

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 302 of 2022
SCRA 303 of 2022
SCRA 304 of 2022
SCRA 305 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objections No.9, 10 & 25.
2. For orders on CMA No.17581/2022.
3. For hearing of main case.
4. For orders on CMA No.1759/2022.

11.12.2025

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

The question proposed for determination in this reference is as follows:

Whether the less payment of duty / taxes made through self-assessment by declaring lower invoice value in the presence of valuation ruling is not a mis-declaration within the meaning of Section 32, 32A, 79 and 192 of the Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009?

Learned counsel for the respondent places on record a copy of order dated 24.12.2020 passed in SCRA 638 of 2019 and connected matters to demonstrate that the said issue has already been determined against the applicant department. The operative part whereof reads as follows:

“5. Perusal of the aforesaid provision which in fact is a binding guideline for the adjudication officer, not to impose a fine less than 35% on such type of cases, clearly reflects that it can only be done when the declared value is less than 30% from the value ascertained / determined on the basis of a direct evidence. Admittedly, the applicants case is not that there was any direct evidence of the identical or similar goods; but there was some valuation ruling pursuant to negotiations and consultation with local agents of the vehicle in question as per directions of the Chief Collector vide Circular No. 01/2017. It is very strange that the Adjudicating authority while passing the Order in Original has relied upon this very provision i.e. Serial No.1(d) of SRO 499 to first confiscate the vehicle and then redeeming the same upon payment of fine in lieu of confiscation. We are of the view that instant case is certainly not the one which would fall in this clause of the SRO 499 as the show cause notice as well as the entire case of the Applicant is based on a Valuation Ruling and not of a direct evidence of identical or similar goods.

6. We may also observe that a value notified through a valuation ruling by the department is in fact based on estimation and is not always reflective of the transactional value. It is in fact notional at times and in majority has been subject to challenge in accordance with s.25D of the Act. Though it is required to be notified after following the methods as provided under s.25 ibid, (which seldom is a case); but in any case it is not reflective of any direct evidence of exactly an identical goods; hence, will not fulfill

the criterion as laid down in para 1(d) of SRO 499 to sustain any confiscation and imposition of fine.

7. In the case reported as¹ a learned Division Bench of this Court had the occasion to deal with somewhat similar situation wherein the customs department was insisting that import license value would be debited on the basis of value of arms notified in terms s.25B of the Act (ITP) and not on the basis of invoice value. The importers case that though they were required to pay duties on the ITP values; but the import license and its value had got nothing to do with such values and could only be debited for the purposes of record and authorization of the same on the basis of invoice value or the value on which the arms had been sold to them by the seller. The learned division bench was pleased to decide the issue against the department by observing that “the notional value which is an artificial price determined under section 25B of the Customs Act, 1969, as stated above, is exclusively for the purpose of levy of customs duty and cannot be used for any other purpose as the law does not indicate such application”. Though it was in the context of the old valuation law; nonetheless the same in our view still holds field wherein the department intends to take punitive action pursuant to a value notified through a valuation ruling.

8. The questions of law, so proposed, do not appear to be properly drafted as it is only one question, which arises out of the order of Tribunal and that is “Whether in the facts and circumstances of the case, the Tribunal was justified in holding that in cases, wherein, assessment has been made on the basis of a Valuation Ruling, no action of confiscation and imposition of redemption fine in lieu thereof can be sustained in terms of Section 32 of the Customs Act, 1969” and the same is answered in the affirmative, against the Applicant and in favour of the respondents. Accordingly, these Reference Applications are dismissed in limine.

9. Office to issue copy of this Order to the Customs Tribunal under Section 196(5) of the Customs Act, 1969 and shall also place the same in all connected files.”

Learned counsel for the respondent states that the aforesaid order is squarely binding on this court and the present reference applications may be disposed of for the same reasons and upon the same terms as aforesaid. Counsel for the applicant articulates no cavil in such regard. Order accordingly.

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(5) of the Customs Act, 1969. Office is instructed to place copy hereof in the connected files.

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Judge

Judge

Khuhro/PS

¹ 2004 PTD 1769