

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

AFR

CIVIL APPEAL NO. 251 OF 2015

(On appeal against the judgment dated
03.01.2014 of the High Court of Sindh,
Karachi in Special Customs Reference
Application No. 69/2010)

Collector of Customs

...Appellant(s)

VERSUS

M/s Faisal Enterprises

...Respondent(s)

For the Appellant: Raja M. Iqbal, ASC

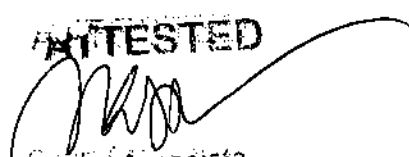
For the Respondent: Raja Zafar Khaliq Khan, ASC

Date of hearing: 14.05.2019

JUDGMENT

FAISAL ARAB, J.- The respondent imported two consignments of HR Steel Sheets of prime quality from Ukraine at a price of USD 175 and USD 180 per metric ton respectively. These actual transaction values were duly reflected in the invoices, the Letter of Credits and the Goods Declarations filed by the respondent at the time of arrival of goods at the port. The respondent did not get the goods released for home consumption and got them stored in the bounded warehouse to avoid demurrage. At the time of in-bonding, the appraising staff inspected the goods and made an endorsement that they are of secondary quality and valued them at USD 174 per metric ton. At the time of seeking ex-bonding i.e. clearance of goods for home consumption, the respondent on the basis of the inspection carried out by appraising staff declared the goods to be of secondary quality and valued them at USD 157 per metric ton, which was not

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accepted and the goods were assessed at the actual transaction value.

2. The respondent challenged the valuation. The matter was adjudicated vide Order-in-Original passed by the Assistant Collector of Customs on 19.08.2002 directing the respondent to make payment at the transaction value. The respondent preferred an appeal before the Collector of Customs (Appeals), who remanded the matter for *de novo* adjudication. On remand, fresh Order-in-Original was passed on 12.05.2003 whereby the claim of the respondent was again rejected. The respondent again appealed before the Collector of Customs (Appeals), which was dismissed. It was held that as the actual transaction value of each of the two consignments was USD 175 and USD 180 per metric ton respectively, which was duly reflected in the Letter of Credit and the Goods Declaration filed at the time of in-bonding of goods, therefore, the question of making assessment under Sub-Section 5 of Section 25 of the Customs Act at the time of seeking release of the consignments for home consumption did not arise. Respondent appealed to the Customs, Excise & Sales Tax Appellate Tribunal, Karachi, which was dismissed on 20.09.2008. Against such decision, the respondent filed Customs Reference Application before the High Court of Sindh, which was also dismissed vide judgment dated 25.03.2009. The respondent challenged the said decision before this Court by filing Civil Petition No. 476-K of 2009 and vide order dated 02.07.2009, this Court remanded the matter back to the Tribunal for reconsideration. On remand, the appeal of the respondent was allowed vide order dated 22.01.2010. Thereafter, the Department filed Special Customs Reference Application before

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the High Court of Sindh, which was dismissed vide impugned judgment dated 03.01.2014. Hence this appeal with leave of the Court.

3. Learned counsel for the appellant mainly argued that the High Court failed to consider that in terms of Section 25(1) of the Customs Act, 1969 duty was to be levied on the basis of the price which the respondent paid to the exporter, hence the question of making assessment under Section 25(5) did not arise. Learned counsel for the respondent, on the other hand, argued that the goods at the time of in-bonding upon inspection were found to be of secondary quality instead of prime quality and as similar goods of secondary quality imported from the same country of origin and shipped on the same ship were assessed at USD 157 per metric ton, hence the goods were to be assessed under Section 25(5) at USD 157 per metric ton.

4. In terms of Sub-Section 1 of Section 25 of the Customs Act, 1969, the value of the imported consignment is to be assessed on the basis of price actually paid or payable when sold for export to Pakistan. It is only when the declared value cannot be assumed on transaction value or such value is genuinely disputed by the customs authorities the occasion arises to have recourse to the provisions of sub-Sections 5, 6, 7, 8 & 9 of Section 25. In the present case, the actual invoice price at which both the consignments were purchased and duly disclosed in the Letter of Credits was USD 175 and USD 180 per metric ton respectively, which values were also declared by the respondent in the Goods Declaration filed at the time of arrival of


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goods at the port. So the question of making assessment under Sub-Section 5 of Section 25 did not arise. Only when the transaction value is genuinely believed to be an outcome of under-invoicing only then the question of assessing customs value under Sub-Section 5 of Section 25 would arise. In the Order-in-Original, it is also noted that it was not the case of the respondent that the damaged goods were shipped entitling the respondent to seek reduction in the rate of duty on the basis of surveyors' report and thereby seeking remittance of the differential amount back from the exporter, which evidence is missing in the present case. The learned High Court, therefore, committed error when it treated the goods to be assessable on the basis of values other than the actual transaction value by relying on the endorsement of the appraisal staff that the goods are of secondary quality, which endorsement did not match with the description of goods stated in the import documents such as invoices, Letter of Credit and into-bond Goods Declaration.

5. We are of the view that when the goods without any difficulty can be assessed on the basis of the transaction value under Sub-Section 1 of Section 25 i.e. the price actually paid or payable for the goods sold for export to Pakistan then the question of invoking Sub-Section 5 of Section 25 does not arise at all. It is only when the goods cannot be assessed on transaction value then it is to be assessed on the basis of the value of identical goods sold for export to Pakistan at about the same time at which the goods were being valued under Sub-Section 5 of Section 25. It is not the case of the respondent that the goods were not the same as were originally ordered, which resulted in raising a claim with foreign supplier for refund of the differential amount. Hence, the two consignments

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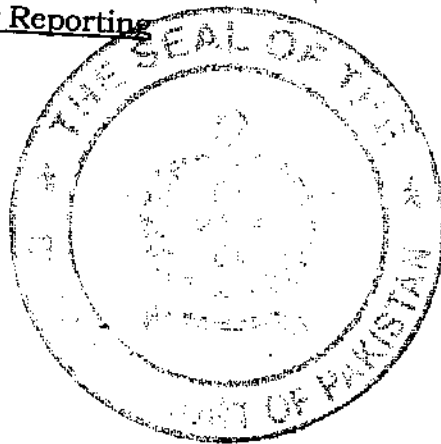
imported by the respondent are liable to be assessed at the undisputed transaction value reflected in the invoices, the Letter of Credits and the Goods Declarations that were filed at the time of arrival of goods, which was admittedly USD 175 and USD 180 per metric ton respectively.

6. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside. The differential amount is liable to be recovered from the respondent.

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Islamabad, the
14th of May, 2019
Approved For Reporting
Khuram

27/5/19



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