

IN THE HIGH COURT OF SINDH, KARACHI

*Before: Muhammad Junaid Ghaffar &
Mohammad Abdur Rahman, JJ*

S.C.R.A Nos. 41 to 48 of 2025

The Collector of Customs

Vs.

Haleon Pakistan Limited & another

AND

S.C.R.A Nos. to 49 to 57 of 2025

The Collector of Customs

Vs.

Services International

Applicant in SCRA No.41 to 57 of 2025 : Mr. Sardar Zafar Hussain
Advocate

Respondent in SCRA Nos. 41 to
48 of 2025 : Mr. Salman Akram Raja,
Advocate

Respondent in SCRA Nos. 49 to
57 of 2025 : Mr. Muhammad Abbas,
Advocate

Date of Hearing : 17 April 2025

Date of Short order : 17 April 2027

Date of Reasons for Short Order : 30 April 2027

ORDER

MOHAMMAD ABDUR RAHMAN,J: Through this common order we will be deciding SCRA Nos. 41 to 57 of 2025 each maintained by the Collector of Customs, under section 196 of the Customs Act, 1969, praying to this Court to answer the following questions emanating from a

Judgment dated 19 December 2024 passed by the Customs Appellate Tribunal, Bench-I, Karachi in Customs Appeal Nos. K-2424 of 2024 to 2431 of 2024:

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

A. FACTS

2. The Additional Collectorate of Customs (Adjudication-II), Karachi had, on 13 February 2024, issued a Show Cause Notice to Glaxo Smith Kline Consumer Health Care Limited, which after restructuring has been renamed as Haleon Pakistan Limited, alleging that during the course of a post release verification it was considered that “Rigid PVC Film” (H.S. Code 39220.4910) and “Aluminum Foil” (H.S. Code 7607.1990), that had been imported by Haleon Pakistan Limited, was not amenable to avail a concessionary import quota under Serial No.9 and Serial No.31 of Table D of Part-II of the Fifth Schedule to the Customs Act, 1969 as while those goods were admittedly required for the purposes of packaging of drugs manufactured by Haleon Pakistan Limited, under condition (i) of Part II of the Fifth Schedule of the Customs Act, 1969, to claim the concessionary import quota, according to the Additional Collectorate of Customs (Adjudication-II), Karachi, such manufacture must be done by Haleon Pakistan Limited “in house” and could not be availed if the manufacture of the drugs was being done under a toll manufacture agreement.

3. Haleon Pakistan Limited contested the Show Cause Notice and maintained that the Additional Collectorate of Customs (Adjudication-II), Karachi was misreading condition (i) of Part II of the Fifth Schedule of the Customs Act, 1969 as on a literal interpretation of the clause it would be permitted to avail the concessionary import quota, even if the products

were used under a toll manufacturing agreement, but which contention did not find favour with the Additional Collector of Customs Adjudication-II, Karachi and who by its Order-in-Original dated 8 May 2024 rejected the contentions of Respondent and stated that the concessionary import quota, was only available where the material indicated at Serial No.9 and Serial No.31 of Table D of Part-II of the Fifth Schedule to the Customs Act, 1969 were utilised by Haleon Pakistan Limited in an inhouse manufacturing process.

4. Being aggrieved, Haleon Pakistan Limited maintained Customs Appeal Nos.K-2424 of 2024 to K-2431 of 2024 before the Customs Appellate Tribunal Bench-I, Karachi while its Clearing Agent Service International maintained Customs Appeal Nos. K-2474 of 2024 to K-2481 of 2024 and K-2505 of 2024 before the same Tribunal and which by a Judgement dated 19 December 2024 was pleased to allow the Appeal holding that the language used in condition (i) of Part II of the Fifth Schedule of the Customs Act, 1969 referred to the expression “in house use” and which was wide enough to cover the manufacture of the drugs under a toll manufacture agreement and that the interpretation being cast by the Department on the expression “in-house use in the manufacture of specified pharmaceutical substances” could not be read to mean “in house manufacturing facilities” and thereby permitted Haleon Pakistan Limited to claim the concessionary import quota.

