

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

SCRA 237 of 2017 : The Collector of Customs vs. Khurshid Sons

SCRA 238 of 2017 : The Collector of Customs vs. Tabassum Khursheed & Co.

SCRA 239 of 2017 : The Collector of Customs vs. Unique Packages

SCRA 240 of 2017 : The Collector of Customs vs. Premium Paper Products

SCRA 241 of 2017 : The Collector of Customs vs. Graduate Timber Works.

SCRA 242 of 2017 : The Collector of Customs vs. Ismail Dadabhoy Co.

SCRA 243 of 2017 : The Collector of Customs vs. Century Container

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For the Applicant : Mr. Muhammad Khalil Dogar, Advocate

For the Respondents : Mr. Aqeel Ahmed Khan, Advocate

Date of hearing : 15.03.2021

Date of announcement : 15.03.2021

### JUDGMENT

**Muhammad Junaid Ghafar, J.** Through these Reference Applications the Applicant has impugned order dated 30.01.2017, passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No.K-1481 of 2016 and other connected matters of identical nature. Initially various questions were proposed; however, vide order dated 11.10.2018, notice was issued on questions No.1, 3 and 4 which reads as under:

“1. Whether in the light of facts and circumstances of the case the learned Appellate Tribunal has erred in law to set aside the Valuation Ruling and Order-in-Review to the extent of present appellant whereas the Valuation Ruling was issued under Section 25-A of the Customs Act, 1969 for imported goods & not for importers?”

3. 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-Review of Section 25-D of the Act, the Appellate Tribunal has erred in law to set aside the Order-in-Review without giving any cogent rebuttal findings?

4. Whether the Valuation Ruling issued with the determination of Customs Value in terms of Section 25-A(1) of the Customs Act, 1969, and the Order-in-Review passed in terms of Section 25-A of the Customs Act, 1969 can be termed as without jurisdiction?"

2. Learned counsel for the Applicant has read out the impugned order and submits that the Valuation Ruling was issued by the Department after following the methods as provided under Section 25 of the Customs Act, 1969 ("Act"); hence, the Appellate Tribunal was not justified in setting aside the Valuation Ruling and the Order in Revision. He has referred to the impugned Valuation Ruling and Para 2 thereof to support his contention.

3. On the other hand, learned counsel for the respondents has supported the impugned order and has relied upon the judgment of this court<sup>1</sup> and submits that the Valuation Ruling in question could not have been issued under Section 25(9) of the Act, as it is against the dicta laid down in the aforesaid judgment and he has prayed for dismissal of Reference Applications.

3. We have heard both the learned counsel and perused the record. It appears that not all, but some of the respondents had challenged Valuation Ruling No.833 of 2016 dated 19.04.2016 in terms of section 25D of the Customs Act, and the such Revision was dismissed by the Director General (Valuation), vide order dated 09.06.2016. The aggrieved respondents then preferred appeal before the Appellate Tribunal and the learned Appellate Tribunal through a detailed order has set aside the Valuation Ruling and the Order-in-Revision; however, at the same time, neither the Appellate Tribunal has determined the values by itself; nor has remanded the matter to the concerned department for determination of the values declared by the respondents in terms of Section 25 of the Act. While confronted, learned counsel for the respondents has not been able to satisfactorily respond to this question; nor has the impugned order been assailed by the respondents for this purpose. Even in the judgment of **Goodwill Traders (Supra)** relied upon by the respondent's counsel, the Court after setting aside the impugned Ruling had determined the value of the petitioners consignments by accepting the same in terms of s.25(1) of the Act. This is not the case in hand and therefore,

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<sup>1</sup> 2014 PTD 176 (Messrs Goodwill Traders vs. Federation of Pakistan and Others)

the order of the Appellate Tribunal to that extent cannot be sustained. Recently, in identical facts we had the occasion to dilate upon this very issue as to setting aside of the Ruling and the Order in Revision without determination of the value in terms of s.25 of the Act<sup>2</sup> and have observed as follows;

