

IN THE HIGH COURT OF SINDH, KARACHI
SCRA NO. 733 to 735 / 2022

Date

Order with signature of Judge

HEARING CASE / PRIORITY.

- 1) For hearing of main case.
- 2) For hearing of CMA No. 4172/2022.

10.03.2023.

M/s. Omer Memon & Atezaz Manzoor Memon, Advocates
for Applicant.

None present on behalf of Respondent No. 1 though duly served.
Service held good, no further notice required.

On the other hand, Learned Counsel for the Applicant submits that proposed questions of law as raised in these Reference Applications already stands decided by this Bench through order dated 04.02.2021 in Special Customs Reference Applications No. 727 / 2019 (***The Collector of Customs Through Additional Collector of Customs (Law) MCC Appraisement (East), Customs House Karachi Vs. M/s Zahid Ali & Company***).

We have heard learned Counsel and perused the record. The Applicants have impugned judgment dated 14.9.2022 passed in Appeals by the Customs Tribunal and on 13.12.2022, notice was issued on the following proposed questions of law.

- I. Whether in the facts and circumstances of the case, the consignments imported by Applicant (at least prior to the Finance Act, 2017) can be assessed under Section 25 of the 1969 Act on the basis of the transactional value of the goods even though when such consignments were assessed and cleared pursuant to a valuation ruling already in field and issued under Section 25A of the 1969 Act?
- II. Whether the consignments imported by Applicant prior to the year 2017 be assessed to a higher value under Section 25A(2) of the 1969 as inserted by the Finance Act, 2017?
- III. Whether Respondents are empowered to rely on information available on an Indian website (i.e., www.icegate.gov.in, namely "ICE GATE – e Commerce Portal Central Board of Excise and Customs" - herein after referred to as the "**Indian website**") to assess the consignments imported by Applicant?
- IV. Whether the subject matter of the instant SCRA has already been decided by this Honourable Court in an identical matter through its order dated 04.02.2021 in the case of Collector of Customs v. M/s Zahid Ali & Company ("**Zahid Ali case**")?

We have gone through the cited case and the order passed thereon and it appears that the main question as raised in these Reference Applications (though differently worded) is similar to what has been decided in the cited case i.e. *“Whether in the facts and circumstances of the case [at least prior to Finance Act-2017] can goods be assessed under section 25 of the Act on the basis of a transactional value when a Valuation Ruling issued in terms of s.25A of the Act is already in field”* and has been answered against the Respondent / Department and in favour of the Applicants / Importer. The relevant findings in the said order reads as under:-

4. We have at the very outset, confronted the learned Counsel for the Applicant that as to how and in what manner, reassessment could be made in respect of goods for which a Valuation Ruling has been issued in terms of Section 25 of the Act, and duly applied and to this, he has not been able to controvert this legal proposition. Section 25-A¹ confers a power to determine the Customs value and starts with a Non-Obstante clause and provides that notwithstanding the provisions contained in section 25, the Collector of Customs on his own motion, or the Director of Customs Valuation [on his own motion or] on a reference made to him by any person [or an officer of Customs], may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable. It is clear that the provision of s.25A *ibid* would have an overriding effect while applying the values determined under it and it is only the methods of s.25 which are to be followed; but in no manner any assessment can be made under s.25 when there is a Valuation Ruling under s.25A already in field. It is not understandable as to how the Applicants through a Show Cause Notice have made an attempt to reassess the goods under Section 25 of the Act by showing intention to accept transactional value of the goods in question. Notwithstanding this, even the proviso in Section 25-A whereby, it is provided that where the value declared in a goods declaration or mentioned in the invoice retrieved from the consignment is higher than the value determined under sub-section (1) of section 25-A, such higher value shall be the customs value was inserted by way of Finance Act, 2017, whereas, the instant case is prior in time. Moreover, it is not a case where the transactional value was available with the department or the value mentioned in the invoice was retrieved from the consignment at the time of making any assessment under Section 25 of the Act. In this case the goods were already released pursuant to a statutory Valuation Ruling and therefore, any information gathered from the website pursuant to which an attempt has been made to make assessment by accepting the transactional value under section 25 *ibid* cannot be sustained. On our query we have been informed that the Valuation Ruling in question was never amended pursuant to such information from the website. And lastly, we have also noted that in the Show Cause

¹ **[25A. Power to determine the customs value.-** (1) Notwithstanding the provisions contained in section 25, the Collector of Customs on his own motion, or the Director of Customs Valuation [on his own motion or] on a reference made to him by any person [or an officer of Customs], may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable.

(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.]

(3).....

[(4)

Notice there again are vague allegations, whereas, neither the values so made available from the website have been mentioned; nor respondents have been confronted with any such unit value independently, and in a generalized manner, the Show Cause Notice had been issued.

5. In view of hereinabove facts and circumstances, we do not see any reason to interfere with the order passed by the learned Tribunal. The question so proposed have not been drafted properly as it is only one question which is relevant that *“Whether in the facts and circumstances of the case [at least prior to Finance Act-2017] can goods be assessed under section 25 of the Act on the basis of a transactional value when a Valuation Ruling issued in terms of s.25A of the Act is already in field”* and the same is answered in negative, against the Applicant and in favour of the Respondents. Accordingly, these Reference Applications being misconceived are hereby dismissed in limine. Let copy of this order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Act, whereas, office to place copy of this order in all above connected Reference applications.

In view of the above, since identical question has already been answered by us, therefore, proposed questions are answered in favour of the Applicants and against the Respondents. Accordingly, these Reference Applications are allowed. The order impugned is set aside. Let copy of this order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Act, whereas, office to place copy of this order in all above connected Reference applications.

J U D G E

J U D G E

Arshad/