

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 361 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For order of office objection No. 26.
- 2. For hearing of CMA No. 1387/2020.
- 3. For hearing of main case.
- 4. For hearing of CMA No. 1388/2020.

07.11.2025

Mr. Khalid Rajpar, advocate for the applicant.

Learned counsel demonstrates that pursuant to orders herein, service has been effected through publication.

The following questions have been proposed for determination:-

- i. Whether the invoice placed by the shipper in the container in terms of Rule 389 of the Customs Rules, 2001, is more authentic than the one submitted by the importer alongwith Goods Declaration?
- ii. Whether the less payment of duty / taxes made through self-assessment by declaring lower invoice value is not a mis-declaration within the meaning of Section 32(1)(c) read with SRO 499(I)/2009 dated 13.06.2009?

Learned counsel states that this is not case of first impression and the matter has already been conclusively decided by an earlier division bench of this court in the case of *Seminar (Pvt) Limited* reported as 2025 *PTD* 695. Learned counsel draws attention to the following observation hereinbelow:-

“11. As to placing reliance on the judgments of this Court by the Respondents Counsel, firstly, the facts of the present case are materially different because the retrieved invoice has been admitted having been placed in the consignment by the Shipper at Taiwan; but a plea has been taken that it was done inadvertently. These facts are not germane to the facts available in the said cases so relied upon by the Respondent's Counsel. Nonetheless, we have examined and perused the cases relied upon by the Respondents Counsel and with respect are unable to subscribe to the views so taken in these judgements as they are not supported by the Act or any rules in field. In NETPAC (Supra), firstly, it was not proved or established that the retrieved invoice had in fact any relation or concern with the Importer; hence, any finding recorded therein, has no relevance with the case in hand. Even otherwise, the finding at Para 13 of the said judgment to the effect that "it was incumbent upon the department to substantiate their assessment by making confirmation from the shipper or ascertain its market value or to examine the value declared by similar consignments as in absence of these parameters the retrieved invoice loses its significance" does not find any support from the relevant provision of the Act as discussed hereinabove. The law is clear in this regard and does not require the department to carry out any such exercise, once an invoice has been retrieved. It is only that whether the invoice is applicable and has relevance and concern with an Importer or not. There can't be a situation that despite retrieval of an invoice and its direct relevance with the Importer, any other method of assessment can be applied except making assessment based on the said invoice. We may further observe that for the present purposes the relevant provision of law

is not under challenge before us. In the case of Hasnain Qutbuddin (Supra), there was a finding of fact that the department had miserably failed to correlate the difference between the two invoices. We are afraid in that case further observations of the Court are not relevant for the present purposes, whereas again the Court had made similar observations as in the case of NETPAC (Supra) which we have already discussed hereinabove. The case of Urooj Autos (Supra) again is not relevant as despite certain observations by the Court as to the merits of the case as well as law, the case was decided against the department primarily on the premise that the Tribunal had determined the facts finally, which could not be interfered by this Court in its' Reference jurisdiction. Therefore, any reliance on this case is of no help wither. Even otherwise, post Finance Act, 2024, the relevant provision i.e. Section 196⁴ of the Act, under which a Reference Application can be filed, has been materially amended and now this Court has to decide even a question of fact arising out of order of the Tribunal; therefore, the ratio of the cases cited by the Respondent's Counsel is not applicable insofar as the present case and facts available are concerned.

12. On the other hand, Respondent's case is fully covered by the observations of the Honorable Supreme Court in the case of Junaid Traders⁵ wherein, the Hon'ble Supreme Court has been pleased to hold that once an Invoice has been retrieved from the container then it is a case of misdeclaration and concealment of material facts, and therefore, the Customs Authorities while making assessment and initiating further proceedings were fully justified in law.

13. Lastly, the Tribunal in its impugned order at Paras 21 and 22 has allowed Respondents Appeal in totality, whereas at best the case of the Respondent was that the assessment ought to have been made on Valuation Ruling, existence of which is not denied nor was under challenge at any stage of the proceedings by way of any Revision under Section 25A of the Act, hence, on this ground as well the impugned order cannot be sustained.

14. In view of hereinabove facts and circumstances this Reference Application was allowed through a short order on 23.01.2025 by answering the questions as above in negative; in favour of the Applicant and against the Respondent, and by setting aside the impugned order. These are the reasons thereof. Let copy of this order be issued to the Tribunal in terms of section 196(5) of the Act."

Learned counsel states that aforementioned judgment is squarely binding on this court per the multiline principles and in pursuance thereof, questions framed be decided in favour of the applicant department and against the respondent. Order accordingly. Reference application is disposed of in the said terms.

A copy of this order may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge