

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.203 of 2019

Date	Order with signature of the Judge
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1. For order on office objection
2. For hearing of main case
3. For hearing of CMA No.1506/2019 (Stay)

27.10.2021

Syed Nadeem-ul-Haq, advocate for the applicant
Mr. Sarfaraz Khan Marwat, advocate for respondent No.3
Mr. Kafeel Ahmed Abbasi, DAG
Mr. Hussain Bohra, Assistant Attorney General

This reference is filed by the importer in respect of the consignment regarding which goods declaration was filed on or around 08.8.2015. The consignment consists of the following goods: -

- i. PRIVAC 400 ML OPERATION THEATRE SYSTEM LARGE-LOCK CONNECTION (QTY. 30000 PCS) under PCT heading 9018.3990.*
- ii. REDON 1 DRAIN CH.8, 800 MM LENGTH/I 50MM PERFORATION STERILE (QTY. 900 PCS) under PCT heading 9018.3990 at a declared invoice value of US\$ 10291.17.*

GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred for examination. During examination, an invoice of higher value was found as against the declared value in a "Goods Declaration", in response to which a letter of apology was presented by the petitioner, which is apparently a letter of the principle / exporter, which is undated and addressed to the applicant. The tribunal and the statutory forum hearing appeal all concluded that there is a conclusive evidence in respect of invoice retrieved from container as the importer asked the bank to act on the basis of a retrieved invoice and hence the subsequent letter of apology and the modified invoice should not come in the way.

We have heard the learned counsel and perused the material.

Admittedly an invoice is retrieved from the container, however, the consignment is of the regime prior to the proviso inserted in Section 25A of the Customs Act, 1969, which is as under: -

25A. *Power to determine the customs value.-*

"(2) The Customs value determined under sub-section (1) shall be the applicable customs value for assessment of the relevant imported or exported goods.

Provided that where the value declared in a goods declaration, filed under section 79 or section 131 or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under sub-section (1), such higher value shall be the customs value.]”

Albeit this amendment was carried out through the Finance Act, 2017 assented on 19.6.2017, whereas GD was filed prior to this amendment, yet, this could not take away the applicability of Section 25 of the Customs Act, 1969 as the custom officials are required to determine the value i.e. the price actually paid or payable for goods when sold for export to Pakistan, notwithstanding that the proviso was inserted much latter to the goods declaration. This remained an undeniable fact that the actual evidence found from the container is irresistible in the sense that petitioner’s own letter addressed to the Manager Bank Al-Habib, Shaheed Millat Road Branch, Karachi itself suggests that the found invoice was relied upon for remittance i.e. Invoice No.4101286 dated 30.6.2014. The amount of remittance may not be of any importance as the actual evidence is invoice which is relied upon. Hence the price actually paid could very conveniently be determined on the basis of such documents and notwithstanding the insertion / amendment made in the year 2017 as far as the second proviso to Section 25A is concerned, it is the amount, which is actually paid or payable which is considered as customs value for the goods when sold for export to Pakistan.

Counsel for the applicant has proposed two questions of law, which were reproduced in the order dated 28.6.2019 for examination on the conclusion of the arguments. The questions are as under: -

i. Whether the Custom Appellate Tribunal was justified to ignore the material produced by the applicant e.g. invoice of the consignment issued by the shipper?

ii. Whether the Customs Authorities are required to determine the transactional value of the consignment in terms of Section 25 of the Customs Act, 1969 by adopting sequential method of valuation instead of relying on the invoice recovered from the container, which is disputed by the importer?

Both the questions are answered in affirmative. With regard to question No.1, the consignee / applicant has failed to prove the corrected version of invoice and undated letter was sent to the consignee without disclosing the actual invoice and amount and without disclosing as to what amount was remitted through banking or any other channel. Similarly insofar as question No.2 is concerned its affirmative answer would turn nothing, as the sequential method for the determination of the value of the goods actually paid and payable was adopted by relying on value disclosed in original invoice. In the instant case, since the applicant has failed to discharge his burden regarding

the corrected version of invoice, the original invoice stood proved for the simple reason that the applicant itself asked the bank to remit the amount on the basis of the found invoice irrespective of the amount that is being remitted i.e. Euro 6317.75 as this could be a partial payment through bank. What is important for the purposes of this reference is the invoice which was retrieved and acted upon in terms of the remittance. Consequently, the reference is dismissed.

Copy of this order be sent to the appellate tribunal in terms of Section 196(5) of the Act.

J U D G E

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Zahid/*