

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
 Special Customs Reference Application ("SCRA") No. 852 to 859 / 2017

---

Date Order with signature of Judge

---

**Present: Mr. Justice Muhammad Junaid Ghaffar**  
**Mr. Justice Agha Faisal**

**Applicant:** **Collector of Customs,**  
**Through Additional Collector of Customs**  
**(Law), Model Customs Collectorate of**  
**Appraisement (Wet), Customs House,**  
**Karachi.**  
**Through Mr. Kafeel Ahmed Abbasi,**  
**Advocate.**

**Respondent:** **M/s. Osaka Electronic & Industries Co,**  
**Through Mr. Ghulam Hyder Shaikh,**  
**Advocate.**

**Date of hearing:** **19.01.2021**

**Date of Order:** **26.02.2021**

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J:** Through these Reference Applications, the Applicant has impugned order dated 05.07.2017 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-1231 to 1238 of 2015 proposing the following Questions of Law:-

- "1) Whether the basis of facts and circumstances of the case the learned Appellate Tribunal erred in law that in terms of Section 25(2)(b) of the Act, read with Rule 122(1)(ii) of the Customs Rules, 2001 and the long outstanding assessment practice the cost / price of the essential packing cannot be ignored while evaluating the value of the imported and exported goods?
- 2) Whether the provisions of law clearly states that every incidental cost shall be included in value of the goods, the respondent / importer is not liable to pay the duties / taxes as per correct and lawful assessment, made by the appellant?
- 3) Whether the Appellate Tribunal has consider legal aspect that the inner core, on which the tape is wrapped, is the integral part of the imported goods, thus, the same cannot be detached or lake out of the imported goods?

- 4) Whether on the basis of facts and circumstances of the case the learned Appellate Tribunal has jurisdiction to nullify without any cogent reason the value applied on the basis of essential packing i.e. inner Core?
- 5) Whether the Appellate Tribunal's findings are not perverse and a result of non-reading / mis-reading of record?"

2. Learned Counsel for the Applicant has contended that the Tribunal as well as the Collector (Appeals) have erred in law by accepting the contention of the Respondent in respect of tare weight of Inner Core Packing of the Insulation Tape in question. He has also referred to Note annexed with the Valuation Ruling in question read with s.25(2) (b) of the Customs Act, 1969 ("Act") and has contended that the Tribunal has failed to take note of the same. According to him, the assessment of the goods was required to be made on the actual weight including that of the inner core packing; hence, Questions be answered in favour of the Applicant

3. On the other hand, learned Counsel for the Respondent has supported the orders passed by the forums below and submits that the Valuation Department has already clarified vide this issue vide its letter dated 4.11.2011 pursuant to which the Lahore High Court in Writ Petition Nos. 3000/2010 and 6559/2016 has already accepted the contention raised herein by the Respondent. He has prayed for dismissal of the Reference Applications.

4. We have heard both the learned Counsel and perused the record. As per the statement of facts as narrated in this Reference, the Respondent imported a consignment of PVC Electric Insulation Tapes in Jumbo Rolls declaring a total net weight of 81750 Kgs including net weight of inner core and cartons, whereas, after examination of the goods the Applicant Department refused to accept such declared net weight and passed the following assessment order dated 12.03.2015:

"upheld. The importer agitated against the inclusion of weight of inner core in the assessable net weight of the consignment. Uploaded images seen. The inner core of the imported goods is part and parcel of the goods and will be sold to the end consumer along with the tape. **Therefore, as per provisions of section 25(2)(b) of the Customs Act, 1969, the weight of the inner core will be included in the assessable net weight of the goods upon which duty / taxes are levied.** Therefore, the importer's request for allow of weight of inner core cannot be acceded to as the same constitutes essential packing

of the goods. However, the tare of outer cartons is admissible and the same has already been allowed.”

