law in holding that the principles of law laid down by this court in case of M/S PAK SUZUKI MOTORS LIMITED VS. COLLECTOR OF CUSTOMS (2006 PTD 2237) are not applicable to the facts and circumstances of the case of the applicant?
- iii. Whether the Tribunal as well as the fore below has erred in assuming that corrigendum dated 3.1.2003 was a continuation / part of payment demand cu show cause notice dated 26.3.2002?

2. Heard learned Counsel for the parties and perused the record. Before Question Nos. 1 & 3 could be dealt with, we have, at the very outset, confronted the Respondent's Counsel as to the proposed Question No.2 as according to the Applicants Counsel the issue in hand stands settled by this Court and she has not been able to assist us in any manner as to any distinguishing facts in the case in hand. It has been alleged in the instant matter that the discounts, so availed by the Applicant, were not disclosed in the Commercial Invoice or Proforma Invoice; and therefore, was to be added in the value for the purpose of assessment in terms of Section 25(3) of the Customs Act, 1969; whereas, in the case of ***Pak Suzuki Motors*** (supra) exactly the same facts were present as recorded by the Court at Pages 2239, 2240, 2241 and 2244 of the reported judgment. Perusal of the same reflects that in that case as well, the discount was given by the foreign supplier and was not disclosed or mentioned in the invoices; nor duties were paid on such discounts. However, the Court had ordered and accepted the transactional value declared by the said importer. The learned Division Bench has interpreted the provisions of Section 25(3) *ibid* relied upon by the department and came to a definite conclusion that notwithstanding such discounts, the transactional values could still be accepted. We may also note that we have not been assisted by the Respondents Counsel that whether the said judgment was further impugned or not. The Tribunal on the other hand has observed that the case of

***Pak Suzuki Motors*** (supra) was not applicable as the facts were different; however, the Tribunal appears to have been misdirected as such finding of the Tribunal does not appear to be correct.

3. In view of hereinabove facts and circumstances of this case, the proposed question No.2 is answered in favour of the Applicant and against the Respondent, whereas remaining questions need not be answered. As a consequence, thereof, the impugned order of the Tribunal, including orders of the forums below are set-aside and this Reference application is ***allowed***. Let a copy of this order be sent to the Customs Appellate Tribunal at Karachi under Section 196(5) of the Customs Act, 1969.

**CHIEF JUSTICE**

**J U D G E**

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