6. As to the above findings insofar as the law and the judgments of this Court are concerned, there can't be any cavil to that; however, it may also be of relevance to observe that one cannot remain oblivious of the facts of the case at the same time. A judgment or a precedent is always referred to when the very facts of the case are also germane to it. It can't be made applicable in isolation. In Para-4 as above, the Tribunal has come to a conclusion *that respondents had provided plethora of evidences in support of its contention, including but not limited to import data pertaining to the Polyester Filament Yarn, raw materials as well as export prices, and work-back calculations on the basis of market surveys, and the department in a patently high-handed, arbitrary and illegal manner rejected the petition.* However, when the order as a whole is perused, it nowhere reflects that any such material was placed on record; or for that matter was discussed in the impugned order except the above. If this was before the Tribunal, then it was incumbent upon it to examine the same and give its findings as to it being acceptable or otherwise. We have confronted the learned Counsel for the respondent to either refer to any such material on record; or in the alternative assist us as how the same was considered by the Tribunal in arriving at the conclusion of setting aside the impugned Valuation Ruling and the Order-in-Revision, and he has not been able to satisfactorily respond. Therefore, we are of the view that this finding of fact is erroneous in law; and is a question of law<sup>3</sup> before us in the Reference jurisdiction, and therefore, cannot be taken into consideration so as to non-suit the Applicant. It further reflects that the Tribunal after reproducing the provisions of law as well as the discussion thereof, has finally set-aside the impugned Valuation Ruling and the Order-in-Revision without either remanding the matter to the department; or in the alternative determining the values on its own. If the Ruling issued under s.25A of the Act is set-aside, then apparently the assessment of the goods has to be made under Section 25 *ibid*, as it is only these two provisions under which any imported goods can be assessed by the concerned department. The department had assessed the goods pursuant to a Valuation Ruling (issued under s.25A of the Act) in field; consequently, could not have resorted to s.25 *ibid* for assessment of the goods in question. After setting aside of the impugned Valuation Ruling such opportunity for passing an assessment order in terms of s.25 of the Act has not been provided to the Applicant department. Alternatively, after setting aside it, the Tribunal on its own could have determined the values if it was not convinced to remand the matter. In the absence of any of these two steps, it would amount to accepting the Transactional value of the Respondents in a vacuum. And even for that a proper exercise of carrying out an assessment in terms of s.25 of the Act is mandatory and it is only then, if at all, the Transactional Value of the Respondents could be accepted. There isn't any concept of an implied acceptance of the same in terms of s.25(1) of the Act as argued by the learned Counsel for Respondents. In fact, this argument is by itself contradictory in absence of a specific remand order for making assessment in terms of s.25 of the Act, after setting-aside of the impugned Valuation Ruling issued under s.25A of the Act. There cannot be a vacuum in the assessment proceedings inasmuch as on the one hand, the Valuation Ruling issued under Section 25A of the Act has been set-aside and on the other, the opportunity to make assessment in terms of Section 25 has also been denied. It cannot co-exist; as it would lead to absurdity. In fact, acceptance of Transactional Value (declared by the respondents), was never their case in their Revision petition before DG Valuation. They had in fact conceded to the method of valuation<sup>4</sup> in existence for a long time and had only prayed that values determined in the impugned Ruling be revised on the basis of reduction in prices of raw materials of yarn. It wasn't their case that their Transactional Values be accepted in terms of s.25(1) of the Act. In that the Tribunal has seriously erred in law by placing reliance on precedents of the Court as well non application of sequential methods of assessment in terms of s.25 *ibid*. The only issue before the Tribunal was to the extent of the validity of Valuation Ruling in question based on the material so claimed to have been relied upon before the DG Valuation.

<sup>2</sup> SCRA No.223-2020 (Director Valuation v Bilal Brothers Industries)

<sup>3</sup> Shahi Carpet (Private) Limited v Commissioner of Wealth Tax (2003 PTD 1377)

<sup>4</sup> That we along with other several importers requested to Director, Valuation to determine a fresh valuation ruling on the basis of values of Raw Material in international market which in Pure Terephthalic Acid (P.T.A) and Mono Ethylene Glycol (M.E.G) (extract from Revision petition)

4. In view of herein above facts and circumstances of this case, we answer the proposed questions against the Applicant and in favor of the Respondents; and uphold the order of the Appellate Tribunal; however, not for the reasoning so assigned; but by following the dicta laid down in the case of ***Goodwill Traders (Supra)***; but at the same time matter is remanded to the concerned Department for making assessment of the consignments of those Respondents who had impugned the Valuation Ruling before the Director General (Valuation), in terms of Section 25 of the Customs Act, 1969 and without being influenced by the impugned Valuation Ruling in question and after affording opportunity of hearing.

With these observations, these Reference applications are disposed of along with pending applications. Let copy of this order be sent to the Appellate Tribunal in terms of Section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE