

# **IN THE HIGH COURT OF SINDH, KARACHI**

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

1.	Spl. Cus. Ref. A. No. 220 / 2022	The Collector of Customs Karachi Vs. M/s. Raz Textile Karachi
2.	Spl. Cus. Ref. A. No. 221/2022	The Collector of Customs, Karachi <b>VS</b> M/s. SKF Collection, Karachi
3.	Spl. Cus. Ref. A. No. 222/2022	The Collector of Customs, Karachi <b>VS</b> M/S. A. R. Industries, Karachi
4.	Spl. Cus. Ref. A. No. 225/2022	The Collector of Customs, Karachi <b>VS</b> M/s. S.M. Industries, Karachi
5.	Spl. Cus. Ref. A. No. 227/2022	The Collector of Customs, Karachi <b>VS</b> M/s. Radium Slik Factory, Karachi
6.	Spl. Cus. Ref. A. No. 233/2022	The Collector of Customs, Karachi <b>VS</b> M/s. Raz Textile, Karachi
7.	Spl. Cus. Ref. A. No. 234/2022	The Collector of Customs, Karachi <b>VS</b> M/s. Brother Enterprises, Karachi
8.	Spl. Cus. Ref. A. No. 235/2022	The Collector of Customs, Karachi <b>VS</b> M/S. S.K.F. Collection, Karachi
9.	Spl. Cus. Ref. A. No. 236/2022	The Collector of Customs, Karachi <b>VS</b> M/S. A. R. Industries, Karachi
10.	Spl. Cus. Ref. A. No. 237/2022	The Collector of Customs, Karachi <b>VS</b> M/s. S.M. Industries, Karachi
11.	Spl. Cus. Ref. A. No. 238/2022	The Collector of Customs, Karachi <b>VS</b> M/s. Brother Enterprises, Karachi
12.	Spl. Cus. Ref. A. No. 239/2022	The Collector of Customs, Karachi <b>VS</b> M/s. Radium Slik Factory, Karachi
13.	Spl. Cus. Ref. A. No. 244/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Radium Slik Factory, Karachi
14.	Spl. Cus. Ref. A. No. 245/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Brother Enterprises, Karachi
15.	Spl. Cus. Ref. A. No. 246/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. S.M. Industries, Karachi
16.	Spl. Cus. Ref. A. No. 247/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/S. A. R. Industries, Karachi
17.	Spl. Cus. Ref. A. No. 248/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. SKF Collection, Karachi
18.	Spl. Cus. Ref. A. No. 249/2022	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Raz Textile, Karachi

**For the Applicants:**

Mr. Khalid Rajpar, Advocate  
(in SCRA Nos. 233, 235 to 239 of 2022)  
Mr. Aamir Raza Advocate  
(in SCRA Nos. 220 to 222, 225, 227, & 234 of 2022)  
Mr. Irfan Mir Halepota, Advocates.  
(in SCRA Nos. 244 to 249 of 2022)

**For the Respondents:**

Mr. Khawaja Shamsul Islam, Advocate.

**Dates of hearing: 28.02.2023; 2.03.2023 & 15.3.2023**

**Date of Judgment: 17.03.2023.**

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

**Muhammad Junaid Ghaffar, J:** Through these Reference Applications, the Applicants (3 different departments) have impugned a common Order dated 17.01.2022 passed in Customs Appeal Nos. 6084 to 6089 of 2021 filed by the Respondents before the Customs Appellate Tribunal, Karachi, proposing various questions of law; however, these Reference Applications were admitted for regular hearing by the Court vide order dated 15.09.2022 and proposed question No.1 in SCRAs No. 220 to 228 and 233 to 239 of 2022 and questions No.1 & 6 in SCRAs No. 229 to 232 of 2022 were admitted for adjudication. The said questions respectively read as under: -

### **Question No.1 in SCRA Nos.220 to 228 of 2002**

- 1) Whether on the facts and circumstances of the case, the learned Appellate Tribunal misread the relevant Section 25A(2) of the Customs Act, 1969, read with all the Rules and Notifications, issued for the determination of customs value for the purpose of assessment of the imported goods?

### **Question No.1 in SCRA Nos. 233 to 239 of 2022 & SCRA Nos. 229 to 232 of 2022**

- 2) Whether, in light of Section 25-A, as amended vide Finance Act 2007, and the law established by the Honorable High Court of Sindh in judgment reported as PTCL 2014 CL 537, the Learned Appellate Customs Tribunal was justified to hold that the Director Valuation was bound to apply the valuation methods provided in Section 25 in sequential manner?

### **Question No.6 in SCRA Nos. 229 to 232 of 2022**

- 3) Whether the Learned Appellate Tribunal, while exercising Appellate jurisdiction under Section 194-A(1)(e) of the Customs Act 1969, was within jurisdiction to pass a direction that the Respondent Importer's imported polyester fabric be assessed under Section 25(1) of the Customs Act 1969?

2. All learned Counsel were heard on 02.03.2023 and matters were reserved for judgment; however, while dictating the order, it transpired that SCRA Nos.220 of 2022 and 13 other matters had impugned a separate judgment of the Tribunal; hence, matter was fixed for Re-hearing on 15.03.2023, and were once again heard and reserved for judgment. Learned Counsel for the Applicants have jointly argued that the learned Tribunal was not justified in passing the impugned order inasmuch as

without proper appreciation of law, the Valuation Ruling and Order-in-Revision have been set aside, whereas, the Respondents had failed to substantiate their transactional values; and therefore, the proposed questions be answered in favour of the department.

3. On the other hand, Respondents' Counsel has contended that the entire exercise of market enquiry conducted at the time of determination of values under Section 25-A of the Customs Act, 1969 was done behind the back of the Respondents as they were never associated, and therefore, the impugned Valuation Ruling and the Order-in-Revision were passed without lawful authority. He has further contended that law as to determination of values under Section 25 of the Customs Act, 1969, ("**Act**") is settled by this Court in a number of judgments including cases reported as *Messrs Sky Overseas through authorized Attorney Vs. Federation of Pakistan through Secretary, Revenue Division and 4 others (2019 PTD 1964)*, *Collector of Customs through Additional Collector of Customs Vs. Messrs Osaka Electronics and Industries Co. (2022 PTD 836)*, *Collector of Customs through Additional Collector of Customs Vs. Ms. Shazia Aman (2022 PTD 674)* and *Messrs Zakwan Steel and others Vs. The Federation of Pakistan through Secretary (Revenue/Chairman) and others (2023 PTD 9)*, whereby, the valuation methods are to be followed in a sequential manner, which in the instant case is lacking; and therefore, the impugned order is correct in law.

4. We have heard all learned Counsel and perused the record. It appears that the department in exercise of the powers conferred upon the Director Valuation under Section 25-A of the Act issued a Valuation Ruling Bearing No. 1452 of 2020 dated 24.06.2020; whereby, he determined the values of the product in question in terms of section 25(7) of the Act, being the Deductive Value method or more commonly known as Market Inquiry method. It further appears that when Respondents imported various consignments of the product in question, assessment of their goods were made on the basis of such Ruling and being aggrieved by such determination of the values under Section 25-A (ibid), filed Revision Applications respectively in terms of Section 25-D of the Act before The Director General Valuation. During pendency of such Revision Applications, the goods were released provisionally and thereafter an Order-in-Revision was passed by the Director General Valuation on 26.02.2021; whereby, such Revision Applications were dismissed and

being further aggrieved; Respondents approached the Customs Appellate Tribunal, by way of separate Appeals, which have been allowed by way of the impugned Order, through which not only the Valuation Ruling, but the Order-in-Revision also stands set-aside. The Tribunal has further accepted the values of Respondents as true transactional values for assessment in terms of section 25(1) of the Act. The operative part of the order, passed by the Tribunal, which is relevant for the present purposes, reads as under: -

