

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:-**

**Mr. Justice Syed Sajjad Ali Shah.**

**Mr. Justice Muhammad Junaid Ghaffar.**

**C. P. NO. D-1629 of 2014**

**M/s Trade Link Corporation ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-4591 of 2013**

**Kaweeta Dileep ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-5572 of 2013**

**Aneel Kumar -----Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-1025 of 2014**

**Aneel Kumar ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-137 of 2014**

**M/s Abdullah & Co. ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-419 of 2014**

**Aneel Kumar ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-452 of 2014**

**M/s Abdullah & Co. ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-268 of 2014**

**M/s Jass Brothers International ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-6016 of 2014**

**Aneel Kumar ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-4798 of 2015**

**Aneel Kumar ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-5103 of 2014**

**M/s Abdullah & Co. & another ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**C. P. NO. D-222 of 2014****Aneel Kumar ----- Petitioner****Versus****Federation of Pakistan & others ----- Respondents****Date of hearing: 13.10.2015****Date of judgment: 03.11.2015****Petitioners: Through Mrs. Ismat Mehdi and Mr.****Ghulamullah Advocates.****Fed. of Pakistan: Through Mr. Ainuddin Khan DAG.****Respondents Through Mr. Kashif Nazeer, Mr. Ghulam Haider Shaikh, Mr. Iqbal M. Khurram and Mrs. Masooda Siraj Advocates.****J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** Through this common judgment, we intend to decide the aforesaid petitions, wherein, a common question of law is involved, whereby, the petitioners have impugned corrigendum dated 14.10.2013, through which Valuation Ruling No. 590 of 2013 ("590") was amended. For ease of reference the facts as detailed in C.P. No. D-1629 of 2014 are referred.

2. Briefly, the facts as stated are that the petitioners are involved in the import of Cosmetics and Toiletries for which a Valuation Ruling No. 512 of 2012 dated 21.12.2012 was in existence till 30.9.2013, when a new Valuation Ruling No.590 was issued by superseding the earlier Ruling dated 21.12.2012. Thereafter, on 14.10.2013 a corrigendum was issued by Respondent No.2 (Director Valuation) whereby, in the Table of Exclusions provided in the said Ruling, certain brand names were deleted. Subsequently, on 24.10.2013 another Valuation Ruling bearing No. 596 of 2013 ("596") was also issued for Toiletries of low and unknown brands. The precise grievance of the petitioners appears to be that on the

basis of impugned corrigendum, the goods imported by the petitioners are being assessed under Valuation Ruling No.590 instead of 596.

3. Counsel for the petitioners have contended that once a Valuation Ruling is issued, the Director Valuation becomes functio officio and neither can amend, nor alter, the Valuation Ruling by issuing a corrigendum. It has been further contended that there is no provision or authority in law which could empower the Director Valuation, while exercising powers under Section 25-A of the Customs Act, 1969, to issue a corrigendum in such a manner, whereby, the contents of the Valuation Ruling are specifically deleted, modified or altered. In support, reliance has been placed on the cases of *Assistant Commissioner, Mianwali and another Vs. Muhammad Amir and 4 others (1987 CLC 2095)* and *Customs Appeal No. K-15/2013 (2003 PTD 1489)*.

4. Conversely, Counsel for the respondents have contended that the petitioners were required to avail alternate remedy by filing a review under Section 25-D of the Customs Act, 1969, whereas, the corrigendum has been issued to clarify certain queries of the assessing department and to resolve the confusion existing in the application of the said Valuation Ruling. It has also been contended that the authority who had issued the Valuation Ruling, was also empowered to issue a corrigendum to clarify any confusion or ambiguity existing in the practical application of such Ruling.

5. We have heard all the learned Counsel and have perused the record. By consent all the aforesaid petitions are being finally decided at Katcha peshi stage.

6. Perusal of the record reflects that the Director Valuation had issued Ruling No.590 by exercising powers under Section 25-A of the Customs Act, 1969, whereby, the earlier Ruling dated 21.12.2012 was also superseded. Ruling 590 was issued in respect of values of Toiletries excluding brands mentioned in the Table to the said Ruling. Subsequently, a corrigendum dated 14.10.2013 was issued, purportedly by exercising powers under Section 25-A of the Customs Act, 1969 whereby, Valuation Ruling No.590 was amended, and, in the Table of Exclusions, certain brands on which the said Ruling was not to be applied, were deleted. By such deletion of certain brands, the intention

appears to be that Valuation Ruling 590 is applicable on the goods of the petitioners, as prior to this, most of the brands being imported by the them, were mentioned in the Exclusion Table. It would be advantageous to refer to the corrigendum dated 14.10.2013 which reads as under:-

