GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI BENCH – I
3RD FLOOR, JAMIL CHAMBERS
SADDAR, KARACHI

Before:- Mr. Muhammad Nadeem Qureshi, Member (Judicial – I), Karachi
Mr. Mohammed Yahya, Member (Technical – I), Karachi

Customs Appeal No.K-735 /2007
Customs Appeal No.K-736 /2007

M/s. Muhammad Ahmed & Company,
C/o Sardar M. Younus, Advocate,
401, Ruby Centre, Talpur Road,
Karachi ..... Appellant

Versus

1 The Collector Customs
(Appeals), Karachi

2. The Assistant Collector Customs
(Appraisement Gr-IV), Custom House,
Karachi. ..... Respondents

Sardar Muhammad Faisal, Advocate, present for the appellant.
Mr. Shamim, P.A & Mr. Siddique Zia, A.O., present for the respondent.

Date of hearing: 03.03.2015
Date of Order: 08.04.2015

ATTESTED

ORDER

Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order we intend to dispose of the Customs Appeals Nos. K-735/2007 and No.K-736/2007 being identical in nature filed under Section 194-A of the Customs Act, 1969, against Order-in-Appeal No.718-719/2007 dated 17.10.2007 passed by the Collector of Customs (Appeals), Karachi. These appeals have identical issue of law and facts therefore, being heard dealt with and disposed of simultaneously though this common order in the light of judgment of the Honorable High Court of Sindh in

RECEIVED
DATE 13/04/15
LAW BRANCH

Customnews.pk

Customs Reference No. 157 of 2008, S. M. Naqi S/o Syed Muhammad Hussain, Karachi Vs Collector of Customs (Adj-I) and Others.

2. Brief facts of the cases are that the appellant M/s. Muhammad Ahmed & Company, Karachi imported a consignment of 'S. S. Check Valve' from China and filed a GD No.HC-9945 dated 13.02.2007 at a declared unit value of @US$2.82/Kg. The Customs Authorities assessed the impugned goods @US$12.35/Kg in the light of Valuation Ruling No.854/2006 dated 14.12.2006. The importer paid the additional differential amount of duties and taxes and filed an appeal against the assessment before the Collector of Customs (Appeals), Karachi which was rejected vide Order-in-Appeal No.718-719/2007 dated 17.10.2007. The operative part of the said order is reproduced as under:

> *"I have examined the appeal case record and given due consideration to the arguments of rival parties presented before me and conclude that the charge of misdeclaration on account of suppressing custom value by the appellant in the light of Valuation Ruling No.854/2006 dated 14.12.2006 framed by the Revenue Collectorate, has substantial legal weight. They contended that value so relied upon by the Directorate General Customs Valuation had been based upon the findings of M/s. SGS who communicated actual price after conducting thorough inquiries and also informed that foreign seller had also disowned the sale of goods to the alleged Pakistan based importer (Appellant) which also speaks fraudulent transaction to hood wink the custom authorities to evade duty under the garb of under invoicing.*
>
> *Moreover perusal of the valuation advice furnished by the Directorate has been found of the same time as provided under Rule No.107(a) of Valuation Rules 2001 therefore learned counsel's arguments have not been able to*

ATTESTED

CUST. APPELLATE TRIBUNAL GOVT. OF PAKISTAN KARACHI

Customnews.pk

disprove the department's case. I therefore find no valid reason or grounds to interfere with the assessment order dated 29.03.2007 which has been passed on correct law points and facts of the case and according appeal being devoid of merit is dismissed."

3. Being aggrieved and dis-satisfied with the impugned Order-in-Appeal No.718-719/2007 dated 17.10.2007, the appellants filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal which is reproduced as under:

"That the impugned order of the respondents is not authorized by law in as much as it is based on wrong interpretation of law.

That the impugned order of the respondents is against the prevailing departmental practice and thus the same is discriminatory.

That the impugned order of the respondents is abinitio, illegal, void, malafide in as much as the same is influenced by circumstances not permitted by law.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL GOVT. OF PAKISTAN BENCH-I, KARACHI

That the impugned order is based on whimsical ground/mis-interpretation without following the spirit of mandatory provision of law/established departmental practice/procedure and due to the said reason/basis same is discriminatory.

