IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Special Custom Reference Application Nos. 1264, 1265, 1266, 1267, 1268, 1269 & 1270 of 2023

(The Collector of Customs, Karachi VS M/s. Ali Co. and Sons, Karachi)

Date of hearing: 14.09.2026

Date of decision: 17.09.2026

Applicant(s): Through Mr. Agha Shahid Majeed Khan, Advocate.

Respondents: Through Dr. Shahab Imam, Advocate.

O R D E R

DR. SHAH NAWAZ MEMON, J.: — These seven reference applications, maintained under section 196 of the Customs Act, 1969 (hereinafter referred to as the "Act"), impugn a Rectification Order dated 20.03.2023 of the Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeals Nos. K-44 to K-50 of 2022 (Rectification Application Nos. Nil), whereby the rectification applications were allowed and the Order-in-Appeal Nos. 958 to 964 of 2022 dated 12.01.2022 passed by the Collector of Customs (Appeals), Karachi was set aside. They arise out of one and the same order and turn upon identical questions, and are accordingly disposed of by this common judgment.

I. THE CONTROVERSY

1. The dispute is a short one in compass, although its history is long. The respondent imported consignments which it declared as "Decorative MDF Wooden Panel". The Department, upon examination, found them to be "MDF Door Skin" and assessed them at the customs value fixed for door skins by a valuation ruling issued under section 25-A of the Act. Both descriptions fall under the same PCT heading and attract the same rate of duty; what turns upon the description is not classification but the applicability of the valuation ruling, and with it the customs value at which the goods are to be assessed.

2. The Tribunal, by its judgment dated 23.08.2022, upheld the Department. This Court, in the earlier round, found that the Tribunal had attributed to a laboratory report a description which the report did not bear, and, without answering the questions then proposed, remitted the matter by directing the filing of rectification applications. Upon that remit the Tribunal reversed itself and allowed the appeals. The Department is before us to say that the Tribunal, in doing so, exceeded the jurisdiction which rectification confers and decided the matter without reasons; the respondent answers that the Tribunal has settled a factual controversy which this Court, in its reference jurisdiction, may not reopen.

II. FACTS OF THE CASE

3. Between October and December 2020 the respondent filed seven Goods Declarations, namely GD No. KPPI-HC-24580 dated 03.10.2020, GD No. KPPI-HC-30700 dated 24.10.2020, GD No. KPPI-HC-31850 dated 28.10.2020, GD No. KPPI-HC-32273 dated 31.10.2020, GD No. KPPI-HC-32279 dated 31.10.2020, GD No. KPPI-HC-46006 dated 17.12.2020 and GD No. KPPI-HC-47018 dated 21.12.2020, declaring the imported consignments as "Decorative MDF Wooden Panel" of Malaysian origin under PCT heading 4411.9390. The declared value was US$ 365 per cubic metre which, reduced to weight, worked out at about US$ 0.32 per kilogram. Duty and taxes were paid upfront upon that self-assessment in terms of section 79(1) of the Act, and the consignments were referred for examination under section 80.

4. Upon examination the goods were reported by the examining officers to be "MDF Door Skin", and photographic images were uploaded with the examination reports. On that footing the Collectorate applied Valuation Ruling No. 1227 dated 30.11.2017, issued under section 25-A of the Act, which at Serial No. 2 of the Table in Paragraph 6 fixes the customs value of Primered Moulded Fibre Door Skin at US$ 0.62 per kilogram, and re-assessed the consignments at that value under section 80(3) read with section 25-A(2).

5. At the respondent's own request the goods were released provisionally under section 81 against securities, and samples were referred to the Industrial Analytical Centre of the H.E.J. Research Institute of Chemistry, University of Karachi. Two reports followed, dated 18.11.2020 and 17.02.2021. The samples were forwarded by the Collectorate under the description "Premiered Moulded MDF Door Skin". Under the head "Identification" the laboratory recorded "White Premier (one side) MDF moulded designed panel sheet", and under the head "Interpretation" it stated:

> *"In the light of tests carried out, the given sample entitled 'Premiered Moulded MDF Door Skin' is found as MDF moulded designed panel sheet."*

6. The measured thickness of the samples was recorded as 3.74 mm, 2.88 mm and 2.68 mm, the length as 214.5 cm, the width as 102.0 cm and the density in the range of 814 to 829 kilograms per cubic metre. Each report carries a printed disclaimer that sampling was not performed by the laboratory's own staff, that the results proceed upon the assumption that the sample provided is representative of the consignment, and that the report is not to be used in legal proceedings.

7. The respondent invoked the constitutional jurisdiction of this Court in C.P. No. D-6446 of 2020. By interim order dated 15.12.2020 encashment of the securities was stayed, and by order dated 16.02.2021 the petition was disposed of with a direction to the Collectorate to pass a speaking and appealable final assessment order under section 81(5) read with section 80 of the Act after affording an opportunity of hearing. That order came on 29.03.2021,

finalising the assessment at US$ 0.62 per kilogram and directing encashment of the securities.

8. The respondent's appeal failed before the Collector of Customs (Appeals), who by Order-in-Appeal Nos. 958 to 964 of 2022 dated 12.01.2022 held that the Department had made the correct classification and valuation, and that the importer, if aggrieved by the valuation ruling, ought to have approached the appropriate forum. Seven appeals were then preferred to the Tribunal.

