

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P.No. D-3756 of 2018
Along with
C.P.No.D-3757, 3758, 4311, 4312, 4313, 4998, 523,
5233, 6549, 7597, 7598, 7599, 7600 &, 7601 of 2018

<i>Date</i>	<i>Order with signature of Judge</i>
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Priority

1. For hearing of Misc. No. 17057/2018.
2. For Hearing of main case.

10.02.2021:

Mr. Aqeel Ahmed, Advocate for petitioner
Mr. Muhammad Adnan Motan, Advocate for petitioner.
Mr. Kafeel Ahmed Abbasi, Deputy Attorney General
Mr. Muhammad Khalid Rajpar, Advocate for respondent
Ms. Masooda Siraj, Advocate for respondent.

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In all listed petitions, the petitioners are aggrieved by letter issued in February 2018 (**without any specific date**), by the then Collector of Customs (East) to Member (Customs) Federal Board of Revenue, through which values of different types of Artificial jewelry of Indian origin was determined, and at the same time was notified advising all the other Collectorates to make assessment of such goods on the basis of the determined values.

Learned Counsel for the petitioner(s) submit that the letter has been issued without any lawful authority; whereas the Director Valuation had already issued a Valuation Ruling No.1007 of 2017 dated 11.01.2017 of such goods, which was then challenged in Revision before the Director General Valuation under s.25D of the Customs Act, 1969, and through order dated 08.02.2017 certain values were revised, which were in field; hence the impugned letter of Collector in question cannot be sustained.

On the other hand, learned Counsel for respondent(s) have supported the impugned letter on the ground that some under invoicing was detected in respect of imports by M/S Al Saudia Enterprises and, therefore, this letter was issued; whereas the Director General Valuation was advised to revise the values as well.

We have heard all the learned Counsel and perused the record. At the very outset, we have confronted the learned

Counsel for the respondents to refer to or cite, as to any authority or powers vested in the Collector to first determine the values of goods in question; and then circulate the same amongst other Collectorates and to this no satisfactory response has been given. Under section 25A of the Customs Act, 1969 (post Finance Act, 2019) it is the Director of Valuation, who can determine the values after following the methods as provided under section 25 and notify the same and against this determination, an aggrieved person can approach the Director General for its revision under section 25D of the Act. Though, at the relevant time (pre Finance Act, 2019), in terms of s.25A of the Act, the Collector of Customs, on his own motion was competent to issue a Valuation Ruling; but the impugned letter admittedly is not a Valuation Ruling; but is an advice at the most, which per settled law has no binding force; nor the Collector has any jurisdiction to do so. Moreover, and without prejudice, it is also settled proposition of law that a Valuation Advice (and not a Valuation Ruling) is nothing but an advice which has no binding effect, whereas, it is not to be taken as a conclusive evidence while making assessment of goods¹; and reliance upon the valuation advice simpliciter is not a valid basis of assessment of the value of imported goods within the framework of section 25 of the Act². If it had been a case of exercising powers in terms of s.25A, which admittedly is not, the Respondents may have had a case, but since in this case, a Valuation Ruling issued in terms of s.25A read with an Order under s.25D of the Act was already in field; there couldn't have been another Valuation Ruling in existence for the same goods. Perhaps for this reason this provision is no more on the statute after Finance Act, 2019.

Under the scheme of the Customs Act, even otherwise, the Collector, on its own motion cannot determine the values and notify the same even by way of any circular or letter or even an advice. The Collector through his authorized officers can only assess and determine the values in terms of section 25 of the Act, however that power is restricted to and applicable on consignments imported by the respective individuals and does not confer any authority, across the board for determination of

¹ Kings Pen Company v Collector of Customs [2005 PTD 118] & followed in Habib ur Rehman & Company v Collector of Customs [2005 PTD 69]

² M.M.M. Traders v Deputy Collector of Customs [2006 PTD 313]

values. Therefore, in our considered view, the impugned letter has no legal basis; whereas the law i.e. the Customs Act does not support any such determination of values by the Collector of Customs; neither other Collectorates can be directed or even advised to assess goods on any such recommended values.

Accordingly, the impugned letter No. MCC/MISC/49/2018-R&D(East) dated Nil (February 2018) is hereby set aside; whereas the respondents, in respect of consignment(s) which were released under section 81 of Customs Act, 1969 shall pass final assessment orders after affording opportunity of being heard in accordance with law and without being influenced by the letter which already stands set aside. Such exercise be carried out keeping in view the Valuation Ruling and the Order in Revision as above which were in field at the relevant being statutory in nature in terms of section 25A read with Section 25D of the Customs Act. If any of the parties is further aggrieved, they may seek appropriate remedy as may be available in law. Further, till such time the respective final assessment orders are passed, no securities furnished by the Petitioner(s) shall be encashed.

All listed petitions along with pending applications are allowed in the above terms.

J U D G E

Aamir, PS

J U D G E