

IN THE HIGH COURT OF SINDH, KARACHI

Special Customs Reference Application ("SCRA") Nos. 668 to 703 of 2023

Date

Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman**

Applicant : **The Collector of Customs,
(Appraisement-East) Karachi**
Through Mr. Muhammad Faheem,
Advocate

Respondents : **The Customs Appellate Tribunal
Karachi** and another
Through Mr. Zia-ul-Hassan, Advocate

Date of hearing : **13.08.2024.**

Date of Judgment : **13.08.2024.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Reference Applications the Applicant has impugned a common judgment dated 26.09.2022 passed by the Customs Appellate Tribunal, Bench-II, Karachi in Customs Appeal Nos.K-909 to K-944 of 2022; proposing various questions of law, however, vide order dated 15.02.2024 this Court has reframed only one question, which reads as under: -

"Whether in the facts and circumstances of the case Valuation Ruling No.1554/2021 dated 06.10.2021 is applicable on the goods imported by the Respondents / Importers."

2. Heard learned counsel for the parties and perused the record. It appears that Respondent imported polyester pile fabric for blankets, which was assessed on the basis of a Valuation Ruling No.1485/2020 dated 13.11.2020, whereas the department had released the goods provisionally under Section 81 of the Customs Act, 1969 ("Act") pending Respondents Revision application against the said Valuation Ruling. The said revision was decided through Order-in-Revision No.25/2021 dated 20.08.2021 and the above Valuation Ruling was set aside. Thereafter, the department carried out a fresh exercise

and issued another Valuation Ruling No.1554/2021 dated 06.10.2021 and, then finalized the provisional assessment based on the said Valuation Ruling dated 06.10.2021. The respondent being aggrieved preferred an appeal before the Collector of Customs (Appeals), which was dismissed vide order dated 14.03.2022 and being further aggrieved preferred further appeal under Section 194-A of the Customs Act, 1969 before the Customs Appellate Tribunal, which has been decided through impugned judgment. The findings of the Tribunal in the said judgment read as under: -

“6. We have examined the case record and considered the verbal arguments advanced by both sides. The appellant imported polyester pile fabric for blankets vide GD No.KAPE-HC-105253 dated 15.12.2020. The department assessed the goods provisionally under section 81 of the Customs Act, 1969 as review petition was filed against VR No.1485/2020 dated 13.11.2020 with the competent authority under section 25-D of ibid.

7. Subsequently, the impugned VR was set aside through Order-in-Revision No.25/2021 dated 20.08.2021. The operative para is as under: -

“The Valuation Ruling is, therefore, set aside owing to procedural and legal defects. The Director Valuation is directed to re-determine the values of pile fabric for blankets by conducting proper investigation of prices prevalent in the international market and the countries of origin.

8. The department embarked upon a fresh exercise and concluded it with issuance of VR No.1554/2021 dated 06.10.2021. The department finalized provisional assessment (made on 21.12.2020) on the strength of Valuation Ruling No.1554/2021 dated 06.10.2021.

9. It is considered view of the Bench that valuation ruling No.155 of 2021 dated 06.10.2021 can not be applied retrospectively on the subject consignments. The application of the Valuation Ruling to the consignments imported prior to its issuance is not permissible as the Valuation Ruling cannot have retrospective effect. Once the earlier Valuation Ruling had been set aside by the competent authority, assessment of the consignments could only be carried out in terms of Section 25 of the Customs Act, 1969.

10. In view of the pronouncement of the Honourable Sindh High Court in the case of Rehan Umer versus Collector of

Customs (2006 PTD 909), the transaction value declared by the Appellant, duly supported by the commercial invoice issued for the respective consignment, has to be given effect. The Respondent Collectorate had every opportunity to dispute the declaration made by the Appellant. However, the Respondent Collectorate has chosen not to dispute the same and, instead, have insisted that the Valuation Ruling be applied. As discussed above, the said Valuation Ruling cannot be applied in such manner.

