IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Junaid Ghaffar, **J**.
Agha Faisal, **J**.

SCRA 141 & 142 of 2010	:	Collector of Customs, MCC PaCCS vs. Abdul Wahid & Co.
For the Applicant	:	Mr. Pervaiz Ahmed Memon, Advocate Mr. Muhammad Rashid Arfi, Advocate
For the Respondent	:	Mr. Daniyal Muzaffar, Advocate
Date of hearing	:	23.02.2023
Date of announcement	:	14.03.2023

ORDER

Agha Faisal, **J**. The department has assailed an order of the Customs, Excise and Sales Tax Appellate Tribunal Karachi in Customs Appeal No. K-118 / 2008 dated 05.04.2010 ("Impugned Order") and proposed certain question of law to be addressed by this Court.

2. Chronologically stated, the respondent had imported consignment of energy saving lamps from China during November, 2005 and February 2006 and filed their Goods Declaration for clearance electronically. Upon checking, it was apprehended that the respondent had declared a suppressed value for the goods and the department initiated remedial proceedings. The respondent approached this Court by way of a Constitutional Petition, bearing No.1035 of 2007, wherein an order was passed to release the goods by securing the differential amount of duty and taxes though post-dated cheques, with further directions to pass an appropriate assessment order after affording an opportunity of hearing to the respondent. Thereafter, Assessment Order dated 25.06.2007 ("Assessment Order") was delivered wherein short levy of duties and taxes was adjudicated against the respondent. The operative part of the assessment order is reproduced herein below:

> *"8. Mr. Ilyas Ahsan Khan, Appraising Officer (MCC) and Hafiz Muhammad Jokhio, the Valuation Officer of the Directorate General of Valuation and PCA, Karachi, also attended the hearing. The representative of the Valuation Department stated that the Valuation Rulings have been issued after due process of law and consultation with the importers, KCCI and FPCCI. The said importers Mr. Abdul Wajid has also attended the meetings held in the Valuation Departments but despite repeated requests the importer refused to participate in the market enquiry on the plea that the value of their goods have to be determined under sub-section (1),(5) and (6) of section 25 of the Customs Act, 1969. The Valuation Officer showed the record of the exercise undertaken by*

them while determining the value of this item (i.e Energy Saver Lamps / Bulbs) Since all the major importers are / were importing this item at suppressed value, that being so, they all have joined hands and did not participate in the market enquiry conducted by the Valuation Department. The Valuation Officer added that under the said circumstances they had no other alternative but to proceed further for market enquiry with the assistance of the representative of FPCCI. The case record consisting of the said exercise was shown to the importers Mr. Abdul Wajid and he was again offered to join and proceed for the local market enquiry even at this stage. Mr. Abdul Wajid not only refused to proceed for the market enquiry but also stated that he does not believe on such market enquiry and instead he is offering to surrender the imported goods at D.V + 5% without guarantee card. Though the Importers have failed to justify as to why there is no guarantee about the quality of the goods, however, it was clarified to them that in obedience of the Honourable High Court's Order dated 05-06-2007 we have to finalize the assessment by considering the provision of section 25 of the Customs Act, 1969, whereas their proposal can not be entertained unless there is any offer from a 3rd party in terms of section 25C of the Customs Act, 1969, Mr. Abdul Wajid admitted that he attended the meetings held in the Directorate General of Valuation and PCA, Karachi, but not participated in exercise of the market enquiry.