5. The Respondent being aggrieved filed an Appeal before the Collector of Customs (Appeals) who vide order dated 05.06.2015 agreed with the contention of the Respondent by holding that the assessment is to be made on the net weight of the goods excluding the weight of inner core packing. The relevant finding of the Collector Appeals is as follows: -

“3. I have examined the case record. In this case the appellants imported and declared PVC Electric Insulation tapes in jumbo rolls, assessable as per Valuation Ruling No. 362 dated 06.08.2011. Upon examination the goods were found as per declaration and were assessed as per same Valuation Ruling. The accompanying assessment notes show that further addition to the net weight of goods has been made under the provisions of section 25(2)(b) of the Customs Act, 1969. The aforesaid provisions of law authorizes addition of certain costs and charges incurred by the importer which are not included in the price actually paid or payable for the imported goods. However, these additions are to be made if customs value is being determined under sub section (1) of section 25 of the Act, which is not the case here. In the current scenario there is no determination of customs value under sub section (1), rather customs value has been determined already under section 25-A, the provisions contained in section 25, notwithstanding. It is inbuilt in customs value determined section 25-A of the Act that methods laid down in section 25 have been followed. Therefore, valuation determined under section 25-A could not be further saddled by invoking any provision of section 25 by the assessing officer. This has been a settled position as is evident from ONO 328143 dated 19.02.2015, wherein show cause notice on identical ground was withdrawn by DC adjudication and no appeal has been filed by the responding Collectorate.

4. Identical matter with reference to a Valuation Ruling came up before Lahore High Court in W.P No.3000/2010 and in pursuant thereof the Directorate General of Valuation clarified vide their letter dated 04.11.2011 that all Valuation Rulings were applicable on net weight basis (excluding essential packing weight) except those wherein it is explicitly so mentioned to include weight of essential packing. This clarification had the blessing of the Court vide order dated 15.12.2011. This view has been reiterated by the Directorate General of Valuation vide letter dated 16.02.2015. The instant Valuation Ruling does not mention or instructs to include weight of essential packing as such the customs value determined in the said ruling is applicable on net weight basis.

5. The appellants cited order in appeal number 9969/2015 dated 20.03.2015, whereby the appeals were allowed. The responding Collectorate has provided letter No.S1/Misc/31/2015/III dated 01.04.2015, wherein the Directorate General of Valuation has been requested to re-visit the whole issue and advise, in the meanwhile the Collectorate will assessed the goods under section 81 of the Customs Act, 1969. However, in this case assessment has been made under Section 80 of the Act, therefore, amendment in Valuation Ruling will have no bearing on this case.

6. In view of the aforesaid discussion it is held that the assessment made by the respondents in arbitrary and not supported by law, hence the same is set aside and appeal is allowed.”

6. The aforesaid order of the Collector Appeals was further impugned by the Applicant before the Customs Appellate Tribunal and through impugned order, the learned Tribunal has dismissed the Appeal in the following terms: -

6. We have given anxious thought to the available record and heard both the parties in appeal. The plain reading of Assessment Order passed on Goods Declaration No. KAPW-HC-134809-02-03-2015 reveals that assessment carried out by the concerned Assessing Officer was upheld by the Reviewing Authority holding that 'The importer agitated against the inclusion of weight on inner core in the assessable net weight of the consignment. Uploaded images seen. The inner core of the imported goods is part and parcel of the goods and will be sold to the end consumer along with the tape. Therefore, as per provisions of section 25(2) of the Customs Act, 1969, the weigh to the inner core will be included in the assessable net weight of the goods upon which duty / taxes are levied. Therefore, the importer's request for allow of tare weight of inner core cannot be acceded to as the same constitutes essential packing of the goods. However, the tare of outer cartons is admissible and the same has already been allowed."