“GOVERNMENT OF PAKISTAN  
FBR DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI.  
\*\*\*\*\*

DETERMINATION OF CUSTOMS VALUES OF TOILETRIES UNDER  
SECTION 25-A OF THE CUSTOMS ACT, 1969.  
(VALUATION RULING NO.590/2013)

**CORRIGENDUM**

No.Misc/41/2007-II/2906

dated October 14,2013

In exercise of the powers conferred under section 25-A of the Customs Act 1969, the following amendment is made in Valuation Ruling No.590/2013, dated 30.09.2013.

Background of the valuation issue: The Customs values of Toiletries were determination under Section 25-A of the Customs Act, 1969, vide Valuation Rulings No.590, dated 30.09.2013. Immediately after issuance of said Ruling, representations were received from various trade bodies including Karachi Chamber of Commerce & Industry that while determining the customs values, the values of certain middle level brands were determined at par with high end expensive brands. In this regard, reference was also made by the stakeholders to the Findings of Honorable Federal Tax Ombudsman in Complaint No. 04/2011. Accordingly, the concerned stakeholders including President KCCI & Chairman Valuation Committee FPCCI were associated and their recommendations were also considered in this brand nationalization exercise. Therefore the following amendments are made in the Ruling.

(1) In the existing Table of Exclusions the brands mentioned below are deleted:

Aqua, Axe, Boots, Clean & Clear, Cuticura, Dove, Denim, Etude, Himalaya, Herbals, Herbal Essences, Jergens, John Frieda, Just 4 Mea, Koleston, Marks & Spencer, Neutrogena, Nivea, Noxema, Old Spice, Palmers, St.Ives, Sensodyne, Swarzkopf, Vatika, Vaseline, Wella, Yardley.

Sd/-  
(Suraiya Ahmed Butt)  
Director”

7. Thereafter on 24.10.2013, another Valuation Ruling No.596 was issued, whereby, Customs values of Toiletries of low end and unknown brands were determined. The cumulative effect which appears to be, and by which the petitioners seem to be aggrieved is, that initially when Valuation Ruling No.590 was issued, the brands imported by them were excluded in the Table to the said Ruling and therefore, such Ruling was not applicable to their consignments. However, pursuant to issuance of

corrigendum dated 14.10.2013, whereby the brands being imported by the petitioners were deleted from the Exclusion Table, the Ruling was made applicable to their imports. Thereafter, on 24.10.2013 another Valuation Ruling No.596 was issued in respect of some low end and unknown brands mentioned in the Table to the said Ruling, including and in addition to other *unknown brands*. The petitioner's goods, on the basis of corrigendum dated 14.10.2013, were not being assessed on Valuation Ruling No.596, which according to the petitioners, was applicable on their imports and instead were being assessed under Valuation Ruling No.590 on the basis of corrigendum as stated hereinabove. The precise grievance of the petitioners is that under the garb of a corrigendum they have been subjected to assessment under Valuation Ruling 590, whereas, their consignments ought to have been assessed under Valuation No.596, under the head of *low end and unknown brands*. Though the question that whether the goods in question fall in the category of "known" or "unknown" brands is a factual one, and cannot be decided by us while exercising writ jurisdiction, nonetheless, the question therefore, before us, is as to whether a corrigendum in the manner as has been issued in the instant matter, could be issued by Respondent No.2 so as to alter or modify a Valuation Ruling or for that matter can a corrigendum be a substitute of a New Ruling?

8. Insofar as Customs Act, 1969 is concerned, the only provision which relates to correction of clerical errors is Section 206 of the Act which, provides that clerical or arithmetical errors in any decision or order passed by the Federal Government, the Board or any officer of Customs under this Act or errors arising therein from accidental slip or omission, may at any time be corrected by the Federal Government, Board or such officers of Customs, or his successor in office as the case may be. Though the Counsel appearing for and on behalf of the respondents have not referred to this provision, however, even otherwise, in our view, it is also not applicable in the instant matter as the case does not appear to be of any clerical error or an accidental slip or omission which could be corrected under Section 206 of the Customs Act, 1969.

9. Insofar as the word corrigendum is concerned, the same has though not been defined under the Customs Act, 1969 however; the dictionary meaning of the word corrigendum, as provided in Oxford Dictionary is, **A thing to be corrected, typically an error in a printed book,** (<http://www.oxforddictionaries.com/definition/english/corrigendum>).

