

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Spl. Customs Reference Application No. 849 of 2024

(Sayyed Engineers Limited VS The Collector of Customs, Appraisement East,
Karachi & Others)

Date of hearing: 15.09.2026

Date of decision: 18.09.2026

Applicant: Through Mr. Pervaiz Iqbal Kasi, Advocate.

Respondent: Through Mr. Asif Ali, Advocate.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference application, maintained under section 196 of the Customs Act, 1969 (hereinafter referred to as “the Act”), impugns the judgment dated 19.08.2024 of the Customs Appellate Tribunal, Bench-II, Karachi in Customs Appeal No. K-7048 of 2021, whereby the appeal of the applicant against Order-in-Original No. 1654868-15032021 dated 15.03.2021 passed by the Collector of Customs (Adjudication-II), Karachi was dismissed.

I. THE CONTROVERSY

1. The dispute lies in a very short compass. The applicant imported sharpener blades and screws, and declared their quantity in pieces at a price per piece. The goods fall under tariff headings for which the unit of measure prescribed for assessment is the kilogram, and the weight declared for that purpose was 1,531 kilograms. On examination the consignment weighed 3,640 kilograms. The Department says that the weight was suppressed in order that the goods might be assessed upon a base less than half of the true one, and that duty and taxes of Rs. 4,961,233 would have gone unpaid had the consignment not been weighed. The applicant says that the weight came from a packing list prepared by its foreign supplier, that the error was inadvertent, that the invoice value was constant whatever the weight, and that the charge of mis-declaration therefore has no fiscal substratum to rest upon.
2. The question, so stated, is whether a declaration of weight which is wrong by more than half is false in a material particular within the meaning of section 32(1) of the Act; and, if it is, whether the applicant has offered an explanation for it which the forums below were bound to accept. The first of those questions is one of law. The second is not.

II. FACTS OF THE CASE

3. The applicant is a public limited company which has been engaged in the manufacture of stationery articles at Lahore since 1965, and is a regular importer of the blades and screws which go into the sharpeners it manufactures.
4. On 02.10.2020 the applicant, through its declarant, electronically filed Goods Declaration No. KAPE-HC-53812-02-10-2020 declaring (i) Blade for Sharpener (SEL 490.03), 3,500,000 pieces, under PCT heading 8214.1000 at RMB 80,500; (ii) Blade for Sharpener (SEL 490.04-D), 2,800,000 pieces, under the same heading at RMB 53,200; and (iii) Screw for Sharpener (SEL-006), 2,000,000 pieces, under PCT heading 7318.1590 at RMB 6,200. The total declared invoice value was RMB 139,900. The import was covered by Bank Contract No. 0331COT027220 dated 31.08.2020 registered with Faysal Bank Limited, and by proforma and commercial invoices numbered SY-081420 of Messrs Ningbo NSC Foreign Trade and Services Co. Ltd., Ningbo, China. The net weight declared was 1,531 kilograms. Duty and taxes were determined and paid upon that self-assessment in terms of section 79(1) of the Act.
5. The Goods Declaration was routed through the Yellow channel and was assessed and allowed out of charge upon the declared description, quantity and value, without physical examination. Thereafter, upon the applicant's own pleading, while the cargo was being de-stuffed the cargo agent intimated that the particulars of the cargo, namely the type of packages and the weight, did not tally with the documents; whereupon the clearing agent applied to the Collectorate for physical examination, and the Goods Declaration was marked for examination.
6. The consignment was then weighed in full, and the weight was found to be 3,640 kilograms as against the declared net weight of 1,531 kilograms. The examining officer recorded the excess at 137.7 per cent and reported that the importer had paid duty upon the basis of weight and had deliberately mis-declared it. The show-cause notice which followed puts the difference of weight at 2,040 kilograms and the excess at 133 per cent. Neither figure is arithmetically exact, the difference upon the stated weights being 2,109 kilograms and the excess 137.75 per cent, but nothing turns upon the discrepancy, since neither the fact nor the order of magnitude of the excess is in dispute.
7. The show-cause notice alleged that the applicant had deliberately concealed and mis-declared the weight of the goods in order to have them assessed upon a suppressed weight, thereby wilfully and with mala fide intention evading duty and taxes of Rs. 4,961,233, the offending value of the goods being worked out at Rs. 5,876,794. Violation was alleged of sections 32(1), 32(2) and 79(1) of the Act, section 33 of the Sales Tax Act, 1990 and section 148 of the Income Tax

Ordinance, 2001, punishable under clause (14) of section 156(1) of the Act read with S.R.O. 499(I)/2009 dated 13.06.2009.

