

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Customs Reference Application ("SCRA") Nos. 1371 / 2015 a/w
SCRA No. 1372 to 1380 /2015

Date	Order with signature of Judge
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Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Agha Faisal

Applicant: Director of Customs Valuation, Karachi
Through Mrs. Masooda Siraj, Advocate.

Respondent: M/s. A. K. Business Link.
Through Mr. Umar Akhund Advocate.

Date of hearing: 19.11.2020

Date of Order: 19.11.2020.

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Muhammad Junaid Ghaffar, J: Through these Reference Applications under section 196 of the Customs Act, 1969, ("**Act**") the Applicant has impugned order dated 20.06.2015 passed by the Customs Appellate Tribunal at Karachi, in Customs Appeal No. K-114/2015 and other connected matters, proposing as many as ten (10) Questions of Law, which in our considered view (for discussion to follow) do not arise out of the order impugned herein.

Learned Counsel for the Applicant has read out the order and has argued that the Tribunal erred in law by setting aside the Valuation Ruling and remanding the matter for which the Tribunal had no jurisdiction. According to her, huge revenue is involved as the consignments were released on provisional basis and therefore, the order of the Tribunal be set aside.

On the other hand, Counsel for Respondent has supported the order of the Tribunal and submits that no cause of action remains for the Applicants as subsequently, fresh Valuation Rulings have been issued as directed which have also been challenged successfully. He has prayed for dismissal of these Reference Applications.

We have heard both the learned and perused record. On 18.11.2020 after briefly hearing the matter we had passed the following order: -

“Learned counsel for the applicant has made part submissions. However; it appears through the impugned order though the valuation ruling was set aside but the matter was remanded for issuance of fresh ruling in accordance with Section 25 and 25-A of the Customs Act, 1969.

Learned counsel for the respondent submits that subsequently another valuation ruling was issued which has also been challenged and stands set aside. Since a fresh ruling has been issued by the Department, we fail to understand that why the present reference has been filed.

Learned counsel for the respondent to come up with instructions. Adjourned to 19-11-2020 at 8:30 a.m. Office is directed to place copy of this order in the all connected cases.”

Today, instead of withdrawing these Reference Applications the Counsel under instruction has pressed the same on merits on the ground of huge revenue implications. We have gone through the Questions so proposed and are unable to comprehend as to why these Reference Applications have been filed and are being pressed upon till today. The learned Tribunal while deciding the Appeals finally has observed in Para 20 as under: -

“20. That on the strength of the Judgments passed by the Superior Courts including the Hon’ble High Court of Sindh in the case of Sadia Jabbar and in conformity of the aforesaid observations along with our additions, the subject impugned Valuation Ruling 702/2014 dated 25.11.2014 lacks the warrant of law and its issuance has no adherence to the statutory requirements as laid down in Section 25 of the Customs Act, 1969. Therefore, the said Valuation Ruling is declared as devoid of any lawful authority, void, illegal and is set aside accordingly. The impugned order in review passed within the hierarchy of the Customs infested with patent illegalities, is also held to be null and void and accordingly set aside. The respondents are also directed to follow the ratio decidendi observed and decided by the Superior courts in their Judgments referred above along with our additional observations made thereon in its letter and spirit, before issuing any fresh ruling. Any transgressional and derogatory activity caused shall amount to non-compliance with the statutory provisions and will fall under the dictum of corum-non-judice. The Hon’ble Supreme Court of Pakistan in reported case 1994 SCMR 2234 has held that if the mandatory provisions of law were not met at initial stage of legal process, the superstructure built in shape of any order shall be void. ***The Department should take appropriate measures and issue a fresh Valuation Ruling, considering the above noted observations, especially in accordance with the principles laid down in Sections 25 and 215-A of the Customs Act, 1969, (stricto sensor), after giving the opportunity, being heard to all stakeholders. The exercise will be completed within one month from the receipt of this order.*** Compliance report shall be submitted accordingly. Appeal is allowed accordingly with no order as to cost.”

Perusal of the aforesaid finding of the learned Tribunal reflects that though the impugned Valuation Ruling No.702/2014 dated 25.11.2014 has been set aside; however, in the concluding part of the order, the Department has been directed to take appropriate measures to issue a fresh Valuation Ruling considering the

observations of the Tribunal and in accordance with Section 25 & 25-A of the Act after affording opportunity of being heard to all stakeholders. It was further directed to complete the exercise within one month from the receipt of this order. After going through the above observations, we do not see any justification to file a Reference Application proposing ten questions of law, when apparently the Applicant as of today can't be anymore aggrieved inasmuch as after setting aside the impugned Valuation Ruling, the Department has been given certain directions and has not been restrained, either from issuing a new Valuation Ruling; or from making assessment under Section 25 of the Act. In fact, in our view, it is the Respondent who ought to have been aggrieved by filing a Reference Application against directions to the Applicant Department for issuing a new ruling.

