

**JUDGEMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**C.M. Independent No.970 of 2021**

*in*

**Custom Reference No.15 of 2013**

***M/s. Venus Pakistan (Pvt.) Ltd.***

***Vs.***

***Collector of Custom and another***

**Applicant by:** Mr. Khalid Mehmood Khan,  
Advocate.  
**Respondents by:** Mr. Riaz Hanif Rahi, Advocate.  
**Date of Hearing:** 19.01.2022

**AAMER FAROOQ, J.-** This order shall dispose of the abovementioned application as well as C.M. No.971/2021 and C.M. No.972/21 as they entail common questions of fact and law. All the applications call in question consolidated judgment passed by this Court in Custom Reference No.15/2013, Custom Reference No.05/2012 and Custom Reference No.16/2013 on 15.01.2019.

2. The facts relevant for the disposal of the referred applications are that the applicant received a show cause notice during the course of audit conducted by Deputy Collector Audit, LTU, Islamabad of M/s. Attock Petroleum Ltd. Islamabad for Duty & Taxes Remissions for Export (DTRE) approval dated 06.09.2007. It was observed that the goods acquired under DTRE approval are not consumed in export as certain quantities of JP-8

and HSD were lost during transit to Afghanistan. In the referred show cause notice the applicant was asked to pay the Government duties as well as default surcharge. The applicant contested the matter; however, Order-in-Original dated 12.05.2012 was passed against the applicant, which was challenged in appeal before the Custom Appellate Tribunal. The Tribunal accepted the appeals of the applicant vide order dated 24.06.2013. The Department filed Reference under Section 196 of the Customs Act, 1969 (the Act) before this Court which was disposed of vide judgment dated 15.01.2019. Hence, the applications under Section 12(2) Code of Civil Procedure, 1908 (CPC).

3. Learned counsel for the applicant, *inter alia*, contended that the issues raised in the Tax References filed by the Respondent Department with respect to the show cause notices issued to the applicant were different than the lead Reference in which the matter has been decided i.e. Reference No.11/2013. It was submitted that the respondents procured the order through fraud and misrepresentation and the judgment rendered in References filed by the Department in the case of the applicant are not tenable and merits setting aside, especially because even the findings on the legal issues involved are also not tenable.

4. Learned counsel for the respondents, *inter alia*, contended that the parameters of Section 12(2) CPC are that an order may be set aside on the basis of fraud and misrepresentation or want of jurisdiction. It was contended that it is trite law that

where fraud and misrepresentation is pleaded the allegation is to be specific and particulars of the same are to be provided whereas in the instant applications neither such fraud or misrepresentation has been specifically pleaded nor during the course of arguments it has been shown. It was submitted that the judgment rendered in the References in question cannot be opened on merit through the instant applications.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. Summary of facts leading to filing of the instant applications has been mentioned hereinabove, therefore, need not be reproduced. As noted, the applicant seeks setting aside of the judgment rendered by this Court in Reference No.15/2013, Reference No.05/2012 and Reference No.16/2013 on the basis that they have been procured through fraud and misrepresentation. Section 12(2) CPC permits the Court to set aside any order on the basis that it has been procured through fraud and misrepresentation and/ or want of jurisdiction. The applicant though has pleaded that the orders have been procured through fraud and misrepresentation but no particulars have been mentioned. The decision of this Court in Reference No.31/2015 dated 20.04.2016 was argued to be not applicable; however, nothing was shown during the course of arguments or otherwise in the pleadings as to the basis of the said argument. The applicant, if

aggrieved, of the judgment could have challenged the same before the Hon'ble Supreme Court of Pakistan but the remedy was not availed.

7. The Civil Procedure Code, 1908, *per se*, is not applicable in the proceedings under Section 196 of the Act; however, there is some case law to the effect that where a decision has been procured through fraud and misrepresentation the forum has inherent jurisdiction to set aside the same. However, in the instant case, as observed above, nothing has been brought to the attention of the Court to the effect that there was fraud or misrepresentation committed by the Respondent Department.

8. For what has been stated above, the instant applications are not competent, hence dismissed.

**(SARDAR EJAZ ISHAQ KHAN)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

*Announced in open Court on the 29<sup>th</sup> day of March 2022*

**JUDGE**

**JUDGE**

\*M. Naveed\*