8. In reply the applicant took the position that the unit of measure had been declared in pieces, that being the international practice in this trade; that the weight had been wrongly stated in the packing list furnished by the shipper, who had apologised in writing for the error; and that the misstatement carried no fiscal consequence, the value of the goods being unaffected by their weight.
9. By Order-in-Original dated 15.03.2021 the learned Collector of Customs (Adjudication-II) held the charge established. He recorded that the applicant had not questioned the findings of the examination report but had denied deliberate mis-declaration, and that there was “no denying the fact that the impugned items are assessed on the basis of weight which has been found grossly short on examination”. He confiscated the goods under clause (14) of section 156(1) of the Act for violation of sections 32(1), 32(2) and 79, and allowed redemption under section 181 upon payment of a fine equal to twenty per cent of the offending value, namely Rs. 1,175,359, in addition to the leviable duty and taxes, with a penalty of Rs. 10,000.
10. The applicant preferred Customs Appeal No. K-7048 of 2021 before the learned Tribunal and simultaneously invoked the constitutional jurisdiction of this Court by C.P. No. D-3013 of 2021, the Tribunal not then being fully functional and the consignment incurring storage charges at the port. By interim order dated 25.05.2021 this Court directed that the amount of duty and taxes mentioned in the Order-in-Original be deposited with the department and that the fine and penalty be secured before the Nazir of this Court, whereupon the consignment was to be released forthwith.
11. By the impugned judgment dated 19.08.2024 the learned Tribunal dismissed the appeal. It held that the assessable quantity of goods falling under PCT headings 8214.1000 and 7318.1590 is expressed in kilograms; that under section 79(1) of the Act a declarant in the computerised system is responsible not only for the correct particulars of the goods but for the discharge of his own liability of duty and taxes; and that, read with section 32(1)(c), the non-payment of duty and taxes referable to the tariff unit of measure, resulting in short levy, is itself an act of mis-declaration or misstatement.
12. The learned Tribunal then went to the record, and made a finding which lies at the centre of this case. Upon examining the documents annexed to the applicant’s own memorandum of appeal it found that two packing lists had been annexed, at pages 25, 26 and 29, bearing one and the same invoice number, SY-081420; that the packing list at page 26 showed gross and net weights of 1,531.50 and 1,485.50 kilograms, approximating the applicant’s declaration; and

that the packing list at page 29 showed gross and net weights of 3,700.50 and 3,611.50 kilograms, approximating the weight found by the officers of the Collectorate upon checking under section 80 of the Act. It further observed that the “Items Details” screen of the assessment module provides three separate columns for the quantity of an imported item, namely quantity for assessment purposes, quantity for statistical purposes and quantity as internationally traded, so that even a trader dealing in pieces remains obliged to declare the correct weight in the column meant for assessment. Upon that footing it concluded that the applicant had deliberately declared the number of pieces as the assessable quantity in place of the correct net weight, with the intention of evading duty and taxes by deceiving the computerised system of assessment, and that Serial No. 1(g) of the Table to S.R.O. 499(I)/2009 in any event made the wrong declaration of the unit of measure for assessment purposes an offence of mis-declaration.

13. This reference followed. Upon its presentation a Division Bench of this Court, by order dated 15.10.2024, admitted it to regular hearing, issued notice and directed that the respondents take no coercive measures in the meanwhile.

III. THE QUESTIONS PROPOSED

14. The applicant has invited this Court to answer the following four questions, which are reproduced verbatim from the memorandum of the Reference Application:
 - a. “Whether the learned Tribunal has erred by holding that the wrong declaration of Unit of Measure (UoM) for assessment purposes is an offence of misdeclaration under S.No. 1(g) of SRO 499(I)/2009 dated 13.06.2009 without proving that such inadvertent declaration of UoM has caused any evasion of duty and taxes?”
 - b. “Whether the learned Tribunal has erred by upholding the unlawful enhancement of value by Respondents Nos. 1 and 2 despite the fact that the same does not conform to the parameters of the provisions of Section 25 of the Customs Act, 1969, as well as Customs Rules, 2001?”
 - c. “Whether the learned Tribunal has erred by not appreciating the evidential GDs pertaining to Sharpener Blades confirming the declared unit values of the subject goods within the parameters of Section 25(5)&(6) of the Customs Act, 1969?”
 - d. “Whether the learned Tribunal has erred in not appreciating that the declaration of unit of measure in Pieces instead of Kgs had no bearing on the total invoice value of the goods ensuing no revenue loss to the national exchequer?”

IV. THE SUBMISSIONS AT THE BAR

15. Mr. Pervaiz Iqbal Kasi, learned counsel for the applicant, submitted that no mis-declaration of any kind was made and that no fake or false document was filed with the Goods Declaration. The weight, he said, was shown on the lower side inadvertently, upon a packing list prepared by the foreign supplier, who has since apologised in writing for the error; and inadvertence, he urged, is the antithesis of the wilful and deliberate falsity which section 32(1) of the Act

requires. He submitted that the learned Tribunal failed to appreciate the evidence properly, and in particular failed to appreciate the five earlier Goods Declarations of the applicant covering identical goods, cleared at the very same unit values per piece, and the Goods Declarations of other importers showing per-kilogram values lower than those of the applicant. He contended that the value adopted by the Department answers to no parameter of section 25 of the Act, having been arrived at by multiplying a per-kilogram figure derived from the wrongly declared weight by the difference between the declared and the ascertained weight, an exercise which he described as illogical and unsupported by any document. Finally, and as his principal submission, he urged that the duty and taxes stand paid, that no loss has been occasioned to the exchequer, and that a declaration which carries no fiscal consequence cannot found a charge of mis-declaration.

