

IN THE HIGH COURT OF SINDH, KARACHI
Special Custom Reference Application No. 220 of 2014

Date Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Zulfiqar Ahmed Khan

Applicant: Collector of Customs, Model Customs
Collectorate of Appraisement (West),
Custom House, Karachi Through Mr.
Muhammad Khalil Dogar, Advocate.

Respondent: Nemo for ACE Nutritions.

Date of hearing: 23.11.2023.

Date of Order: 23.11.2023.

ORDER

Muhammad Junaid Ghaffar, J: Through this Special Customs Reference Application the Applicant Department has impugned Order dated 02.04.2014 passed by the Customs Appellate Tribunal, Karachi in Customs Appeal No. K-218 of 2014 proposing the following questions of law: -

- “1) Whether in the facts and circumstances of the case, the learned Tribunal was justified to allow the appeal filed by the respondent under Section 194A of the Customs Act, 1969?
- 2) Whether in the facts and circumstances of the case the learned Tribunal was justified to hold that the invoice found in the consignment was not applicable for the purposes of assessment of the impugned goods?
- 3) Whether the declaration of value lower than the actual value found in the invoice placed in the consignment will not be termed as mis-declaration in terms of Section 32 of the Customs Act, 1969? And whether it shall not attract the provisions of Section 32(1) of the Customs Act, 1969?
- 4) Whether the provision of Section 25A of the Customs Act, 1969 are relevant in the case where in the actual transactional value was found higher than the Valuation Ruling issued under section 25. And whether, the observance of the learned member of the Tribunal that the goods are not to be assessed as per Valuation Ruling irrespective of the higher transactional value is perverse and contrary to the provisions of Customs Act, 1969?
- 5) Whether import of goods on under-invoice value is not an offence under section 32(1) of the Customs Act, 1969?
- 6) Whether the determination of value of goods as decided by the learned member is perverse?
- 7) Whether the assessment of the goods under Valuation Ruling 624/2013 dated 23.12.2013 despite the fact that the actual transactional value found was higher than the value mentioned in the Ruling as held by the learned Tribunal is contrary to law and in case the assessment in the impugned order is followed the same will render scheme of Section 25 of Customs Act, 1969, as redundant?”

2. Heard learned Counsel for the Applicant and perused the record. Insofar as the Respondent is concerned, despite being served by way of publication as noted in order dated 11.10.2023, none has appeared.

3. From perusal of the record, it reflects that a Show Cause Notice was issued to the Respondent on the ground that at the time of inspection of the container, an invoice was retrieved showing value of goods in question as US\$ 66,056.10 as against the declared value of US\$ 26,616.63. The matter was adjudicated against the Respondent, whereby, after confiscation of goods fine and penalty was imposed in addition to payment of duties and taxes on the value as shown in the retrieved invoice. The Respondent being aggrieved approached the Appellate Tribunal and its Appeal has been allowed in following terms: -

“9. After hearing the arguments of both parties, perused the record of case and order passed by lower forum as well as Apex Courts. It is evidence from the orders as referred/quoted during the arguments that the contention of department was mostly rejected on the subject issue. The Hon’ble Supreme Court of Pakistan has also settled a law by passing order in Civil Petition No.1502 of 2004 and held that principle enshrined in Article 25 of the Islamic Republic of Pakistan which holds that “A facility allowed to some and denied to one is the discrimination”. The Hon’ble High Court of Sindh has also passed a judgment in CP No.2693/2009 which comprehensively dealt with this issue and observed at para 24 that “it also to apply the invoice value (i.e. the transaction value) if it is higher than the formula value. As noted above, section 25A, contemplates the permits a predetermination of customs value. It is impermissible to apply the transaction value in terms of section 25A that value can only apply under section 25. This ruling is therefore, also vires section 25A. In view the aforesaid facts and circumstances, I am of the considered view to set aside the impugned order and allow the appeal of appellant with direction to assess the goods as per valuation ruling No.624/2013 and also remit the penalty imposed on importer. This Tribunal has also passed an interim order dated 24.03.2014 for release of goods against the bank guarantee equal to disputed amount (i.e. Rs.24,57,933/- along with duty and tax and penalty amounting to Rs.7,02,266/-), if the bank guarantee has been submitted and goods released accordingly, the said bank guarantee be returned to the importer on receipt of this detailed order.”

4. From perusal of the aforesaid findings, it reflects that the Tribunal has come to the conclusion that the assessment of goods ought to have been made as per Valuation Ruling No.

624 of 2013 and not on the retrieved invoice value and as a consequence thereof, fine and penalty has been remitted.

5. It is not in dispute that for assessment of the goods in question, Valuation Ruling No. 624 of 2013 dated 23.12.2013 issued under Section 25A of the Customs Act, 1969, exists. The legal question has though, not been dealt with by the Tribunal in specific terms as it ought to have done; however, the conclusion drawn by the Tribunal raises a question of law that “whether the assessment of the goods is to be made on the basis of an invoice retrieved from the Container or as per Valuation Ruling issued under section 25A of the Customs Act, 1969”. The said provision starts with a non-obstinate clause, and provides that notwithstanding the provisions contained in Section 25, the valuation of goods imported and exported shall be determined by the Director Valuation by following the assessment methods as laid down in Section 25 of the Act. It further appears that prior to the year 2017 i.e. un-amended Section 25A was silent in this regard, however, in 2017 a proviso has been added, which provides that where the value declared in goods declaration or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under subsection (1) of Section 25A, then such higher value shall be the customs value.

6. Admittedly, the goods in question were imported prior to the insertion of this proviso in 2017 and, therefore, when a Valuation Ruling was in existence when the consignment in question was imported, the value of such goods cannot be determined under Section 25(1) of the Act by relying upon the retrieved invoice; rather, the values determined and notified by way of Valuation Ruling under Section 25A *ibid* would be applicable. It is needless to state that any assessment on the basis of the retrieved invoice would an assessment under

Section 25(1) of the Customs Act, 1969; i.e. the “transactional value”.

7. It is also a matter of record that the Respondent had all along disputed any proper retrieval of the invoice and had in fact asked the adjudicating authority to provide a copy and bring the same on record; however, no such opportunity was provided to the Respondent. Surprisingly, it has not been placed before us as well.

8. Since, the law is clear on this aspect of the matter, whereas, the proviso to section 25A of the Act, is not applicable retrospectively, therefore, no exception can be drawn to the findings given by the Tribunal; however, for our reasons as above, and not otherwise as concluded by the Tribunal.

9. The questions proposed do not appear to be relevant except question No. 7 which requires rephrasing i.e. ***“Whether the Tribunal was justified in directing the assessment of goods in question (imported prior to 2017) on the basis of Valuation Ruling issued under section 25A of the Customs Act, 1969, notwithstanding that an invoice of higher value was retrieved from the consignment”*** and the same is answered in the ***affirmative*** against the Applicant and in favor of the Respondent. As a consequence, thereof, remaining questions are not required to be answered. The Reference Application stands ***dismissed***. 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.

J U D G E

J U D G E

Amir/