5. Being aggrieved with the Judgement dated 19 December 2024 of the Customs Appellate Tribunal Bench-I, Karachi passed in Customs Appeal Nos.K-2424 of 2024 to K-2431 of 2024 and Customs Appeal Nos. K-2474 of 2024 to K-2481 of 2024 and K-2505 of 2024 the Collector of Customs Karachi, East has maintained each of these References raising the questions as have been reproduced in Paragraph 1 hereinabove.

B. Contentions on Behalf of the Collector of Customs, East

6. Mr. Sardar Zafar Hussain entered appearance in each of these reference applications, on behalf of the Collector of Customs, East and contended that so as to avail the concessionary import quota condition (i) of Part-II of the Fifth Schedule of Customs Act, 1969 needed to be complied with and which clarified that both the Rigid PVC Film and Aluminum Foil had to be used by Haleon Pakistan Limited in the inhouse manufacture of products and could not be availed where the goods were not being manufactured in house e.g., under a Toll Manufacturing Agreement. He further contended that such an interpretation followed

from the literal reading of condition (i) of Part-II of the Fifth Schedule of Customs Act, 1969 and which the Customs Appellate Tribunal Bench-I, Karachi had erred in interpreting. On this basis he stated that Haleon Pakistan Limited was not entitled to the benefit of the concessionary import quota and prayed that in the circumstances, the questions raised in each of these Special Customs Reference Applications under Order should be answered in favour of the Department. He did not rely on any caselaw in support of his contentions.

C. Contentions on behalf of Haleon Pakistan Limited and Services International Pakistan Limited

7. Mr. Salman Akram Raja entered appearance on behalf of Haleon Pakistan Limited in SCRA Nos. 41 to 48 of 2025 and contended that the interpretation that had been cast by the Collector of Customs, East on condition (i) of Part-II of the Fifth Schedule of Customs Act, 1969 could not be sustained on a literal reading of that provision. He maintained that so as to avail the benefit of the concessionary import quota it was necessary for Haeon Pakistan Limited to show the products being imported were utilized by it for *“in house use in the manufacturing of specified pharmaceutical substances as approved by the “Drug Regulatory Agency of Pakistan”* and which was being done. He submitted that it not being in dispute that Haleon Pakistan Limited had obtained the requisite license and approvals from the Drug Regulatory Authority of Pakistan to permit it to manufacture certain drugs under a Toll Manufacturing Agreement clearly the benefit to the concessionary import quota could not be denied on that basis. He submitted that on a literal interpretation of condition (i) of Part-II of the Fifth Schedule of Customs Act, 1969 as long as the goods being imported were being used “in house” i.e., for the manufacture of drugs being sold by Haleon Pakistan Limited then, irrelevant as to the manner in which the drugs were manufactured, Haleon Pakistan Limited would be entitled to the benefit of the concessionary import quota.

8. In support of his contentions Mr. Salman Akram Raja referred us to a decision of the Supreme Court of Pakistan reported as **Commissioner Inland Revenue, Zone I, Large Taxpayer Unit-II, Karachi vs. Messrs Ori Tech Oil (Pvt.) Ltd.**¹ wherein while considering whether the Respondent was exempt from pay Value Addition Tax under Rule 58 B of the Sales Tax Special Procedure Rules, 2007 on the basis that material that were imported was used for “in house consumption,” the Supreme

¹ 2019 SCMR 875

Court of Pakistan held that as the materials were imported for the use of the respondent, the fact that they were physically handed over to a third party who utilised such materials in the manufacture of a product that was sold by the respondent, only amounted to bailment and would not distract from the fact that the goods were at all times owned by the respondent and used by it for its “in house consumption.” He also placed reliance on a decision of a Division Bench of this Court reported as **Messrs Tufail Chemical and Surfacants (Private) limited though Company Chief Executive Officer vs. Province of Sindh through Secretary Ministry of Law**² in which a Division Bench of this Court, while considering as to whether the jurisdiction to levy Sales Tax on Toll Manufacturing Agreements vested with the Federal Government or the Province Government while relying the decision reported as **Commissioner Inland Revenue, Zone I, Large Taxpayer Unit-II, Karachi vs. Messrs Ori Tech Oil (Pvt.) Ltd.**³ had held that toll manufacturing was a “process of manufacture.” He concluded by relying on an unreported decision of the Supreme Court of Pakistan Reported as **Pakistan WAPDA Foundation vs. The Collector of Customs, Sales Tax, Lahore etc.**⁴ which clarifies as to what is meant by the expression “manufacture” in the context of a levy of Central Excise Duty.