That the impugned order of the respondents without giving a proper opportunity of hearing is tantamount to violation of principles of natural justice as well as ruling of Superior Courts given in identical cases, wherein it is clearly given that nobody should be condemned unheard and same is also in violative to ruling of Superior Courts given in identical cases, reliance is made on following cases:

Customnews.pk

- Pakistan Vs Sardar Ali, PLD 1959 SC. 25
- Ms. Obaidullah Vs. IGFC Quetta, SCMR 1997 P.1883

That Honourable Appellate Tribunal Lahore Bench vide Order-in-Appeal No.1668 & 1669/LB/2002 dated 24.05.2004, PTD 2005 Tri.617, while giving a guiding essential principles for non-acceptance of transactional value by the customs officers clearly held that officers legally bound to inform the importer of reservation in writing and give him an opportunity to justify price difference –On failure of importer to justify price difference, then transactional value of identical goods, transactional value of similar goods, deductive value, computed value and fall back method would be applied in same sequential order— Compliance of provisions of Section 25(10) of the Customs Act, 1969 being mandatory could not be deviated from – Transactional value of similar goods could not be applied without fulfilling mandatory requirements of Section 25(4) of the Customs Act, 1969.

That non acceptance of transactional value on the basis of any presumption without following the mandatory provision of law have no legal value and same is in clear violation of basic concept of Gatt regime introduced regarding the acceptance of transactional value otherwise following a proper procedure in sequential manner to prove the falsity of transaction which was not followed and aforesaid action on the part of relevant authorities is tantamount to negation of rulings of Appellate Tribunal given in identical case of Ms. Dawalance Pvt. Ltd., K-861/2001 (SBLR 2002 Tri.31), operative paras of the same is reproduce as under:

ATTESTED

CUSTOMS APPELLATE TRIBUNAL
GOVT OF PAKISTAN
BENCH-I, KARACHI

I. In order to appreciate the said issues, the first important instrument containing the relevant the rule for

4/9

Customnews.pk

determination of value of the imported goods is Section 25(1) of the Customs Act, 1969. As per said section, the value of goods is the transactional value i.e. the price actually paid or payable for the goods when sold for exports to Pakistan. It is evident that the goods of the appellant do not fall within any exceptions contained in clause (a) to (d) to the proviso to the subsection (1) of Section 25. The adjudication officer did base the impugned order on the plea that the department is in possession of any evidential invoice of identical goods, and difference in price is around 22% to 25%.

II. Law relating to identical goods is provided in subsection (5) of Section 25 of the Customs Act 1969. This subsection only comes into effect when the value cannot be determined under Section 25(I). Where a case does fall in any of the four exceptions of Section 25(1), if cannot be assumed that the value fo the imported goods cannot be determined under that subsequent. The burden of proof in this respect would be on the department.

III. The general principle of the interpretation of statues is that a rule, cannot override the statutory requirement, therefore, the presumption under a deeming clause has to be read within the parameters of subsection (I) of the Section 25 of the Customs Act, 1969.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL
GOVT. OF PAKISTAN
BENCH-I KARACHI

That the respondents clearly misused their discretionary powers while passing such an arbitrarily impugned order without following the spirit of mandatory provision of law/principles of natural justice as well as rulings of Superior Courts given in identical cases, reliance is made on case of Ms. Walayat Ali Mir,

Customnews.pk

SCMR 1995 P.650, operative para of the said rulings is reproduced as under:

> --Exercise of –Mode—While exercising discretion, Authority should not act arbitrarily, unreasonably and in complete disregard of relevant rules and regulation—Discretion to be exercised has to be judged and considered in the background of facts and circumstances of each case—Discretion is not be exercised on whims, caprices and mood of Authorities—Exercise of discretion is circumscribed by principles of justice and fairness—Authority exercising discretion should take into consideration and advance aim and object of the enactment, rule or regulation under which it was authorized to act, it should not act in complete negation of the object of such law, rule, regulation or established policy otherwise it would not be fair, reasonable and just exercise of power—Pre-conditions imposed for exercise of discretion should be honoured and respected unless for valid reasons, they have to be discarded.

That the impugned order of the respondent is also in violative to mandatory provision of Qanun-e-Shahadat 1984 article 119 which is binding on all the quasi judicial authorities/Truibunal/Courts and ignoring the same is negation of mandatory provision of law/rulings of Appellate Tribunal given in identical cases wherein it is clearly held that burden of proof is always on adjudicating authorities and in absence of a proper evidence impugned order is without lawful authority/basis, reliance is made on case of M/s. Rehan Brothers, vide Appeal No.K-756/02 dated 16.10.2003 (PTD 2003 Tri.2898).

6/9

Customnews.pk

That the plea taken in the subject case is also in violative to directives of CBR given vide letter No.2(37)/S(Val)/95 dated 15.05.2001, letter No.1(14)S(Val)/98 dated 16.05.1998 & letter NO.1(14)5(Val)/98 dated 02.06.1998, wherein it is clearly given that value of identical goods exported at or but the same time will only apply if customs value under Section 25(1) price actually paid or payable is rejected.

