

IN THE HIGH COURT OF SINDH, KARACHI

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

1.	Spl. Cus. Ref. A. 357/2022	The Collector of Customs, Karachi VS M/s. Shakeel Traders, Peshawar
2.	Spl. Cus. Ref. A. 358/2022	The Collector of Customs, Karachi VS M/s. Abdul Rahman & Co., Peshawar
3.	Spl. Cus. Ref. A. 359/2022	The Collector of Customs, Karachi VS M/s. Vohra Traders, Karachi
4.	Spl. Cus. Ref. A. 360/2022	The Collector of Customs, Karachi VS M/s. Mubeen Industries, Karachi

For the Applicants: Mr. Muhabbat Hussain Awan, Advocate.

For the Respondents: M/s. Aneel Zia & Sauma Syed,
Advocates.

Ms. Alizeh Bashir, Assistant Attorney
General.

Date of hearing: 06.03.2025
Date of Order: 06.03.2025

ORDER

Muhammad Junaid Ghaffar, J: Through these Reference Applications, the Applicant (department) has impugned a common Judgment dated 12.03.2022 passed in Customs Appeal No. K-970 of 2021 and other connected matters by the Customs Appellate Tribunal Karachi proposing various Questions of law.

2. Heard learned Counsel for the parties and perused the record. It appears that the Respondents had imported various consignments of artificial leather which were assessed by the Customs department on the basis of Valuation Ruling No. 919 & 978 of 2016. The Respondents were aggrieved and approached this Court under its Constitutional jurisdiction seeking provisional release of the consignments as according to them, they had approached the Director Valuation for re-

determination of the Valuation Ruling under Section 25A of the Customs Act, 1969. By way of various orders in different Petitions, the goods imported by the Respondents were released by directing the Applicant department to secure the differential amount of duties and taxes, whereas, the Petitions were finally disposed of with the observations that the secured amounts shall not be encashed till a final decision has been given by the Director Valuation on the representation of the Respondents under Section 25A *ibid*. It appears that thereafter, a fresh Valuation Ruling bearing No. 1450 of 2020 was issued and the goods of the Respondents were assessed. The Respondents then approached the Collector of Customs (Appeals) by impugning the Final Assessment Orders which Appeals were dismissed by the Collector of Customs (Appeals) with the observations that in the case of Respondents a separate Valuation Advise had been issued for final assessment; hence, no exception can be drawn, whereas, the argument that Valuation Ruling has been applied retrospectively has no basis. The Respondents being further aggrieved preferred Appeals before the Tribunal and through impugned order the Appeals stand allowed, whereas, the Tribunal had formulated two Questions in Paragraph 4 which reads as under:-

- “(i) Whether a VR can applied retrospectively and applicable on goods imported prior to its issuance.
- (ii) Whether the goods released provisionally under section 81 of the Customs Act, 1969 after securing the differential amount can be reassessed on the basis of value re-determined through a fresh VR.

3. From perusal of the record as well as the order of the Tribunal, it reflects that the Tribunal has failed to appreciate the correct facts available on record. Firstly, it is not a case of any retrospective applicability of a Valuation Ruling inasmuch as the Collector (Appeals) in his order has clearly held that besides issuance of a Valuation Ruling a separate Valuation

Advise was issued in respect of the Respondents therefore, it was not a case of retrospective application of the Valuation Ruling and the Advice, if any, could have been challenged on its own merits which has not been done. Secondly, it was issued on a reference made to the Valuation department at the request of the Respondents whereby, they had sought provisional release through this Court. Today, we are also informed that the said Valuation Ruling was also challenged by way of a Revision under Section 25D before Director General Valuation and such Revision stands dismissed against which no further remedy was availed. Secondly, the Tribunal has also erred in determining that the provisional assessment under Section 81 of the Act cannot be re-assessed or re-determined through a fresh Valuation Ruling. Since as per record the assessment has not been made on the basis of Valuation Ruling strictly, but the assessment has been finalized on the basis of Valuation Advise the findings of the Tribunal on both the Questions does not appear to be correct nor is based on true facts. Lastly, even otherwise, once the Revision Application of the Respondents was dismissed under Section 25D *ibid* the only remedy available was to approach the Tribunal by way of an Appeal under Section 194(1)(d) of the Customs Act, which provides such Appeals against the order of the Revision. Till such time the Valuation Ruling remains in field, the assessment must be made on the basis of such Valuation Ruling, whereas any Appeal against an Assessment Order based on a Valuation Ruling before Collector of Customs (Appeals) is also meaningless as held in ***Collector of Customs v Ahsan & Company***¹ passed by this Court, wherein it has been held that when Valuation Ruling was not under challenge before the Tribunal after an order in Revision under Section 25D of the Customs Act, 1969, the Tribunal, while hearing Appeals against assessment orders / order of

