

IN THE HIGH COURT OF SINDH, KARACHI
SCRA 744 of 2016
and connected cases

Date / Order with signature of Judge

Present: Munib Akhtar and Yousuf Ali Sayeed, JJ.

For hearing of main case
Dates of hearing: 22.02 and 03,
17 and 31.03 and 17.04 and
15 and 29.05.2017

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Munib Akhtar, J. This judgment disposes off the matters described and identified in para 25 below. The matters comprise of petitions and SCRA's against various orders of the learned Appellate Tribunal. In issue are questions relating to the interpretation, scope and interaction of s. 25A and s. 25D of the Customs Act, 1969. The questions arise in relation to certain valuation rulings issued from time to time by the Valuation Department, which were then the subject of orders made by the Director General of Valuation. The parties are importers, the Customs authorities through the Valuation Department and also certain local manufacturers who have joined issue with the importers. In our view, the following issues require determination in these matters, which shall be treated as the questions of law that need to be answered in terms of the SCRA's:

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(1) What is the proper interpretation of ss. 25A and 25D of the Customs Act, 1969, especially with regard to the scope and extent of the latter, and the interaction and relationship between the two provisions?

(2) Whether a customs value determined in terms of s. 25A can be enhanced by the Director General of Valuation under s. 25D?

(3) Whether the Director General of Valuation, while considering a petition under s. 25D (or exercising jurisdiction under s. 25A(3)) can determine the customs value of any goods in addition to or other than those for which a valuation ruling has been issued under s. 25A?

(4) Whether a local manufacturer can ask for a determination and/or enhancement of the customs value of any goods (not itself being the importer of the same) under s. 25A or s. 25D and for this purpose file an application or petition under either section or intervene in any pending proceedings or be made a party thereto, whether as a "stakeholder" or otherwise?

2. Before commencing it will be convenient to first set out both ss. 25A and 25D, as they stood at the relevant time:

"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.

(3) In case of any conflict in the customs value determined under subsection (1), the Director-General of Customs Valuation shall determine the applicable customs value.

(4) The customs value determined under sub-section (1) or, as the case may be, under sub-section (3), shall be applicable until and unless revised or rescinded by the competent authority."

"25D. Revision of the value determined.- Where the customs value has been determined under section 25A by the Collector of Customs or Director of Valuation the revision petition may be filed before the Director-General of Valuation within thirty days from the date of determination of customs value and any proceeding pending before any court, authority or tribunal shall be referred to the Director-General for the decision."

3. Learned counsel for the Department, which was the applicant in SCRA 744/2016 referred to the valuation ruling made under s. 25A (Ruling 874/2016), which was accepted by the importers. It was assailed before the Director General under s. 25D by the local manufacturers. The Director

General enhanced the value determined in terms of the valuation ruling, though not to the extent as prayed for by the local manufacturers. Against this enhancement the importers preferred appeals before the learned Appellate Tribunal under s. 194(1)(e), as did the local manufacturers. The learned Appellate Tribunal allowed the importers' appeal and dismissed that filed by the local manufacturers. Against the decision of the learned Appellate Tribunal, the Department filed SCRA 744/2016 and others whereas the local manufacturers filed SCRA 4/2017.