7. From the perusal of Assessment Order as discussed above, it is apparent that the weight of Inner Core was not granted to the Respondent No. 1 as Tare weigh. Be within the narrow confines of the above issue, the grant of tare weight in respect of 'Inner Core Packing' or otherwise is the matter of consideration for disposal of these appeals. The term 'tare weight' in general require no illustration, however, in this specific case above referred term is discussed for the sake of brevity which means "**the weight of the wrapping or container in which goods are packed.**" Normally, tare weight is granted to the importers wherever it is admissible. While looking into the matter, '**inner core packing**' is factually the foundation and innermost part of a product on which the structure of such product is fixed and cannot be excluded from it. If the same is excluded or removed from there, it would make the goods redundant from marketing point of view. Based on such factual position, the Inner Core Packing is integral parts of Insulation Tape in Jumbo Rolls, which cannot be separated from it for any purpose, if it is done, it would make the product redundant.

8. Keeping in view the above discussions, the observations of the Reviewing Authority /Deputy Collector of Customs, MCCA-West for not granting the tare weight of Inner Core Packing of Insulation Tape in Jumbo Rolls is beyond logic. It is settled principle that every case is based on points of fact or points of law and where points of law are not applicable, the points of fact and prevailing practice are to be taken into consideration on the ground that prolonged practice becomes a law. In the instant appeal, point of fact with regard to 'Inner Core Packing' is involved, which has not been properly addressed by the concerned assessing officers.

9. Now coming to the above referred Valuation Ruling, the perusal of Para -3 thereto reveals that Insulation Tape is either imported in Log Roll or Retail Packing and very rarely imported in Jumbo Rolls. Further perusal of referred VR especially Para 5 stipulates that "*log roll is different than jumbo roll, as in logroll, 'tape is cut to specific size and repacked whereas in jumbo roll, the tape is cut to specific size and rewound on the spool and repacked*". The referred portions of aforesaid VR lend support to findings that paperboard spool on which Insulation Tape is wrapped, becomes scrap and is of no value,

whereas, outer cardboard packing, which is considered for grant of Tare Weight, amounts to valued scrap which ultimately pays back to the importers. We subscribe to the observations of learned Collector, Customs (Appeals), Karachi that “The instant Valuation Ruling does not mention or instructs to include weight of essential packing, as such, the customs value determined in the said ruling is applicable on net weight basis.”

10. In view of above, we do not find any reasons to interfere with the impugned Order-in-Appeal, as such, the same is upheld being a lawful order. The present appeals are dismissed with no order as to cost.”

7. The precise case of the Applicant which can be gathered from the record placed before us is that though the net value per Kg applied pursuant to Valuation Ruling No.726 is not in dispute; however, the assessment has to be made on the weight of the goods including that of the essential packing, (here inner core) and therefore, the forums below have failed to appreciate the relevant provisions of law. It has been contended that while making assessment of goods under the Transactional Value concept and as provided under Section 25(2)(b)<sup>1</sup> of the Act, it is permissible to add weight of the essential packing for the purposes of assessment and for arriving at the correct Transactional Value.

8. Perusal of the aforesaid provision reflects that while determining the transactional value of imported goods there shall also be added to such price *to the extent that they are incurred by the importer but are not included in the price actually paid or payable of the imported goods*; which may include cost of containers which are treated as being one for Customs purposes with the goods in question and the cost of packing whether for labor or materials. However, in our considered view, reliance on the said provision is wholly misconceived. First, it may be taken note of that this provision only applies or can be invoked when the

---

<sup>1</sup> “[25. [Value of imported and exported goods].- (1) Transaction Value.- -----

- (2) -----
  - (a) -----
    - (i) -----
    - (ii) -----
    - (iii) -----
  - (b) there shall also be added to such price, **to the extent that they are incurred by the importer but are not included in the price actually paid or payable** of the imported goods-
    - (i) commissions including indenting commissions and brokerage, except buying commissions;
    - (ii) the cost of containers which are treated as being one for customs purposes with the goods in question; and
    - (iii) the cost of packing whether for labour or materials;”

assessment of an imported goods is being made in terms of Section 25(1) of the Act or under the transactional value method. Section 25(1) to (4) provides a mechanism in giving assistance to the Customs Department for determination of a transactional value, whereas, the said exercise is only to be carried out when Customs intend to invoke the Transactional Value method<sup>2</sup> which in our Customs Act is provided under s.25(1), whereas sub-section (2) to (4) provides the basics and assists in arriving at a correct transactional value. It is only in that case that a Customs Officer can resort to these sub-sections of Section 25 including Section 25(2)(b). Notwithstanding, the first and foremost factor while applying Section 25(2)(b) is that the cost of containers or essential packing can only be added, and *to the extent that they are incurred by the importer*, and this would only come into force when the value declared by the importer is being accepted as a transactional value and not otherwise. In the instant matter, it is not a case of determination of value under the transactional value method [s.25(1)]; rather it is a case of assessment under Section 25-A<sup>3</sup> of the Act pursuant to a Valuation Ruling already issued by the Valuation Department. In our considered view, in that case, while making assessment s.25 of for that matter s.25(2)(b) *ibid* cannot be resorted to or invoked by the concerned assessing officer as determination of value has already been made by the Valuation Department in terms of Section 25-A after following the methods provided under section 25 *ibid*.

9. In this matter the relevant and applicable Valuation Ruling is 726 of 2015 dated 20.04.2015 which reads as under:-

---

<sup>2</sup> Article VII of the General Agreement on Tariffs and Trade has laid down the general principles of international system of valuation and provides that the value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed and it is the price actually paid or payable is the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods by the buyer to the seller, or by the buyer to a third party to satisfy an obligation of the seller.

<sup>3</sup> [25A. Power to determine the customs value.-(1) Notwithstanding the provisions contained in section 25, 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) Omitted

(4) The customs value determined under sub-section (1) shall be applicable until and unless revised or rescinded by the competent authority.]

“GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI.

The Collectors of Customs, Model Customs Collectorates, Appraisement (East / West) / Port Muhammad Bin Qasim / Preventive, Karachi / Lahore (Appraisement / Preventive) / Sambrial (Sialkot) / Faisalabad / Multan / Islamabad / Hyderabad / Quetta / Peshawar / Gawadar / Gilgit-Baltistan.

Determination of Customs Values of PVC Electric Insulation Tape Under Section 25-A of the Customs Act, 1969.

(VALUATION RULING NO. 726/2015)

No. Misc/08/2008-II/8668

Dated: April 20, 2015

In exercise of the powers conferred under Section 25-A of the Customs Act, 1969, Customs values of PVC Electric Insulation Tape are determined as follows:

1. **Background of the valuation issue:** Customs values of PVC Electric Insulation Tapes were determined under Section 25-A of the Customs Act, 1969, vide Valuation Ruling No.362/2011, dated 6<sup>th</sup> August, 2011. A number of representations were received in the Valuation Department to re-determine PVC Electric Insulation Tape values to correctly reflect international prices. Moreover, there were complaints that assessing staff is allowing different tare weights at different customs stations. The issue of confusion of net and gross weight was also vehemently agitated by Karachi Chamber of Commerce and Industry before Director General Valuation on her recent visit to the Chambers, therefore, an exercise to re-determine the Customs values of the subject goods afresh was taken up.
2. **Method adopted to determine Customs values:** Valuation methods given in Section 25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. Transaction Value Method under Sub-Section (1) of Section 25 of the Act *ibid* was found inapplicable because required information under the law was not available. Identical and Similar Goods valuation methods provided in Sub-Sections (5) and (6) of Section 25 of the Customs Act, 1969 provided some reference values but due to wide variations the same could not be relied upon. In the sequential order this office then conducted a market inquiry in terms of Sub-Section (7) of Section 25 of the Customs Act, 1969. Stakeholder meeting were also conducted for their input and feedback. On-line values were also checked. All the information was analyzed and evaluated. Customs values of PVC Electric Insulation tapes are determined under sub-section (9) of Section 25 of the Customs Act, 1969.
3. **Stakeholders' participation:** Meeting were held with stakeholders including the representatives of importers, local manufactures, clearance Collectorate, Karachi Chamber of Commerce and Industry, and trade bodies on 19.03.2015 and 07.04.2015 for their input on the subject issue. In the meetings all issue relating to PVC electric insulation tape values including prices of different raw materials, ratios between gross weight and net weight were discussed in minor details. It was clarified that insulation tape is imported either in log roll or retail packing and very rarely imported in jumbo roll. Importers as well as manufacturers agitated against diverse practice adopted regarding net and gross weight by different assessing staff and requested for a clear verdict on the issue. The samples of different types of insulation tapes in retail packing were weighed in the presence of all stakeholders to determine ratio of weight with tare, i.e. paperboard spool and

covering wrapper. The essential packing weight ranged from 23 to 26 per cent of the total weight. It was further clarified that tare weight in log roll is of the same ratios.

4. **Customs Value for PVC electric insulation tape** : PVC Electric Insulation Tape *hereinafter specified* shall be assessed to duty/taxes at the following Customs values:-

S. No.	Description of goods	PCT	Proposed PCT for WEBOC	Origin	Customs Values (C&F) us\$/Kg Net Weight
(1)	(2)	(3)	(4)	(5)	(6)
01	PVC Electric Insulation Tape- Width exceeding 20.cm- (Log Roll)	3919.9090	3919.9090.1300	China	1.25
			3919.9090.1400	Korea, Taiwan, UAE, Vietnam	1.30
			3919.9090.1500	Europe, USA, Canada, Japan	1.60
01	PVC Electric Insulation Tape- Width exceeding 20 cm- (Retail packing)	3919.9090	3919.1020.1000	China	1.40
			3919.1020.1000	Korea, Taiwan, UAE, Vietnam	1.45
			3919.1020.1200	Europe, USA, Canada, Japan	1.80

5. (Note: Essential packing is part of the customs value and needs to be adequately accounted for in the customs value whether the assessment is on net or gross weight basis. The element of essential packing has, duly been accounted for in the above table. Column 6 in the above Table indicates customs values on the basis of net weight where tare is to be allowed at the rate of 25% on account of essential packing.

Log Roll: It was also clarified during the stakeholder meeting, that log roll is different than jumbo roll, as in log roll, tape is cut to specific size and repacked whereas in jumbo roll, the tape is cut to specific size and rewound on the spool and repacked.

6. In cases where declared / transaction values are higher than the Customs values determined in this Ruling, the assessing officers shall apply those values in terms of Sub-Section (1) of Section 25 of the Customs Act, 1969. In case of consignments imported by air, the assessing officer shall take into account the differential between air freight and sea freight while applying the Customs values determined in this Ruling.
7. **Validity of this Valuation Ruling:** The values determined vide this Ruling shall be the applicable Customs value for assessment of subject imported goods until and unless it is rescinded or revised by the competent authority in terms of Sub-Sections (1) or (3) of Section 25-A or section 25-D of the Customs Act, 1969.
8. **Revision of the value determined vide this Valuation Ruling:** A revision petition may be filed against this Ruling, as provided under Section 25-A of the Customs Act, 1969, within 30 days from the date of issuance of this



Ruling, before the Director General, Directorate General of Customs Valuation, 7<sup>th</sup> Floor, Custom House, Karachi.

9. The Collector of Customs may kindly ensure that the values given in the Ruling for the given description of goods are applied by the concerned staff without fail. Any anomaly observed may kindly be brought to the notice of this Directorate General immediately for redressal.

