ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 99 of 2026
SCRA 100 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on CMA No.1133/2026.
2. For hearing of main case.
3. For orders on CMA No.1134/2026.

<u>03.09.2026</u>

Agha Shahid Majeed Khan, advocate for the applicant.

On 10.08.2026, following order was passed:

"**<u>10.08.2026</u>**

Agha Shahid Majeed Khan, advocate for the applicant.

Learned counsel seeks time to reformulate the questions of law. At his request to come up after three weeks. Office is instructed to place copy of this order in the connected file."

Impugned judgment concludes as follows:

"08. Heard the arguments of both sides and examined the record brought before this Bench by the appellant as well respondent. Briefly, facts are that the Appellants are admittedly registered manufacturer-cum-importers of the pharmaceutical material/products. In the routine course of business, the appellants have imported a consignment of "Veterinary Antibiotics i.e. Asiphan Oral Powder, Belacol 100%, Kopmktat, Acipher-Tylosuscit 100%, Komaktat from Germany", with DRAP's Certified Invoice and the Clearance Certificate (annexed at pages 22 and 31 of memo of appeal). The GD bearing No. KAPS-HC-6428-10-03-2023 was processed by the respondent Collectorate through the WeBoc System as per the appellant's declaration. The consignment was allowed release digitally through the WeBOC Gate-out release message. Subsequently, nearly one and a half years after the issuance of show cause notice, dated 01.08.2024 (CN-1834395-19042024) for short levied duties / taxes of Rs. 5,646,152/ on the ground that the imported drugs / medicine were not meant for "hepatitis", thus, did not qualify for concession under Sr No. 5 of Table-C of Part- II, of the Fifth Schedule to the Customs Act, 1969. The case was adjudicated under Section 179 of the Customs Act, 1969, by the Collector (Adjudication-II) and enforced the demand of the aforesaid short-levied amount with a penalty of Rs. 500,000/-on the importer and Rs. 100,000/- on the customs agent, vide impugned Order-in-Original. Being aggrieved, the subject appeals were filed by the appellants.

09. This Bench has minutely read the conditions /restrictions as prescribed under Table-II of the Fifth Schedule. It is clear that apart from Sr. No. 5, which covers "All types vaccines, interferon and medicine for Hepatitis", the Table-C of the Part-II covers no less than 41 types of "Drugs" have different classes such as cancer, kidney, HIV / AIDS, cardiac, etc. The usage of Antibiotics, as drugs, is common in different diseases. The Table-C of Part-II

covers the "Drugs" and the DRAP has admittedly certified the invoice and issued the Clearance Certificate. The conditions of Part-II in general, particularly the conditions (ii) and (iv), require attention, and are reproduce 23. below:-

PART-II

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, raw Excipients/chemicals, packing material and 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.

(ii) The requirement for active pharmaceutical ingredients and Excipients/chemicals, **drugs as specified in Table A, B & C, shall be determined by the Drug Regulatory Agency of Pakistan**

(iii) The requirement for packing materials/raw materials for packing, as specified in Table-D. shall be determined by Input Output Coefficient Organization;

(iv) The designated/authorized **representative person of Drug Regulatory Agency of Pakistan shall furnish all relevant information, as set out in this part, online to the Customs computerized system**, accessed through the unique user identifier obtained under section 155 D of the Customs Act 1969, along with the password thereof. For "Respective Headings entries in column (3) of the Table against which two rates of customs duty 3% and

(v) For "Respective Headings entries in column (3) of the Table against which two rates of customs duty 3% and 5% have been mentioned in Column (4), the rate of 3% shall be applicable only for such goods which are chargeable to 3% duty under the First Schedule to the Customs Act 1969.

It is clear from the contents of Appendix-C of Part-II that it apart from other diseases covers the drugs for more than forty (40) types of assorted medicines which ought to be used for human beings including animals, these drugs / medicines are for Kidney, Cardiac, HIV / AIDS, etc., therefore, the medicines /drugs meant for Hepatitis but also for other diseases cannot be ousted from the Table-C of the Fifth Schedule (Part-II). Certification by the DRAP for the impugned consignment confirms that the impugned goods (Antibiotics) qualify as "drugs" for the purpose of Table-C. The appellants from day one of the adjudication proceedings, have stated that, by-default, the WeBOC System only shows the contents / description of Sr. No. 5 of Table-C, with the addition of the word "etc". Apparently by this "by default" appearance of Sr. No. 5's contents the respondents department has assumed that the impugned drugs, including "Antibiotics", are not for the use of "Hepatitis" patients, hence, cannot be eligible for the concessionary Tariff rates of the Fifth Schedule whereas the contents of Table-C and the conditions of Part-II of the Fifth Schedule confirms that the "drugs", other than Hepatitis, are also covered for the Fifth Schedule's Tariff rates. The aforesaid facts and Table-C's position have not been denied by the respondents' D.R instead just stick to their initial objection that the "drugs" imported by the appellant are not for Hepatitis disease, hence, not eligible for concessionary Tariff rates of the Fifth Schedule. It has also been noticed by this Bench that the respondents' D.R has not denied the veracity of DRAP's Certifications which have been issued for the appellants' consignment by the DRAP. Any previous clearance of the goods cannot be a basis to deny a legitimate benefit to an importer.

10. Considering the aforesaid observations / findings it is clear to this Bench that the appellants' application of concessionary Tariff rates under Section 18(1A) of the Customs Act, 1969, through Table-C of Part-II of the Fifth Schedule for their consignment of "VETERINARY ANITBIOTICS i.e. ACIPHEN ORAL POWDER, BELACOL 100% KOPMKTAT, ACIPHEN-TYLO-SUSCIT 100% KOMAKTAT, from Germany" is convincing and correct, therefore, the subject appeal is allowed in the above term and the impugned Order-in-Original is set-aside. There is no order as to cost."

Impugned judgment appears to have been rested on appreciation of evidence and no cavil in such regard has been articulated before us. Even otherwise, the Appellate Tribunal is the last fact finding forum in the statutory hierarchy and no case is set out for denovo adjudication of evidence in reference jurisdiction. Since no question of law articulated here from has been raised before us, therefore, reference applications are dismissed in limine,

A copy of this decision 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(10) of the Customs Act, 1969. Office is instructed to place copy hereof in the connected file.

Judge

Judge

Khuhro/PS