

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1179, 1181 & 1429 of 2015

DATE

ORDER WITH SIGNATURE OF JUDGE

Suit No.1179/2015

For hearing of CMA No.11537/18 (U/S 151 CPC)

Suit No.1181/2015

For hearing of CMA No.11539/18 (U/S 151 CPC)

Suit No.1429/2015

For hearing of CMA No.11541/18 (U/S 151 CPC)

05.10.2018.

Mr. Abdul Moiz Jafri, Advocate for the Plaintiffs in all three Suits.
Mr. Kashif Nazir, Advocate for Defendant &
Mr. Khurram Iqbal, Advocate for Defendant alongwith Hamood-ur-Rehman, Principal Appraiser and Mr. Muhammad Farooq Khan, law Officer.
Ms. Afsheen Aman, Advocated for Defendant.
Mr. Umar Zad Gul Kakar, DAG.

These three applications have been filed by the Plaintiffs for discharge / release of Bank Guarantees/ Pay Orders deposited with the Nazir of this Court pursuant to Order dated 3.8.2015 and 12.08.2015. When these Suits were disposed by consent, the order of disposal was to the effect that since Review Petition against Valuation Ruling impugned therein was pending, therefore, the consignments be released till the decision of the Review Petition on furnishing of Bank Guarantee / Pay Order. It appears that Review application was dismissed by Director General Valuation vide order dated 16.9.2015 against which the Plaintiffs preferred Appeal before the Customs Appellate Tribunal at Karachi bearing Appeal No.K-1485/2015, which has been decided vide Judgment dated 11.09.2017 and Para-12 thereof reads as under:-

“12. Being custodian of law, purpose of administration of justice is to hold and not to thwart appellants’ rights, on the basis of ably, deliberations and by getting the strength what has been stated and observed herein in above particularly the interpretation of law and legal prepositions, in the light of prescribed law and to

follow the ratio decidendi as observed by the superior courts, along with our additional observations made therein, we led to conclude that the impugned valuation ruling No.712/2015 dated 29.01.2015 and Order-In-Revision No.129/2015 dated 16.09.2015, passed by the Director and Director General, Customs Valuation does not have any adherence to the statutory requirements, specifically in presence of advice dated 21.01.2016, besides being derogatory to specific provision of Sections 25, 25-A & 25-D of the Customs Act, 1969. We hereby set aside the said impugned Valuation Ruling and Order-in-Revision being without lawful authority, void and ab initio. Appeal is accordingly allowed with no orders to costs.”

Counsel for the Department was confronted as to what further proceedings have taken place and it is informed that some Reference has been filed; however, no restraining orders are in operation. He further submits that without prejudice, the Department is still entitled to make assessment under S.25 of the Customs Act, 1969. However, firstly the above Order of the Tribunal does not postulates giving of any such direction, whereas, even otherwise the said Order was passed in September, 2017 and we are now in October, 2018, and nothing has been placed on record to justify any of the assertions as above. The order of disposal of these Suits was clear in terms that upon decision of Review Nazir is to be approached for further proceedings in relations to the differential amount according to such decision. Hence no case is made out on behalf of the department for indulgence.

In view of such position, Applications are allowed in all three Suits. Nazir is directed to discharge / return the Bank Guarantees / pay orders (with profits if any), to the Plaintiffs after proper identification and verification.

J U D G E