16. Mr. Asif Ali, learned counsel for the respondent Department, submitted that for goods of this description the customs value is determined upon the basis of weight; that the applicant, with mala fide intention, declared a weight less than half of the actual weight, and thereby sought to evade duty and taxes running into millions of rupees; and that had the authorities not detected the suppression at the stage of examination, the revenue would have suffered that loss in full. He submitted that the findings of the learned Tribunal are findings of fact recorded upon material, and that in a reference under section 196 of the Act they are not open to re-appreciation.
17. We have heard learned counsel for the parties, perused the impugned judgment, the Order-in-Original and the show-cause notice, and examined the record placed before us.

V. THE JURISDICTION UNDER SECTION 196

18. It is convenient to begin where the answer to much of this reference lies. Section 196 of the Act is explicit at every stage. The application to this Court must state “any question of law arising out of” the order of the Appellate Tribunal; what this Court decides is the question of law so raised; and the order of the Tribunal stands modified by the judgment delivered upon it. The remedy so conferred is appellate in nature. The contrary notion, that the jurisdiction is “advisory”, is the legacy of a provision long since repealed, and it was laid to rest by the Hon'ble Supreme Court in *Messrs Squibb Pakistan (Pvt.) Ltd. v. Commissioner of Income Tax*,¹ where, upon the identically structured provisions of the federal fiscal statutes, it was held:

¹[2017 SCMR 1006] = [2017 PTD 1303], at paragraphs 48 to 50. The holding was lately reaffirmed in *Haseeb Waqas Sugar Mill Limited v. Government of Pakistan* [2026 SCMR 833]. Section 196 of the Act is framed in terms materially identical to those of section 133 of the Income Tax Ordinance, 2001 which their Lordships were construing, including the provision that the order of the Appellate Tribunal shall stand modified by the judgment of this Court, which was the very feature identified as the essence of an appellate order.

“Thereafter, no advisory jurisdiction remained in any shape or form. But since the significance of the change was not appreciated, the concept of advisory jurisdiction continued to confuse the courts — the corpus had disappeared, but the shadow remained. ... There is no question of advisory jurisdiction (which phrase was never used in the law at any stage) and the plain words of the section must now be given their ordinary meaning. No hypertechnicalities now stand as barriers in the way of substantive justice.”

“It is therefore clear beyond any doubt that the remedy under section 133 *ibid* is appellate in nature and must be construed and applied as such. The language of the law must be given effect to, rather than unnecessarily restricting the scope of the jurisdiction on the basis of judgments from an era when the law and circumstances were completely different.”

19. One consequence of that holding should be stated at once, because it operates in the applicant’s favour. Since the law permits every question of law arising out of the order of the Tribunal to be raised, and not merely such questions as were argued or agitated before it, no objection can be taken in this Court upon the ground that a point now pressed was not taken below. We have accordingly entertained each of the four questions upon its merits.
20. But the width so recognised is a width of law, and not of fact. The very passage which enlarges the remedy delimits it: the challenge is limited to questions of law only, and, decisively for present purposes, the facts as stated in the order of the Tribunal have to be taken as recorded, it being from those facts, so taken, that the question of law must be made out.
21. That the Appellate Tribunal is the final fact-finding forum, and that its findings of fact are not open to re-examination here, is settled by a long and unbroken line of authority. In *Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi*,² a case arising under this very Act, it was held that the Tribunal is the last forum for the determination of facts, that the reference jurisdiction of the High Court is limited to a question of law, and that it does not lie within the jurisdictional domain of the High Court to determine the facts for itself. The rule, and the narrow exception to it, were stated in *The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd., Lahore*³ thus:

²*Messrs Middle East Construction Company, Karachi v. The Collector of Customs, Karachi* [2023 SCMR 838], a case arising under this very Act, where it was held that “it is also well settled that the Tribunal is the last forum for the determination of facts”, that the reference jurisdiction of the High Court “is limited to a question of law”, and that it does not lie within its jurisdictional domain to determine the facts for itself.

³*The Collector of Sales Tax and Central Excise, Lahore v. Messrs Qadbros Engineering (Pvt.) Ltd., Lahore* [2023 SCMR 939], collecting *Pakistan Match Industries (Pvt.) Ltd. v. Assistant Collector, Sales Tax and Central Excise, Mardan* [2019 SCMR 906] and *Commissioner Inland Revenue, Lahore v. Messrs Sargodha Spinning Mills (Pvt.) Ltd., Faisalabad* [2022 SCMR 1082]. To the same effect *Haji Ibrahim Ishaq Jobri v. The Commissioner of Income Tax (West), Karachi* [1993 SCMR 287], adopting the Privy Council in *Commissioner of Income Tax v. Laxminarain Badridass* [5 ITR 170] that “it is not possible to turn a mere question of fact into a question of law by asking whether as a matter of law the officer came to a correct conclusion upon a matter of fact”; *Army Welfare Trust (Nizampur Cement Project), Rawalpindi v. Collector of Sales Tax, Peshawar* [2017 SCMR 9]; *Commissioner Inland Revenue v. Messrs Khudadad Heights, Islamabad* [2025 SCMR 716]; and *The Intelligence Officer, Directorate of Intelligence and Investigation, FBR v. Abdul Karim* [2025 SCMR 969]. This Court has applied the same rule to its own reference jurisdiction in *Messrs Lever Brothers Pakistan Ltd. v. Customs, Sales Tax and Central Excise Appellate Tribunal* [2005 PTD 2462] and *Messrs Packages Limited v. Customs Appellate Tribunal* [2024 PTD 1532], holding in the latter that the Tribunal “is final arbitrator of facts” and that factual controversies are not ordinarily amenable for adjudication in this jurisdiction.

