

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

Special Customs Reference Application Nos.491 to 508 of 2017

**The Director of Customs Valuation**  
**Versus**  
**KAPA Enterprise & others**

Date	Order with signature of Judge
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**Dated: 03.11.2020**

Ms. Masooda Siraj for applicant.

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This Special Customs Reference Application along with all listed connected matters have been filed against a common order/judgment dated 20.06.2017 passed by Customs Appellate Tribunal (“Tribunal”) in Custom Appeal No.K-563/2017 and other connected matters by proposing the following questions of law in terms of section 196 of the Customs Act 1969:-

1. Whether by making direction not to issue fresh Valuation Ruling the Appellate Tribunal has not travelled beyond its jurisdiction in terms of Section 194-B(I) of the Customs Act, 1969?
2. Whether the Appellate Tribunal erred in law by misreading the plain language of Section 25-A(I) of the Act which states that the value for the Valuation Ruling is to be determined as per methods prescribed under section 25 of the Act?
3. Whether in the light of facts and circumstances of the case the learned Appellate Tribunal has erred in the law to hold, without any cogent justification that the Director (Valuation) has not determined the value under the provisions of Section 25 and Chapter-IX of the Act?
4. Whether on the facts and circumstances of the case and considering the findings/order of the Director General of Customs Valuation in the Order-in-Revision of Section 25-D of the Act, the Appellate Tribunal erred in law to set aside the Order-in-Revision without giving any cogent rebuttal findings?
5. Whether in the facts and circumstances of the case the learned Appellate Tribunal has not erred in law to determine the Customs values as “fixation of value” as the concept of “fixation of value” no more exists in the Customs Act, 1969. Customs values are being determined under Section 25 read with Section 25-A of the Customs Act,1969?
6. Whether the learned Appellate Tribunal erred in law by indulge in selective reading of the order of the judicial forums, and misreading/non-

reading of the record available before the Tribunal, and prima facie, just based its findings/order on the submissions/dictates of the respondent importer?

Learned counsel for applicant has read out the impugned judgment and submits that the impugned judgment is not in accordance with law, whereas, the Tribunal has failed to appreciate the material available on record; hence, the impugned judgment is perverse and liable to be corrected and or modified by answering the proposed questions in favor of the Applicant.

We have heard the learned counsel and perused the record. The relevant finding of the Tribunal is contained in paragraph 13, which reads as under: -

“13. By getting the strength from the Judgments passed by the Superior Courts including the Hon’ble High Court of Sindh in the case of Sadia Jabbar and in conformity of the aforesaid observations along with our additions, the subject impugned Valuation Ruling 1075/2017 dated 09.03.2017 lacks the warrant of law and its issuance has no adherence to the statutory requirements as laid down in Section 25 of the Customs Act, 1969. Therefore, the said Valuation Ruling is declared as void, illegal and without lawful authority is hereby set aside accordingly. The impugned Order-in-Revision passed within the hierarchy of the Customs infested with patent illegalities, are hereby declared null and void and accordingly set aside. The Department should take appropriate measures and issue a fresh Valuation Ruling, considering the above noted observations, specially in accordance with the principles laid down in Section 25 and 25-A of the Customs Act, 1969 (stricto sensu), after giving the opportunity, being heard to all stakeholders. The exercise will be completed within one month from the receipt of this order. Compliance report shall be submitted before Registrar of this Tribunal accordingly. Appeal is allowed with no order as to cost.”

Perusal of the aforesaid finding reflects that after a detailed discussion as to the prevailing law and the judgments of the Courts, the Tribunal has though finally set aside the impugned valuation ruling; but at the same time, has remanded the matter to the department for taking appropriate measures and to issue a fresh valuation ruling in accordance with law and by following the provisions of Section 25 of the Customs Act, 1969. It has been further directed that such exercise is to

be carried out after appropriate opportunity of hearing to the stakeholders.

We have confronted the learned Counsel on the above findings and to point out any legal defect in the same; but she has failed to satisfactorily respond. We are completely at a loss as well as unable to understand as to why, and in what manner, the applicant department is aggrieved by the above findings and the remand of the matter. Learned Tribunal has only given directions to act in accordance with law and to follow the valuation / assessment methods, as contained in Section 25 *ibid*. As to the other entire discussion in the order of the Tribunal, we may observe that it is only to the extent of law already declared by this Court as well as other courts of the country and the Tribunal has not given any finding even on facts in favour of the respondent. It is only reiteration of the dicta already laid down by the Courts in respect of applicability and exercise of powers under section 25 and 25A of the Customs Act, 1969, which in our view is to be followed by the department without exception.

Insofar as the questions of law proposed hereinabove are concerned, in our view none of them arise out of the order/judgment of the Tribunal nor they are drafted properly. The only question which at the most could arise out from the impugned order/judgment is *whether in the facts and circumstances of the case the Tribunal was justified in setting aside Valuation Ruling No.1075/2017 dated 09.03.2017 and remanding the matter to the customs for issuance of fresh Valuation Ruling in accordance with law* and the answer to this question is in the affirmative. As a consequence, thereof these Reference Applications are misconceived and are hereby dismissed in limine.

**Judge**

**Judge**