9. From the foregoing factual and legal position it is clear that in the light of provisions of clause (f) of sub section (2) read with sub-section 13(a) of section 25 of the Customs Act, 1969, and Rules 107(a) and 121 of the Customs Rules, 2001 the importers have neither able to substantiate that their declared value can be considered as customs value in terms of sub-section (1) of section 25 of the Customs Act, 1969, nor they have joined the exercise to determine the value under other secondary methods of valuation. Due to concealment of vital information from the customs it is cleared that their consignment can not be evaluated under sub-section (1) of section 25 of the Customs Act, 1969. Further in the absence of any consignment where value was determined under sub-section (1) of section 25 of the Customs Act, 1969, the value of the said consignment can not be determined under sub section (5) and (6) of section 25 of the Customs Act, 1969, in terms of Rules 117 and 118 of the Customs Rules, 2001. Therefore, considering the market enquiry so conducted by the Valuation Department in February 2007, for the said kind of goods and also considering the customs value data of the said goods in terms of Rule 107(a) read with sub section 13(a) of section 25 of the Customs Act, 1969, the value of the subject consignment is correctly determined @ US $ 1.64/PC in terms of sub section (9) read with sub-section (7) and 13(a) of section 25 of the Customs Act, 1969, further read with Rules 107(a) and 121 of the Customs Rules, 2001. As the vital information like raw material cost manufacturing cost etc, also not provided by the importers, that being so, the determination of value in terms of sub-section (8) of section 25 of the Customs Act, 1969. is also not practicable. Considering the principal of equity and to eliminate any discrimination in the light of Article 25 of the Constitution of Islamic Republic of Pakistan 1973, the consignment of other importers of same kind of goods were also shown to the importers during the course of hearing, the assessment so made above in line with the current assessment practice and within four corners of law.

10.The importers are directed to make the payment of amount of duties and taxes @ US $ 1.64/pc within ten days from the date of issue of this order, failing which the assessed amount will be recovered alongwith surcharge, as envisaged in section 202A of the Customs Act, 1969.

11. This order is being issued in obedience of the Honourable High Court of Sindh's order dated 05-06-2007, which was received in the Collectorate on 06-06-2007. The importers, if being aggrieved with this order may file an appeal under section 193(1) of the Customs Act, 1969, before the Collector of Customs (Appeal)"

3. The respondent filed an appeal against the Assessment Order, however, the same was dismissed vide order dated 15.12.2007 ("Order in Appeal"). The operative part of the aforesaid order reads as follows:

8.I have gone through the record of the case, perused respondent Collectorate's counter submissions and appellants written reply to the same and considered arguments advanced by the rival parties before me.

9. The appellants have contested the impugned assessment order dated 25.6.2007, purportedly passed by the respondent in pursuance of Honourable High Court of Sindh at Karachi in C.P. No. 292 of 2007, whereby the Honourable Court have directed to pay differential taxes as per final assessment in the light of Valuation Advice No.872/2007 dated 26.02.2007, issued by the Directorate General of Customs Valuation & PCA under section 25(7) of the Customs Act, 1969, in respect of appellants goods i.e. energy saver lamps which were provisionally released under section 81 of the Customs Act, 1969. It has been mainly argued by the appellant that procedure for fixation of value as provided under section 25 of the Customs Act, 1969 has not been adhered to as a result the appellant's declared value has not been accepted and further the respondent Collectorate did not consider the guidelines given by the Honourable High Court of Sindh in Rehan Umar's case while finalizing assessment of energy saver lamps imported by the appellant. On the other hand it has been contended by the respondent Collectorate that in the instant case the assessment was finalized well within time stipulated under section 81 of the Customs Act, 1969, and electronic message/encashment notice was conveyed to the appellant intimating finalization of assessment and, without prejudice, after the Issuance of Honourable High Court's order, the respondent has issued a speaking order confirming that valuation was made under section 25 of the Customs Act, 1969. It has been further contended by the respondent that:

> *(9a) ... as per provision of section 81 of the Customs Act, 1969, in a case of provisional assessment there is no mandatory requirement to issue Show Cause Notice and Order-in-Original. Infact Order-in-Original and Show Came Notice is only mandatory in a case where any confiscation of the goods or imposition of penalty is involved. In the case of M/s. Video Masters v/s Deputy Collector and others (1988 CLC 1173), the Honourable Apex Court has held that:*
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> *(9b) Valuation of customs duty infact being an advice to subordinate to Higher Authority in same department for passing necessary orders. There being no provision in the Customs Act, for providing an opportunity to importer at valuation stage. Petition dismissed.*
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> *(9c) In recent past the same position has been confirmed by the Divisional Bench of the High Court of Sindh in C.O. No.137/2006 vide order dated 26.04 2006 and even the Assistant Collector's orders on the note sheet of the file has been considered as a valid proof that the provisional assessment has been finalized within time. In the said case also the petitioner's only argument was that the provisional assessment has been finalized without any speaking Order-in-Original. Further the same position has also been confirmed by the Appellate Tribunal in Appeal No. K-55 of 2006, in para 17 of order dated 22.02.2007 that, without prejudice to above, even otherwise in terms of sub-section (4) read with "Explanation" thereof, and sub-section (3) of section 81 of the Customs Act, 1969, the answering respondent are authorized to encash / adjust the security deposit if the provisional assessment was not finalized within the stipulated period as envisaged in sub-section (2) of section 81 of the Customs Act, 1969.*