“The Appellate Tribunal is therefore the final fact-finding body and its findings of facts are conclusive; the High Court cannot disturb them unless it is shown that there was no evidence on which the Appellate Tribunal could arrive at its conclusion and record such findings, or the same are perverse or based on surmises and conjectures.”

22. A question which does no more than invite this Court to weigh the evidence afresh, or to prefer one inference upon the facts to another, is therefore not a question of law at all. The window through which a factual finding may be examined here is a narrow one, and it opens only where the finding rests upon no evidence, or proceeds upon a misreading or non-reading of material evidence, or is perverse, or is founded upon surmise and conjecture.⁴

VI. THE STATUTORY SCHEME

23. Section 79(1) of the Act obliges the owner of imported goods to file a Goods Declaration containing the correct particulars of the goods and, in the automated system, to determine and discharge his own liability of duty, taxes and other charges. Section 80 empowers the appropriate officer to check that declaration and the goods. Section 32(1) makes it an offence, in connection with any matter of customs, to make or deliver to an officer of Customs any declaration, notice, certificate or other document whatsoever knowing or having reason to believe that it is false in any material particular; and section 32(2) provides for the recovery of duty not levied or short-levied by reason of such a document or statement. The three limbs of section 32, namely falsity in a material particular, collusion, and inadvertence, error or misconstruction, are distinct from one another and are not to be conflated.⁵
24. Where a declaration is found to be false in a material particular, clause (14) of section 156(1) renders the goods liable to confiscation, and section 181 permits the owner to redeem them upon payment of a fine, the quantum whereof is regulated by S.R.O. 499(I)/2009 dated 13.06.2009, Serial No. 1(g) of the Table to which deals in terms with the wrong declaration of the unit of measure prescribed for assessment. It bears emphasis that in an automated environment the responsibility for a correct self-assessment rests squarely upon the declarant, and that the Collectorate’s power of subsequent scrutiny under section 80 in no way dilutes it.⁶

⁴Judgment dated 11.09.2026 passed by this Bench in Spl. Customs Reference Application No. 230 of 2026 (*Nageeb Ullah v. Collector of Customs (Enforcement), Karachi and others*), where the conclusion was stated thus: “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.” No such demonstration has been attempted in the present case.

⁵*Messrs Rose Colour Laboratories Nayab No. 1 (Pvt.) Ltd. v. Chairman, C.B.R.* [2003 PTD 1047], where it was held that section 32 relates to three different and distinct categories of short levy or refund, namely a declaration or statement which is false in any material particular, collusion, and inadvertence, error or misconstruction. The distinction is not merely taxonomic: the limitation prescribed for each limb differs, as do the consequences which attend it, and a charge laid under one limb is not sustained by proof of another.

⁶*Gold Trade Impex v. The Appellate Tribunal* [2012 PTD 377], relied upon by the learned Tribunal, where it was held that under the automated self-assessment and payment system the declarant is responsible for the correct assessment and payment of duty and taxes. The scheme is one of trust reposed in the declarant, verification under section 80 being by exception and not by rule; a system of that character can only work if the particulars upon which the machine computes are furnished truly.

VII. WHETHER THE DECLARATION OF WEIGHT WAS FALSE IN A MATERIAL PARTICULAR

25. The premise upon which the applicant's entire case is built is that these goods are internationally traded in pieces, that the invoice value is a function of the number of pieces, and that the weight is therefore a particular of no consequence to the assessment. That premise does not survive an examination of the record.
26. It is not in dispute, and it was not disputed before the learned Tribunal, that for goods falling under PCT headings 8214.1000 and 7318.1590 the unit of measure prescribed for assessment is the kilogram, and that the assessable value is generated by applying a unit value to the quantity so expressed. Weight is accordingly not a descriptive or incidental particular of such a declaration. It is the multiplicand upon which the assessable base is built. A declaration which states that quantity at 1,531 kilograms, when the true quantity is 3,640 kilograms, depresses the base by more than one half. That is the beginning and the end of the question of materiality, and it is what distinguishes this case from those in which a misstatement was found to lie outside the reach of section 32.
27. The applicant's answer, that it trades in pieces, was fully met by the learned Tribunal, and the answer it gave is one we adopt. The declaration form in the automated system provides three separate columns for quantity: for assessment purposes, for statistical purposes, and as internationally traded. The applicant was at perfect liberty to declare its pieces in the latter two columns, and its commercial practice would have been faithfully recorded. What it was obliged to declare in the first column was the weight, and to declare it correctly. There is no conflict whatever between the applicant's trade usage and its statutory obligation, and the one furnishes no excuse for a departure from the other.
28. The tables placed before us by learned counsel, which divide a constant invoice value first by the declared weight and then by the weight found, and which show a per-kilogram figure falling as the divisor rises, demonstrate no more than that the invoice total remained constant. They do not establish that the assessment remained constant, and they cannot, because the assessment did not proceed upon the invoice total but upon the declared weight. The exercise therefore answers a question which does not arise. Indeed, if the applicant were right that weight could make no difference to the duty, there would have been nothing whatever to be gained by mis-stating it, and the Department's computation of a short levy of Rs. 4,961,233, which has at no stage been challenged in its arithmetic, would be inexplicable.