It further appears that during pendency of the Appeal before the learned Tribunal the Applicant Department by itself has issued a fresh Valuation Ruling of the same goods bearing No.737/2015 dated 27.05.2015. Para 2 of this new Valuation Ruling is relevant for the present purposes and reads as under: -

"2. Background of the valuation issue: This office has issued Ruling 702/2014 dated 25.11.2014 for toilet soaps. Importers and local manufactures, the two main stakeholders, filed revision petitions against the Ruling before Director General Customs Valuation under section 25-D. the Honourable Director General maintained the Ruling, however, considering the agitation from the stakeholders, directed to initiate exercise for redetermination of customs values within one month. In pursuance of these order, the Directorate of Customs Valuation initiated exercise for re-determination of values of defended types of soap. Meanwhile, a number of importers have approached this Directorate for inclusion of their brand name in the Ruling."

Perusal of the above reflects that the Director General Customs Valuation while deciding Revision Application(s) under Section 25-D ibid though maintained the impugned ruling; however, directed the Applicant to initiate exercise for redetermination of customs values within one month. It is further stated that in pursuance of these order, an exercise was initiated for re-determination of values of the products in question, whereas, in the meanwhile, a number of importers have also approached the Valuation Directorate for inclusion of their brand name in the Ruling.

It is a matter of fact that a number of aggrieved persons including the Respondents herein had filed Revision Applications under s.25D before Director General Valuation who vide order dated January 07, 2015 (wrongly mentioned as January 07, 2014) while dismissing the

Revision Applications had given the above directions to re-determine the values within one month. It may be noted that the Applicant never assailed the said directions of re-determination of values. The Respondents impugned the same before the Tribunal against which these References are now before us. Once the Department on its own; or in compliance of the directions given by Director General Valuation, and before passing of the impugned order of Tribunal had initiated exercise for re-determination of the values, then they ought to have approached the Tribunal for decision of the Appeals on the same line. Not only this they even issued a new Ruling on 27.5.2015 even before the Tribunal had decided the Appeals. Subsequently, the order of Tribunal has been assailed before us proposing the questions of law, whereas, the Tribunal has also asked the Applicant to re-determine the values by way of a new / fresh Valuation Ruling. When an order of re-determination was complied with notwithstanding that the Appeals were pending before the Tribunal, then how come now as of today the Applicant can be aggrieved of a remand order. This is not understandable. In fact, the exercise of re-determination and issuance of new Valuation Ruling even before the Appeals could be decided by the Tribunal is on the face of it an admission that the values determined through impugned Ruling were not correct. If not, then why an exercise of re-determination was carried out in sub-judice matters. We have not been able to understand this stance of the Department, whereas, no assistance of whatsoever nature has been provided to us on this conduct of the Applicant Department. The argument that the Tribunal was not competent to remand the matter is not relevant for the present purposes as the Applicant Department by itself had gone into an exercise of re-determination of the values notified through impugned Valuation Ruling No.702/2014 which as per the conduct of the Applicant itself had lost its efficacy and validity. The other argument of involvement of huge financial implications is on the face of it meritless and without any force of law. The law has to take its own course without being influenced with any financial implications, whereas, the Applicant department is bound to follow the law.

In view of hereinabove facts and circumstances of this case, neither the questions proposed are questions of law nor do they arise out of the order of the Tribunal as finally the matter was against sent to the Department for issuing a fresh Valuation Ruling and such

orders stands complied with even before passing of the impugned order by the Tribunal. In fact, question “G” proposed by the Applicants is *“whether the learned Honourable Appellate Tribunal has not appreciated that the Valuation Ruling No.702/2014 dated 25.11.2014 has been revised and fresh Valuation Ruling No.737/2015 dated 27.5.2015 of Toilet Soap has been issued as per directives in Order-In-Revision No.73/2015 dated 7.1.2015?”* (wrongly mentioned as 01.07.2014) and to this we may observe that this question also does not arise out of the order of the Tribunal as there is no discussion in the impugned order in this regard. In fact, proposing this question supports the stance of respondent that the impugned Valuation Ruling warranted re-determination being against the law.

To conclude we may observe that in view of the above discussion no substantial questions of law remain to be answered as the matter was finally sent back to the Applicant department who could no more be aggrieved; hence, these Reference Applications being misconceived and not maintainable are hereby dismissed. Let copy of this order be sent to the Customs Tribunal in terms of s.196(5) of the Act

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