

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 264 of 2017
Along with Special Customs Reference Application 263/2017

| DATE | ORDER WITH SIGNATURE OF JUDGE(S) |
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1. For orders on office objection 17.
2. For hearing of CMA 2186/2017.
3. For hearing of Main Case.
4. For hearing of CMA 2187/2017.

16.12.2025

Mr. Muhammad Khalil Dogar, advocate for the applicant.
Rana Sakhawat Ali, advocate for respondent.

Paragraph 6 of the impugned judgment reads as follows:

“6. It is pertinent to note that no reference has been filed against the order dated 16.06.2015 passed by this Tribunal in Customs Appeal Nos.487 to K.511/2015 which has attained finality but instead of reference a fresh show cause notice has been issued by Collector of Customs who had no authority under the law for fresh/re-assessment after clearance of the consignment. As no reference has been filed in Honourable High Court by the respondent, therefore the order passed by this Tribunal cannot be revoked, amended or modified by the Collector (Adjudication) as no power therefore are provided in Section 179 of the Customs Act, 1969 to review or annul the order of Tribunal. The decision taken by the Adjudicating Authority was against the cardinal principle given in Article 13 of the Constitution whereby protection under double punishment or punishment for same offence more than one has been given. Instead of prescribed method, the learned Collector himself re-opened the matter finally decided by the Tribunal.”

Learned counsel for respondent for respondent relies upon judgment of earlier Division Bench of this Court dated 03.03.2025 passed in SCRA No.616/2016 and connected matters which reads as follows:

“JUDGMENT

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant has impugned Judgment dated 19.07.2016 passed in Customs Appeal No. K-1379/2016 and other connected matters by the Customs Appellate Tribunal Bench-III at Karachi, proposing various questions of law; however, vide statement dated 04.02.2021, amended /

additional questions of law have been proposed and today Counsel has relied upon the said statement. The amended questions read as under:-

- i. Whether in the facts and circumstances of this case, the learned Appellate Tribunal was justified to pass judgment dated 19.07.2016 in respect of the same Valuation Ruling No. 859 of 2016 which had already been adjudicated upon by the same bench of the learned Appellate Tribunal vide Order dated 27.06.2016 passed in Customs Appeal Nos. K-1408 & K-1416 of 2016?
- ii. Whether the learned Appellate Tribunal after passing order dated 27.06.2016 in Customs Appeal Nos. K-1408 & K-1416 of 2016 did not become functus officio and could still entertain the said Customs Appeal Nos. K-1408 & K-1416 by passing another Order dated 19.07.2016 afresh as if the said appeals were still pending decision?
- iii. Whether the learned Appellate Tribunal by setting aside the impugned Valuation Ruling 859 of 2016 and further directing the authorities to release the Consignments by applying (4) four years old Valuation Ruling No. 421 of 2012 dated 30.01.2012 in the absence of any provision of law did not commit any illegality?

2. Heard learned Counsel for the Applicant. Insofar as question Nos. ("i") & ("ii") are concerned, it appears that neither the department nor the Counsel have proposed these questions with any application of mind inasmuch as the Order dated 27.06.2016 passed in two Appeals i.e. Customs Appeal Nos. K-1408/2016 & K-1416/2016 was an interim order on some applications filed by the Appellants in those appeals seeking release of the consignments provisionally during pendency of their appeals; whereas, the said order was not a final order; therefore, the contention of Applicant's Counsel that Tribunal could not have been passed any further orders in these two appeals as well as other remaining appeals is misconceived and appears to be lack of application of mind while proposing such questions. It seems that the authorised person who has signed / filed these Reference Applications has not even bothered to even read what is being presented before the High Court. Such conduct has become a norm for the Applicant Department which needs to be deprecated. Accordingly, both these questions are answered against the Applicant Department and in favour of the Respondents.

3. Insofar as proposed question No. ("iii") is concerned, we have time and again confronted the Applicant's Counsel to assist us as to the Goods Declarations as well as import documents of the Respondents enabling this Court to answer the said question; however, despite repeated chances, he has not been able to refer to any of the documents on record. It appears that these Reference Applications have been filed without proper documents as only copy of Valuation Ruling, Order-in-Revision and Order of the Tribunal have been annexed, whereas neither the import documents, nor Goods Declaration has been shown to us. In that case, the proposed question (iii) as above cannot be answered by us.

4. In view of hereinabove facts and circumstances, these Reference Applications, being misconceived, are hereby **dismissed**.

5. Before parting with this order, we may observe that it has come to the notice of this Bench that Customs Department (i.e. all Collectorates including Directorate of Valuation), time and again file Reference Applications against the orders of the Tribunal by proposing questions, which are neither properly drafted; nor (in most of the cases) are arising out of the proceedings. In addition to this, Reference Applications are filed without complete import documents; or even the documents which have been placed before the Tribunal. This results in sheer wastage of precious time of the Court in deciding such matters. Lastly, the address of the Importers / Respondents is at times vague and incomplete which makes it impossible to serve them properly and in time. We need not reiterate that time and again the Department has been warned in such situations but to no avail.

In view of these facts let copy of this order be issued to Chairman FBR for his perusal and to investigate the general conduct of the Applicant department and to ensure appropriate remedial measures. It is high time that some specialised people are given this task to draft / propose questions of law / facts in a proper and just manner who shall file Reference Applications only in cases where there is a need for it; and not in every run of the mill case.

A copy of this order shall also be sent to the Tribunal in terms of Section 196(5) of the Customs Act, 1969 and shall also be placed in the connected files.

ACTING CHIEF JUSTICE

J U D G E

Ayaz “

In view hereof, learned counsel for the applicant does not press instant reference application, which is dismissed as withdrawn along with pending application(s).

A copy of this decision may also 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. Office to place a copy hereof in the connected matter.

Judge

Judge