IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Applications Nos. **223 to 236, 241, 247 to 267, 237 to 245 of 2020**

Date	Order with signature of Judge

Present: ***Mr. Justice Muhammad Junaid Ghaffar***
Mr. Justice Agha Faisal

Applicant(s): **The Director Customs Valuation Through Ms. Masooda Siraj, Advocate.**

Respondents: **M/s. Bilal Brothers Industries (in SCRA No. 223/2020) & 43 other cases.**

Date of hearing: **08.03.2021.**

Date of Order: **08.03.2021.**

O R D E R

Muhammad Junaid Ghaffar, J.- Through these Reference Applications, the Applicant Department has impugned a common order/judgment dated 07.02.2020 passed in Customs Appeal No. K-1269/2019 & other connected matters by the Customs Appellate Tribunal, Karachi, (at Islamabad), proposing the following questions of law:-

i. Whether under the facts and circumstances of the case, while setting aside the impugned Order-in-Revision No.19/2019 dated 06.11.2019 and Valuation Ruling No. 1387/2019 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 Rule and Notifications issued for determination of Customs value?

ii. Whether the learned Appellate Tribunal erred in law and facts while setting aside the impugned Order-in-Revision No. 19/2019 dated 06.11.2019 and Valuation Ruling No. 1387/2019, failed to appreciate that the Director General passed impugned Order-in-Revision in exercise of powers conferee under Section 25-D read with SRO 495(I)/2007 dated 09.06.2007?

iii. 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 Custom Act, 1969 for purpose of upholding the valuation ruling?

iv. Whether the learned Customs Appellate 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, 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?

v. Whether the learned Appellate Tribunal, can indulge in selective reading of the order of the judicial forums, and non-reading of the record available in the instant case, and ignore the most vital part of it to utter determent 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 of the Tribunal and submits that the Tribunal was not justified in setting aside the Valuation Ruling and the Order-in-Revision as the department had followed the law as well as the judgments of the Courts while determining the values of goods in question, whereas, the methods of assessment under Section 25 of the Customs Act, 1969, ("Act") were strictly followed. She has prayed for setting aside the impugned order by answering the questions of law in favour of the Applicant department.

3. On the other hand, learned Counsel for some of the respondents has argued that a finding of fact was recorded in Para-4 by the Appellate Tribunal to the extent that the relevant material was placed before the authorities, but was not considered; hence no question of law arises out of the order of the Tribunal. He has further argued that impugned Valuation Ruling was not in accordance with law; therefore, could not have been sustained.

4. We have heard both the learned Counsel and perused the record. It appears that the respondents through Revision petition under Section 25D of the Customs Act, 1969 had impugned Valuation Ruling No.1387/2019 dated 03.09.2019 and had raised the following objections in their revision Petition:-

i) That the Valuation Ruling No. 1362/2018 dated 25.04.2019 of Polyester Filament Yarn was in field which was not according to the values of the subject goods in open international market.

ii) 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).*
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> iii) That the values of Raw Material were provided to the Director Valuation but he ignored our submissions which is very clear from the preamble of the Valuation Ruling where the Director Valuation categorically mentioned that Pakistan Yarn Manufacture Association was also sitting in the meeting in which a fresh Valuation Ruling No. 1387/2019 dated 03.09.2019 was finalized.
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> iv) That it is pertinent to mention here that the local manufacturer who pushed the Director Valuation to determine the values of Polyester Filament Yarn does not produce any evidence at the time of hearing. Even if they produce it and they were not aggrieved in any manner with impugned assessed values carried out at the time of Collectorates they were supposed to approach contact the Director Valuation to determine the value under Section 25-A of the Customs Act, 1969 their entire proceedings actions to the extent of determining Customs value of Polyester Filament Yarn through impugned Order of Valuation Ruling No. 1387/2019 of the Customs Act, 1969 is totally illegal unlawful and without any legal authority a defect which is not curable by any corner of law.
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> v) That the Valuation Ruling is issued by the Director Valuation under pressure of the local manufacturers therefore it may be treated unlawful unjustified. It is requested that the impugned Valuation Ruling may kindly be set aside / refer back to Director Valuation with the directions to issue a fresh Valuation Ruling without taking pressure of local manufacturers. It is further requested that Director Valuation be direct to place on record documentary evidence on the basis of which they determined the impugned Valuation Ruling.

5. The Director General Valuation dismissed the Revision Petition vide Judgment dated 06.11.2019, which was then impugned before the Tribunal and through impugned order not only Order-in-Revision has been set-aside; but so also the Valuation Ruling in question. It further reflects that the Tribunal has neither remanded the matter to the department for passing of an assessment order; nor, has determined the values by itself. While confronted, learned Counsel for the respondents has contended that by implication, the transactional value declared by the respondents respectively stands accepted. However, we are not impressed with this contention of the learned Counsel for the Respondents for a number of reasons. First, as contended, in the interregnum, the consignments were released provisionally under section 81 of the Act. If that be so, then at least, directions were required to be given to the concerned department to pass a final order as contemplated under s.81(2) of the Act. However, this does not seem to be so, as there is nothing on record to suggest that the consignments of the Respondents were released provisionally as contended. However, we would not like to comment further on this

aspect of the matter as this issue is not directly before us. Secondly, since the Tribunal came to the conclusion that the Valuation Ruling ought to have been set-aside, then, the assessments were required to be made in terms of s.25 of the Act; which is also not the case in hand, as the learned Tribunal has not even remanded the matter for this purposes. It would be advantageous to refer to the relevant findings in the impugned order, which is premised more on law as against the very facts of the in case in hand. It reads as under:-

> "04. Arguments heard and concluded. After perusal of the case record and arguments advanced by counsel for appellant, it has been observed that, in spite of the fact that the Appellant had provided plethora of evidences in support of its contention, including but not limited to import date pertaining to the Polyester Filament Yarn, raw materials as well as export prices, and work-back calculations on the basis of market surveys, the Respondent No.1 in a patently high-handed, arbitrary and illegal manner rejected the petition filed by, inter alias, the Appellant's on sole basis that the petitioner's fail to provide proof/ evidence to substantiate their transaction value. Respondent No.1 fail to controvert the submissions made by the Appellant's with reference to any specific argument raised thereby, and merely gave sweeping statements devoid of any reasoning the Respondent No.1 praised the Respondent No.2 / it's officers as having provided "comprehensive market inquiry" and having made *"it categorically clear that values have been determined in accordance with market inquiry results in fair manner",* whereas no basis for such statements has been given. Respondent No.1, on its own whims and without any lawful basis, has introduced a concept of *"rationalization"* of customs assessable values, which is entirely alien to the scheme of the Customs Act, 1969, and the Customs Rules, 2001. Law only permits the *determination of values"*. Such additions are contrary to the legal bindings and not be admissible under the law.
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> 05. The determination of the values of Polyester Filament Yarn is a long pending unresolved issue, series of litigations has been carried out or initiated against various valuations ruling issued and notified by the department. On each and every issue initiated and raised before this august Tribunal through different appeals this Court has passed the judgments, it has been noticed from the record that, with effect of the judgments or otherwise the Director General Valuation under his hierarchy every time issued the new Valuation Rulings in compliance of Section 25 and 25-A of the Customs Act, 1969. Apart from aforementioned deliberations conducted by the relevant quarter, it is again the duty of the Court to deliberate with the subject issue/controversy in accordance with the mandate and prescribed dictums of law. In the present appeals the main controversy still revolves around the same issue which has already been decided by this Court as well as by the Hon'ble High Court, who observed and extended the guidelines for determination of customs values reported in 2014 PTD 176 Goodwill Traders VS Federation of Pakistan and PTCL 2014 CL 537 Sadia Jabbar Vs Federation of Pakistan. In present appeals no proper and independent market inquiry was conducted nor any market inquiry report has been placed on record and the concerned quarters including the respondents failed to place on record any valid reasons for not adopting the methods of valuation provided under sub-sections (1), (5),(6),(7) & (8) of Section 25 by application of these sub-sections in a "flexible manner" or a suitable blending of elements from two or more other

valuation methods which is the basic framework of sub-section (9) of Section 25 of the Customs Act, 1969.

11. All observations and relevant references along with the Judgments passed by the Superior Courts are preferably to maintain and follow the proper interpretation of law, more importantly for the Customs officers to acquire discretions in preparation of Valuation Ruling. It is not so difficult to follow the legal dictum prescribed under the law by the Higher Courts and concerned authorities or officials at the time of preparation of valuation ruling. The words 'look-in', provided the link, how principle of sequential application of sub-sections defined under structure of Section 25 of the Customs Act, 1969. For example, if in any particular case, the Customs officers/authorities want to jump over from non-obstinate clause without referring to any specific reasons that would amount to override the provisions of Section 25. The concerned Customs officers are limited or restricted only to the method set forth in Section 25. The concerned Custom officers are limited or restricted only to the methods set forth in Section 25 of the Customs Act, 1969, not to act otherwise. If, some method other than that specified in Section 25 is complied, that would clearly by ultra vires the powers conferred under Section 25A of the Customs Act, 1969. The Department has no justification about such increase which clearly reflected against the statutory obligations, prescribed under Section 25 and 25A of the Customs Act, 1969. The determination of value under Section 25-A of the Customs Act, 1969, is not a simple thing. It is, therefore, appropriate that the ruling should contain sufficient details to show that the provisions of Section 25 have been properly applied while invoking Section 25-A. Therefore, it is imperative that the Valuation Ruling must be a speaking order, as per the mandatory requirement of Section 24-A of the General Clauses Act, 1887. In the present appeals, the authority/Director General, Customs Valuation ignored the directions of the Superior Courts and made observations in contradiction of provisions of Section 25-A of the Customs Act, 1969. Such ignorance is violative o flaw. Being custodian of law, purpose of administration of justice is to hold and not to thwart appellants' rights.

12. On the basis of deliberations, and by getting the strength, what has been stated and observed herein above particularly the interpretation of law and legal prepositions and in the light of prescribed law and to follow the ratio decidendi as observed by the superior courts, along with our additional observations made therein, we are led to conclude that the impugned Valuation Ruling No. 1387/2019 dated 03.09.2019 and Order-in-Revision No. 19/2019 dated 06.11.2019, passed by the Director and Director General, Customs Valuation, does not have any adherence to the statutory requirements, besides being derogatory to specific provision of Sections 25, 25-A of the Customs Act, 1969. We hereby set aside the said Order-in-Revision No. 19/2019 dated 06.11.2019 and impugned Valuation Ruling No. 1387/2019 dated 03.09.2019 being without lawful authority and jurisdiction, *void ab-initio.*

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[1] 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

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[1] Shahi Carpet (Private) Limited v Commissioner of Wealth Tax (2003 PTD 1377)

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[2] 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.

7. In view of hereinabove facts and circumstances of this case, we do not see any justifiable reason to sustain the impugned order as the same is not only based on misreading of facts; but so also in law. In our considered view only one question is relevant that *Whether in the facts and circumstances, the Tribunal was justified in setting aside the impugned Valuation Ruling No. 1387/2019 and Order-in-Revision No.19/2019?* And it is answered in negative in favour of the Applicant and against the Respondents. The Reference Applications are allowed and impugned Order is set aside.

Let copy of this Order be sent to Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office

[2] 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)

to place copy of this order in connected Reference applications as above.

J U D G E

J U D G E

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