9. By judgment dated 23.08.2022 a Division Bench of the Tribunal comprising Mr. Abdul Jabbar Qureshi, Member (Judicial-I) and Mr. Abdul Basit Chaudhry, Member (Technical-I) dismissed the appeals, holding:

> *"In view of all above, we hold the view that the impugned goods are MDF moulded door skin or designed panel sheet as mentioned by the HEJ lab in its test report but in no way MDF Wooden Panels as declared by the appellant. We are constrained to hold that the department's stance is correct and the goods have been correctly assessed vide S.No. 2 of the Table in Para 6 of Valuation Ruling No. 1227 of 2017. The instant appeals are accordingly dismissed."*

10. The respondent thereupon filed Special Customs Reference Applications Nos. 547 to 553 of 2022 before this Court. A Division Bench, by order dated 29.11.2022, recorded that of the questions proposed only the first was pressed, noticed that the Tribunal had attributed to the H.E.J. report a description which that report did not bear, and disposed of the references without answering the questions, in these terms:

> *"Perusal of the record clearly reveals that the CAT, while passing the impugned order, has seemingly fallen into error as the Custom Appellant Tribunal while relying upon the HEJ report has mentioned that the imported consignments were of 'MDF' Moulded Door Skins or Designed Panel Sheets, whereas the HEJ report clearly categorizes the consignment as 'MDF Moulded Designed Panel Sheet' which admittedly are two different and distinct items, though as per both the learned counsel their PCT heading and rate of duty are the same. We under the circumstances are of the view that since there appears to be a factual error, it would be in the fitness of things, for the applicant to file appropriate rectification applications before the CAT within shortest possible time and the CAT, after receiving the said applications to decide the matter in accordance with law, after hearing the parties, and in this pursuit may call for more technical reports to support its view, or to give qualified reasons for differing from the opinion of HEJ."*

11. Rectification applications were accordingly moved in December 2022. They were heard on 09.03.2023 by a Bench comprising Mr. Abdul Basit Chaudhry, Member (Technical-I) and Mr. Hafiz Ansar ul Haq, Member (Judicial-I), and were disposed of by the impugned order dated 20.03.2023. After reproducing the order of this Court, the whole of the Tribunal's reasoning is contained in a single paragraph:

> *"02. The rectification applications have been re-examined in the light of the above observation of the Hon'ble High Court of Sindh and also have provided fresh opportunity of hearing to both the sides. The HEJ report has been re-examined in detail and it has been found, inter-alia, that thickness of the panels has been determined as 2.68mm and 3.74mm which further supports the finding of HEJ lab that the goods are 'MDF Moulded Designed Panel Sheet'. The counsel for*

the appellant highlighted this point and contended that door skin thickness ranges from 0.8mm to 1.0 mm. Hence, the impugned goods are as per declaration and not door skin. The DR could not rebut this argument."

12. Paragraph 3 then reads: "In view of all above, the instant rectification applications are allowed and the impugned Order-in-Appeal is set aside." The order was served upon the applicant on 30.03.2023, and this reference followed.

III. THE QUESTIONS PROPOSED

13. The applicant Department has invited this Court to answer the following four questions, which are reproduced verbatim from the memorandum of the Reference Application:

1) *"Whether the learned Appellate Tribunal is justified to expand the scope of rectification for altogether altering its judgment despite the point that the Honourable High Court had remanded back the cases to the learned Appellate Tribunal with specific directions to re-examine the matter in the light of HEJ reports only?"*

2) *"Whether the Appellate Tribunal can change the whole order / judgment already passed under the mandate of 'rectification' in terms of Section 194-B(2) of the Customs Act, 1969?"*

3) *"Whether the importer has not declared the imported goods as Decorative MDF Wooden Panels instead of the MDF Door Skins just to escape the application of Valuation Ruling No. 1227 dated 30.11.2017 and whereas the circumstances of the case and literature relating to imported goods confirm that the impugned goods are the same in terms of constituent material, sizes, images and use?"*

4) *"Whether the findings of the Appellate Tribunal are not based on mis-reading / non-reading of record and whether the Appellate Tribunal has not erred in law and facts by just relying on the respondent importer's statement and not proper appreciation of the substantive evidence like examination reports by the appropriate officers of Customs and test reports of the technical experts?"*

IV. THE SUBMISSIONS AT THE BAR

14. Mr. Agha Shahid Majeed Khan, learned counsel for the applicant Department, was heard at some length. He advanced two lines of attack. The first was jurisdictional: that once a case has been argued and decided the Tribunal becomes *functus officio*; that the power conferred by section 194-B(2) of the Act is confined to the rectification of a mistake apparent from the record and cannot be employed to recall, review or reverse a considered adjudication; and that, in any event, no notice of intention as contemplated by the proviso to that sub-section was issued. The second was upon the merits: that the respondent had itself declared the goods under PCT heading 4411.9390, the very heading under which the Department assessed them; that the examination reports and the photographic images taken by the examining officers establish the goods to be door skins; and, taking us to the clearance data, that goods of the same description were declared as door skin by other importers earlier and continue to be so declared and cleared today, at a thickness of 3 mm. Learned counsel went further, and placed before us technical material to show that the thickness criterion upon which the learned Tribunal proceeded is unknown alike to the trade and to the Harmonized System; that there exists no test or standard by which a door

skin is distinguished from a designed panel sheet upon thickness alone; and that the range of 0.8 mm to 1.0 mm asserted at the Bar before the learned Tribunal answers to nothing in any published specification. Upon that footing he prayed that the question, being a technical one, be referred for determination to the Classification Committee constituted by the Federal Board of Revenue.

15. Dr. Shahab Imam, learned counsel for the respondent, met the jurisdictional objection head on. He submitted that it was this Court which, by its order dated 29.11.2022, had sent the matter back to the Tribunal and had itself directed the filing of rectification applications; that the Tribunal thereafter heard the matter afresh, as it was required to do, and settled the factual controversy; and that this Court, sitting in reference jurisdiction under section 196 of the Act, cannot interfere with a factual determination made by the Tribunal, which is the final authority upon questions of fact. Learned counsel further objected to the technical material produced by the applicant Department, contending that for this Court to look at it would be to receive fresh evidence, which it may not do in this jurisdiction. When asked upon what material the learned Tribunal had proceeded in fixing the range of thickness of door skins at 0.8 mm to 1.0 mm, learned counsel was unable to point to anything upon the record, and maintained that the evidential aspect of the matter was in any event beyond the reach of this jurisdiction.

16. In rebuttal Mr. Agha Shahid Majeed Khan submitted that the Tribunal has given no independent reasons whatever; that it has decided the matter merely upon the strength of the laboratory report; and that it has not brought to bear the rules of interpretation of the Harmonized System upon the description of the goods.

17. We have considered the submissions of learned counsel for the parties, perused the impugned order, the judgment of the Tribunal dated 23.08.2022, the Order-in-Appeal and the Order-in-Original, and examined the record placed before us.

V. THE RECTIFICATION JURISDICTION AND THE PLEA OF FUNCTUS OFFICIO

18. Section 194-B(2) of the Act, as it stood at the relevant time, empowered the Appellate Tribunal, at any time within one year from the date of the order, with a view to rectifying any mistake apparent from the record, to amend any order passed by it under sub-section (1), and required it to make such amendment if the mistake was brought to its notice by the Collector of Customs or by the other party to the appeal. The proviso forbade an amendment having the effect of enhancing the assessment, reducing a refund or otherwise increasing the liability of the other party unless the Tribunal had given that party notice of its intention to do so and a reasonable opportunity of being heard.

19. Upon the scope of such a power the law is settled and admits of no argument. A power of rectification is not a power of review, and still less a power of appeal. In *Commissioner of*

Income Tax, Karachi v. Abdul Ghani[1] the Hon'ble Supreme Court, dealing with the cognate provision of section 156 of the Income Tax Ordinance, 1979, stated the test in these words:

> *"Rectification under section 156 of the Ordinance is permissible if the error is apparent, obvious and floating on the face of the judgment and can be rectified without long drawn arguments and proceedings for appreciating facts and interpretation or application of any provision of law."*

20. Their Lordships went on to hold that where the Tribunal had decided an issue "after application of mind, consciously and giving plausible and satisfactory reasons for the same", its conclusion "cannot be said to be a mistaken or inadvertent finding or an error floating on the face of the judgment so as to be rectifiable"; that in the absence of any error apparent upon the record the Tribunal "ought to have refused to exercise jurisdiction"; that in rectifying an order free from such error it had "in fact acted as Appellate Forum against its own order, which is not sustainable in law"; and that the Tribunal "could not sit on its own judgment/order unless an error apparent or floating on the record could be pointed out". The principle was restated by the Hon'ble Supreme Court last year in *Chaudhary Steel Furnace v. Commissioner Inland Revenue*[2], where it was held that although a mistake apparent upon the face of the record may be rectified, the power "does not enlarge the scope of the Tribunal to render a complete and altogether different decision, independent of the earlier view".

21. That the very same test governs section 194-B(2) of the Customs Act, 1969 was settled by this Court in *Pakistan State Oil Company Ltd. v. Collector of Customs, Karachi*[3]. The argument that the scope of section 194-B(2) is wider than that of section 156 of the Ordinance of 1979 was there advanced and was rejected, the words of the two provisions being the same. The rectification application in that case was found, in substance, to seek a modification of the Tribunal's order, no mistake floating upon the face of the record having been identified; and it was held that a wrong order which has been made "deliberately and with conscious application of mind" cannot be termed an order suffering from a mistake apparent from the record. The judgment of the learned Tribunal dated 23.08.2022 was, whatever be its merits, an order of precisely that character.

22. The converse must equally be borne in mind, for the rule is not that a Tribunal may never undo what it has done. Where the earlier order rests upon a fact patently and demonstrably wrong, or leaves out of account material which was already upon the record, or overlooks a conclusive pronouncement which was already upon the field, the error is apparent within

[1] *Commissioner of Income Tax, Karachi v. Abdul Ghani* [PLD 2007 SC 308 = 2007 PTD 967].

[2] *Chaudhary Steel Furnace v. Commissioner Inland Revenue, Sialkot Zone, Regional Tax Office, Sialkot* [2025 SCMR 1505]. The identical situation, a Tribunal reversing its own order upon a rectification application moved by the taxpayer, came before the Lahore High Court in *Commissioner Inland Revenue v. Mehran Business International (Pvt.) Ltd.* [2023 PTD 1687], where it was held that a mistake which is not patent and obvious from the record is not rectifiable, and that the Tribunal may not assume the jurisdiction of review in the garb of rectification.

