

# **IN THE HIGH COURT OF SINDH, KARACHI**

Special Customs Reference Application ("SCRA") Nos. 02, 03 & 04 of 2018

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Mohammad Abdur Rahman,*

**Applicants:** Universal Enterprise  
Through Syed Nadeem-ul-Haque,  
Advocate.

**Respondents:** Deputy Collector of Customs,  
Through Mr. Muhammad Rashid Arfi,  
Advocate.

**Date of hearing :** 14.03.2025.  
**Date of Judgment :** 14.03.2025.

## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through this Special Customs Reference Application, the Applicant has impugned judgment dated 15.11.2017 passed by the Customs Appellate Tribunal Bench-II, at Karachi in Customs Appeal No. K-2210 to 2212/2016 proposing the following reformulated questions of law:-

- "i) Whether the Show Cause Notice issue don 26-1-2016 is valid having aware about the litigation in term of appeal No. 1839/2025 pending before the Custom Appellate Tribunal III at Karachi?
- ii. Whether the question of resjudicata is not applicable on the impugned order in Original No. ONO-39/2015. Since the litigation against the parties and the issue of controversy was also same at Custom Appellate Tribunal III at Karachi and Collectorate of Custom Adjudication-II?
- iii. Whether the parallel litigation simultaneous be initiated in two different forums, one at Custom Appellate Tribunal No. III at Karachi and second at Collectorate of Custom Adjudication-II?
- iv. Whether in order to ascertain market value of item in question, the commission is required to be constituted?
- v. Whether the order in Original No. ONO-39/2015 has been passed on erroneous assumption rather than collecting the proper market of the item in question by conducting the survey?
- vi. Whether Under Section 32 synopsis serial 18.14 of the Custom Act 1969 the show cause dated 26-1-2016 and impugned order in original No.ONO-39/2015 are time barred as the first notice was issue don 11-9-2015, while order in original No.ONO-39/2015 was passed on 20-5-2016?

2. Heard learned Counsel for the parties and perused the record. It appears that the Applicant imported a consignment of

PRIVAC 400ML OPERATION THEATRE SYSTEM UARGE-LOCK CONNECTIN (QTY.25000 PCS) under PCT heading 9018.3990 vide Goods Declaration No. KAPE-HC-12757 dated 19.08.2013 at a unit value Euro 0.3415 per piece from Germany; whereas, on post audit scrutiny, it transpired that the Applicant had earlier imported an identical consignment on the same declared value; but an invoice had been retrieved from the container in that case and the matter was adjudicated vide Order-in-Original No. NON-411048-26082015 by making assessment at the unit value of Euro 1.0742 per piece. The said assessment was accepted by the Applicant and goods were released. Based on this, instant Show Cause Notice was issued alleging mis-declaration of value based on identical goods imported by the same Applicant. The Adjudicating Authority as well as the Appellate Tribunal have decided the matter against the Applicant. The relevant finding of the Appellate Tribunal reads as under:-

"7. I have heard both the contesting parties at some length and also examined the relevant record. During the course of hearing, the learned Counsel emphasized that the impugned Order-in-Original (No.41 of 2015-16 dated 20.05.2016) is time-barred by 129 days. The record shows that the Show Cause Notice is dated 20.01.2016 whereas the Order-in-Original has been issued on 20.05.2016. The aforesaid position confirms that the impugned Order-in-Original was issued well within 120 days as required under section 179(3) of the Customs Act, 1969. On the issue of valuation, the learned Counsel has not been able to justify value of Euro 0.3415/piece as declared by him, in presence of value of Euro 1.0742/piece based on invoice retrieved from the container of the Appellant in another case in 2015. His argument "that the value of the goods can be determined according to the Sub-Chapter-III the price actually paid and payable is the payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, the payment need necessarily take the form of Transfer of money", is least important to establish credibility of any value in the wake of clear evidence in the form of an Invoice which has been retrieved from the container of the Appellant in some other case. It is also important to observe that the Appellant deposited the amount of duty and taxes assessed by the Customs department on the basis of the found value. The said position has further been confirmed through adjudication process culminated in Order-in-Original No.411048 dated 26.08.2015."

3. Today, Counsel has been confronted as to the above finding and the admitted fact that earlier the value as mentioned in the retrieved invoice was accepted and the goods were released on payment of duty and taxes at the value of Euro 1.0742 per piece and he has not been able to satisfactorily

respond. We have also queried that whether the earlier Order-in-Originals were challenged, and any favourable orders were obtained and again no response has been given in the affirmative. The arguments raised on behalf of the Applicant before the Tribunal in its Memo of Appeal are also not convincing as it was stated that invoice found in the container was a human error at the time of generating the invoice through computer accounting software error, which response does not appear to be convincing and unless earlier Orders-in-Original are set-aside in favour of the Applicant; on merits no question of law is made out for our consideration.

4. Insofar as the other argument that the Order in Original is time barred, again the same also appears to be misconceived inasmuch the Show Cause Notice was issued on 26.01.2016; whereas the Order-in-Original was passed on 20.05.2016 i.e. within the period of 120 days as provided thereunder at the relevant time under Section 179(3) of the Customs Act, 1969. The contention that the period is to be counted from the date of Contravention Report and not from the Show Cause Notice is also misconceived as Section 179 (ibid) has been amended in the year 2009 and now the period of limitation for passing an Order-in-Original is to be counted from the date of Show Cause Notice and not from the date of Contravention Report.

5. In view of hereinabove facts and circumstances of the case, the proposed questions are answered against the Applicant and in favour of the Respondent and consequently, these Reference Applications are ***dismissed***. Let copy of this order be issued to the Tribunal as required under section 196(5) of the Customs Act, 1969 and a copy shall also be placed in the connected Reference Applications.

**ACTING CHIEF JUSTICE**

**J U D G E**