VIII. INADVERTENCE, MENS REA, AND THE PLEA THAT NO FALSE DOCUMENT WAS FILED

29. We accept, as settled, that *mens rea* is an ingredient of an offence under section 32(1) of the Act, and this Court has said so more than once. In *Muhammad Waheed v. Customs Appellate Tribunal*⁷ it was held that the Department, which is itself responsible for the assessment of goods, must satisfy itself before invoking section 32 that prima facie an element of *mens rea* is present, that is to say that “there should be an attempt of wilful and deliberate false declaration”. In *Messrs Xavier Company v. Customs, Excise and Sales Tax Appellate Tribunal*⁸ the charge was set aside where the element of *mens rea* was missing, no deliberate mis-declaration was apparent from the record and the authorities had adduced no evidence to substantiate a wilful fault; and it was there observed that mere hypothecation would not *ipso facto* mean that the element of *mens rea* was present so as to render an importer liable to penalty. A *bona fide* error, a difference of interpretation, or a mere failure of arithmetic will not do, and a penal provision is not to be worked upon suspicion.
30. But whether a given declaration was deliberate or inadvertent is quintessentially a question of fact, and in this case that question has been answered against the applicant by two forums, upon material to which we have been shown no answer.
31. The material is this. Annexed to the applicant’s own memorandum of appeal before the learned Tribunal were two packing lists bearing one and the same invoice number, SY-081420. One of them shows gross and net weights of 1,531.50 and 1,485.50 kilograms. The other shows 3,700.50 and 3,611.50 kilograms, which corresponds closely to the 3,640 kilograms found upon full weighment. The document filed with the Goods Declaration was the first. The second was in the applicant’s own file, and it was the applicant which put it before the learned Tribunal.
32. Once it is found that a packing list disclosing the true weight was in the applicant’s own possession, the plea of inadvertence is left without a foundation to stand upon. The letter of apology from the shipper may explain how an incorrect packing list came into existence. It does not begin to explain how the correct packing list came to be in the applicant’s record while the incorrect one was tendered to the Customs.
33. Nor does the submission that no fake or false document was filed carry the matter any further. Section 32(1) of the Act does not speak of forgery or of fabrication. It speaks of a document false in any material particular. A genuine packing list which states a weight less than half of the true weight is false in a

⁷[2016 PTD 35]. The observation was made with reference to paragraph 101(B) of Customs General Order 12 of 2002, the directions contained in a General Order being binding upon the field officers of the Department by virtue of section 223 of the Act.

⁸[2023 PTD 725], following *Messrs Latif Brothers v. Deputy Collector, Customs, Lahore* [1992 SCMR 1083]. See also *Messrs Sardar Chemical v. Collector of Customs* [PTCL 1999 CL 813], where the Peshawar High Court held that provisions of penalty are criminal in nature and that the intention of the party is therefore relevant.

material particular, and it is no answer to say that the printing upon it is authentic. The applicant's record contains two mutually irreconcilable packing lists issued under a single invoice number; whichever of them is authentic, the one filed with the Goods Declaration was not true. The bill of lading, which records a net weight of 1,485.5 kilograms, takes the matter no further, being no more than a reproduction of the particulars furnished by the shipper.

34. We have also considered the submission that the discrepancy was brought to the notice of the Customs by the applicant's own side, and that this bespeaks good faith. Upon the applicant's own pleading, however, it was the cargo agent who, at the stage of de-stuffing and after the goods had already been assessed and allowed out of charge, intimated that the weight did not tally with the documents; the clearing agent thereupon sought examination. The disclosure was thus occasioned by the physical handling of the cargo rather than volunteered, and in any event it goes to conduct after the declaration and not to the state of mind at the time the declaration was made. The applicant cannot at once disown the packing list as its supplier's document and claim the credit of its agent's disclosure as its own.⁹
35. Finally, an understatement of this order is not of a character which can be explained away as a clerical slip. The weight declared was less than half of the weight found. Where the divergence is of that magnitude, and where the document disclosing the true position was in the declarant's own hands, a forum of fact which declines to accept a plea of inadvertence cannot be said to have acted perversely, or upon no evidence, or upon surmise. That being so, the finding is not open to review in this jurisdiction.

IX. **THE PLEA THAT THE DUTY AND TAXES STAND PAID AND NO LOSS HAS RESULTED**

36. The principle upon which learned counsel's principal submission rests is a familiar one, and we affirm it. It was stated by a learned Division Bench of this Court in *Messrs Kamran Industries v. The Collector of Customs (Exports), Karachi*¹⁰ in the following terms:

“Where a person submits a declaration in the context of Customs clearance, and there can possibly be no fiscal consequence contingent upon his declaration and that contingency of no fiscal consequence is either undeniable or regarding which the accused had demonstrated his knowledge or reason to believe that he thought that no tax was leviable, by no figment of imagination could it be said that the said person had any knowledge or reason to believe that his declaration/statement was false

⁹*Messrs Muhammad Sadquain v. Collector of Customs (Appraisement), Karachi* [2006 PTD 2742], where the penalty imposed upon a clearing agent was struck down, the agent having filed the bill of entry upon the shipping documents supplied by the importer; and *Messrs Avia International v. Assistant Collector of Customs (Import), Karachi* [2004 PTD 997], where it was observed that every person is responsible for his own acts and omissions and incurs no liability for the wrong of another. The corollary is that the importer, whose documents these were, answers for them.