[3] *Pakistan State Oil Company Ltd. v. Collector of Customs, Karachi* [2005 PTD 1128]. To the same effect, see *Commissioner Inland Revenue, Karachi v. E.N.I. Pakistan (M) Ltd., Karachi* [2013 PTD 508], where it was held that the mistake must be so obvious and apparent from the record that it strikes immediately upon the face of it, and must not be something to be established by a long drawn process of reasoning upon issues on which two views are conceivable, the power not being available as an alternate or substitute for appeal, revision or review; and *Mrs. Nighat Tariq v. Deputy Commissioner of Income-Tax* [2006 PTD 324], where it was held that a considered and deliberate finding, even one which may not survive in appeal, is not a mistake apparent on the record. The principle was reiterated by the Lahore High Court in *Bisma Textile Mills Ltd., Lahore v. Federation of Pakistan* [2016 PTD 1790], where it was held that the rectification jurisdiction "could not be assumed to set aside a well-reasoned order which was passed after due deliberation, application of mind and due consideration of relevant provisions of law and the applicable case-law".

the meaning of the section, and the Tribunal not only may but must correct it, even though the correction alters the result.[4] In *Paracha Textile Mills* this Court, approving the statement of the law in *Commissioner of Income Tax v. Mithalal Ashoke Kumar* [158 ITR 755], put the matter thus: although the Appellate Tribunal has no power to review its own order, "yet it can certainly correct its mistakes by rectifying the same in case it is brought to its notice that the material which was already on record before deciding the appeal on merits was not considered by it". What divides the permissible case from the impermissible one is therefore not the magnitude of the correction, but the character of the error. A mistake which announces itself upon the face of the record may be rectified; a conclusion reached upon a considered view of the evidence, however contestable it may be, can only be appealed against. It is by that measure that the impugned order falls to be judged.

23. It may be noticed in passing, though it does not govern this case, that the rectification power has since been narrowed still further by amendment.[5] The amendment confines what was always a confined power; it does not alter its character.

24. Were the impugned order the product of a rectification jurisdiction assumed by the Tribunal of its own motion, the authorities just cited would dispose of this reference in a sentence. But that is not this case, and Dr. Shahab Imam is right to say so. The rectification applications were filed because this Court directed that they be filed. The order dated 29.11.2022 was passed in the presence of the Department, which was represented by counsel; it identified an error; it directed the respondent to move the Tribunal; and it directed the Tribunal, upon receiving those applications, to decide the matter in accordance with law after hearing the parties. The Department did not seek a review or recall of that order, nor did it move the Hon'ble Supreme Court against it. The order has long since attained finality, and it bound the Tribunal.

25. It follows that the Tribunal did not clothe itself with jurisdiction. It exercised a jurisdiction which this Court had directed it to exercise, and the Department, having stood by while that direction was made and having allowed it to become final, cannot now be heard to say, by way of collateral attack in a later reference, that the direction was one which could not lawfully be complied with. The plea of *functus officio* therefore fails at the threshold.

26. The complaint founded upon the proviso to section 194-B(2) fails for a shorter reason. The notice of intention for which the proviso provides is a protection for the party whose assessment stands to be enhanced, whose refund stands to be reduced, or whose liability stands otherwise to be increased. The amendment made here reduced the respondent's

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[4] *Commissioner (Legal Division), Large Taxpayers Unit, Karachi v. Paracha Textile Mills Ltd., Karachi* [2010 PTD 1016], where this Court upheld the recall by the Tribunal of its own order, the earlier order having recorded facts which did not pertain to the appeal at all, such facts being apparent and patent upon the record; it was observed that the mistake need not be arithmetical or clerical and may be substantive or procedural, subject always to notice and hearing to both sides. The same view was taken by the Lahore High Court in *Kot Addu Power Company Limited v. Commissioner Inland Revenue, Regional Tax Officer, Multan* [2025 PTD 77], where a conclusive pronouncement of the superior Courts upon a question of jurisdiction had escaped the attention of the Tribunal when it passed the original order.

[5] Section 194-B of the Act was substituted by the Finance Act, 2024. The power of rectification now stands confined, by sub-section (4), to clerical and arithmetical errors and errors arising from accidental slip or omission apparent from the record, and is exercisable within fifteen days of the communication of the order.

liability, not the Department's; and the Tribunal has recorded in terms that it "provided fresh opportunity of hearing to both the sides", which the departmental representative attended. Neither want of notice nor prejudice is made out. There is a further answer. Jurisdiction is conferred by statute and can never be created by the consent of a party; but where the forum possesses jurisdiction, a mere procedural lapse or irregularity does not vitiate its order, and is capable of waiver by a party who takes part in the proceedings without objection.[6] The record before us discloses no objection taken by the Department upon that score when it appeared and was heard.

VI. WHETHER THE TRIBUNAL KEPT WITHIN THE REMIT

27. A jurisdiction conferred by a remit is, however, a jurisdiction bounded by that remit. The question is therefore what the order dated 29.11.2022 asked the Tribunal to do, and whether the Tribunal did it.

28. The error identified by this Court was a precise one. The Tribunal had recorded that the H.E.J. report described the goods as "MDF Moulded Door Skins or Designed Panel Sheets", whereas the report described them as "MDF Moulded Designed Panel Sheet". This Court did not hold that the goods were not door skins, nor could it have done so; it held that the Tribunal had attributed to the report words which the report did not contain. And it indicated with some care the two courses by which the Tribunal might resolve the difficulty: it might "call for more technical reports to support its view", or it might "give qualified reasons for differing from the opinion of HEJ".

29. The Tribunal adopted neither course. It called for no technical report. It did not differ from the laboratory and therefore gave no reasons for differing from it; upon the contrary, it purported to apply the report. What it did instead was to take up a wholly new ground, namely thickness, and to decide the appeals upon it.

30. That reasoning cannot bear the weight placed upon it. The Tribunal observed that the measured thickness of 2.68 mm and 3.74 mm "further supports the finding of HEJ lab that the goods are 'MDF Moulded Designed Panel Sheet'". With respect, it does nothing of the kind unless it is first established that thickness distinguishes a designed panel sheet from a door skin, and, if it does, at what point. The laboratory said nothing whatever upon that subject. The only material upon the point was the assertion of learned counsel for the respondent, recorded by the Tribunal, that "door skin thickness ranges from 0.8mm to 1.0 mm". That assertion was supported by no report, no standard, no trade literature and no data. The Tribunal accepted it because "the DR could not rebut this argument".

