

# IN THE HIGH COURT OF SINDH AT KARACHI

Before: **Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Fahim Ahmed Siddiqui**

C.P. No. 1193 of 2004  
C.P. No. 1219 of 2005

Waheed Sons.	....	Petitioner.
Versus		
Federation of Pakistan & others.	....	Respondents

C.P. No. D-1388 of 2005

Zoaib Asghar Ali.	....	Petitioner.
Versus		
Federation of Pakistan & others.	....	Respondents

C.P. No. D-1438 of 2005

Abdul Rahim.	....	Petitioner.
Versus		
Federation of Pakistan & others.	....	Respondents

Dates of hearing : 30.01.2020 and 30.01.2020

Date of judgment : \_\_\_\_\_

Petitioner Waheed Sons in C.P. Nos. D-1193 of 2004 & 1219 of 2005 and Zoaib Asghar Ali in C.P. No. D-1388 of 2005 through Mr. Umer Akhund, advocate.

Petitioner Abdul Rahim in C.P. No. D-1438/2005 through Mr. Darvesh Mandan, advocate.

Respondent No.2 the Collector of Customs in C.P. No. D-1193/2004 through Mr. Muhammad Zubair Hashmi, advocate.

Respondent No.2 the Collector of Customs in C.P. No. D-1438/2005 through Mr. Muhammad Rashid Arfi, advocate.

Respondent No.2 the Collector of Customs in C.P. No. D-1219/2005 and C.P. No.D-1388 of 2005 through M/s. Khalil Ahmed Doggar, Dr. Shahnawaz Memon, Shakeel Ahmed and Muhammad Rashid Arfi, advocates.

Mr. Kafeel Ahmed Abbasi, Assistant Attorney General for Federation of Pakistan.

## J U D G E M N T

**FAHIM AHMED SIDDIQUI, J:-** Since all these petitions pertain to the same issue; therefore, it will be appropriate to decide these petitions with this common judgment. Through these constitutional petitions, the petitioners have challenged show-cause notice issued in connection with the assessment by the Customs authorities in respect of polished porcelain tiles imported by them.

2. The factual matrix of the case is that the petitioners have imported polished porcelain tiles from different countries including China. They have completed all the formalities in respect of their imported goods. According to the petitioners, these styles are of different specifications and qualities and also differ in value on account of their specification, quality, and colour. However, the respondents' appraisal authorities assessed the value of imported consignment of these tiles on the basis of advice, rendered by Pakistan Sanitary Merchants & Manufacturers Association (PSMMA). The petitioners claimed that their imported goods should be assessed as per their market worth instead of the advice of PSMMA.

3. Mr. Umer Akhund advocate, appearing for the petitioners Nos. D-1193 of 2004, 1219 of 2005 and C.P. No.D-1388 of 2005, has argued at length. He submits that for the assessments of polished porcelain tiles, the Customs' appraisal authorities have relied upon the data provided by PSMMA, which was incorrect and not according to the market rates. According to him, the assessment by the Customs authorities was

contrary to law and, as while assessing, they have completely ignored Section 25 of the Customs Act, 1969. He submits that the goods imported by the petitioners were directly assessed under Section 25 (7) of the Customs Act instead of sequential order. According to him, since a long time has passed and the now relevant record will also be not available; therefore, the proper course would be to allow the petitions and the value of goods, as ascertained by the petitioners, be declared as correct. In support of his contentions, he relied upon the cases reported as **Messrs. Yousuf Enterprise vs Collector (2005 PTD 21, Rehan Umer vs Collector of Customs, Karachi (2006 PTD 909), and Messrs. Khan Trade International vs Assistant Collector Customs (Group-VII), Appraisement Collector, Karachi (2006 PTD 2807).**

4. Mr. Darvesh Mandan, advocate for the petitioner in C.P. No. D-1438/2005 prefers to adopt the arguments of Mr. Umar Akhund, advocate. After adopting such arguments, he adds that in the case of his client, no assessment was done by the Customs authorities, while in the cases of other petitioners, the assessment was provisionally made but no further action was taken thereafter. However, he cites some more case laws i.e. **Wania Impex vs Assistant Collector Customs (2008 PTD 1760) and Collector of Customs, Lahore vs Fazal Ilahi and Sons (2015 SCMR 1488).**

5. Mr. Shahnawaz Memon, learned counsel for the respondents, submits that only show-cause notices were issued but the petitioners have filed the instant petitions instead of proceeding before the Customs authorities with the reasonable reply to such notices. He submits that the final assessments could not be done on account of stay granted in the instant petitions. He submits that the proper course available to the petitioners was to approach the Customs authorities and put forth their side of the issue before them.

