

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. 527 to 538 of 2020

Date	Order with signature of Judge
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Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Applicant: The Director Customs Valuation, Karachi,
Through Ms. Masooda Siraj, Advocate.

Respondents: M/s. Usman Traders 11 others
Through Mr. Asad Raza Khan, Advocate.

Date of hearing: 27.01.2021.

Date of Order: 27.01.2021.

O R D E R

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant Department has impugned Order dated 04.09.2020 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No.K-1008/2020 and connected matters (12 Appeals), proposing the following questions of law:-

- i. Whether under the facts and circumstances of the case the learned Appellate Tribunal has jurisdiction to restore the earlier Valuation Ruling No. 1003/2017 dated 05.01.2017 whereas, the abovementioned Valuation Ruling has already been superseded by Valuation Ruling No. 1453/2020 dated 24.06.2020?
- ii. Whether under the facts and circumstances of the case, while setting aside the impugned Order-in-Revision No. 20/2020 dated 24.07.2020 and Valuation Ruling No. 1453/2020 dated 24.06.2020 the learned Appellate Tribunal has erred in law and misinterpreted in particular Sections 25-A (1) & (4) and 25-D of the Customs Act, 1969 read with relevant Rules and Notifications issued for determination of Customs value?
- iii. Whether after passing final impugned order the learned Appellate Tribunal is empowered to issue direction for provisional assessment on the basis of earlier superseded Valuation Ruling No. 1003/2017 dated 05.01.2017?
- iv. Whether under the facts and circumstances of the case the learned Appellate Tribunal erred in law while passing impugned order and completely misinterpreted Section 25D of the Customs Act, 1969 read with SRO 495(I)/2007 dated 09.06.2007, whereby the Director General being special

forum and having technical expertise has power under Section 25D of the Customs Act, 1969 for purpose of upholding the valuation ruling?

- v. Whether the learned Customs Appellate Tribunal erred in law and failed to appreciate that the impugned Order-in-Revision, whereby, the Director General Customs Valuation has upheld the customs values determined by the Director Customs Valuation vide Valuation Ruling 1453/2020 dated 24.06.2020, was well within four corners of law in particular with powers conferred under Section 25D of the Customs Act 1969 read with SRO 495(I) 2007 dated 09.06.2007 and SRO 494(I) 2007 dated 09.06.2007?
- vi. Whether the learned Appellate Tribunal, can indulge in selective reading of the order of the juridical forums, and non-reading of the record available in the instant case, and ignore the most vital part of it to utter detriment of revenue and have forced out an interpretation to the benefit of an individual?

2. Learned Counsel for the Applicant has read out the Order and submits that the Applicant Department is aggrieved by the findings of the Tribunal as contained in para-15, whereby, the earlier Valuation Ruling No.1003/2017 dated 05.01.2017 has been revived after setting aside the impugned Valuation Ruling No.1453/2020 with further directions to finalize the provisional assessments on the basis of earlier Valuation Ruling No.1003/2017. She submits that while setting aside the impugned Ruling, further directions were given to issue a new Ruling; hence, the order for finalising the provisional assessments pursuant to the old ruling and its revival till further orders cannot be sustained.

3. On the other hand, learned Counsel for Respondents has supported the impugned Order; and while confronted with the findings as recorded in Para-15, submits that since the impugned Valuation Ruling No.1453/2020 had in fact superseded the earlier Valuation Ruling No.1003/2017, therefore, once it being set-aside, the earlier Valuation Ruling stood revived. As to the directions in respect of making final assessment of the provisionally released goods, as contained in para-15(III), he concedes that this could not have been directed by the learned Tribunal.

4. We have heard both the learned Counsel and perused the record. It appears that Respondents had challenged Valuation Ruling No.1453/2020 in terms of s.25D of the Customs Act, 1969, (“**Act**”) by way of a Revision before the Director General Valuation, who vide order dated 24.7.2020 dismissed such Revision, and Respondents

being aggrieved filed an Appeal in terms of s.194A(e) of the Act before the Tribunal which has been allowed vide impugned order. On perusal of the impugned order passed in favour of the respondents it reflects that it is primarily premised on the ground that while determining the values in the impugned Valuation Ruling under Section 25(7) of the Act, (i.e. deductive value method), the respondents were not engaged, consulted or involved while conducting the market survey, which according to the law settled by this Court in various judgments including the judgment of Rehan Umar¹ was not justified. To that extent on perusal of the Valuation Ruling in question, the finding of the learned Tribunal appears to be correct and no exception can be drawn. However, the Tribunal, after coming to this conclusion, has not only made assessment of the goods imported by the Respondents (Para-14); but so also has given further directions in para-15. The findings are as under:-