“8. The application of fall back method is not unbridled. First of all it has to be established that all the valuation methods when applied in sequential order could not yield result. The fall back method allows application of any of previous methods in a flexible manner. Under no circumstances fall back method suggests departure from scheme of determination of value provided under sub-section (1), (5), (6), (7) and (8). This method only permits reasonable degree of flexibility in application of a method chosen from the provided methods to determine customs value, however, the customs value so determined, shall to the greatest extent possible be based on previously determined customs values of identical goods. In addition the application of fall back method is subject to rules. The explanation of reasonable flexibility provided under rule 121 of Customs Rules, 2001 also pertains to only three methods i.e. identical goods, similar goods and deductive method. This entails that there is no probability of reasonable flexibility under transaction value method and computed method. A caveat which requires emphasis here is that while determining customs value under fall back method or for that purpose under any method, it is prohibited to apply arbitrary or fictitious value. The same is provided under rule 110 of Customs Rules, 2001.

9. Keeping in view the aforesaid provisions of law, procedure adopted to determine customs value in the impugned Valuation Ruling was evaluated. The customs value of Polyester Polar Fleece Fabrics have been determined under section 25(9) of the Customs Act, 1969. The learned Director Valuation brushed aside all methods of valuation and jumped over to Sub-section (9) for determination of value. The impugned Valuation Ruling as well as the Order-In-Revision says that transaction value method was found inapplicable. The Valuation Ruling ascribes wide variation in values declared to customs as the only reason, whereas the Revision Order only states that documents submitted by appellants were examined by the Department Representative. The Act and the rules have defined the circumstances, where Transaction value cannot be taken as customs value, the learned Director did not elaborate the reasons to reject the Transaction Value. In view of the presence of verifiable import data, coupled with load port GD's, there was no reason to reject Transaction Value of the appellants. The impugned Valuation Ruling rejects identical goods method and similar goods method in one sentence. The reason provided for such rejection is again wide variation in declared values of subject goods. The learned Director is perhaps not aware of the provisions of statute. There is no scope or concept of declared value under section 25 or 25-A of the Customs Act, 1969. The whole scheme of valuation of goods is based upon Transaction Value. If Transaction Value of imported goods cannot be determined, then the transaction value of identical or similar goods in that order shall be the customs value. There is no nexus or even reference to declared value. The subsequent methods are also used to determine customs value independent of declaration. The impugned Valuation Ruling later rejects deductive value method and computed value method, before taking recourse to fall back method.

10. It has been asserted by the appellants that the values declared by them in the import documents truly reflect the transactional value of impugned grounds. Moreover, due to onset of COVID-19 Pandemic, prices of commodities particularly polyester fabric registered sharp decline throughout the world during the period in question but the Respondents while determining the values of impugned fabric vide aforesaid Valuation Ruling No. 1452/2020 dated 24.06.2020 failed to take into account the recession in prices of all the commodities including the ones imported by the appellants. During the Pandemic the prices of crude oil registered steep fall resulting in lowering of prices of polyester fiber.

11. As mentioned above as per provisions of law value of imported goods determined under fall back method shall to the greatest extent possible be based on previously determined customs values of identical goods assessed within ninety days. It is worthwhile to recapitulate here that the learned Director Valuation has not only summarily rejected the customs value of identical goods but also cast a serious doubt over their authenticity. The outright rejection of customs value of identical goods practically renders the fall back method as fruitless. The same is true with reference to similar goods. In utter disregard of the above provisions of law, the impugned ruling is silent as to what method of valuation was applied and how reasonable degree of flexibility was adopted.