10. **This Ruling supersedes Valuation Ruling No. 362/2011 dated 06.08.2011.**

**Sd/-**  
**(Abdul Rashid Sheikh)**  
**Director**

10. Perusal of the aforesaid Ruling issued by the Director Valuation under Section 25A of the Act reflects that the issue of essential packing and the dispute as well as contention regarding net and gross weight as well as that of essential packing has been discussed and already decided while notifying the values through this Ruling. It is noteworthy that this Valuation Ruling is not under challenge before us, whereas, it is a Ruling issued by applying s.25(9) of the Act i.e. the fall back method<sup>4</sup>. In the Valuation Ruling as above it has been stated and agreed upon even by the Respondents that the assessment of the goods cannot be done either under Section 25(1) or (5), (6) and (7) of Section 25 *ibid*; hence, resort has to be made to the fall back method as contemplated under s.25(9) of the Act. The goods in question fall in Serial No.1 and column 6 of the Valuation Ruling as above, provides an assessment value of US\$ 1.25 per Kg (**net weight**); hence, it is not in dispute that the assessment of the goods in this case is to be made on net weight of the goods. The Valuation Department has also taken note of the issue regarding essential packing of the product in question and it has been decided and agreed upon that the element of essential packing has duly been accounted for; and column 6 in the above table indicates customs values on the basis of **net weight**, whereas, tare weight is to be allowed at the rate of 25% on account of essential packing. A literal meaning of the above note in this Valuation Ruling means that a difference of

---

<sup>4</sup> Customs value determination based on reasonable means consistent with the principles and general provisions of the Agreement, Article VII GATT and on the basis of available data and is applied when the customs value cannot be determined under any of the previous methods. It allows determination using reasonable means consistent with the principles and general provisions of the Agreement and of Article VII of GATT, and on the basis of data available in the country of importation. To the greatest extent possible, this method should be based on previously determined values and methods with a reasonable degree of flexibility in their application.

25% between the net and gross weight has to be allowed as a maximum difference for making assessment of the goods. Even on this touchstone the Applicant has no case inasmuch as the net weight declared by the Respondent is 81750 Kgs, whereas, it has been calculated as 96120 Kgs, including the weight of the inner core and the difference between two is approximately 17.58%; hence, even otherwise, the claim of the Respondent for difference in net and gross weight is within the para-meters notified in the Valuation Ruling in question. It is settled law that once a Ruling has been issued in terms of s.25A of the Act, then recourse to the methods and assists as well as powers conferred upon the Customs department in terms of s.25 of the Act cannot be resorted to as the Ruling in terms of s.25A is statutory in nature and cannot be deviated; nor any other method of valuation can be applied by the Collectorate while making assessment of goods.

11. Lastly, it may be observed that the Applicant Department in the Memo of its Appeal before the Collector has admitted the stance of the Respondent to the extent that the Ruling is notified for assessment which has to be made on net weight basis, excluding the weight of essential packing as claimed. It would be advantageous to refer to the grounds taken in appeal before the Tribunal which reads as under:-

- “1. That in terms of section 25(2)(b) of the Act, read with Rule 122(1)(ii) of the Customs Rules, 2001 and the long outstanding assessment practice the cost / price of the essential packing cannot be ignored while evaluating the value of the imported and exported goods. The aforesaid provisions of law clearly states that every incidental cost shall be included in value of the goods. Whereas, the inner core, on which the tape is wrapped, is the integral part of the imported goods. Therefore, the “Inner core” are to be assessed with PVC Insulation Tape for the purpose of charging duties and taxes by considering the provisions of Section 18, 80(1) and 25(2) of the Act, read with Rule 122(i)(ii) and 438 of the Customs Act, 2001.
2. That admittedly in imported PVC Insulation Tape cannot be sold, imported and supplied without the “Inner Core”, thus, considering the provision of Section 18 and 80(1) of the Act, in the absence of any exemption, the “Inner Core” cannot be allowed release without charging the leviable duties and taxes. Indeed, the Valuation ruling is showing the price of PVC Insulation Tape and perhaps not included the price of essential packing, so far the clearance of the “Inner Core” the appropriate value is to be added as Section 18, 80(1) and 25(2)(b) of the Act and Rule 122(1)(ii) of the customs Rule, 2001 are asking for charging the duties and taxes. The importers have option either to clear the “Inner Core” on payment of duties and taxes or left it alone at

the port However, the respondent importer has opted to clear the PVC Insulation Tape along with Inner core, that being so, in terms of Section 18 of the Act, read with Section 25(2)(b) and 80(1) of the Act the Respondent importers are required to make payment of duties and taxes for the Inner Core irrespective whether the value of the inner core is included in the Valuation Ruling or not.