¹ Collector of Customs v Ahsan & Company (judgment dated 10.7.2024 in SCRA No.431 of 2011)

Collector Appeals could not have varied or set-aside the said Valuation Ruling as the Tribunal was not hearing Appeals against an Order-in-Revision passed by the Director General (Valuation) under Section 25D of the Act.

4. In the case of *DG Valuation v A. A. Tyre*², the question before this Court was whether the Tribunal, while hearing an Appeal under Section 194-A(f) of the Act, against an Order-in-Revision passed under Section 25-D *ibid*, can pass an order of assessment by accepting the declared value as the true transactional value in terms of Section 25 of the Act, when there was neither any assessment order nor an order of the Collector Appeals was before the Tribunal. The court held as under:-

7. Having said that, at the same time, the finding of the Tribunal that the values declared by the Respondents cannot be discarded as they have provided complete data; hence same are directed to be accepted under Section 25(1) of the Act is concerned, we do not see any reason to sustain this as it is not supported by any material on record, nor is otherwise permissible in law. The jurisdiction being exercised by the Tribunal in hearing the Appeals in question emanates from Section 194-A(f) of the Act read with Section 194-B *ibid*. The same reads as under:

[194A. Appeals to the Appellate Tribunal. - (1) Any person [or an officer of Customs] aggrieved by any of the following orders may appeal to the Appellate Tribunal against such orders:-

[(a) Omitted.]

[(a) a decision or order passed by an officer of Customs not below the rank of Additional Collector under section 179.]

[ab) an order passed by the Collector (Appeals) under section 193;]

[(b) Omitted].

(c) an order passed under section 193, as it stood immediately before the appointed day;

(d) [an order passed under section 195 by the Board or an officer of Customs not below the rank of an Additional Collector;]

[***]:

(e) [omitted]

(f) [an order passed in revision by the Director-General Customs Valuation under section 25D, provided that such appeal shall be

² Judgment dated 4.7.2024 in SCRA No.1923 of 2023 & other connected matters.

heard by a special bench consisting of one technical member and one judicial member.]

[Omitted]

194B. Orders of Appellate Tribunal. - (1) The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit **confirming, modifying or annulling** the decision or order appealed against. The Appellate Tribunal may record additional evidence and decide the case but shall not remand the case for recording the additional evidence:

Provided that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the Tribunal may, for reasons to be recorded in writing, fix:

Provided further that in cases, wherein the provisions of clause (s) of section 2 have been invoked, appeals shall be decided within a period of thirty days;]

Provided further that the Appellate Tribunal may stay recovery of the duty and Sales Tax on filing of appeal which order shall remain operative for thirty days and during which period a notice shall be issued to the respondent and after hearing the parties, order may be confirmed or varied as the Tribunal deems fit but stay order shall in no case remain operative for more than one hundred and eighty days.]

8. From a perusal of the above provision, it reflects that there are various orders passed under different provisions of the Act which can be impugned by way of an Appeal before the Tribunal, including but not limited to, orders passed under Section 179, 193 and 195 of the Act. Similarly, an order passed under Section 25D of the Act can also be appealed, as is the case in hand. At the same time, an assessment order passed under Section 80 of the Act can be impugned before the Collector of Customs (Appeals) under Section 193 of the Act, and such order of the Collector (Appeals) can be further challenged before the Tribunal under Section 194A(ab) of the Act. The order of assessment under Section 80 of the Act can be an order in respect of determination of value in terms of Section 25 of the Act; but at the same time, any order of such valuation assessment based on a Valuation Ruling issued under Section 25A *ibid* cannot be impugned before the Collector of Customs (Appeals) and even if it is impugned, the very assessment order cannot be altered or modified till such time the Valuation Ruling remains in the field. In exceptional cases, it can be impugned to a very limited extent as to the very applicability of the Valuation Ruling on the imported product. However, for an aggrieved person, it is required that the said Valuation Ruling be challenged as provided in law, and only when such Ruling is affirmed, modified or even set-aside, the said assessment order can be altered or modified accordingly. This is because a valuation ruling is a statutory ruling that has the force of law. The Valuation Rulings issued under section 25A of the Act is a notified ruling, which is applicable and binding until revised or rescinded by the

competent authority³. This is because once the Director General Valuation issues a Valuation Ruling, it has to be duly notified, as provided under the Customs General Orders, 2002. Subsection (2A) of section 25A categorically provides that where there is a conflict in the customs value, the Director General Valuation shall determine the applicable customs value⁴. Hence, section 25A of the Act itself provides for a dispute resolution mechanism where the Valuation Ruling for the purposes of assessed value is disputed⁵.

9. The jurisdiction being exercised by the Tribunal in the instant matter was in respect of Appeals against the orders passed by the Director General Customs (Valuation) under Section 25-D of the Act, which provides a Revision against a Valuation ruling issued in terms of Section 25A of the Act. The Tribunal's jurisdiction in these matters is confined to this extent only and is not in respect of any assessment orders passed by the lower forums under Section 80 of the Act. In fact, the assessments in these matters were never a subject issue as they were statutorily based on the values determined and made applicable by way of a Valuation Ruling issued under Section 25A *ibid*. The Valuation Rulings can be impugned further under Section 25D of the Act through a Revision and then a further Appeal as above. This difference in conferment of jurisdiction upon the Tribunal is pertinent and vital when dealing with Appeals under this provision of the Act. All Courts and Tribunals constituted under the Constitution and the law, have only such jurisdiction that has been conferred upon them by the Constitution and the law⁶; and, no Court can exercise any jurisdiction in any matter before it unless such jurisdiction has been conferred to it by the Constitution or law⁷. Therefore, the Tribunal, while hearing Appeals under this provision of the Act, i.e. Section 194-A(f) *ibid*, cannot exercise any powers to make an assessment order accepting the declared values as transactional values under Section 25(1) of the Act. Once it is concluded that the Valuation Ruling issued under Section 25-A of the Act read with Order-in-Revision under Section 25-D of the Act cannot be sustained, it can only set-aside the Ruling; but cannot confer upon itself or assume any jurisdiction to exercise any powers under Section 25(1) of the Act and accept the declared values as transactional values. This is so because the Tribunal is not hearing an Appeal against an assessment order passed under Section 80 of the Act, but against an order passed under Section 25-D of the Act.

5. Therefore, the Tribunal, while hearing Appeals under Section 194A(ab) of the Act against an order of Collector of Customs (Appeals) passed under Section 193 of the Act, cannot alter or modify or even set-aside the Valuation Ruling

³ Collector of Customs v Wasim Radio Traders (2023 SCMR 1716)

⁴ --do--

⁵ --do--

⁶ Habib Bank Limited v Saqib Mahmood [2021 PLC (CS) 1495]

⁷ Malik Iqbal Hassan v Defence Housing Authority (PLD 2019 Lahore 145)

duly issued under Section 25A of the Act. For that, the aggrieved person has to impugn the same in terms of Section 25D *ibid* and thereafter, if further aggrieved, before the Tribunal in terms of Section 194-A(f) *ibid*. In view of this position, in our considered view, the Tribunal has acted in excess of jurisdiction while dealing with all the above questions regarding the merits of the Valuation Ruling.

6. In view of the above, the two Questions determined by the Tribunal in the impugned order are answered against the Respondents and in favor of the Applicant department. Therefore, the impugned order of the Tribunal stands ***set aside***. All these Reference Applications are ***allowed***. Let a copy of this order be sent to the Customs Appellate Tribunal, Karachi in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in connected Reference applications as above.

ACTING CHIEF JUSTICE

J U D G E

Arshad/