14. Having examined the documents referred to by the learned Counsel for the Appellants, the veracity whereof has not been disputed by the learned DR, it also appears that the values determined through the impugned Valuation Ruling are not in reflective of the actual prices paid / to be paid for such goods at the time of import into Pakistan. Emphasis was placed on the values listed at Sr. No.1 of the Table at paragraph 5 of the impugned Valuation Ruling, which are for Polyester Printed, Dyed, Embossed Pile Fabric for Blankets (PCT Heading 6001.9290) of China origin @ US\$ 4.40 per KG. The documents referred to by the learned Counsel show that even recent imports and purchases of Polyester Printed, Dyed, Embossed Pile Fabric for Blankets (PCT Heading 6001.9290) of China origin have been made at considerably lower values, being in the region of US\$ 2.45/KG. Neither the learned DR during the course of hearings nor the impugned Valuation Ruling provide any evidence as to how the value of US\$ 4.40/KF was arrived at for this item. It is, therefore, our opinion that the impugned Valuation Ruling and the value of US\$ 4.40/KG was improperly arrived at and is not substantiated on the touchstone of Section 25 of the Customs Act, 1969. We have also examined the contents of the earlier Valuation Ruling No.1003 of 2017, which provides value of the same aforesaid item @ US\$ 2.45/KG.

15. In view of the foregoing, we are inclined to allow the instant appeals and order as follows,

- I. The Valuation Ruling No.1453 of 2020 dated 24.06.2020 is set aside and declared as being illegal, contrary to law and *void ab initio*. The Order-in-Revision No.20 of 2020 dated 24.07.2020 is also set aside.
- II. The Valuation Ruling No.1003 of 2017 dated 5.1.2017 stands revived on the setting aside of the Valuation Ruling No. 1453 of 2020 dated 24.06.2020.
- III. The provisionally assessed consignments of the Appellants are to be finally assessed on the basis of the earlier Valuation Ruling No.1003 of 2017. Furthermore, the Valuation Ruling No.1003 of 2017 shall be used for assessment of imported consignments until it is rescinded

¹ Rehan Umar vs. Collector of Customs (2006 PTD 909)

by the competent authority or otherwise revised through issuance of a fresh valuation ruling in terms of Section 25A of the Customs Act, 1969.

- IV. Any fresh determination of values shall be preceded by a proper inclusion and association of the Appellants in the process of determination and submissions made by the Appellants shall be considered in light of the law.
- V. Delays in clearance of consignments caused as a result of the issuance of the Valuation Ruling No. 1453 of 2020 and the Order-in-Revision No.20 of 2020 shall be condoned and appropriate Delay and Detention Certificates shall be issued to the Appellants.”

5. On perusal of the above findings it reflects that the Tribunal has set aside the impugned Valuation Ruling on the grounds as noted hereinabove and has thereafter given further directions for fresh determination of values by associating the respondents in the process of such determination, whereas, we have been informed that even a new Ruling has also been issued. To this extent we agree with the order of the Tribunal as even otherwise no other substantial ground has been raised before us to upset this part of the order. However, at the same time the Tribunal has not only revived the earlier Valuation Ruling² during the interregnum; but has also given directions to finalize the provisional assessment on the basis of earlier Valuation Ruling. The finding of the Tribunal as contained in Para 15(II & III) doesn't seem to be correct and is not in accordance with law as well. Firstly, it may be noted that the Appeal before the Tribunal was only in respect of the impugned Ruling and not of the provisional assessments made by the respective Collectorates under s.81 of the Act. Neither any assessments were finalised against the Respondents; nor any other assessment orders were before the Tribunal in the said Appeals. Even if the impugned Valuation Ruling was set-aside, the Tribunal had no jurisdiction to give any directions to finalise the provisional assessment as such matter was not before the Tribunal in Appeal. It is only the concerned department which first has to pass a final assessment order in terms of s.81(2) of the Act after considering the facts and in accordance with law and while doing so the department can always resort to s.25 ibid; if a Ruling issued under s.25A of the Act has been set-aside. Therefore, the Tribunal was not justified in giving such directions to

² No.1003 of 2017

finalise the provision assessment and we are unable to agree with the findings of the Tribunal as recorded in Para-15 (III).

6. Insofar as the revival of the earlier Ruling is concerned again we are not persuaded to agree with such findings at Para 15(II) of the impugned order, for the reason that it is the respondents' own case as reflected from pleadings and the impugned order that a Valuation Ruling does not remain valid after a period of 90 days; hence, a Ruling of 2017 could not have been made alive or made applicable by the Tribunal. Secondly, notwithstanding this, once matter was remanded with certain directions to issue a fresh Valuation Ruling after associating the Respondents, then at the same time, it was not justified for the Tribunal to give directions either for reviving the earlier Valuation Ruling; or for that matter for finalisation of the provisional assessments on the basis of such Ruling.

6. In view of hereinabove discussion, according to us the questions so proposed are not proper; rather the only question arising out of the impugned order is "*Whether in the facts and circumstances of the case, the Tribunal was justified in reviving the earlier Valuation Ruling No. 1003/2017 with further directions to finalize provisional assessment on the basis of such Valuation Ruling after setting aside the impugned Ruling*" and the same is answered in negative; in favour of the Applicant and against the Respondents. The finding of the Tribunal as contained in Para-15(II) & (III) of the impugned order are hereby set-aside and the order stands modified to that extent. These Reference Applications are partly allowed. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969, with further directions to the Office to place copy of this order in connected Reference applications as above.

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