10. That all the consignments are to be evaluated in the light of provisions of sub-section (1) to (9) of section 25 of the Customs Act, 1969, read with Chapter-IX of the Customs Rules, 2001. It is pertinent to mention here that under the Pakistan Customs Computerized System (PaCCS) an importer may file his Goods Declaration (G.D) electronically in terms of sub-section (1) of section 79 of the Customs Act, 1969, and pay duties and taxes as per his declaration and determination of his liability unilaterally at his own. Under selectivity criteria, considering the provisions of sub-section (1), (2) and (11) of section 25 and section 80 of the Customs Act, 1969, read with Rules 107, 110, 111, 121 and 125 of Chapter-IX of the Customs Rules, 2001. It is pertinent to mention here that under the Pakistan Customs Computerized System (PaCCS) an importer may file his Goods Declaration (G.D.) electronically in terms of sub-section (1) of section 79 of the Customs Act. 1969, and pay duties and taxes as per his declaration and determination of his liability unilaterally at his own. Under selectively criteria, considering the provisions of sub-section (1), (2) und (11) of section 25 and section 80 of the Customs Act, 1969, read with Rules 107, 110, 111, 121 and 125 of Chapter-IX of the Customs Rules, 2001, the importer's declaration is to be checked with the available data. The provisions of sub-section (1) of section 25 of the Customs Act, 1969, clearly say that the determination of correct payable transactional value is subject to Rules and subsequent provisions of section 25 of the Customs Act. 1969, clearly say that the determination of correct payable transactional value is subject to Rules and subsequent provisions of section 25 of the Customs Act, 1969. As stated above the appellants was failed to fulfill the provisions of sub-section (2) of section 25 of

the Act and also their declared value was not in consonance with the customs value data of similar kind of goods already cleared / imported, thus, their declared value can not be termed as true payable transaction value to be considered as customs value for the purpose of levy of duties and taxes. Taking into consideration the principle laid down by the Honourable High Court in the case of M/s. Super Industries (Pvt) Ltd. v/s Central Board of Revenue & others (2002 PTD 955) the assessment of the consignment has been made at par with the other identical or similar goods with a view to eliminate any discrimination and market distortion. In the afore cited case the Honourable High Court held that one of the cardinal principles of tax law is that the revenue method should be consistent in practice and version. The proposed assessment invariable shown electronically on the In-Box (Screen) of the importer, who than have an option either to pay the duties and taxes after accepting the proposed assessment or file a "Review" which has to be re-viewed by Senior Assessing Officer i.e. Principal Appraiser. If an importer is not satisfied with the results of review / decision made by the Principal Appraiser, then, he may file a "Second Review" before the Assistant / Deputy Collector of Customs, if an importer is still aggrieved with the Assistant/ Deputy Collector's review decision then he may avail the remedy provided under section 251 of the Customs Act, 1969. In the presence of such a comprehensive forums of remedies available to the importer/appellant, in the Customs Act, 1969, and under PaCCS, the appellant has invoked the jurisdiction of this Honourable Court un- necessarily, on value aspect which is not outside the jurisdiction of this Court. That the appellant's consignment was re-assessed as per customs value data available with the department and the investigations carried out by the Directorate of Valuation & PCA. The record confirms that as per Customs Act, 1969, if the appellants were not agreed with the Customs value determined by the Directorate of Valuation, then why they did not approach the Director General of Valuation within time for review. Thus, their in-action in this regard confirms that the values determined in these cases have attained finality. Without prejudice to above, even otherwise the appellant has failed to substantiate that their declared value was payable transaction value and failed to produce any corroborative documents to prove the chain of transfer of actual payable value / amount into the sellers bank accounts, thus, there was no question to accept their declared value as customs value in terms of sub section (1) of section 25 of the Customs Act, 1969,"