12. We hereby hold that customs values determined vide the impugned Valuation Ruling are arbitrary and fictitious. The Director General of Customs Valuation failed to appreciate that the provisions of Section 25 and 25A of the Customs Act, 1969 were not applied properly. The Respondents did not keep in view the guiding principles laid down by the Hon'ble High Court in Saadia Jabbar Vs. Federation of Pakistan (PTCL 2014 CL 537) and ignored the concept of Transaction Value altogether. Instead of depending upon factual Transaction Values, the impugned customs Valuation Ruling was based on hypothetical data. The Director General ignored the directions of Superior Courts, as well as guidelines provided by this Tribunal. Being custodian of law, purpose of administration of justice is to hold and not thwart appellants' rights. The aforesaid Valuation Ruling and Order-in-Revision lack the warrant of law, therefore, the same is declared as void and illegal. The Order-in-Revision passed within hierarchy of customs is non-speaking, ignoring facts and laws. We hereby declare the same as null and void. The appellants have demonstrated that Transaction Values for import of different types of Polyester Polar Fleece Fabrics from China are correct.

13. We hereby order that the Transaction Value for import of Polyester Polar Fleece Fabrics imported by the appellant shall be accepted as customs value under Section 25(1) of the Customs Act, 1969. The Valuation Ruling No.1452/2020 dated 24.06.2020 and Order-In-Revision No.05/2021 dated 01.03.2021 are hereby set aside being unlawful without any substance to the extent of appellant's consignments impugned herein above only. The appeals are allowed.”

5. From perusal of the above order, it appears that the same is an outcome of not only a complete non-application of mind; but as well as law, inasmuch as the entire order states that the values of the goods in question have been determined under the Fall Back method as provided under Section 25(9) of the Act, without following the sequential methods under Section 25 ibid. However, this observation of the learned Tribunal is totally misconceived as the values were never determined by the Director Valuation under Section 25(9) of the Act. Perusal of the impugned Ruling

clearly reflects in Para-4 that the values were determined under Section 25(7) of the Act i.e. the Deductive Value method or commonly known as Market Inquiry method. The Tribunal without any justification and application of mind has even observed that ***“The learned Director is perhaps not aware of the provisions of statute”***, which was completely unwarranted. The relevant finding of the Director Valuation to this effect in Para-4 of the Valuation Ruling No.1452 (ibid) reads as under: -

**“4. Methods Adopted to Determine Customs Values:** Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive at customs value of subject goods. The Transaction value method as provided in sub-section (1) of Section 25 of the Customs Act, 1969 was found inapplicable because no substantial documents were provided by the stakeholders to prove that declared values were true transactional values. Moreover, different values were declared by different importers for same product. Identical/similar goods value methods provided in Sections 25 (5) & (6) ibid were examined for applicability to determine customs values of subject goods. The data provided some references; however it was found that the same could not be solely relied upon due to absence of absolute demonstrable evidence of qualities and quantities of commercial level etc. Information available hence found inappropriate. In line with statutory sequential order of section 25, this office conducted market inquiries under sub-section (7) of Section 25 of the Customs Act, 1969. As the prices of Fleece Fabric of different kinds in the market varied significantly and were heavily dependent on quality of the Fleece fabrics and the location of the selling points or shops in the city, therefore a number of surveys were conducted to arrive at customs values. PRAL imports database, market inquiry and international prices through web were examined thoroughly. ***Consequently, Deductive Value method as provided under Section 25(7) of the Customs Act 1969 was applied to arrive at assessable customs values of Fleece Fabric of different kinds.***”

6. From perusal of the aforesaid determination, it clearly reflects that insofar as the transactional values are concerned Section 25(1) of the Act was found inapplicable as admittedly the stakeholders never provided any substantial documents to accept such transactional values under Section 25(1) (ibid). It has been further determined that since different values were declared by different importers for the same product; and therefore, the next method of valuation i.e. *identical goods* and *similar goods* methods, as provided under Section 25(5) & (6) of the Act were also found inapplicable in absence of absolute demonstrable evidence of qualities and quantities as well as the commercial level of such values. Thereafter, the next method of valuation was invoked i.e. *Deductive Value Method* under Section 25(7) of the Act and values were determined. It is these values, which were challenged by the Respondents and for reasons unknown, the Tribunal treated the determination of values under the Deductive Value Method [Section 25(7)] as values determined under the Fall Back Method [Section 25(9)]. This is a glaring illegality committed by the

