ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 66 & 67 of 2018

Date	Order with signature of Judge

Fresh case.

1. For order on office objection No. 21.
2. For order on CMA No.548/2018 (Exemption)
3. For hearing of main case.
4. For order on CMA No. 549/2018 (Stay)

10.10.2023.

Mr. Khalid Mehmood Rajpar, Advocate for Applicant.

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1 to 4. Through these Reference application, the Applicants Department has impugned Judgment dated 31.10.2017 passed in Customs Appeal No. K-401/2017 & other connected matters, proposing various questions of law. However, at the very outset, learned Counsel for the Applicant department has placed on record order dated 04.02.2021 passed in Special Custom Reference Application No. 727 of 2019 & other connected matters (***The Collector of Customs V.s. M/s. Zahid Ali & Company***) by a Division Bench of this Court and submits that the questions as raised in these matters have already been answered against the Applicant department. He has referred to Para Nos. 3 & 4 of the said Order which reads as under:

> "3. We have heard the learned Counsel for the Applicant and perused the record and we are not inclined to even issue notice in this matter. Facts available on record reflect that Respondents herein imported various consignments of Tyres and Tubes from India, assessment of which was made as per existing Valuation Ruling and after the goods were assessed and released, pursuant to some information, the matter was investigated after taking into consideration the information available on some purported official website (www.lcegate.gov.in) and it is the case of the Applicant that the values were incorrectly declared by the Respondents and the assessment made on the basis of Valuation Ruing was incorrect, whereas, the assessment ought to have been made under section 25 by accepting the transactional values so arrived at on the basis of the information gathered from the said website. A Show Cause Notice was issued and thereafter, matter was adjudicated against the Respondents; however, through impugned order the learned Tribunal has allowed the Appeals in the following terms:-
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> > "05. Record of the case has been carefully examined and the argument put forth by the appellants and respondents have been duly considered. The cases of the Appellants are that they have imported consignment of "Tyres and Tubes, with or without Flaps of different Brands" of Indian origin, which were allowed release after passing of Clearance Orders under section 83 and Rule 442 of the Act / Rules by the competent authority prescribed therein on the strength of valid Assessment orders passed by the Authority defined in Section 2(a) under Section 80 and Rule 438 of the Act /

Rules for levy of duty and taxes with the application of value determined by the Director, Directorate General of Valuation under the provisions of Section 25A of the Act, in exercise of the powers vested upon them through SRO 371/(I)/2002 dated 15.06.2002. Subsequently, the Directorate General of Post Clearance Audit conducted Audit under section 2692) and thereafter framed contravention report on the basis of information gathered from the Indian official website "Ice gate e-Commerce Portal Central Board of Excise and Customs" which revealed that the export price of the goods declared to the Indian Customs is on much higher side. They further argue that even the Valuation Ruling specifically mentions that where the actual payable transactional value is higher than the value as determined in the Valuation Ruling such transactional value shall be taken for the purpose of assessment of duty and taxes. The respondents calculated value of the imported consignments by adding element of freight in the FOB value declared in Indian rupees as is available on the fore-stated Indian official website and thereafter, the said value was converted into US dollars.

07. The stance of the appellants as explained by their learned counsels is that they made assessment of duty and taxes in the light of prevailing Valuation Ruling which are issued / determined after detailed deliberations with all relevant stakeholders and also after considering the prevailing international prices, therefore, the transactional values declared by the importers are rejected and assessment is made on the basis of the Valuation Ruling. The system of valuation ruling is widely in place for assessment purposes in order to ensure uniformity in the valuation and to avoid undue discretion. So many consignments are daily cleared by customs by following these valuation rulings ignoring the lower values declared in GDs. Accordingly, the goods were released by the Collectorate without raising any objection. Further section 25A of the Customs Act, 1969 where under the aforesaid Valuation Ruling was issued, starts with Non-Obstante clause which means the said provisions of law has overriding effect over section 25 (which mentions about the transaction al value) ibid. the counsel for the appellants further stated that after Valuation Ruling is issued under section 25A, the next relevant provision of law is section 25-D and cannot be reversed to section 25. The learned counsels also invited attention towards Disclaimer of Ice gate. The emphasized, that neither section 25 of the Customs Act, 1969 nor section 25-A ibid mention, about the Ice gate. Further the Indian Customs has not certified the value given on their Website. According to the Counsel, the exporters in general, inflate value of their goods to obtain so e legal benefit like rebate etc. The Counsels added that values given on Indian Website (Ice gate) do not carry any legal sanctity. The added that had it been so, the Directorate General of Customs Valuation, could have revised its values upward as given in the Valuation Ruling No. 659/2014 dated 29.03.2014.