That the impugned order is in violative to spirit of Section 25 as well as rulings of Superior Courts given in identical cases, wherein it is clearly held that in absence of any valid evidence plea regarding enhancement of value on the basis of any import of different country of origin is in violative to spirit of Section 25 of the Customs Act, 1969, reliance is made on following cases, operative para of the same is also reproduced as under:

- *Ms. Latif Brothers Vs. Deputy Collector, SCMR 1992 P.1083*
- *Ms. Kausar Trading Vs. Pakistan, PTCL 1986 CL.300*
- *Ms. Farooq International Vs. Controller, PTCL 1985 CL.353*

That the order of the respondents is bad in law in the light of all available facts of the case and thus liable to be set-aside."

TESTED

4. We have gone through the records of the case and found that the appellant have challenged the Valuation Ruling on two grounds namely jurisdiction to issue the Valuation Ruling and the application of method of valuation in a sequential manner. Here we would like to reproduce the then prevailing Section 25(10) of the Customs Act, 1969:

> *"10.Sub-section(1), (5), (6), (7), (8) and (9) define how the customs value of imported goods is to be determined under this Act. The methods of Customs value are required to be applied in a sequential order except reversal of the order of*

Customnews.pk

sub-section (7) and (8), at the importer's request, if so agreed by Collector of the Customs."

5. A bare perusal of Sub-section (1) of Section 25 reveals that it was mandatory for determination of value to follow the methods of valuation in a sequential order. The words 'required to be applied in a sequential order' had made it compulsory to apply the methods in a sequential order. The perusal of the Valuation Ruling No.854/2006 shows that while issuing the Ruling, only fall back methods had been followed under Section 25(9) of the Customs Act, 1969, while altogether ignoring the methods given therein. Nor has any cogent reason been given for not resorting to the previous methods of valuation. The superior judicial for a in various cases have held that different methods of valuation provided in Section 25 of the Customs Act, 1969 and the Customs Rules 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to Sub-section (5) and likewise without similar exercise under Sub-section (5) no resort can be made to Sub-section (6). In the same manner without an exercise in writing on record under Sub-section (6) no resort can be made to Sub-section (7) and similarly to Sub-section (8) and (9).

TESTED

6. As regards the legal sanctity of the impugned Valuation Ruling, it is observed that then the Central Board of Revenue vide its notification No.1933(I)/2006 dated 03.10.2006 had notified functions and powers of the Customs officers and appropriate officer to the officers of Valuation and PCA department. The Director of Customs Valuation and Director General of Customs Valuation were designated with the powers to exercise function under Section 25A and Section 32. In fact, the Valuation Rulings are issued under Section 25A of the Customs Act, 1969 and at that point in time the issuance thereof which was prerogative of Director or Director General Valuation in terms of the aforesaid SRO. In the instant case the impugned Valuation Ruling had been issued by the Deputy Director who was not a competent officer for this purpose.

Customnews.pk

7. In view of the foregoing legal and factual position, it is observed that the Valuation Ruling had been issued without jurisdiction and without following the methods of valuation in a sequential order. Moreover no reasoning for evidence as to non-acceptance of transaction value has been produced by the Customs to substantiate their stance. Hence, all orders passed in the hierarchy of Customs in case of appeals No.K-735/2007 and No.K-736/2007 are set-aside being abinitio void and unlawful. The instant appeals are allowed as no order to the cost. We further direct the respondent to refund the excess amount of duty and taxes paid on the assessed value.

8. Order passed and announced accordingly.

-Sd/-
(Mohammed Yahya)
Member (Technical – I)

-Sd/-
(Muhammad Nadeem Qureshi)
Member (Judicial – I)

ATTESTED

CUSTOMS APPELLATE TRIBUNAL
GOVT. OF PAKISTAN
BENCH-I, KARACHI

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI

Appeal No. Old K-735/2007 15-12-2007
Appeal No. Muhammad Ahmed & Company
718-719/2007 17-10-2007
Collector of Customs Appeals Karachi

Muhammad Ahmed & Company
Sardar Faisal Khan
Appraisement IV

3. Collector of Customs Hyderabad / Sukkur / Quetta
4. The D.G Intelligence & Investigation Pakistan Karachi/ Hyderabad / Sukkur / Quetta
5. The D.G Valuation / Post Clearing Audit, Karachi
6. Office Copy

Assistant Registrar
11/7/15

Cus-133/2007-Val.

438

9/9

Customnews.pk