11. The Appellants have not been able to refute the above contention of respondent which is prima facie supported by the relevant provisions of section 25 read with sections 79(1), 81 and 81(2) of the Customs Act, 1969. It also appears that the assessable value has been worked out by the Directorate General of Valuation & PCA in the light of provisions of section 25(7) of the Customs Act, 1969, and Rules 107 (a) and 121 of Customs Rules, 2001 notified under SRO 450(1)/2001, after affording appellant an opportunity to participate in the market enquiry, etc, conducted by the said Directorate. However, reportedly, despite repeated requests, the appellant refused to participate in the market enquiry and emphasized on the plea that such value should be determine only under sub-section (1), (5) and (6) of section 25 of the Customs Act, 1969, the respondent Collectorate have also demonstrated that the values determined vide Valuation Advice dated 26.02.2007, were invariably applied to the similar and identical imports made during the relevant period. The appellants have failed to bring forth any corroborative evidence contrary to the respondent's stance.

12. In view of above position, I do not find any substance in appeal to interfere with the impugned Assessment Order. The appeal is accordingly rejected. This order shall also be applicable to the following appeal case of the Appellant involving identical facts and points of law.

S.No.	*File No.*	*Party's name*
	CUS-533/2007-MCC No. MCC-law-36-2007	*M/s. Abdul Wahid & Co.*

4. The respondent filed appeals before the Customs, Excise and Sales Tax Appellate Tribunal at Karachi and vide the Impugned Order the appeals were allowed. The operative constituent is reproduced herein below:

15. In view of the above observations by this forum, the following issues are framed for consideration:-

i) Whether the parameters fixed by the Hon'ble High Court of Sindh in the case of Rehan Umar reported as 2006 PTD 909 have been followed while issuing the

assessment order dated 25.6.2007 by the respondent as per directives of the Hon'ble Court in C.P.No.881/2006?
ii) Whether the market inquiry has been conducted by the respondent in terms of clause (a) of subsection (7) of Section 25 of the Customs Act, 1969?
iii) Whether the appellant and representatives of Pakistan Electrical and Electronics Merchant Association being the prime stakeholders participated in the market inquiry conducted by the respondent before issuance of assessment order dated 25.6.2007.
iv) Whether the Appellate Tribunal Customs has jurisdiction to entertain, hear and decide the cases regarding determination of value in terms of insertion of subsection 25-D in the Customs Act, 1969?

16. As regards issue No. (i) as already discussed supra, the respondent has not followed the parameters fixed in the case of M/s. Rehan Umar by not following the sequential order thereby exhausting primary method (1) to (4) or secondary method at (5) to (6) without bringing in writing any evidence of higher value on record. The customs value of similar / identical imports which were compared with the declared transaction value of the subject goods in Customs Act, 1969 at the time of filing of Goods Declaration by the appellant as per opening para (ninth line) of the Assessment Order dated 25.6.2007 magically disappeared from the data base/repository of the respondent and under the garb of under-invoicing even exercise in terms of subsection (5) & (6) of Section 25 ibid was not undertaken and resort was made to Deductive Method under subsection (7) of Section 25 ibid. The respondents are therefore, estopped by their own aforesaid statement which is unambiguous and unqualified that evidential value of identical or similar goods are not on record for comparison with the declared transaction value. In addition the customs / commercial documents submitted by the respondent have neither been negated nor rebutted with any cogent evidence or enquiry from the concerned quarters. No counter affidavits have been filed by the respondent to neutralize or extinguish the claim of the importer or his supplier or verification by Government of People's Republic of China or attestation by Chinese Consulate in respect of transaction value. Filing of counter affidavit is essential to controvert the assertion of the incumbent in terms of superior courts' judgments reported as 1986 CLC 1408, 1993 SCMR 662, 1991 MLD 1243.