31. A finding of fact reached in that manner is not a finding of fact at all. The *ipse dixit* of counsel is not evidence, and the failure of an opponent to contradict an unproved assertion

[6] *Messrs Kasbati Builders v. Income Tax Appellate Tribunal* [2006 PTD 1088], where it was held that a forum which lacks jurisdiction altogether cannot be invested with it by consent or acquiescence, but that where the forum has jurisdiction to pass the order, a mere procedural lapse or irregularity does not vitiate it and is curable and subject to waiver.

does not convert the assertion into proof. Indeed, the applicant Department has placed material before us to show that no test or standard exists by which goods of this kind are distinguished upon thickness alone, and that the range asserted before the learned Tribunal corresponds to nothing in any published specification. Dr. Shahab Imam objected to our so much as looking at that material, upon the ground that this Court, in its reference jurisdiction, does not receive evidence. The objection is well founded, and we have given effect to it: we do not act upon the material, and we decide nothing upon the question whether a test of that kind exists. But the principle for which the objection contends is the very principle which the impugned order offends. If a proposition of technical fact may not be received in this Court without evidence, it cannot be acted upon in the learned Tribunal without evidence either. Nor was the field empty. There was upon the record the examination report of the officers of Customs, with photographic images of the goods; there was the material relating to comparable clearances; and there were the physical dimensions recorded by the laboratory itself. The Tribunal adverted to none of it. It decided a disputed question of description upon a single untested proposition advanced from the Bar, and upon nothing else.

32. The reliance placed upon the laboratory report also calls for a word. The report is a report of chemistry and physics. The sample was forwarded to the laboratory by the Collectorate under the very description then in dispute, "Premiered Moulded MDF Door Skin"; the laboratory recorded that the source of information was the "customer requisition letter and provided sample"; and it stated in terms that sampling had not been performed by its own staff, that its results proceed upon the assumption that the sample is representative, and that the report is not to be used in legal proceedings. The laboratory was never asked, and did not purport to answer, whether the goods are door skins in the trade, or whether they answer the description in the valuation ruling. A label attached to a sample by the sender does not become a determination, and a laboratory's choice of descriptive words does not displace the statutory exercise. The identification of imported goods for the purposes of assessment is a function of the customs hierarchy and, upon appeal, of the Tribunal, to be performed by reference to the tariff, the relevant section and chapter notes, the General Rules for the Interpretation of the Harmonized System, the commercial understanding of the goods, and the whole of the material upon the record. The Hon'ble Supreme Court has recently described an exercise of that kind, in *K.S. Sulemanji Esmailji and Sons (Pvt.) Ltd.*[7], as one of the most basic functions in the context of the import and export of goods, a specialised job and technical in nature, essentially requiring expertise and the taking of multiple factors into consideration, among them the examination of the goods, of all the relevant documents, and of the classification aids and the technical literature.

33. The significance of that description, for the present purpose, is not that it obliges any particular authority to be consulted, for no question as to the correct heading arises in this

[7] *Additional Collector of Customs, Model Customs Collectorate of Appraisement (West), Custom House, Karachi v. K.S. Sulemanji Esmailji and Sons (Pvt.) Ltd., Karachi* [2025 SCMR 121 = 2025 PTD 260].

case. Its significance lies elsewhere. A forum called upon to decide a question of that character must do one of two things. It must either obtain the technical assistance which the question demands, or it must give reasons of its own, drawn from the material upon the record, which support the conclusion it reaches and which explain its departure from any expert material before it. What it may not do is neither. That, upon analysis, is the very choice which the order of this Court dated 29.11.2022 had placed before the learned Tribunal, and it is a choice which the learned Tribunal declined to make. It was precisely because the laboratory report could not by itself settle the controversy that this Court had contemplated further technical material.

34. There is a further difficulty, and it goes to the heart of the matter. This controversy is not, in truth, a controversy about classification. Both competing descriptions fall under the same PCT heading 4411.9390, and both learned counsel told the Bench on 29.11.2022 that the heading and the rate of duty were the same. What divides the parties is the applicability of Valuation Ruling No. 1227 of 2017, made under section 25-A of the Act, and in particular whether these goods answer the description at Serial No. 2 of the Table in Paragraph 6 of that ruling. The Tribunal never set that description against these goods at all. To that extent Mr. Agha Shahid Majeed Khan's complaint that the interpretative rules of the Harmonized System were not applied is only partly to the point, the heading itself having never been in issue; but his larger complaint, that the Tribunal determined the description of the goods without ever addressing the criteria by which that description falls to be determined, is well founded.

35. Finally, we are constrained to notice an incongruity in the operative part of the impugned order. The order under rectification was the Tribunal's own judgment dated 23.08.2022. Section 194-B(2) empowers the Tribunal to amend an order passed by it under sub-section (1), and nothing else. Yet paragraph 3 of the impugned order allows the applications and sets aside "the impugned Order-in-Appeal", without in terms recalling, amending or substituting the judgment dated 23.08.2022. As the order stands, the Tribunal's judgment survives untouched while the Order-in-Appeal which had merged in it stands set aside. That alone would have required the order to be revisited.