¹⁰[PLD 1996 Karachi 68]. The passage reproduced is that relied upon by the applicant before the adjudicating authority, before the learned Tribunal and before us.

or untrue in any material particular. ... Any other interpretation would also give rise to an absurd situation, where although no tax would be leviable on the main/basic assessment but there could possibly be imposition of a penalty.”

37. That statement of the law was approved by the Hon’ble Supreme Court in *Collector of Customs (Exports) v. Messrs R.A. Hosiery Works*,¹¹ where it was held that section 32(1) of the Act is attracted only where a mis-declaration or misstatement is made with a view to obtaining an illegal gain by evasion of the payment of customs duty and other taxes, or by causing loss to Government revenue; and the mis-declaration there in question, being neither for evasion nor productive of any financial loss to the Government, was held not to attract the section at all.
38. The difficulty for the applicant is that the principle has no application to these facts. The cases in which it was applied were, almost without exception, cases of declarations made upon export, or of alternative descriptions advanced in support of a refund claim, where the particular said to have been mis-declared had no bearing upon any duty leviable at all, so that there could be no fiscal consequence contingent upon the declaration.¹² Here the fiscal consequence is quantified at Rs. 4,961,233, and it is the direct arithmetical product of the weight which was suppressed.
39. The converse case, and the one which governs this reference, is *Messrs Soneri International v. Collector of Custom*.¹³ There too the consignments had been assessed and cleared upon the importer’s own declaration, and the Department reopened the matter afterwards. This Court held that an intentional declaration of a lesser value, and the obtaining of clearance upon it, amounted to evasion of duties and taxes, notwithstanding that the goods had been assessed and had passed out of charge, and notwithstanding that no charge of mis-declaration had been levelled in the show-cause notice in terms. The present case falls upon that side of the line, and rather more plainly, the charge here having been levelled expressly and the suppression having been established not by comparison with the declarations of others but by the weighbridge.
40. As to the submission that the duty and taxes stand paid, the record furnishes its own answer. They were not paid because the applicant volunteered them. They were paid because the consignment stood detained, and because this Court, by its interim order dated 25.05.2021 in C.P. No. D-3013 of 2021, permitted release

¹¹[2007 SCMR 1881], where *Kamran Industries* was expressly relied upon, along with *Messrs Al-Hamel Edible Oil Limited v. Collector of Customs* [2003 PTD 552] and *Pakistan v. Hardcastle* [PLD 1967 SC 101].

¹²*Collector of Customs (Export), Karachi v. Customs, Excise and Sales Tax Appellate Tribunal* [2007 PTD 2466], where the weight of an export consignment was declared less by fourteen per cent and it was conceded before every forum that the exporter thereby neither derived any gain nor caused any loss; *Messrs Al-Kawkab Al-Fiddi Trading v. Collector of Customs (Adjudication)* [2006 PTD 2572], where the weight of goods to be exported was mis-declared and it was held that the act, even if deliberate and intended to defraud the foreign buyer, would not call for action under section 32, no loss having been caused to the revenue; and *Messrs Shafiq Textile Mills Ltd. v. Federation of Pakistan* [2005 PTD 923], affirmed in *Collector of Customs, Karachi v. Messrs Shafiq Textile Mills Limited* [2006 PTD 278], where alternative descriptions advanced in support of a refund claim were held not to amount to a false statement at all.

¹³[2015 PTD 902].

only upon the disputed duty and taxes being deposited with the Department and the fine and penalty being secured before the Nazir. A payment procured by detection, and made under the compulsion of an order of the Court, is not proof that nothing was evaded. It is the measure of what was.¹⁴

41. In law, moreover, the offence under section 32(1) is complete upon the making of the untrue declaration. Whether the revenue ultimately recovers what was withheld goes to consequence and not to ingredient. Were it otherwise, no mis-declaration could ever attract a redemption fine, because every detected mis-declaration is followed by recovery, and the provision would be a dead letter in the only class of case in which it could ever be invoked. That is plainly not the scheme of an Act which, by clause (14) of section 156(1), renders the goods liable to confiscation and, by section 181, permits their redemption upon a fine in addition to the leviable duty and taxes. The submission, carried to its conclusion, would mean that the more efficient the detection, the weaker the case for a sanction; which is to stand the statute upon its head.

