

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1930 Of 2016

DATE ORDER WITH SIGNATURE OF JUDGE

For final Arguments.

12.03.2019.

Mr. Ahmed Ali Hussain, Advocate for Plaintiff.

Ms. Maimoona holding brief for Mr. Sohail Muzaffar, Advocate for Defendant No.1.

Ms. Masooda Siraj, Advocate for Defendant No.3.

On 15.11.2018, the following issues were settled:-

1. Whether the Director General Valuation exercising powers under 25 D of the Customs Act 1969, could enhance the customs value?
2. Whether the Director General Valuation could substitute his own determination in revisional jurisdiction?
3. Whether benefit of the new Valuation Ruling passed during the pendency of the instant suit will be available to the plaintiffs?
4. What should the decree?

Before the arguments of both learned Counsel could be appreciated, it has been brought to the knowledge of this Court by the learned Counsel for the Plaintiff that insofar as Issue Nos.1 & 2 are concerned, they stand decided and are covered by a judgment of a learned Division Bench of this Court in the case of ***Director General Customs Valuation and another v. M/s. Al-Amin Cera*** reported as **(PTCL 2018 CL. 636)**. On perusal of the said judgment, it appears that it was rendered under the Reference jurisdiction of this Court under Section 196 of the Customs Act, 1969, on a Reference Application against the order of the Customs Appellate Tribunal and question No.2 thereof reads as under:-

“(2) Whether a customs value determined in terms of s. 25A can be enhanced by the Director General of Valuation under s. 25D?”

The relevant finding of the learned Division Bench is recorded in Para-23 of the said judgment, which reads as under:-

“23. In view of the foregoing, the first two questions stand answered as follows section 25A on the one hand and s. 25D on the other are not complementary. They apply and operate in their own spheres. Insofar as s. 25A(3) is concerned, it applies only if there are conflicting customs values determined under subsection (1) and not otherwise. If such is the case, and the matter is referred to the Director General under this provision, he may either choose between the two or make his own determination. In either case it would be his determination, and it would be “the” “applicable customs value”. **Insofar as s. 25D is concerned, it is a revisional Jurisdiction. I can only be invoked by a revision petition, i.e. is not exercisable by the Director General on his own motion. Furthermore, it applies only if there is a customs value determined under s. 25A by either the Director Valuation or the Collector of Customs. The jurisdiction being revisional, what the Director General is concerned with is whether the customs value has been determined in accordance with law. If the answer is in the affirmative, the value is affirmed. If the answer is in the negative, then the customs value must be set aside, thus opening the way for a determination afresh under s. 25A(1) by the Director Valuation or the Collector of Customs, as the case may be. The Director General cannot substitute his own determination, either by way of modification or a purported “fresh” determination or otherwise. It necessarily follows that when the Director General is exercising his jurisdiction under s. 25D there can be no question of any enhancement under s. 25D there can be no question of any enhancement of the customs value as determined under s. 25A(1).**

From perusal of the above finding, it clearly appears that the controversy in this matter as reflected through Issue Nos.1 & 2 above is fully covered by this judgment which is binding in nature; hence, no further findings are to be recorded. In view of hereinabove facts and circumstances of this case, Issue Nos.1 & 2 are answered in negative in favor of the Plaintiffs and against the Defendants and instant Suit stands decreed to the extent of prayer clause “b” and consequently, the security furnished before the Nazir pursuant to orders of this Court stands discharged, and Nazir to act accordingly. Insofar as prayer clause “c” is concerned it is decreed to the extent that Plaintiff shall approach the Defendants/Department with its

refund application within 30 days from today and on such presentation, the same shall be decided preferably within 60 days thereof, in accordance with law after providing opportunity of being heard to the Plaintiffs.

Suit stands decreed in the above terms. Office to prepare decree accordingly.

J U D G E

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