6. Mr. Kafeel Ahmed Abbasi, learned Assistant Attorney General, submits that the petitioners have approached this Court at a premature stage. He further submits that since no final assessment has been done and the matter is prejudice; therefore, the record of these cases must be available with the Customs authorities. However, he frankly admits that the sequential order ought to be followed, for which appropriate directions may be issued.

7. Mr Khalil Ahmed Doggar, Mr. Muhammad Rashid Arfi, Mr. Shakeel Ahmed and Mr. Muhammad Zubair Hashmi, learned advocates appearing for the Respondents/Department in different petitions prefers to adopt the submissions of Dr. Shahanawaz, advocate and Mr. Kafeel Ahmed Abbasi, Assistant Attorney General..

8. We have heard the arguments and perused the relevant record. It is the case of the petitioner that they have suffered because of preliminary assessment of the duty on the value, as advised by PSMMA. In the instant matter, the assessment of the imported goods was done as per the provision of Section 25 (7) of the Customs Act, which was not under the spirit of the law. The transactional value of goods imported was to be ascertained in the sequential order. It is now well-settled that a direct assessment under Section 25(7), without resort to sub-sections (1) to (6), is not warranted under the law. It is also now well settled that the proper course available to the appraisement staff was to go sequentially and before reaching sub-section (7) of Section 25 of the Customs Act, the procedure laid down in preceding sub-sections should be exhausted. In this respect, reliance may be taken from the cited cases especially a case reported as Rehan Umer (supra), wherein a Division Bench of this Court, while analyzing the statutory provisions, has observed as under:

*"The established principle of interpretation of the tax laws is that the plain language of the law is to be applied. A bare perusal of section 25 shows that it is specifically provided in subsection (1) of section 25 that the customs value of the imported goods, subject to the provisions of this section and rules shall be the transaction value, i.e. the price actually paid or payable for the goods when sold for. Export to Pakistan. The detailed guidelines in this behalf are given in sub-sections (1), (2), (3) and (4). The provisions contained in section 25(1) to (4) contain primary method of valuation and in the first instance the primary method of valuation is required to be adopted in each case of valuation of the imported consignment which is mandatory. The detailed guidelines in this behalf are contained in section 25 and the rules reproduced above. Thus, it is the mandatory requirement of law that before resorting to the method provided in subsection. (5), the customs officials shall make an exercise in accordance with the provisions contained in subsections (1) to (4) of section 25 and if thereafter they find that the customs value of the imported goods cannot be determined under the provisions of subsection (1) they shall resort to the method B provided in subsection (5) and not otherwise. It shall be an exercise duly reflecting on the record so that the appellate forums may examine whether the mandatory requirement of law has been carried out or not. We are further fortified in our views in this behalf with the provisions contained in sub-rule (3) of Rule 109 which provides that, "when a final decision is made, the appropriate officer shall communicate to the importer in writing his decision and the grounds therefor." In addition to the specific provisions contained in subsection (10) of section 25 to the effect that the methods of customs valuation are required to be applied in a sequential order we find that it is provided in subsection (6) that, if the customs value of the imported goods cannot be determined under the provisions of subsection (5) the method provided in subsection (7) shall be resorted to and similar provisions are contained in subsections (7), (8) and (9)."*

9. Admittedly, in the cases of present petitions, no final assessment has been made by the Customs authorities due to the interim orders passed in these petitions. When final assessment has yet to be done, no question arises to declare the value of goods correct, as ascertained by the petitioners. It will also make no difference that the considerable delay has caused in these matters. We, therefore, consider that in the existing position of affairs, the proper course available in these petitions to issue directions to the Customs authorities to initiate the process of assessment from the scratch by observing the proper procedure laid down in Section 25 of the Customs Act in sequential order, as described above. It is further

directed that this exercise should be completed within a period of 30 days with the full opportunity of hearing to the petitioners.

With these observations, all these petitions are disposed of.

JUDGE

JUDGE