X. THE OBJECTIONS FOUNDED UPON SECTION 25

42. Questions (b) and (c) proceed upon the premise that the Department rejected the declared transaction value and re-determined it under section 25 of the Act. The principles which govern such an exercise were settled by the Hon'ble Supreme Court in *Collector of Customs, Port Muhammad Bin Qasim v. Messrs Zymotic Diagnostic International, Faisalabad*,¹⁵ upon which learned counsel placed reliance. It was there held that although an officer of Customs is authorised by section 25 to reject a declared value and to assess the goods himself, he must, in rejecting or refusing to accept the value declared, give cogent, plausible and satisfactory reasons; that he cannot proceed upon his whim or desire; that he is required to point to some flaw or defect, or to circumstances which create a doubt as to the veracity and correctness of the declared value or which suggest under-invoicing; and that in determining the fair value he is under an obligation to take into consideration all the necessary factors and circumstances enumerated in section 25. Those principles are not in doubt, and we reaffirm them.
43. The difficulty is that the premise fails. The record does not bear out that any such exercise was undertaken. The declared transaction value in RMB was not rejected; no valuation ruling under section 25-A was applied; and no sequential resort was had to subsections (5) and (6) of section 25. What the Department

¹⁴*Tauseef Mirza v. Collector of Customs (Appraisement)* [2016 PTD 548], where the importer was held liable for the wilful act, negligence or default on account of which duty was short-levied; *Baba Khan v. Collector of Customs, Quetta* [2000 SCMR 678]; and *Messrs Haris Trading International v. Director Intelligence and Investigation (Customs and Excise), Karachi* [2005 PTD 1180], as to the competence of the Customs authorities to carry out full weightment and to take cognizance of a contravention disclosed by it.

¹⁵[2007 PTD 2623], also reported as [2008 SCMR 438]. To the like effect, *Rehan Umar v. Collector of Customs, Karachi* [2006 PTD 909], upon which learned counsel also relied, and *Messrs Kumail Steel Traders v. Deputy Collector Customs (Group-V), Karachi* [2005 PTD 251], as to the manner in which a final assessment under section 25 is to be made.

did was to apply the unit value flowing from the applicant's own declaration to the quantity found in excess of that declaration, in order to arrive at the offending value of the goods for the purpose of the redemption fine under clause (14) of section 156(1) read with S.R.O. 499(I)/2009. The safeguards which attend the rejection of a declared value do not arise where the declared value has not been rejected.

44. If the applicant finds the arithmetic of that quantification unpalatable, the short answer is that the arithmetic is the product of its own declaration. The per-kilogram figure which the Department applied is what is obtained when the applicant's invoice is divided by the weight which the applicant chose to declare. A declarant cannot complain that the unit value generated by his own understatement of quantity is too high. We may add that the departmental comments before the learned Tribunal record, and nothing has been shown to us to the contrary, that the quantification was not disputed upon the facts at the stage of adjudication. We say this not as a bar to the point being taken here, for the law permits a question of law arising out of the order of the Tribunal to be raised whether or not it was agitated below, but because the computation accordingly stands upon the record unrebutted by any material.
45. The five earlier Goods Declarations relied upon stand upon no better footing. Those consignments were cleared upon the applicant's own declarations, and there is nothing upon the record to show that any of them was physically examined or weighed. A declaration accepted without verification establishes nothing beyond the fact of its acceptance. The plea is in substance one of past departmental practice, and it was answered by this Court in *Messrs Packages Limited*, where the sole objection taken was that an earlier classification ought to have been maintained merely because it had been maintained in the past. This Court held that while the law does provide against an unsubstantiated departure from a settled departmental practice, there was no unsubstantiated departure in that case, and that "it is settled law that a wrong benefit, extended beyond the law / policy, may not be perpetuated".¹⁶ The comparative Goods Declarations of other importers go to a valuation controversy which never arose. Both questions, in truth, invite this Court to re-appreciate evidence, which in this jurisdiction it may not do.

XI. THE REMAINING AUTHORITIES

46. The decisions in which a charge of mis-declaration was set aside for want of *mens rea* do not advance the applicant's case, for in each of them the goods upon examination were found to be exactly as declared, or the controversy was

¹⁶[2024 PTD 1532], following *Syed Azam Shah v. Federation of Pakistan* (Civil Appeal No. 764 of 2021). The learned Tribunal in that case had found that the previous treatment of like consignments was itself "based on incorrect and incomplete data provided by the applicant", and this Court held that there was accordingly no unsubstantiated departure from any settled practice.

one of classification or of the interpretation of a notification rather than one of fact. *Collector of Customs v. Messrs Faco Industries*¹⁷ is the clearest illustration: the consignment there was physically examined and was found to be precisely as declared, the dispute being one of classification alone, and this Court accordingly held that no case of mis-declaration was made out and that no justification existed for the imposition of any redemption fine or penalty when there was no evasion or even difference of duty and taxes. Here the goods were not as declared. Their weight was found to be more than double what the applicant had stated it to be, and the difference was not a matter of opinion but of the weighbridge.

47. Learned counsel also placed reliance upon a line of authority of the Hon'ble Supreme Court in the election jurisdiction, to the effect that not every non-disclosure or mis-declaration is fatal, and that the purpose and the intention behind it must be examined.¹⁸ The principle was put thus in *Shamona Badshah Qaisarani v. Election Tribunal, Multan*:

“Every non-disclosure or mis-declaration would not be sufficient enough to permanently disqualify a member of the Parliament or a candidate. The purpose and intention needed to be seen behind the non-disclosure or mis-declaration. ... If the non-disclosure or mis-declaration was such that it gave an illegal advantage to a candidate then it would lead to termination of his candidature. ... It was the credibility of the explanation that would be the determining factor as to whether non-disclosure of an asset carried with it the element of dishonesty or not.”