17. It is also against the settled law emanating from the hallmark judgment in Evans case by the House of Lords and still being followed by all superior courts (1989 Crl.J.631) including the apex court that if the statute requires a particular act to be done in a particular manner then the act must be performed in that manner alone and all other manners of doing that act would be not permissible under the law. This has been followed by the Hon'ble Supreme of Pakistan where hundreds of Revenue's Appeals involving billions of rupees of duty and taxes have been dismissed where the Collector or the competent authority had not signed these appeals. The relevant extract in cases decided by the Hon'ble Apex Court in Civil Petition No.287 to 530 of 2005 dated 17.10.2005 is as under:-
"It is well settled established principle of law that when the legislature requires doing of a thing in a particular manner then it is to be done in that manner and all other manners or modes of doing or performing that thing are barred."

18. In view of the above it is a foregone conclusion that the directives of the Hon'ble High Court have not been followed by the respondent giving rise to a number of deviations involving glaring mandatory violations tantamount to substantive illegalities / infirmities which are floating on the surface of the assessment order. As such the issue No.(i) is answered in the negative.

19. As regards issue No.(ii) deductive method for determining assessable value in terms of sub-section (7) of Section 25 advocates that if the customs value of the imported goods cannot be determined under sub-section (6) it shall subject to Rules be determined on the basis of customs value of the imported goods or identical or similar goods relying upon the unit price at which such imported goods are also sold in the aggregate quantity at or about the time importation of the goods being valued to person who are not related to the person from whom they buy such goods subject to certain specified deductions. This deductive method is primarily a work back method based on the Analytical Basis of Valuation prevalent under defunct / erstwhile concept of Normal Price or National Value under Brussels' Definition of Value (BDV). The market inquiry to be conducted by the customs functionaries is to be restricted / based on the following parameters:

i) That goods employed for determination of the customs value should comprise of the impugned imported goods or identical / similar imported goods which are sold in Pakistan in the same state;

ii) That the inquiry should be based on the unit price at which impugned imported goods or identical or similar imported goods are sold in the greatest aggregate quantity;
iii) That the words at or about the time of importation of goods being valued denotes 90 days valuation data in terms of Section 25(1) read with Rule 107 (a) of the Customs Rules, 2002.

Amongst others the above two ingredients in respect of the imported goods to be so valued one relating to the quantity and the other relating to the period during which the impugned imported goods or identical or similar goods are sold in the maximum aggregate quantity have been visibly and patently flouted by the respondent officers. The respondent officers have produced three undated quotations of single quantity of bulbs from local market vide their letter dated 07.1.2010 which is reproduced below:-

"On behalf of Respondent namely Dy. Director (Valuation), it is stated that the submission of documentary evidences in support of the arguments / statement given before the Hon'ble Appl. Tribunal during hearing on 6.1.2010 may be allowed for correct submission. Copy of documents are attached for kind consideration.
Prayed accordingly.
Sd/-
(Altaf Ahmed)
Principal Appraiser (Law)
For respondent
Dy. Director Valuation.

20. The aforesaid (3) undated quotations representing local sale price of single quantity /price of bulbs/ energy savers in the domestic retail market reproduced above illustrate the irresponsible, indifferent and criminally careless attitude of the respondents field officers who are professed to be the experts in their field. As such the so called market enquiry conducted by the respondents' officers is patently in absolute contradiction with the provisions of the relevant sub-section (7) of Section 25 of the Customs Act, 1969 and is null and void ab initio. As such issue No. (ii) is answered in the negative.

21. As regards issue No.(iii) it has been observed from the record that the above two principal stakeholders or their representatives did not participate in the so called market inquiry conducted by the respondent from the local market of Liaquatabad from where three (3) undated quotations of single quantity of bulbs of different watts were procured by them. The main argument of the appellant for not participating in the market enquiry conducted by the respondent puts emphasis on the fact that the respondent did not exhaust the primary and secondary methods under sub-sections (1) to (6) of Section 25 of the Customs Act, 1969 and without bringing any evidence in writing on record jumped to sub-section (7) which is not permissible under the law. Even otherwise such a market inquiry which is conducted behind the back of the appellant and the concerned association has no evidentiary value in the eyes of law as adjudged by the superior courts in their judgments reported as 1985 CLC 1781 and 2002 PTD 2957. As such issue No. (iii) is answered in the negative.

