

## IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar  
Justice Ms. Sana Akram Minhas

1.	<u>Spl. Cus. Ref. A. 368/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
2.	<u>Spl. Cus. Ref. A. 369/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
3.	<u>Spl. Cus. Ref. A. 370/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
4.	<u>Spl. Cus. Ref. A. 371/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
5.	<u>Spl. Cus. Ref. A. 372/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
6.	<u>Spl. Cus. Ref. A. 373/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
7.	<u>Spl. Cus. Ref. A. 374/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
8.	<u>Spl. Cus. Ref. A. 375/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
9.	<u>Spl. Cus. Ref. A. 376/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
10.	<u>Spl. Cus. Ref. A. 377/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
11.	<u>Spl. Cus. Ref. A. 378/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
12.	<u>Spl. Cus. Ref. A. 379/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
13.	<u>Spl. Cus. Ref. A. 380/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
14.	<u>Spl. Cus. Ref. A. 381/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
15.	<u>Spl. Cus. Ref. A. 382/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
16.	<u>Spl. Cus. Ref. A. 383/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
17.	<u>Spl. Cus. Ref. A. 384/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
18.	<u>Spl. Cus. Ref. A. 385/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
19.	<u>Spl. Cus. Ref. A. 386/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
20.	<u>Spl. Cus. Ref. A. 387/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
21.	<u>Spl. Cus. Ref. A. 388/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
22.	<u>Spl. Cus. Ref. A. 389/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
23.	<u>Spl. Cus. Ref. A. 390/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
24.	<u>Spl. Cus. Ref. A. 391/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.
25.	<u>Spl. Cus. Ref. A. 392/2019</u>	Collector of Customs <b>VS</b> M/s. Excel Health Care Laboratories (Pvt) Ltd.

**For the Applicants:** Through Mr. M. R. Sethi, Advocate.

**For the Respondents:** Through Mr. Pervaiz Iqbal Kansi, Advocate.

**Date of hearing:** **19.09.2023.**

**Date of Order:** **19.09.2023.**

## **ORDER**

**Muhammad Junaid Ghaffar, J:** Through all these Reference Applications, the Applicant Department has impugned a common Judgment dated 05.03.2019 passed in Customs Appeal Nos. K-17 to 41 of 2019, Appeal Nos. K-72 and 136-159 of 2019 by the Customs Appellate Tribunal Karachi proposing the following questions of law: -

- “1) Whether considering the provisions of Section 194-C of the Act, read with Hon'ble Supreme Court's judgment in the case of Syed Rehan Ahmed (2017 PTD 381) and in the absence of allocation/hearing of the case by the Divisional Bench, the learned Member (Judicial), sitting singly, has not erred in law to pass an order without jurisdiction?
- 2) Whether in the presence of the Honourable Supreme Court's judgment (1994 SCMR 537), the learned Member (Judicial) without associating Member (Technical) of the Appellate Tribunal have no jurisdiction in terms of Section 194-A read with Section 194-C of the Act, to determine the PCT classification of the imported goods?
- 3) Whether owing to the different fact & circumstances of the cases and considering the law settled by the Honourable High Court of Sindh in the case of Pakistan Telephone Cables Ltd V/s FOP & Others (2011 PTD 2849), the Appellate Tribunal has not erred in law to disposed of fifty (50) appeals in one go through single order?
- 4) Whether in the presence of World Customs Organization (WCO)'s Section Notes and Chapter Notes of Chapter-30 of Tariff, the learned Member (Judicial) sitting singly without associating any Member (Technical) and/or without taking any assistance from the "Classification Committee" has not erred in law to held that the respondents consignment of "HMG Massone 75 IU is classifiable under/PCT Heading 3002.2090 instead of correct PCT Heading 3004.3900?
- 5) Whether in the light of facts and circumstances of the case and in the of Sections 4, 32, 80 and 192 of the Custom Act, 1969, and in the absence of any notification imposing embargo / limitation on the Custom officer of Section 3 of the Act, the learned Member (Judicial) of the Appellate Tribunal has not erred in law to hold that after release of the goods instead of Custom Officer of the Collectorate the officers of the Directorate of Post Clearance

Audit of Section 3DD of the Act, are the sole authority to proceed for recovery of the short levied amount or/and make the audit?

- 6) Whether in the light of facts and circumstances of the case and considering the provisions of sections 79(1) read with Section 32 and 80 of the Act, the learned Member (Judicial) of the Appellate Tribunal has not erred in law to allow the respondent's appeal and thus, deprived the Government from its legitimate revenue about Rs. 37.00 millions merely on the technical ground, which is otherwise wrong, that the audit is to be carried out by the officers of the Directorate of Post Clearance Audit and not by the Collectorate's officers?
- 7) Whether the findings of the learned Member (Judicial) of the Appellate Tribunal are not perverse and mis-reading / non-reading of record and exceed from its jurisdiction by ignoring the Supreme Court's ruling that the classification of the imported goods is a technical matter which has to be determined by the customs authorities?"

At the very outset, Respondent's Counsel has placed before us order dated 06.09.2021 passed in Special Customs Reference Applications No. 178 to 206 of 2020 along with memo of Reference Application filed by the Department in that case and submits that all questions of law proposed herein have already been answered against the Applicant Department through the said order. On perusal of the memo of Reference along with the proposed questions and the order passed by the Tribunal under challenge in SCRA No. 178 of 2020 and other connected matters, it appears that the contention of the Respondent's Counsel is correct as identical questions of law had been raised by the Applicant department and they stand answered against them. If further appears that in fact the order of the Tribunal in that case and the case in hand is verbatim same, except the Paragraph numbers.

In view of the above, all questions as proposed in these Reference Applications are answered against the Applicant Department for the reasons so assigned in the order passed on 06.09.20221 in SCRA No. 178 of 2020 and other connected matters. As a consequence, therefore, all listed References are hereby dismissed. Office shall place copy of this order in all connected files.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

**J U D G E**

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Arshad/