VII. THE LIMITS OF THE REFERENCE JURISDICTION

36. Dr. Shahab Imam is upon firm ground when he says that the Tribunal is the final authority upon questions of fact, and that this Court in a reference under section 196 of the Act does not sit in appeal upon the evidence, does not reweigh it, and does not substitute its own view of it for that of the Tribunal. Had the Tribunal recorded a finding upon the material before it, we would not have disturbed that finding however we might ourselves have viewed the matter. We have had occasion very recently to set out the character and the

limits of this jurisdiction at some length,[8] and we do not repeat what was there said. It is sufficient to recall the conclusion:

> *"The window through which a factual finding may be examined in reference jurisdiction is therefore a narrow one, and it opens only upon a demonstration, from the record itself, that the finding rests upon no evidence at all, or proceeds upon a misreading or non-reading of material evidence, or is perverse in the sense of being one that no reasonable forum instructed in law could have reached, or is founded on surmise and conjecture."*

37. The rule presupposes a finding arrived at judicially, that is to say, upon evidence, after consideration of the material upon the record, and for stated reasons. Where a finding rests upon no evidence at all, or upon a bare assertion from the Bar, or is reached by leaving out of account material which was upon the record and bore directly upon the issue, or is unsupported by any reasoning which connects the material to the conclusion, the defect is not one of appreciation of evidence but of legality, and a question of law arises out of the order for the purposes of section 196. Reasons are the soul of a judicial order; they are what distinguishes adjudication from assertion, and they are the substance of the guarantee of a fair trial and due process in Article 10A of the Constitution.

38. We put to learned counsel for the respondent, in the course of the hearing, the question upon what material the learned Tribunal had proceeded in fixing the range of thickness of door skins at 0.8 mm to 1.0 mm. He was unable to point to anything upon the record, and answered that the evidential aspect of the matter was not open to examination in this jurisdiction. That answer, with respect, concedes the very difficulty. Where the material upon which a forum has proceeded cannot be identified at all, the complaint is not that its appreciation of the evidence was mistaken, which would be beyond us; it is that there was no evidence to appreciate, which is not.

39. This is such a case, and it falls squarely within the narrow window. It is also, we may add, the very complaint which this Court has held may properly be taken to the Tribunal by way of rectification. In *Collectorate of Customs v. Messrs Noman Chugtai*[9] this Court, declining a reference founded upon the complaint that the Tribunal had not considered the facts upon the record, observed that "the Tribunal is the final fact finding authority and if as alleged the facts on record have not been considered the applicant may submit rectification application before the Tribunal under section 194-B (2) of the Customs Act, 1969". It follows that where the Tribunal, invited to do exactly that, itself decides without considering the facts upon the record, the resulting order is open to examination here.

40. We are therefore of the view that the impugned order dated 20.03.2023 cannot be sustained. It does not do what the order of this Court dated 29.11.2022 required to be done; it rests

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[8] Judgment dated 11.09.2026 passed by this Bench in Spl. Customs Reference Application No. 230 of 2026 (*Naqeeb Ullah v. Collector of Customs (Enforcement), Karachi and others*).
[9] *Collectorate of Customs v. Messrs Noman Chugtai* [2007 PTD 153].

upon an unproved assertion in place of evidence; it leaves material upon the record out of account; and it is, in substance, unreasoned.

41. Mr. Agha Shahid Majeed Khan asked us, in the alternative, to restore the Tribunal's judgment dated 23.08.2022 in *toto*. We are unable to do so. That judgment is the very order which this Court found, on 29.11.2022, to be affected by an apparent factual error; to restore it would be to reinstate the defect which the rectification proceedings were directed to cure. Nor can we ourselves record a finding whether these goods are, or are not, "Primered Moulded Fibre Door Skin" within the meaning of Serial No. 2 of the Table in Paragraph 6 of Valuation Ruling No. 1227 of 2017. That is a question of fact which the statute commits to the Tribunal, and it must be answered by the Tribunal upon the whole of the material, with reasons. As to the clearance data placed before us, we say only this: some of the Goods Declarations relied upon are of the year 2023, post-date the impugned order, and were not before the Tribunal. This Court in its reference jurisdiction does not receive evidence. It will be open to the Department, and equally to the respondent, to place such material before the Tribunal in the proceedings which we are about to restore.

42. That leaves the question of what is to be done. These consignments were imported between October and December 2020; the securities furnished at the time of provisional release were ordered to be encashed as long ago as 29.03.2021; and the controversy has since passed through the hands of the assessing officer, the learned Collector of Customs (Appeals), the learned Tribunal twice and this Court twice. It is now in its sixth year, and in all that time not one of those fora has brought to bear upon the identification of these goods the method which the Hon'ble Supreme Court has described as essential to the exercise. The assessing officer proceeded upon an examination report; the learned Collector (Appeals) proceeded upon the valuation ruling; the learned Tribunal proceeded, first, upon a laboratory report which said nothing to the point, and thereafter upon an assertion made from the Bar. To remit the matter once more, upon no better footing than before, would be to invite a seventh attempt of the same character.

43. There exists a body constituted for precisely this purpose, and it is to that body that the applicant Department has asked us to refer the question. The Federal Board of Revenue has established the Classification Centre, which is run and managed by the Classification Committee, a body whose members possess the skills, knowledge and experience required for the identification and classification of goods in conformity with the Harmonized System, and whose rulings the Hon'ble Supreme Court has held to be of crucial importance and to carry a presumption of regularity.[10] It is also the body to which the respondent itself asked that this very question be sent. The prayer clause of Constitutional Petition No. D-6446 of 2020 sought a direction to the Collectorate to refer the matter to the Classification

[10] *K.S. Sulemanji Esmailji and Sons (Pvt.) Ltd.* (supra); and *Lucky Core Industries Limited, Karachi v. Director, DGI&I (Customs), Karachi* [2026 PTD 1169], where this Court, the Department and the Tribunal having both failed to seek the opinion of the Classification Committee, remanded the matter to the Classification Centre. The procedure for the issuance of classification rulings is prescribed by the General Orders of the Federal Board of Revenue, C.G.O. No. 10 of 2001 dated 04.09.2001 being referred to in *Lucky Core* and C.G.O. No. 12 of 2002 in *Pepsi Cola*.