22. As regards issue No. (iv), the representative of the respondent argued that the value determined by appropriate officer of customs could not be challenged before any court unless review is filed before Director General, Customs Valuation. In this respect, the relevant statues in the Customs Act, 1969 are sections 25-D, 193 and 194. In this case the appellant has preferred an appeal by exercising his legislative right before Customs Appellate Tribunal under Section 194 of the Customs Act, 1969 against order-in-Appeal passed by the Collector (Appeals) under Section 193 of the Customs Act, 1969. The Customs Appellate Tribunal has jurisdiction to entertain, hear and decide this appeal filed with it against order of Collector (Appeals) in terms of Section 194 of the Custom Act, 1969. This view has been taken by the Hon'ble High Court of Sindh while deciding the Spl. Ref. Appln No.35/2009 whereby the Customs Appellate Tribunal dismissed the appeal of the appellant which was filed in terms of Section 194 of the Customs Act, 1969 against order of the Collector (Appeals) passed under Section 193 ibid. The relevant extract from the judgment of the Hon'ble High Court is reproduced below:-

"The Tribunal seems to have misled itself in considering that the impugned order before it was that of valuation ruling which was not the case rather it was an order of adjudication passed under section 193-A of the Customs Act against which appeal only lies to the Tribunal. The impugned order of the Tribunal is thus not in accordance with law.

> *In the circumstances, we set aside the impugned order and remand the matter to the Tribunal for fresh decision of the appeal."*
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> *As such issue No. (iv) is answered in the affirmative.*
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> *23. In view of the factual and legal aspects of the case discussed supra this forum is of the opinion that the respondent while determining the assessable value of the goods in terms of the directives of the Hon'ble High Court of Sindh in C.P.No.881/2005 vide their order dated 5.6.2007 has indulged into a number of violations of the mandatory provisions enumerated in the relevant section 25 of the Customs Act, 1969 read with Customs Rules 2002 and para 78 of CGO 12/2002 by not following sequential order as envisaged in Rehan Umar's case and also by not brining on record the evidence regarding exhausting primary and secondary methods under sub-section (1) to (6) of the Customs Act, 1969. Besides the provisions enumerated in Clause (a) sub-section (7) of Section 25 of the Customs Act, 1969 have also not been followed in respect of quantity and time period while obtaining the quotations from the local market. The quotations are undated representing prices of single piece of bulb / energy saver of different descriptions. It is not even indicated as to during which year this weird undated quotations were obtained and by whom. Moreover the market enquiry as per record has been conducted without the participation of the principal stakeholders viz. the appellant and the concerned association which has been deprecated and held to be ab initio void as per judgments of the superior courts reported as 1985 CLC 1781 and 2002 PTD 2957.*
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> *24. As already stated supra no evidence of higher value through a visible exercise has been brought on record or intimated to the Appellant. Rejection of value without production of evidence has been held to be inadmissible and of no legal significance in terms of the judgments of the Hon'ble High Court reported as 2002 PTD 1464 and 2004 PTD 2004 2592 and 2007 PTD 1858. The following of sequential order as mandatorily required in the relevant sub-section 10 of section 25 of Customs Act has not been followed and resort to Deductive Method under subsection (7) of Section 25 ibid has been made in disregard of courts' directives in cases reported as 2006 PTD 232, 2006 PTD 909, 2006 PTD 2551, 2006 PTD 2807, 2007 PTD 2632, 2008 PTD 1760 and PTCL 2008 CL 409. Also the non sales tax paid quotations relied upon by the respondent negate the observations of the learned Director General Valuation in a similar case regarding the necessity of production of sales tax paid invoices by the importers while putting their cases for determination of value before him. This forum does not appreciate the failure of the respondent to give any weightage to the production of sales tax paid invoices of the subject imported goods by the appellant as well as his offer in terms of section 25-C of the Customs Act, 1969 for acquisition of his consignment @ C & F price plus 5% margin of profit while determining the assessable value in this case.*
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> *25. In view of the forgoing, the assessment order dated 5.6.2007 is based upon the proceedings which are infested with patent illegalities and which are held to be null and void. As such the Assessment Order as well as the impugned order of the Collector (Appeals) based on such proceedings are also ab inito null and void and are, therefore, set-aside. The subject appeal is accordingly allowed"*