Similarly in the Merriam-Webster dictionary it has been defined as **an error in a printed work discovered after printing and shown with its correction on a separate sheet** (<http://www.merriam-webster.com/dictionary/corrigendum>)

On perusal of the impugned corrigendum, it appears that the same in fact has not been issued for any correction or a mistake or omission but as stated itself in the corrigendum, it has been issued in response to certain representations which were received after issuance of Valuation Ruling 590 from various trade bodies including, Karachi Chamber of Commerce and Industry, that while determining the Customs values, the value of certain middle level brands were determined at par with high and expensive brands, whereafter, the stake holders including President KCCI and Chairman Valuation Committee FPCCI, were associated and after their recommendations, a brand rationalization exercise was carried out, whereafter, the said amendments were made in Valuation Ruling 590 by issuance of the impugned corrigendum. The corrigendum in the instant matter itself reflects that it intends to include or exclude certain brands of Toiletries from the purview of Valuation Ruling in question, and, therefore, in our opinion, the same could not have been done by issuance of a corrigendum. What required was, to issue a fresh and an independent Valuation Ruling for the brands for which the corrigendum was being issued. It is pertinent to observe that a Valuation Ruling which is issued by exercising powers under Section 25-A of the Act, is in fact a statutory ruling or a ruling which is backed by the statute. The Director Valuation while exercising powers under Section 25-A of the Act *ibid*, for issuance of a Valuation Ruling is though delegated with such authority, but, the exercise of such authority must be in accordance with law, whereas, if the Valuation Ruling is allowed to be amended in a manner as has been done in the instant case by issuance of a corrigendum, then it would leave open for the department to carry out such amendment(s) as and when they deem fit, either in respect of description of goods or for that matter for amending the Values so notified. This is not the intent of Section 25-A of the Customs Act, 1969, which in fact provides a complete mechanism, read with the Valuation Rules, that as to how and in what

manner, the Valuation has to be determined before notifying it as a Ruling under Section 25-A of the Customs Act, 1969. In fact there are numerous judgments of this Court as well as the Hon'ble Supreme Court, whereby, the provisions of Section 25 and 25-A have been interpreted and guidelines have been issued which are binding upon the Directorate of Valuation. Reference in this regard may be made to the case of **Collector of Customs Port Muhammad Bin Qasim V/s Zymotic Diagnostic International (2007 PTD 2623)**, **Sadia Jabbar Vs. Federation of Pakistan (SHC) (PTCL 2014 CL 537)**, **Sadia Jabbar and 3 others Vs. Federation of Pakistan and others (2012 SCMR 617)** and **Ayesha Impex Vs Federation of Pakistan (2012 PTD 1)**. The respondents cannot, rather must not, deviate from such directions while exercising powers under Section 25A of the Act *ibid* at the time of issuance of a Valuation Ruling. It appears that while issuing the corrigendum in question, whereby, the Valuation Ruling has been made applicable to certain products / brands the very exercise required to be carried out in terms of Section 25 and 25-A of the Act, read with Valuation Rules 2001, has not been followed. This is, in our view, impermissible under the law. The reasoning as stated in the corrigendum makes it obligatory upon the respondents to issue a fresh Valuation Ruling, instead of issuing a corrigendum, which was not at all warranted in the given facts.

10. The upshot of the above discussion is that in our view, the Director Valuation has no authority and jurisdiction in law to issue a corrigendum except for the purposes as provided under Section 206 of the Customs Act, 1969, whereas, in the instant matter there is no such situation and in fact substantial amendments have been carried out in the Valuation Ruling in question, which has created distortion in the uniform assessment of the goods, leaving unfettered discretion to be exercised by the assessing officers, and therefore, cannot be sustained.

11. Accordingly, the corrigendum dated 14.10.2013 issued in respect of Valuation Ruling No.590 is declared to have been issued without any lawful authority and is hereby set aside. All the aforesaid petitions are allowed to this extent. However, the respondents shall finalize the assessments of the petitioner's consignments in question strictly in accordance with law, and after providing an opportunity of being heard to

the petitioners, either in terms of Section 25 or on the basis of a Valuation Ruling, if otherwise applicable, as the case may be, and without being influenced by the corrigendum dated 14.10.2013, whereas, the amount secured before the Nazir of this Court at the time of release of consignments in question, would be subject to such finalization of assessments. All the petitions are allowed in the above terms.

Dated: 03.11.2015

JUDGE

JUDGE

ARSHAD/