Centre for determination of the specification of the imported goods, that is to say, whether they were "Decorative MDF Panel" as declared or "MDF Door Skin" as assessed. That prayer was never acted upon. The position, therefore, is that the respondent importer sought such a reference in the year 2020 and the applicant Department seeks it now, and that neither the assessing officer nor the learned Tribunal has at any time approached the body which exists to answer the question.

44. Three further considerations weigh with us. The first is that the question is a genuinely technical one, and has now twice been answered by the learned Tribunal without any technical foundation at all. The second is that public revenue is involved: the assessment of these seven consignments turns upon the difference between a declared value of about US$ 0.32 per kilogram and a determined customs value of US$ 0.62 per kilogram, and the same difference will attend every consignment of like goods. The third follows from the second. Goods of this description are imported regularly, and the record before us discloses competing declarations by different importers of what may well be the same article. A determination by the body which the Board has constituted for the purpose, made upon the goods, the documents, the classification aids and the technical literature, will serve not merely to resolve this dispute, but to bring consistency to the assessment of like goods hereafter, and to spare the assessing officers, the learned Tribunal and this Court a recurrence of the very controversy which has occupied all of them for six years.

45. We are conscious of the order dated 02.09.2026 of the Hon'ble Supreme Court in *M/s Pepsi Cola International (Pvt.) Ltd. v. Collector of Customs*[11], by which an order of this Court referring a tax reference to the Classification Committee in reliance upon *K.S. Sulemanji Esmailji* was set aside. Upon a careful reading, that order does not stand in the way of the course we take, and we say so for four reasons, each of which appears upon its face.

(i) The distinction which their Lordships accepted was that in *K.S. Sulemanji Esmailji* the importer had itself made an application for the matter to be referred to the Classification Committee, whereas in *Pepsi Cola* no such application had been made by anyone at any stage. The present case falls upon the *Sulemanji* side of that line, and indeed beyond it: the respondent importer expressly sought such a reference, in a constitutional petition before this Court, in the year 2020, and the applicant Department has prayed for it before us in terms. The difficulty which their Lordships identified, that the course had been adopted although no party had asked for it, therefore does not arise.

(ii) In *Pepsi Cola* the proceedings had been initiated by a show cause notice under section 32 of the Act, the importer had filed its reply, and thereafter, in the words of the order, "a detailed order was made by the concerned officer, in which the matter of classification was thoroughly examined". Nothing of that kind has

[11] Order dated 02.09.2026 passed by a three-Member Bench of the Hon'ble Supreme Court in C.P.L.A. No. 2192 of 2025, *M/s Pepsi Cola International (Pvt.) Ltd., Lahore v. Collector of Customs through Additional Collector of Customs, Karachi*, against the order dated 11.02.2025 of this Court in S.C.R.A. No. 357 of 2013. The order records that it is not approved for reporting.

occurred here. The identity of these goods has never been examined by any forum in the manner which the exercise requires.

(iii) The submission which their Lordships accepted was that "had the matter come within the scope of, or required consideration by, the classification committee the concerned officer of customs could, and ought, to have himself referred the matter to that body but this was manifestly not done". In the present case the officer was asked to do precisely that, and did not. The reasoning of *Pepsi Cola*, applied to these facts, therefore points the other way.

(iv) The vice identified in *Pepsi Cola* was that the High Court had "erred in not considering the tax reference on the merits and erroneously referred the matter to the classification committee". That is not what we have done. We have considered these references upon their merits and have answered the questions of law arising out of the impugned order. What follows is not a substitute for adjudication; it is a direction as to the material upon which the adjudication that remains is to proceed. We may add that the order in *Pepsi Cola* was expressly made "without going at all into the merits of the dispute between the parties", and is marked as not approved for reporting.

46. Two things should be said about the reference we make, so that its limits are not mistaken. The first is that we do not refer a question of classification, for none arises; the heading 4411.9390 is common ground, and so is the rate of duty. What we refer is the anterior question of the identity and specification of the goods, upon which the applicability of the valuation ruling depends, and which is the factual substratum of any classification exercise. The second is that the opinion of the Classification Committee will come to the learned Tribunal as expert material of high authority, and not as a determination which concludes the *lis*. The adjudication remains with the learned Tribunal, which will decide the restored applications upon the whole of the record, and which must either act upon that opinion or record qualified reasons for departing from it.

VIII. THE ANSWERS TO THE QUESTIONS

47. Before the questions are answered, one matter of form requires notice. Questions 1, 2 and 4 as proposed are couched in negatives, and question 4 in double negatives, with the result that a literal answer would convey the opposite of what the applicant seeks; the prayer clause of the reference, which asks that all four questions be answered "in affirmative", does not sit with the language in which three of them are drawn. Section 196 of the Act does not tie this Court to the form in which a question is framed. Where a question as proposed obscures rather than discloses the controversy arising out of the order of the Tribunal, the Court may reframe it so as to bring out the real point and answer it as reframed. We accordingly reframe questions 1, 2 and 4, and answer all four questions as follows.

