IN THE HIGH COURT OF SINDH, KARACHI

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

1	Spl. Cus. Ref. A. No. 223/2022	The Collector of Customs, Karachi **VS** M/S. A. R. Industries, Karachi
2	Spl. Cus. Ref. A. No. 224/2022	The Collector of Customs, Karachi **VS** M/s. S.M. Industries, Karachi
3	Spl. Cus. Ref. A. No. 226/2022	The Collector of Customs, Karachi VS M/s. Radium Silk Factory, Karachi
4	Spl. Cus. Ref. A. No. 228/2022	The Collector of Customs, Karachi VS M/s. Brother Enterprises, Karachi
5	Spl. Cus. Ref. A. No. 229/2022	The Collector of Customs, Karachi VS M/S. A. R. Industries, Karachi
6	Spl. Cus. Ref. A. No. 230/2022	The Collector of Customs, Karachi VS M/s. S.M. Industries, Karachi
7	Spl. Cus. Ref. A. No. 231/2022	The Collector of Customs, Karachi VS M/s. Brother Enterprises, Karachi
8	Spl. Cus. Ref. A. No. 232/2022	The Collector of Customs, Karachi VS M/s. Radium Silk Factory, Karachi
9	Spl. Cus. Ref. A. No. 240/2022	The D. G. Customs Valuation, Karachi & another VS M/s. Radium Silk Factory, Karachi
10	Spl. Cus. Ref. A. No. 241/2022	The D. G. Customs Valuation, Karachi & another VS M/s. Brother Enterprises, Karachi
11	Spl. Cus. Ref. A. No. 242/2022	The D. G. Customs Valuation, Karachi & another VS M/s. Brother Enterprises, Karachi
12	Spl. Cus. Ref. A. No. 243/2022	The D. G. Customs Valuation, Karachi & another VS M/S. A. R. Industries, Karachi

For the Applicants: Mr. Khalid Rajpar, Advocate
(in SCRA Nos. 229 to 232 of 2022)
Mr. Aamir Raza Advocate
(in SCRA Nos. 223, 224, 226, 228 of 2022)
Mr. Irfan Mir Halepota, Advocates.
(in SCRA Nos. 240 to 243 of 2022)

For the Respondents: Mr. Khawaja Shamsul Islam, Advocate

Dates of hearing: **28.02.2023; 02.03.2023 & 15.03.2023**
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. K-1262/2020, K-1263/2020, K-1264/2020, K-1265/2020 by the Customs Appellate Tribunal at Karachi. These Reference Applications were admitted for regular hearing by the Court vide a common order dated 15.09.2022 passed in SCRA No. 220 of 2002 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, whereas, the Applicants had proposed the following questions of law: -

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?

2) Whether the learned Appellate Tribunal has considered that in view of the amendment made in Section 25 A of the Customs Act, 1969 vide Finance Act, 2010, whether the provisions of Section 25-A have overridden the provisions of Section 25 of the Customs Act, 1969?

3) Whether a Valuation Ruling issued by exercising powers under Section 25-A being a statutory ruling is binding upon the appellant / clearance Collectorate?

4) Whether the impugned order is a result of misreading and misapplication of law giving undue benefit and advantage to the importer resulting in miscarriage of justice?

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 after being separated from SCRA 220 of 2022 and other connected matters, were once again 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. 1449 of 2020 dated 04.06.2020; whereby, he determined the values of the product in question in terms of Section 25(9) of the Act 1449/2020 dated 04.06.2020 under the Fall Back Method of assessment. 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 09.10.2020; 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 Cotton, Viscose Suiting / Shirting Fabrics; Tulle Net Fabrics, Polyester pile Fabrics, Viscose Suiting 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. 1449/2020 dated 04.06.2020 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.
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> 13. We hereby order that the Transaction Value for import of impugned fabrics imported by the appellant shall be accepted as customs value under Section 25(1) of the Customs Act, 1969. The Valuation Ruling No.1449/2020 dated 04.06.2020 and Order-In-Revision No.30/2020 dated 09.10.2020 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 aforesaid finding of the learned Tribunal, it appears that the Tribunal in essence came to the conclusion that since sequential methods of valuation as provided under Section 25 of the Act have not been followed while determining the values of the goods in question, therefore, in view of various pronouncements of the Courts, the said determination of values under Fall Back Method directly in terms of Section 25(9) of the Act is unlawful; hence the Valuation Ruling and the Order in Revision were liable to be set-aside. At the same time, while doing so, the values of the Respondents as per their import documents have been accepted as Transactional value(s) under Section 25(1) of the Act. However, on perusal of the record and the Valuation Ruling in question, it appears that the Tribunal to this extent and its reasoning for setting aside the Ruling has misdirected itself and has failed to peruse the record with careful application of mind. It would be advantageous to refer to Para-4 of the impugned Valuation Ruling No. 1449 of 2020 dated 04.06.2020 which reads as under:-

> **"4. Methods Adopted to Determine Customs Values:** Valuation methods given in Section 25 of the Customs Act, 1969 were duly applied in their 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 then conducted a market inquiry using Deductive Value Method under sub-section (7) of Section 25 of the Customs Act, 1969, however, it was found that the determination of Customs value could not be based solely upon this method either. Valuation method provided vide Section 25(8) of the Customs Act, 1969, could not be applied as the conversion cost from the constituent materials and allied expenses, at country of export, were not available. Finally, PRAL database, EDE data of Chinese exports to the Pakistan, market information and international prices through web were examined thoroughly. All the information so gathered was analyzed for determination of Customs Value of the subject goods.