48. We respectfully accept that principle, which sits comfortably with what we have said upon *mens rea*. But it assists a party only where the explanation which he offers is a credible one, and that is precisely what the learned Tribunal found, upon material, that the applicant's explanation was not. In *Shamona Badshah Qaisarani* the property omitted had been inherited under duly attested mutations and no wrongdoing attended its acquisition or retention, so that the omission could be characterised as bad judgment or negligence.¹⁹ Here the document which disclosed the true weight was in the applicant's own file. It is also right to observe that in those cases the consequence in contemplation was disqualification, frequently for life, under Article 62(1)(f) of the Constitution, a sanction of an altogether different order from a redemption fine under a fiscal statute; which is why the Hon'ble Supreme Court required, in that context, that

¹⁷[2017 PTD 2474]. See also *Commissioner Inland Revenue v. Messrs New Allied Electronics Industries (Pvt.) Ltd.* [2023 PTD 264], where the dispute as to specification had never been raised at the customs stage at all; *Messrs Ihsan Sons (Pvt.) Ltd. v. Federation of Pakistan* [2006 PTD 2209], where the question was one of interpretation of an exemption notification and was held not to be a matter of mis-declaration within the contemplation of section 32(1); and *Glaxo Laboratories Ltd. v. Collector Customs, Central Excise and Sales Tax (Adjudication-I), Karachi* [2008 PTD 1539], to the like effect.

¹⁸*Muhammad Hanif Abbasi v. Imran Khan Niazi* [PLD 2018 SC 189]; *Malik Shakeel Awan v. Sheikh Rasheed Ahmed* [PLD 2018 SC 643], where it was held that no question of strict liability arises in relation to a misstatement in nomination papers and that the candidate must always have the opportunity of offering an explanation; *Muhammad Ibrahim Shaikh v. Government of Pakistan* [PLD 2019 SC 133]; and *Pervez Elahi v. Election Commission of Pakistan* [PLD 2024 SC 571], where the asset said to have been concealed had in fact been acquired after the date as at which the statement of assets was required to be made.

¹⁹[2021 SCMR 988]. In that case the property omitted from the nomination papers had been inherited under duly attested mutations, no wrongdoing attended either its acquisition or its retention, and the omission was accordingly characterised as bad judgment or negligence rather than dishonesty.

the mis-declaration be shown to have conferred an illegal advantage and to have been attended by dishonesty. In the present case an advantage was conferred, and it stands quantified at Rs. 4,961,233.

49. We may add, for completeness, that where the Customs authorities have before them prima facie material disclosing a mis-declaration of quantity, the exercise of the powers of detention, examination and adjudication is neither arbitrary nor open to challenge upon that score.²⁰

XII. THE ANSWERS TO THE QUESTIONS

50. The questions proposed are accordingly answered as follows.
- a. Answered in the negative; in favour of the respondent Department and against the applicant. The declaration of the unit of measure was not shown to be inadvertent; the learned Tribunal has found, upon material which it has identified, that it was deliberate; the resulting short levy of Rs. 4,961,233 was established and its computation was never challenged; and Serial No. 1(g) of the Table to S.R.O. 499(I)/2009 dated 13.06.2009 was correctly applied. The premise of inadvertence upon which the question is framed does not survive the findings of fact.
 - b. Answered in the negative; in favour of the respondent Department and against the applicant. There was no enhancement of value under section 25 of the Act to be tested against the parameters of that provision or of the Customs Rules, 2001. The declared transaction value was not rejected, and what was computed was the offending value of the goods found in excess of the declaration, for the purpose of the redemption fine.
 - c. Answered in the negative; in favour of the respondent Department and against the applicant. The evidential Goods Declarations relate to a valuation controversy which did not arise; those of the applicant establish no more than that earlier declarations were accepted without verification; and the question in any event invites a re-appreciation of evidence, which is not permissible in this jurisdiction.
 - d. Answered in the negative; in favour of the respondent Department and against the applicant. For goods assessed upon the basis of weight, the declaration of weight bears directly upon the assessable value, and the loss which the exchequer was spared only by the weighing of the consignment stands quantified. That the duty and taxes were thereafter recovered does not undo the mis-declaration which made their evasion possible.

XIII. ORDER

51. For the foregoing reasons, this Special Customs Reference Application is dismissed. The interim order dated 15.10.2024 stands vacated. The Nazir of this Court shall, subject to any order to the contrary in C.P. No. D-3013 of 2021, release to the respondent Department the amounts secured before him in terms of the order dated 25.05.2021 passed in that petition, together with any profit accrued thereon, to be adjusted against the fine and penalty adjudged. Nothing

²⁰*Saadat Khan v. Federation of Pakistan* [2014 PTD 1615], where it was held that once the officials had credible information and prima facie evidence of a mis-declaration in the description or quantity of the goods, the goods became liable to confiscation and the powers of seizure could lawfully be exercised, the subsequent issuance of a show-cause notice completing the procedure.

in this judgment shall preclude the applicant from seeking credit for any amount already deposited with the Department. The listed applications, if any, stand disposed of. There shall be no order as to costs.

52. 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.

J U D G E

J U D G E

Karachi, dated: 18th day of September 2026

Ayaz PS.