5. While various questions had been pleaded on behalf of the applicant, *prima facie* being argumentative / raising factual controversies[1], the respective parties were in unison that the pivotal issue to consider was whether the method of assessment employed by the department was in *prima facie* consonance with the law. Therefore, respectfully, we hereby reformulate[2] the question to be answered herein as "*Whether in the facts and circumstances of the case the determination of the assessable value of the goods, as demonstrated in the Assessment Order, had been in manifest conformity with section 25 of the Customs Act 1969*".

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[1] Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as *2011 PTD 2577* – Findings of fact cannot be challenged in reference jurisdiction.

[2] *A. P. Moller Maersk & Others vs. Commissioner Inland Revenue & Others* reported as *2020 PTD 1614*; *Commissioner (Legal) Inland Revenue vs. E.N.I. Pakistan (M) Limited, Karachi* reported as *2011 PTD 476*; *Commissioner Inland Revenue, Zone-II, Karachi vs. Kassim Textile Mills (Private) Limited, Karachi* reported as *2013 PTD 1420*.

6. The respective learned counsel read the respective Assessment Order and Order in Appeal and sought to augment their positions on the basis of their interpretations of the relevant text. It was the applicant's case that the Assessment Order shows that the sequential method has been followed in the proper sequence, however, the respondent disagreed. The crux of the respondent's case was that since the respondent had not been included in the market survey, therefore, the entire assessment procedure ought to have been set at naught.

7. Heard and perused. It is imperative to address the respondent's basic argument, regarding not being associated with the market survey, at the very onset.

8. The Assessment Order records in paragraph 8 thereof that *despite repeated requests the importer refused to participate in the market inquiry*. The said paragraph also records that since the respondent, and some other similarly placed importers, also presumably importing the relevant goods at a suppressed value, hence, had also refused to participate in the market enquiry. Under such circumstances the valuation officer had no other alternative but to proceed with the enquiry with the assistance of the FPCCI. The order also demonstrates that the case record of the exercise was shared to the respondent and his participation sought in the said process, however, he refused any involvement and insisted that only the declared value be accepted by the department.

The Order in Appeal also made reference to the aforesaid, in greater detail, and recognized the respondent's categorical refusal to take any part in the enquiry process.

It is also imperative to denote that the pertinent facts, with respect to denial of the respondent to participate in the enquiry proceedings, were not controverted by the respondent's learned counsel even when specifically queried by us in such regard.

In view hereof, we are of the considered view that upon having *admittedly* refused to be a part of the market enquiry process, the respondent's objection, with respect to his absence therefrom, is without merit, hence, cannot be afforded any sanction by us.

9. The Impugned Order dealt with this issue in addressing questions 3 and 4 framed there before and completely disregarded the voluntary lack of participation in the market enquiry process by the respondent himself. The questions were addressed by the Tribunal in a perfunctory manner and the answers could not *prima facie* have been reasonably rested on the rationale provided. It is also noted with trepidation the Tribunal did not remand the matter back for valuation afresh and inexplicably accepted the value declared by the respondent himself; without any cogent rationale expounded for the same.

10. The department's adherence to the sequential method required to be followed per the law is manifest from the Assessment Order and the Order in Appeal and the only objection agitated by the respondent before us in such regard was his disassociation from the market enquiry process. The said objection could not be sustained by us, as denoted supra.

11. Therefore, in view of the foregoing, we do hereby answer the question framed for determination herein in the affirmative, in favor of the applicant department and against the respondent. As a consequence hereof the Impugned Order is set aside and the Assessment Order / Order in Appeal are restored. These reference applications are disposed of accordingly.

12. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

JUDGE

JUDGE