11. *In view of the foregoing, the appeals are allowed and the Respondent Collectorate is directed to finalize the assessment in accordance with the transaction value as declared by the Appellant.”*

3. From perusal of the aforesaid findings, it reflects that the Tribunal has come to the conclusion that while passing a final order in terms of section 81 of the Act, the department has relied upon the subsequent Ruling, whereas, it is the case of the Respondent that the assessment ought to have been made by following the methods of Valuation under Section 25 and not under Section 25A of the Act on the basis of a Valuation Ruling which was issued after the Import and arrival of the goods in question. The only ground urged by the Applicants Counsel in support is reliance on the case of ***Khas Trading Co¹***; however, on perusal of the same it reflects that the facts of that case were materially different inasmuch as the imported consignment was assessed on the basis of a revised Valuation Ruling during pendency of the Revision Petition, whereas, in the instant case Respondent had not sought any such relief; rather Respondent's grievance was in respect of the final assessment order made by the department by merely relying upon the subsequent Valuation Ruling which was not in field when the assessment was made. In our considered view, in fact, no adverse order has been passed against the present Applicant except that while remanding the matter, the department has been directed to make assessment in accordance with the *transaction value* as declared by the Respondent. To that extent the finding of the Tribunal is incorrect and against the law settled by a Division Bench of this Court in the case of ***The Collector of Customs, Vs. A.R.***

¹ 2022 PTD 22

Industries², authored by one of us (*Muhammad Junaid Ghaffar J.*) wherein, in somewhat similar facts, the Tribunal had come to the same conclusion, whereby, while setting aside the Valuation Ruling, declared values of the importers were accepted as true transactional values under Section 25(1) (*ibid*). The relevant finding in that case is under: -

“8. Insofar as, the impugned order of the Tribunal is concerned, while setting aside the Valuation Ruling and the Order in Revision, the declared values of the Respondents have been accepted as Transactional Values in terms of Section 25(1) of the Act. The impugned order of the Tribunal is silent except the use of words (“*The appellants have demonstrated that Transaction Values for import of different types of Polyester Fabrics from China are correct*”). We are completely at a loss to understand, as to how and in what manner, these values of various Respondents were accepted as Transactional Values under Section 25(1) of the Act when there is no discussion about such Transactional Values and supporting documents which each individual Respondent may have placed before the forums below including the Tribunal. This finding of the Tribunal cannot be sustained in the facts and circumstances of the case in hand.

9. In view of hereinabove facts and circumstances of this case, it appears that the questions on which these References were admitted for regular hearing need to be rephrased as under;

(i) “*whether in the facts and circumstances of the case the Tribunal was justified in holding that the values of the goods in question were determined directly under section 25(9) of the Customs Act, 1969 (Fall Back Method) through Valuation Ruling No.1449 of 2020 dated 4.06.2020 without following the sequential methods as provided under Section 25 ibid?*”

(ii) “*whether in the facts and circumstances of the case the impugned determination of values through Valuation Ruling No. 1449 of 2020 dated 4.06.2020 was in accordance with the provisions of section 25(9) of the Customs Act, 1969 (Fall Back Method) read with Rule 120 of the Customs Rules 2001?*”

10. Question No.1 is answered in **negative**; in favour of the Applicant Department and against the Respondents, whereas, Question No.2 is also answered in **negative**; against the Applicant and in favour of the Respondents; however, to this extent the matter stands remanded to the Director of Valuation for redetermination of values of the goods in question to the extent of the present Respondents afresh in accordance with law. All these Reference Applications are partly allowed in the above terms by setting aside orders of the Tribunal to this extent along with the Valuation Ruling and the Order in Revision to the above extent.”

² 2023 PTD 1769

4. Similar view has been expressed in the case of ***The Director Customs Valuation v Bilal Brothers***³ an identical issue came up once again before this Court.

5. Accordingly, proposed question is answered in “***negative***” against the Applicant and in favour of the Respondent. However, the impugned order is modified to the extent that Respondent Collector shall finalize the assessments in question under section 25 of the Customs Act, 1969 in accordance with law. Let copy of this order be sent to the Appellate Tribunal Customs in terms of sub-section (5) of Section 196 of the Customs Act, 1969.

J U D G E

J U D G E

Farhan

³ Order dated 08.03.2021 in Special Custom Reference No.223 of 2020 & others against which leave to Appeal stands refused in CP No.3018-K/2021 dated 3.3.2022