

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

**Special Customs Reference Application**  
**Nos. 512 to 537 of 2016**

Present: *Mr. Justice Muhammad Junaid Ghaffar*  
*Mr. Justice Agha Faisal*

Applicant: **The Collector of Customs**  
**Through Mr. Mirza Nadeem Taqi,**  
**Advocate.**

Respondent: **Afeef Trading & Furniture (pre-**  
**admission stage)**

1. *For Order on office objection No. 18 & 21.*
2. *For Order on CMA No. 3096/2016 (Exemption)*
3. *For hearing of Main Case.*

**Date of hearing:** **26.10.2020.**

**Date of Order:** **26.10.2020.**

**ORDER**

**Muhammad Junaid Ghaffar J.-** All these connected Reference Applications have been filed by the Applicant / Department against a common Order dated 22.04.2016 passed in Customs Appeal No.K-702/2014 to 727/2014 (25 cases) by the Customs Appellate Tribunal Bench-II, at Karachi, proposing the following questions of law:-

- A. Whether in the light of facts / circumstances of case and in the absence of any information /documents from the importers about the adjustments as envisaged in Section 25(2) of the Act, the declared value of @ US\$ 0.35 / kg can be considered as customs value in terms of Section 25(1) read with Section 25(2)(f) and Section 25(13)(a) of the Act?
- B. Whether on the basis of facts and circumstances of the case the learned appellate tribunal erred in law to hold that the Valuation Ruling is applicable in the impugned goods in question i.e. Potato Frozen French Fries of all original are valued at US\$ 0.81/kg?
- C. Whether in the light of facts and circumstances of the case and considering the provisions of 25(13)(a), 25(11), 25(2) and 25(4) of the Act, the Appellate Tribunal erred in law to hold that the declared transactional value be considered as the customs value in terms of Section 25(1) of the Customs Act, 1969?

D. Whether the less payment of duty / taxes made through self-assessment by declaring lower invoice value is not a mis-declaration within the meaning of Section 32(1)(c) read with SRO 499(I)/2009 dated 13.06.2009?

2. Learned Counsel for the Applicant submits that the Tribunal has erred in law by reaching to the conclusion that the Valuation Ruling cannot be applied retrospectively inasmuch as the case of the Applicant department was not entirely dependent on such Valuation Ruling; but evidential consignment of same origin by another importer and in support he has read out the Show Cause Notice in the instant matter. According to him, the Show Cause Notice states that the goods were required to be assessed at US\$ 0.8111 per kg., whereas, the Ruling has determined the value at US\$0.70 per kg and US\$0.85 per kg. In such circumstances, according to him the matter requires consideration for adjudication of the above questions of law.

3. We have heard the learned Counsel and perused the record. The contention so raised by the learned Counsel for the applicant, on perusal of the record, does not seem to be correct inasmuch as in Para-3 of the Show Cause Notice, it has been stated that *"In the light of above valuation determined by the Valuation Directorate under Section 25-A of the Customs Act 1969, the impugned goods were required to be assessed"*, and similarly in Para-2 it is clearly reflected that the matter after examination of record was sent to the Valuation department for determination of customs value under Section 25-A (ibid). His contention is further belied from the record available before us in this regard. We may refer to Para-5 of the Order dated 09.06.2014 passed by the Collectorate of Customs Appeals, which reads as under:-

"5. I have gone through the record of the case and heard the learned Counsel for the Appellant and the Respondent's representative. The instant case pertains to the fact that declared value of the appellant's goods Frozen French Fries Potatos was US\$ 0.25/kg but the same were finally ordered to be assessed at US\$ 0.81/kg in terms of Valuation Ruling No. 542/2013 dated 07.03.2013 vide impugned order. The main plea of the appellants in the case is that "Frozen French Fried Potatoes" have been manufactured in Netherland and same are of "Netherland Origin" whereas evidential data produced by Respondent relates to Canada, United States & Austria as such relied evidence are not applicable on impugned goods being different original and quality of the goods. On the contrary it is evident from the Valuation Ruling that Potato Frozen French Fries of all origin are valued at US\$ 0.81 per kg

and the ruling is based on evidential data of identical goods. Hence the plea taken by the appellants is not maintainable. The impugned order is upheld accordingly and the appeal being without merits is rejected.”

4. Perusal of the aforesaid order very clearly reflects that the entire controversy has been initiated pursuant to a Valuation Ruling No. 542/2013 dated 07.03.2013 and not on the basis of some evidence as relied upon by the Counsel for the applicant now before us. The Collector (Appeals) has even otherwise adjudicated the matter on such basis and while confronted, it was argued that this finding is erroneous on facts; however, admittedly, no further appeal was preferred by the Applicant.