07. We are not inclined to endorse the arguments of the respondent Department. The goods of the appellant were not self-assessed goods under section 79 of the Customs Act, 1969 as stated but instead were released after passing of valid Assessment / Release orders under the provisions of Section 80 & 83 and Rule

438 & 422 of the Act / Rules for levy of duty and taxes on the basis of Valuation Ruling No. 659/2014 dated 29.03.2014 determined by Director, Directorate General of Valuation under Section 25A of the Act, as the goods on which Valuation Ruling is applicable can never be auto-cleared by the WeBOC module by virtue of having no programming in this regards. We subscribe to the arguments of the learned Counsel of the appellants that there is no legal sanctity of the Indian official Website. Their arguments carries weight as section 25-A of the Customs Act, 1969 whereby the aforementioned Valuation Ruling has been issued, opens with Non-Obstante clause meaning thereby that it overrides section 25 of the said Act. We find tremendous arguments of the learned Counsels of the appellants that if the respondent department was so convinced about the legality and validity of the Indian Website, they could have requested the Directorate General of Valuation, Karachi to revisit Valuation Ruling No. 659/2014 dated 29.03.2014 in the light of value available on Ice gate. We are afraid that we are not in agreement with the respondents in regards to the alleged mis-declaration of value as the value available on the Website Ice gate cannot be construed as declaration of the appellant upon examination of the definition in Section 2(kka) of the Act, the charge of mis-declaration could only be leveled on the basis of direct evidence, namely evidential invoice of the same country of the period given in Rule 107(a) of the rules as ordered in Para 78 and 101 of CGO 12/2002 dated 15.06.2002 and Clause (d) of SRO 499(I)/2009 dated 13.06.2009. The Customs Appeal No. 837 of 2016 vide GD No. KAPE-HC-90657-04-01-2016, containing Polyester Plain Cringle Chiffon Fabric, whereas, all aforesaid mentioned appeals pertaining to 'Tyres and Tubes"

08. In view of the above circumstances, we allow these appeals and set aside the impugned order in original No. 209/2016-17 dated 26.12.2016, Order-in-Original No. 211/2016-17 dated 27.12.2016, Order-in-Original No. 430/2016-17 dated 24.11.2016, Order-in-Original No. 207/2016-17 dated 05.12.2016, Order-in-Original No. 179/2016-17 dated 17.10.2016, Order-in-Original No. 496516/2016 dated 21.03.2016, Order-in-Original No. 182/2016-17 dated 24.10.2016, Order-in-Original No. 212/2016-17 dated 03.01.2017, Order-in-Original No. 233/2016-17 dated 28.04.2017, Order-in-Original No. 166/2016-17 dated 07.11.2016 along with issuance of delay detention certificate where applicable.

4. We have at the very outset, confronted the learned Counsel for the Applicant that as to how and in what manner, reassessment could be made in respect of goods for which a Valuation Ruling has been issued in terms of Section 25 of the Act, and duly applied and to this, he has not been able to controvert this legal proposition. Section 25-A[1] confers a

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[1] **[25A. Power to determine the customs value**.- (1) Notwithstanding the provisions contained in section 25, the Collector of Customs on his own motion, or the Director of Customs Valuation [on his own motion or]on a reference made to him by any person [or an officer of Customs], may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable.

(2) The Customs value determined under sub-section (1) shall be the applicable customs value for assessment of the relevant imported or exported goods

Provided that where the value declared in a goods declaration, filed under section 79 or section 131 or mentioned in the invoice retrieved from the consignment, as the case may be, is higher than the value determined under sub-section (1), such higher value shall be the customs value.]

(3)……

[(4) ……..

> power to determine the Customs value and starts with a Non-Obstante clause and provides that notwithstanding the provisions contained in section 25, the Collector of Customs on his own motion, or the Director of Customs Valuation [on his own motion or] on a reference made to him by any person [or an officer of Customs], may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable. It is clear that the provision of s.25A ibid would have an overriding effect while applying the values determined under it and it is only the methods of s.25 which are to be followed; but in no manner any assessment can be made under s.25 when there is a Valuation Ruling under s.25A already in field. It is not understandable as to how the Applicants through a Show Cause Notice have made an attempt to reassess the goods under Section 25 of the Act by showing intention to accept transactional value of the goods in question. Notwithstanding this, even the proviso in Section 25-A whereby, it is provided that where the value declared in a goods declaration or mentioned in the invoice retrieved from the consignment is higher than the value determined under sub-section (1) of section 25-A, such higher value shall be the customs value was inserted by way of Finance Act, 2017, whereas, the instant case is prior in time. Moreover, it is not a case where the transactional value was available with the department or the value mentioned in the invoice was retrieved from the consignment at the time of making any assessment under Section 25 of the Act. In this case the goods were already released pursuant to a statutory Valuation Ruling and therefore, any information gathered from the website pursuant to which an attempt has been made to make assessment by accepting the transactional value under section 25 ibid cannot be sustained. On our query we have been informed that the Valuation Ruling in question was never amended pursuant to such information from the website. And lastly, we have also noted that in the Show Cause Notice there again are vague allegations, whereas, neither the values so made available from the website have been mentioned; nor respondents have been confronted with any such unit value independently, and in a generalized manner, the Show Cause Notice had been issued."

Since the controversy already stands decided by this Court, whereas, no case for an exception is made out, the question so proposed have not been drafted properly as it is only one question which is relevant that is *"Whether in the facts and circumstances of the case [at least prior to Finance Act-2017] can goods be assessed under section 25 of the Act on the basis of a transactional value when a Valuation Ruling issued in terms of s.25A of the Act is already in field"* and the same is answered in negative, against the Applicant and in favour of the Respondents. Accordingly, these Reference Applications being misconceived are hereby dismissed in limine. Let copy of this order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Act, whereas, office to place copy of this order in all above connected Reference applications.

Judge

Judge

Ayaz P.S.