

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

**Special Customs Reference Application No. 845 of 2023
along with S.C.R.As. Nos. 846 to 863 of 2023**

Date

Order with signature of Judge

HEARING / PRIORITY CASE:

1. For order on office objection.
2. For hearing of main case.
3. For hearing of CMA No.952/2023.

Dated; 29th October 2024

Mr. Pervaiz Ahmed Memon, Advocate for Applicant in all SCRAs.

M/s. Madan Lal and Abdul Latif Chandio, Advocates for Respondent in all SCRAs.

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Through these Reference Applications the Applicant department has impugned a common judgment dated 12.11.2022 passed in Customs Appeal No.K-465/2022 and other connected matters by the Customs Appellate Tribunal Bench-I, Karachi; proposing various questions of law, however, today the learned counsel for the Applicant has only pressed Questions Nos.1, 2 and 5, which reads as under: -

1. *Whether the Honourable Appellate Tribunal has erred in law by not considering the fact that the respondent importer grossly mis-declared the value and committed offence under Sections 32(1) 32(2), 32-A & 79(1) of the Act, punishable under clauses (14), (14A) & (45) of Section 156(1) of the Act?*
2. *Whether the learned Appellate Tribunal has considered that it is mandatory for all the "Assessors" of Section 79(1)(b) & 80(c) of the Act, to make the assessment as per the customs values determined by the Director (Valuation) in terms of Section 25-A(1) of the Act?*
5. *Whether the Honourable Appellate Tribunal has erred in law to ignore that the goods have been assessed even below minimum criteria of value per kg as laid down in Valuation ruling No. 1389/2019 which was subsequently transposed to value per pc in Valuation Ruling No. 1408/2019?*

2. Heard learned counsel for the parties and perused the record. It appears from perusal of the Show Cause Notice(s) that the Applicant department had alleged that the goods in question were assessed by the Appraising Group by applying Valuation

Ruling No.1408/2019, whereas during post release verification exercise it has transpired that the goods have been assessed even below minimum criteria of value per kg as laid down in Valuation Ruling No.1389/2019. It was further alleged that the assessed value of the goods was not found in conformity with the Valuation Ruling No.1408/2019 dated 01.11.2019 read with Valuation Ruling No.1389/2019 dated 05.09.2019. Based on such allegations the Adjudicating Authority passed an Order-in-Original No.180 to 185/2020-2021 dated 26.02.2021 and the relevant findings of the said Authority read as under: -

“9. I have given due consideration to the case record, reply of the respondent, comments of the department and detailed arguments put forth by the both parties during hearing and reached to the conclusion that the VR No. 1408/2019 issued by the Directorate General of Customs Valuation was never intended to decrease the assessable value and subsequent leviable duty and taxes of the impugned goods rather the actual criteria for assessment of value and duty / taxes remained the same as per VR No.1389/2019 (minimum weight criteria) and the only change incorporated / meant in the latest VR was of unit of measurement. The stance of the department that the respondent has tried to take undue benefit of exploiting the change in UoM to escape the applicable weight criteria for assessment of impugned goods is found to be correct and on merit.”

3. From perusal of the aforesaid findings of the Adjudicating Authority, which has been maintained by the first Appellate Authority i.e. Collector of Customs (Appeals) it reflects that according to the Adjudicating Authority, the Valuation Ruling No.1408/2019 was never intended to decrease the assessable value and subsequent leviable duty and taxes of the impugned goods rather the actual criteria for assessment of value and duty / taxes remained the same as per Valuation Ruling No.1389/2019 i.e. minimum weight criteria; and the only change meant in the latest Valuation Ruling was of unit of measurement. It has been further observed that the stance of the department against the respondent that they have taken undue benefit by exploiting the change in the Unit of Measurement (UoM) to escape the applicable weight criteria for assessment of impugned goods is found to be correct on merit. This is the entire finding against the Respondents which is primarily based on

Valuation Ruling No.1389/2019 whereas admittedly, the said Ruling stands superseded on 01.11.2019 by issuance of a new Valuation Ruling No.1408/2019, therefore, any reliance placed on any criteria provided in the superseded Ruling is of no consequence and cannot be taken into consideration for the purposes of assessment of goods in question. Therefore, the finding of the Tribunal in the impugned order in this regard appears to be correct and justified and does not warrant any indulgence as to the proposed questions.

4. Insofar as the argument that proper calculation was not made while assessing the goods in question based on Valuation Ruling No.1408 of 2019, we have not been assisted in any manner as to how this is relevant for the present purposes and is a question of law, whereas, even otherwise, there is no finding of the Adjudicating Authority to this effect. In fact, the entire gist of the Order in Original is based on Valuation Ruling, which was no more in field.

5. In view of hereinabove facts and circumstances of the case, the proposed questions are answered against the Applicant and in favour of the Respondent. As a consequence thereof, all these Reference Applications are **dismissed**. Office is directed to send copy of this order to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office shall also place copy of this order in the connected Reference Applications.

JUDGE

JUDGE

Farhan/PS