9. Mr. Muhammad Abbas appearing on behalf of Services International in SCRA Nos. 49 to 57 of 2025, adopted the arguments of Mr. Salman Akram Raja.

D. The Order of the Court

10. We have heard Sardar Zafar Hussain, Mr. Salman Akram Raja and Mr. Muhammad Abbas and have perused the record.

11. Condition 1 of Part-II of the Fifth Schedule of the Customs Act, 1969 reads as under:

“ ... Import of Active Pharmaceutical Ingredients, Excipients/Chemicals, Drugs, Packing Material/ Raw Materials for Packing and Diagnostic Kits and Equipment, Components and other Goods

The Imports under this part shall be subject to following conditions, namely. –

(i). The active pharmaceutical ingredients, Excipients /chemicals, packing material and raw material for packing shall be imported only for **in-house use in the manufacture** of specified pharmaceutical substances, as approved by the Drug Regulatory Agency of Pakistan.
... ”

² 2024 PTD 793

³ 2019 SCMR 875

⁴ Civil Appeal No. 458 of 2017

Firstly, it is not contended by the Collector of Customs, East that the goods were not being used in the manufacture of drugs that are being sold by the Haeon Pakistan Limited or that Haeon Pakistan Limited did not have the requisite licenses and permission from the Drug Regulatory Authority of Pakistan so as to avail the benefit of the concessionary import quota. We have therefore only considered the language of the condition in the context of the manner in which the goods are being put to use and note that it states that so as to avail the benefit of the concessionary import quota the goods being imported have to be imported for the **“in house use in the manufacture”** of the drugs. The expression “in house” has been defined in the Oxford English Dictionary to mean:⁵

“ ... *Of or pertaining to the internal affairs of an institution or organization: existing within an institution or organization.*”

Keeping in mind such a definition, it would seem to us that as long as the goods that were being imported were being used by Haeon Pakistan Limited for their own internal use in the manufacture of products that were being sold by it, such use would come within the ambit of the expression “in house use” and which is exactly what Haeon Pakistan Limited is doing i.e., using the goods for their own use in the manufacture of drugs that are being sold by it under a license given to it by the Drug Regulatory Authority of Pakistan.

12. In this regard we have considered the sole contention of the Collector of Customs, East, that as Haeon Pakistan Limited had outsourced the manufacture of the drugs through a toll manufacturing agreement they were not entitled to the benefit of the concessionary import quota as the drugs being manufactured by Haeon Pakistan Limited were not manufactured “in house.” We do not agree with such a contention. The language of the condition clearly states that as long as the products being imported were used by Haeon Pakistan Limited in the manufacture of its own goods, as opposed to being used in the manufacture of someone else’s goods, they would be entitled to avail the benefit of the concessionary import quota. Such a conclusion is premised, as correctly contended by Mr. Salman Akram Raja, on the fact that the act of handing over the products to a third party under a toll manufacturing agreement would amount to a bailment and would therefore not amount to a transfer of title in the products, as has been held by the Supreme Court of Pakistan in the decision reported as **Commissioner Inland Revenue,**

⁵ Trumble , W.R and Stevenson A (1993) **Shorter Oxford English Dictionary,** Oxford university Press, Oxford

Zone I, Large Taxpayer Unit-II, Karachi vs. Messrs Ori Tech Oil (Pvt.)

Ltd.⁶ and from which it would therefore follow that even if Haleon Pakistan Limited used the products being imported under a toll manufacturing the goods being imported would at all times remain the property of Haleon Pakistan Limited and which would therefore entitle them to have the benefit of the concessionary import quota as the products were being used “in house” in the manufacture of drugs that were eventually going to be sold by it. These References are therefore misconceived.

13. For the foregoing reasons we had on 17 April 2025 answered each of the questions as against the Applicant and in favour of the Respondents and had by a short order dismissed each of these Applications and these are the detailed reasons for that short order. The office is directed to send a copy of this Order should be sent to the Customs Appellate Tribunal in compliance with Sub-Section (5) of Section 196 of the Customs Act, 1969.

JUDGE

ACTING CHIEF JUSTICE

Karachi dated 30 April 2025.

⁶ 2019 SCMR 875