Members of Tribunal in passing the impugned order, whereby, they have set-aside two orders of the forums below. Not only this, the declared values of the Respondents have been accepted as Transactional Values in terms of Section 25(1) of the Act. The impugned order of the Tribunal is silent except the use of word (*“The appellants have demonstrated that Transaction Values for import of different types of Polyester Polar Fleece Fabrics from China are correct”*). We are completely at a loss to understand, as to how and in what manner, these values of various Respondents were accepted as Transactional Values under Section 25(1) of the Act when there is no discussion about such Transactional Values and supporting documents which each individual Respondent may have placed before the forums below including the Tribunal. It is a matter of record that the Director Valuation while determining values under Section 25A of the Act had called a meeting of the stakeholders, who were asked to provide various documents as mentioned in his order at Para-3 thereof, and none of the Respondents and other importers submitted any of the document so requested. This resultantly means that none of the Respondents were able to demonstrate that the values mentioned in their import documents reflected true Transactional Values in terms of section 25(1) of the Act. This is a finding of fact recorded by the forums below, and per settled law, we in our Reference Jurisdiction cannot embark upon factual aspects or controversy to upset such finding of facts<sup>1</sup>.

7. Insofar as the arguments that the Respondents were never associated in carrying out the exercise of market inquiry under Section 25(7) of the Act is concerned, again from the facts as available on record, it appears that this contention is also incorrect. The stance of Director Valuation as recorded in the Order in Revision, is that more than eighty importers / stakeholders were called for meeting held on 6.2.2020 and all the participants were informed regarding results of market survey and some participants denied these suggested prices; however, they were asked to submit evidential/supporting documents to support their claim but none of them submitted any requested documents to prove their stance. Moreover, it is an impossibility that each and every importer, who will be importing the goods in future, after determination of values under Section 25(7) of the Act could be associated prior to such determination. It is an admitted position that while the exercise of determination of values is being carried out, for such assistance, the importers' Association or the

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<sup>1</sup> T & N Pakistan Private Limited v Collector of Customs (2022 SCMR 1119); Pakistan State Oil Co. Ltd., v Collector of Customs (2019 SCMR 1124); Fateh Yarn Pvt. Limited v Commissioner Inland Revenue (2021 SCMR 1133)

Chamber of Commerce and Industries as well as Federation of Pakistan Chamber of Commerce and Industry assists the department on behalf of the importers through their nominated persons and the exercise is then carried out for determination of values under various methods as provided in Section 25 of the Act. In this case even Eighty Importers/ Stakeholders were associated for this purpose. The Respondents' best case before the Tribunal was that since they have not been associated, as alleged, in conducting the market inquiry and invoking the deductive method, therefore, they ought to have sought a remand of the case for such purposes; but instead, they argued the case on an entirely different footing, that the Director Valuation while determining the values of the goods in question, did so directly under the Fall Back method under Section 25(9) of the Act, without following the methods of valuation in a sequential manner from Section 25(1) to Section 25(8) of the Act, with a further argument that such exercise was in violation of the law settled by the Courts. This contention and argument of the Respondents has been accepted by the Tribunal through the impugned Order. For the present purposes, since the Respondents are not aggrieved by the order of the Tribunal and have not filed any Reference Application, we are not required to dilate upon this aspect any further.

8. In view of hereinabove facts and circumstances of this case, it appears that the proposed questions need to be modified as it is only one question which arises out of the impugned order of the Tribunal, and that is *"whether in the facts and circumstances of the case the Tribunal was justified in holding that the values of the goods in question were determined directly under section 25(9) of the Customs Act, 1969 (Fall Back Method) through Valuation Ruling No.1452 of 2020 dated 24.06.2020 without following the sequential methods as provided under Section 25 *ibid*?"* and the same is answered in **negative**; in favour of the Applicant Department and against the Respondents, and as a consequence thereof, order of the Tribunal impugned in these Reference Applications stands set-aside.

9. All these Reference Applications are **allowed** as above. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969. Office to place copy of this order in the connected Reference Applications as above.

**Dated: 17.03.2023**

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