1) **Reframed:** *Whether, the matter having been remitted to it by the order of this Court dated 29.11.2022, the Appellate Tribunal was entitled, in exercise of the power of rectification under section 194-B(2) of the Act, to reopen and reverse its judgment dated 23.08.2022 upon a ground lying outside the error identified by this Court, and without adopting either of the two courses which that order prescribed?* **Answered in the negative**; in favour of the applicant Department and against the respondent. The Tribunal was competent to entertain the rectification applications, that competence having been conferred upon it by the order of this Court which the Department allowed to become final, and the plea of *functus officio* is repelled. But the Tribunal was not entitled to treat the remit as a licence for a fresh adjudication of the appeals upon a new ground, while neither calling for a further technical report nor giving qualified reasons for differing from the opinion of the H.E.J. laboratory.

2) **Reframed:** *Whether the power conferred by section 194-B(2) of the Act to amend an order so as to rectify a mistake apparent from the record carries with it the power to recall a considered judgment of the Appellate Tribunal and to substitute for it an altogether different decision?* **Answered in the negative**; in favour of the applicant Department and against the respondent. The power is one of rectification and not of review or of appeal. It reaches a mistake which is apparent, obvious and floating upon the surface of the record, correctible without a long drawn process of reasoning, without the reception of evidence and without a fresh appreciation of facts. It does not enlarge the Tribunal's jurisdiction so as to permit it to render a complete and altogether different decision independent of its earlier view. Where the High Court remits a matter with a direction that it be decided in accordance with law after hearing the parties, the Tribunal acts within jurisdiction in reopening so much as the remit opens, but it must then decide as the remit requires and by an order which discloses its reasons.

3) **Returned unanswered.** This question does not arise out of the impugned order as a question of law or as a mixed question of law and fact. Whether the respondent misdeclared the goods in order to escape the application of Valuation Ruling No. 1227 dated 30.11.2017 turns upon the description of the goods, which is a question of fact that the Tribunal has yet to determine upon the whole of the evidence. It would be neither proper nor possible for this Court, sitting in its reference jurisdiction and remitting the matter for a fresh decision, to record that finding itself. The question is left entirely open to the Tribunal.

4) **Reframed:** *Whether the findings recorded in the impugned order are vitiated by misreading and non-reading of the record, and by reliance upon a statement made from the Bar in place of evidence?* **Answered in the affirmative**; in favour of the applicant Department and against the respondent. The Tribunal determined the description of the goods upon an assertion made from the Bar on behalf of the respondent importer as to the range of thickness of door skins, supported by no report, no standard, no trade literature and no data, and accepted for no better reason than that the departmental representative did not rebut it. In so doing it left out of account the examination reports and the photographic images of the officers of Customs, the comparative clearance material, the dimensions recorded by the laboratory itself, and the limitations which the laboratory reports carry upon their own face. It also failed to set the description at Serial No. 2 of the Table in Paragraph 6 of the Valuation Ruling against the goods. The resulting order is, in substance, unreasoned.

IX. ORDER

48. For the foregoing reasons, these Special Customs Reference Applications are allowed in part. The order of the Customs Appellate Tribunal, Bench-I, Karachi dated 20.03.2023 passed in Customs Appeals Nos. K-44 to K-50 of 2022 is set aside. The rectification applications are restored to the file of the learned Tribunal, to be heard and decided afresh in accordance with law, in conformity with the order of this Court dated 29.11.2022 and in the light of the observations made above, and subject to the following directions:

(a) the question of the identity and specification of the imported goods, namely whether goods answering the description and particulars borne out by the record are "Decorative MDF Wooden Panel" as declared, or "Primered Moulded Fibre Door Skin" within the meaning of Serial No. 2 of the Table in Paragraph 6 of Valuation Ruling No. 1227 dated 30.11.2017, is referred to the Classification Committee constituted by the Federal Board of Revenue for its opinion;

(b) the Collector of Customs, Model Customs Collectorate of Appraisement, Port Muhammad Bin Qasim, Karachi shall, within fifteen days of the receipt of a copy of this judgment, place before the Classification Centre the Goods Declarations, the examination reports together with the images taken by the examining officers, the samples if still available, the reports of the H.E.J. Research Institute of Chemistry dated 18.11.2020 and 17.02.2021, and the comparative clearance data, with copies to the respondent;

(c) both parties shall be at liberty to place technical literature and such other material as they may be advised before the Classification Committee, which will afford them an opportunity of being heard;

(d) the Classification Committee is requested to render its opinion, with reasons, within ninety days of the receipt of the reference, and to transmit it to the learned Customs Appellate Tribunal, Bench-I, Karachi, with copies to the parties;

(e) upon receipt of that opinion the learned Tribunal shall decide the restored rectification applications by a reasoned order, after notice and a proper opportunity of hearing to both sides, either acting upon the opinion or recording qualified reasons for departing from it, and setting the description at Serial No. 2 of the Table in Paragraph 6 of the Valuation Ruling against the goods as found; and shall endeavour to do so within sixty days of the receipt of the opinion; and

(f) should the Classification Committee for any reason decline or omit to render its opinion within the period aforesaid, the learned Tribunal shall proceed to decide the applications upon such other technical assistance as it may obtain, and shall not upon that account allow the matter to be delayed further.

49. Upon the restoration of the applications the position as it obtained immediately before 20.03.2023 stands revived, and any recovery or refund shall abide the decision of the learned Tribunal.

50. Nothing in this judgment shall be read as an expression of opinion upon the description, classification or valuation of the goods, upon which the learned Tribunal will apply its independent mind.

51. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, in terms of section 196(10) of the Customs Act, 1969, and a copy also to the Chairman, Federal Board of Revenue, and to the Classification Centre, for compliance with the directions contained herein. Office to place a copy of this order in the connected cases. The listed applications, if any, stand disposed of. There shall be no order as to costs.

J U D G E

J U D G E

Karachi,

Dated: 17th day of September 2026

Ayaz PS.