> Consequently, the Fall Back Method as provided under section 25(9) of the Customs Act, 1969 was applied to arrive at assessable customs Values of Polyester, Cotton & Viscose Suiting Fabrics."

6. From perusal of the aforesaid determination of values by the Director Valuation, it appears that the methods of Valuation, as provided in Section 25 of the Act have been sequentially followed inasmuch as the transactional value method under section 25(1) of the Act was found inapplicable as no substantial documents were provided by the stakeholders to justify their transactional values, whereas, different values were declared by different importers for the same product. Similarly the second and third methods of valuation in sequence i.e. identical goods method and similar goods method as provided under Section 25(5) & (6) of the Act were also found to be inapplicable due to absence of absolute demonstrable evidence of qualities and quantities of the commercial level of such goods; hence the information as available was found inappropriate. It has been further observed that thereafter the fourth method i.e. Deductive Value Method under Section 25(7) of the Act was also applied; but it was found that determination of values could not be based solely upon this method either. Thereafter the fifth method of valuation as provided under Section 25(8) of the Act i.e. Computed Value Method was also found inapplicable as the conversion cost of the constituent materials as well as allied expenses in the country of exports were not available. Finally, the values were determined under the Fall Back Method as provided under Section 25(9) of the Act, and thereafter the values were notified under Section 25-A ibid; therefore, as to the exercise carried out by the Director Valuation and the arguments that sequential methods were not followed as provided in Section 25 of the Act and upheld in various judgments of the Courts does not appear to be correct or justified. The Tribunal to this extent appears to have misread the available record and has misdirected itself in observing that sequential methods of Valuation as provided in Section 25 of the Act were not followed. In the case of ***Sadia Jabbar***[1] on which the Tribunal itself has relied upon, while dealing with a Valuation Ruling issued in terms of Fall Back Method [s.25(9)] it has been observed by this Court that;

> 26. The next ruling is No.Misc/01/2009-VIIB dated 23.10.2009, issued in relation to ball bearings imported from Japan and China. This ruling, in our view, appears to come closest to correctly applying and following the provisions of section 25A as noted above. There appears to have been an application of mind by the Director Valuation to the various methods in the proper sequential order, although the reference to the transaction value is not relevant for reasons stated supra. Reasons of one sort or another are given in respect to each method as to

[1] 2018 PTD 1746

> why that method is inapplicable, and ultimately the fall-back method (subsection (9)) is purportedly applied…."

In view of the above, to this extent the Tribunals order cannot be sustained that Values have been determined through impugned Valuation Ruling directly under Section 25(9) of the Act, without following the sequential methods as provided in Section 25(1) to (8) of the Act. This finding, therefore, stands overruled.

7. However, at the same time when the values determined under the Fall Back Method, as provided under Section 25(9) of the Act are looked into, we do not see as to how and in what manner, such determination was made by the Director Valuation by placing reliance on some Database, EDE data of Chinese exports of Pakistan, market information and international prices obtained through web. Insofar as searching prices through web is concerned, when the Valuation Ruling in question was issued, proviso[2] to Section 25A of the Act which empowers the the Director to rely and seek assistance from internationally acclaimed publications, bulletins or official websites of manufacturers of indenters of such goods was not available as it was inserted through Finance Act 2021; hence any reliance on such values would be without lawful authority and against the relevant provision of Section 25A of the Act as prevalent at the time of determination of values in question. Similarly, as to placing reliance on any other supportive material, again the Director Valuation has also failed to give any justifiable reasons and so also the material on the basis of which such values have been determined by him. Therefore, in our considered view the exercise so carried out by the Director Valuation while determining values under section 25(9) of the Act, appears to have been done against the spirit of the said provision read with Rule 120 of the Customs Rules, 2001.

8. Insofar as, the impugned order of the Tribunal is concerned, while setting aside the Valuation Ruling and the Order in Revision, 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 words (*"The appellants have demonstrated that Transaction Values for import of different types of Polyester Fabrics from China are correct"*). We are

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[2] Provided that notwithstanding anything contained in any provision of this Act and any decision or judgment of any forum, authority or court, while determining the customs value under this section, the Director may incorporate values from internationally acclaimed publications, periodicals, bulletins or official websites of manufacturers of indenters of such goods.]

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. This finding of the Tribunal cannot be sustained in the facts and circumstances of the case in hand.

9. In view of hereinabove facts and circumstances of this case, it appears that the questions on which these References were admitted for regular hearing need to be rephrased as under;

(i) *"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.1449 of 2020 dated 4.06.2020 without following the sequential methods as provided under Section 25 ibid?"*

(ii) *"whether in the facts and circumstances of the case the impugned determination of values through Valuation Ruling No. 1449 of 2020 dated 4.06.2020 was in accordance with the provisions of section 25(9) of the Customs Act, 1969 (Fall Back Method) read with Rule 120 of the Customs Rules 2001?*

10. Question No.1 is answered in ***negative***; in favour of the Applicant Department and against the Respondents, whereas, Question No.2 is also answered in ***negative***; against the Applicant and in favour of the Respondents; however, to this extent the matter stands remanded to the Director of Valuation for redetermination of values of the goods in question to the extent of the present Respondents afresh in accordance with law. All these Reference Applications are partly allowed in the above terms by setting aside orders of the Tribunal to this extent along with the Valuation Ruling and the Order in Revision to the above extent.

11. All Reference Applications stands ***allowed / disposed*** of 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

Judge

Judge

Ayaz