ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 476 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of CMA No. 2556/19.
2. For hearing of main case.
3. For hearing of CMA No. 2557/19.

03.12.2025

Mr. Khalid Mehmood Rajper, advocate for applicant.

Per learned counsel, the controversy herein is squarely covered vide earlier order of division bench of this Court dated 27.10.2025 passed in SCRA No. 1202/2023, which is reproduced hereinbelow:-

> **"27.10.2025**
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> Sardar Zafar Hussain, advocate for the applicant alongwith Mr. Muhammad Siddiq, advocate and Mr. Tariq Aziz, Assistant Collector, Customs
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> Following questions of law were proposed for determination:-
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> 1. Whether on the facts / circumstances of the case the learned Appellate Tribunal while deciding the appeal has considered the submission of the appellant/Collectorate as the original invoice found during the physical examination from the container?
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> 2. Whether in terms of Rule 389 of the Customs Rules, 2001, and the law settled by the Honourable Supreme Court of Pakistan in the case of Junaid Traders v/s. Additional Collector of Customs, Appraisement-1 (2012 SCMR 1876) the Appellate Tribunal has not erred in law to ignore the actual value invoice found from the respondent importers' goods?
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> 3. Whether the less payment of duty / taxes made through self-assessment by declaring lower invoice value i.e. US$ 8379.49/- instead of found invoice value i.e. 62,688.42/-difference is US$ 54308.93 (648%) is a mis-declaration within the meaning of Section 32(1)(c) and Section 181 of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13.06.2009?
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> Learned counsel had argued that this a *found invoices* case and the matter is squarely covered in favour of the department by virtue of judgment of the Supreme Court in the case of *M/s. Collector of Customs (West) v. M/s. Seminar (Pvt.) Ltd. and others* reported as 2025 PTD 695.
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> Courier tracking report is placed on record, which demonstrates that service has been effected upon the respondent.

The judgment relied upon by the applicant's counsel observes as follows:-

> "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:-
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> **[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 subsection (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 1964 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 Traders5 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 Paras 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 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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> Learned counsel states that the aforementioned edict has been rendered by Division Bench judgment of this Court and is squarely binding in view of the Multiline principles. He states that in *mutatis mutandis* application of the reasoning so illumined, this Court may be pleased to answer the questions framed in favour of the applicant department and against the respondent. He further seeks that as consequence thereof the reference may be allowed and the impugned judgment be *set aside.* Order accordingly.
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> A copy of this decision may also be sent under the seal of this Court and signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

It is sought that in view of the binding nature of the edict in the case cited *supra,* it would be just and proper for this reference to be disposed of for same reasons and upon same terms as aforesaid. Order accordingly.

A copy of this order may 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.

Judge

Judge

Ayaz p.s.