3. That learned Collector (Appeals) observation that the provision of Section 25(2)(b) of the Act is only applicable when the goods are to be evaluated under Section 25(1) of the Act, is totally incorrect and showing signs of ignorance of law. It is settled law that the customs value of the Valuation Ruling is also to be determined after following the guideline provided under Section 25 of the Act (references made to the case of Saadia Jabbar, CP No. D-2673 of 2009 and other connected petitions). Thus, any administrative clarification from the Directorate of Valuation cannot override the High Court Judgment and aforesaid provisos of law.

12. The above contention and argument of the Applicant insofar as Para 1 is concerned, has already been dealt with by us as above. Insofar as Para 2 is concerned, the Applicant concedes that indeed the Valuation Ruling is showing the price of PVC Insulation Tape and perhaps, does not includes the price of essential packing, so for the clearance of Inner Core, the appropriate value is to be added. It has been further contended that the importers have option either to clear the Inner Core on payment of duties and taxes; or leave it at the Port. Their case is that in terms of Section 18 of the Act read with section 25(2)(b) and section 80(1) of the Act the Respondent is required to make payment of duties and taxes for Inner Core irrespective of the fact that whether the valuation of the Inner Core is included in the Valuation Ruling or not. This stance of the Applicant is by itself conflicting and concedes to the fact that insofar as the Valuation Ruling is concerned, it has been correctly applied by the Appellate forums below. Hence, if the grievance of the Applicant is that the Valuation Ruling in question has failed to take note of applicability of any provision of the Act in question, then perhaps, the Applicant cannot agitate the very validity of the Valuation Ruling in these proceedings and has to take recourse as provided in law, including approaching the Valuation department for necessary amendment, if any.

13. The upshot of the above discussion is that insofar as the Ruling in question is concerned, vide Note 5 it has already taken care of the weight of packing (all sorts) and its value has been included in the values as notified in column 6 thereof. Further while making

assessment of goods for which a Ruling is already notified in terms of s.25A *ibid*, the assessing officer (exercising powers under s.80 or 81 of the Act) cannot invoke or apply s.25(2)(b) of the Act, which otherwise is only applicable when an assessment is being made under the transactional value method in terms of s.25(1) to (4) of the Act and it has come on record that the costs of packing and containers is incurred by the importer; but are not included in the price actually paid or payable. Admittedly, the Valuation Ruling in hand is not under the transactional value method but under s.25(9) (deductive values method) of the Act.

14. In view of hereinabove facts and circumstances of this case, we do not see any reason to interfere with the orders passed by the forums below as they are in line and in accordance with the provisions of the Act and the Valuation Ruling in question; however, the questions proposed are not properly drafted; hence, are rephrased in the following manner;

- (a) Whether in the facts and circumstances of the case, the tribunal was justified in holding that weight of essential packing was already included in the Valuation Ruling No.726/2015 dated 20.04.2015 while determining the values of the goods in question?
- (b) Whether in the facts and circumstances of the case, the tribunal was justified in holding that the assessment of goods in question was to be made on net weight basis pursuant to column 6 read with Note 5 of the Valuation Ruling in question?
- (c) Whether in the facts and circumstances of the case section 25(2)(b) of the Customs Act, 1969, is applicable while making assessment of goods under section 80 or 81 of the Act pursuant to a Valuation Ruling issued under s.25A of the Customs Act, 1969?

15. In view of the discussion as above, Question (a) is answered in the affirmative, against the Applicant and in favour of the Respondent, Question (b) is answered in the affirmative, against the Applicant and in favour of the Respondent and Question (c) is answered in negative, against the Applicant and in favour of the Respondent. As a consequence, thereof, these Reference Applications are dismissed. Let copy of this Order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969, with further directions to the Office to place copy of this order in connected Reference applications as above.

16. All References are dismissed.

Dated: 26.02.2021

**J U D G E**

**J U D G E**