5. The learned Tribunal in its order has dealt with the issue and we have gone through the same and are of the considered view that no substantial question of law could be said to have arisen from the impugned order, whereas, the plea of the Applicant as noted hereinabove is premised on factual aspect of the matter. The finding of the learned Tribunal is as under:-

“05. I have carefully analyzed the surrounding facts and law points involved in these appeals and reached at the conclusion that the whole case revolves around the two key points i.e. (i) whether the Valuation Ruling issued after the passage of one year of the release of the consignment can be applied retrospectively and (ii) whether the evidential GDs pertaining to other origin, than Netherlands, are hit by clause (e) of sub-section (13) of Section 25 of the Customs Act, 1969. It has been noted that sub-clause (e) of sub-section (13) clearly defines that goods shall not be regarded as identical goods or similar goods unless they were produced in the same country as the goods being valued. More, the definition of identical goods given in sub-clause (b) of sub-section (13) of Section 25 of the Act, prescribes that identical goods mean goods which are same in all respects including physical characteristics, quality and reputation. In this case not only the country of origin is different but the sizes of French fries are also different. Therefore, the law of valuation does not allow to apply such GDs to re-assess the present consignments. The assessment made Under Section 80 of the Customs Act, 1969 can only be reopened under Section 32 or 32-A of the Act if there is a direct evidence of evasion of duties. Otherwise, such assessment become past and closed transaction.

6. As regards to application of Valuation Ruling No.542/2013 dated 07.03.2013 detailed discussion is not required as it is a cardinal principle of law that the value determined under Section 25A of the Customs Act, 1969 cannot be applied retrospectively. The Valuation department has issued hundreds of such Valuation Rulings which are applied prospectively not retrospectively. Moreover, the above referred judgment of Lahore High Court clearly restrains to apply even current Valuation

Ruling if it has not been applied at the time of assessment of the goods. Relevant Paras of the judgment are reproduced as under:

"20. Restricting our discussion to section 32, this Court does not have any doubt in its mind that before invoking the provisions of section 32 the prime responsibility of the competent authority is to establish that the document furnished and the statement given by the importers or his representative are wrong and that it was well within his knowledge. The application of section 32 directly without establishing incorrectness of the document available on the record with evidence is beyond the scope and power of the concerned authorities.

21. Valuation Ruling especially in the manner that they are being prepared are still estimates and if the same are not followed at the time of earlier appraisal, it cannot be used against an importer which has already appraised and has been made out of charge by the Customs Authorities.

22. In this view of the matter, the present writ petition is also allowed and the show-cause notice and consequent proceedings are held to be as without lawful authority and are set aside."

07. Considering law points and the above said judgment of the Honourable Lahore High Court Lahore the undersigned is constrained to hold that application of the evidential GDS not being of same country of origin as the goods being valued and application of Valuation Ruling No, 542/2013 dated 07.03.2013 retrospectively, is totally out of the scope of Section 25 of the Customs Act, 1969. Hence, all the 26 impugned Order-In-Originals and Order-In-Appeals No, 8704 to 8729, based upon on wrong application of law, do not carry weight in the eyes of law. Hence, the impugned orders are set aside and all the appeals are allowed in the above terms."

5. On perusal of the aforesaid two orders of the Collector (Appeals) and Appellate Tribunal, it is clear that the entire case has been premised on a Valuation Ruling and which admittedly was issued on 7.3.2013 much after clearance of the consignment(s) in question, whereas, to that effect there is no dispute. Section 25-A, could not have retrospective effect i.e. a valuation ruling, could not be issued in relation to goods actually imported, nor could it be applied to imported goods, unless it was issued before such importation; If there was no valuation ruling when the goods were actually imported, it was only S.25, which was applicable<sup>1</sup>. It is settled law that a Valuation Ruling cannot be applied retrospectively on the consignments, which have already been assessed to customs duty and cleared from the Customs department. Moreover, in this case even otherwise, the declared value of the respondents was not accepted and the department on its own made an assessment order by enhancing the value to US\$ 0.45 per kg. Accordingly, we are of the view it is

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<sup>1</sup> Sadia Jabbar v. Federation of Pakistan (2016 PTD 1096)

only one issue which was decided by the forums below and that was in respect of applicability of the Valuation Ruling issued subsequent to the clearance of the consignments in question which already stands decided against the Applicant department. Therefore, no case for even issuance of notice to the Respondent is made out; hence, all Reference Applications are misconceived and therefore, dismissed in limine. Office is directed to place copy of this order in all connected files, whereas, copy of this order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969.

Judge

Judge

Avaz P.S.