4. Learned counsel for the Department submitted that for purposes of determining the customs value two meetings were held by the Director Valuation with the stakeholders, including the importers and the local manufacturers. The valuation ruling had a number of goods as its subject matter. (The immediate subject matter of the SCRA's now under consideration was tiles.) Learned counsel submitted that the parties in the litigation could be classified into three categories: genuine importers, frivolous litigants and local manufacturers. As noted, both the importers and the local manufacturers were dissatisfied with the order made by the Director General under s. 25D. Learned counsel submitted that this section had a wide scope and had to be construed and applied accordingly. Referring to the order of the learned Appellate Tribunal, learned counsel submitted that the question that, according to the Tribunal, fell for determination was stated as follows in para 7 thereof: "... whether the Director General Valuation while sitting under the jurisdiction in terms of Section 25-D of the Customs Act, 1969 can exercise authority under the law assuming jurisdiction under Section 25-A of the Customs Act, 1969 simultaneously"? This question was answered in the negative. Learned counsel referred to SRO 495(1)/2007 dated 09.06.2007 ("SRO 495"), which conferred the powers under s. 25A on the Director General. Learned counsel submitted that the learned Appellate Tribunal drew a distinction between "customs value" and "applicable customs value". It was reiterated that the Director General had vast powers under s. 25D. Any aggrieved person could file a petition under the section. It was submitted that an importer could even come directly before the Director General in terms of s. 25D. It was submitted that the two sections, s. 25A and s. 25D, had to be read in conjunction. Learned counsel submitted that frivolous litigation had to be guarded against. The importers were well aware of a valuation ruling and some just took a "chance" and undertook frivolous litigation to challenge the same. It was prayed that the order of the learned Appellate Tribunal be set aside and that of the Director General restored.

5. The learned Additional Director, Valuation sought permission to make submissions and we allowed him to do so. The learned Additional Director

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submitted that s. 25A(3) and s. 25D complemented each other. The latter was in the nature of a procedural provision, whereas the former was the substantive provision. In this regard the words "may conflict" used in s. 25A(3) were emphasized. The learned Additional Director submitted that this subsection also used the word "determine" in relation to the power of the Director General, which had a wide connotation and had to be applied accordingly. In this context reliance was also placed on subsection (4). The learned Additional Director also submitted that frivolous litigation had to be guarded against. If there was a great difference between the transaction value declared in terms of s. 25(1) and the value determined under s. 25A, that indicated that any litigation challenging the latter was frivolous. The learned Departmental Representative submitted that the power conferred under s. 25D constituted the Director General as the final executive authority for purposes of determining the customs value.

6. Learned counsel who appeared for the local manufacturers in SCRA 4/2017 submitted the remedy under s. 25D was available to them and had been rightly invoked in the facts and circumstances of the case. Learned counsel submitted the learned Appellate Tribunal, in requiring proceedings and applications under both ss. 25A and 25D had erred materially and incorrectly interpreted and applied the law. This was also contrary to what had been held by a learned Division Bench of this Court in *Danish Jhangir v. Federation of Pakistan and others* 2016 PTD 702. Learned counsel submitted that the order of the learned Appellate Tribunal was self-contradictory. The local importers had been barred from the remedy provided by s. 25D, which was contrary to law. It was also submitted that the Director General had the power to enhance the value in exercise of his powers under s. 25D. Any other interpretation would defeat the purpose and objective of the section.

7. We next heard learned counsel for the applicant in SCRA 55/2017, which involved another order of the learned Appellate Tribunal. The applicant was also a local manufacturer. The matter involved another valuation ruling (Ruling 916/2016, involving different goods), which was assailed by the importers before the Director General in terms of s. 25D, who rather than setting aside the valuation ruling as prayed for instead enhanced the values so determined. Being aggrieved by the decision of the Director General, the importers challenged the same before the learned Appellate Tribunal. The latter allowed the appeal and set aside the determination of the Director General insofar as it enhanced the values as determined in terms of the valuation ruling. Being aggrieved by this, the local manufacturer filed the SCRA in this Court. Referring to ss. 25A and 25D, learned counsel submitted that the sections were mutually exclusive. Subsection (3) of s. 25A applied

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only when there was a conflict between the values set by the Director Valuation and the Collector of Customs. A conflict could arise because a value determined by the former applied over the whole of Pakistan whereas a determination made by the latter was confined to the Collectorate concerned. As regards s. 25D, learned counsel submitted that the power of revision that vested in the Director General could be exercised either to enhance or even reduce the value determined under s. 25A. Learned counsel submitted that the local manufacturer had been a party to the proceedings in terms of which the value ruling was issued and thus had standing throughout, including the standing/interest required to file the SCRA.


8. Learned counsel for the Department in SCRA 38/2017 submitted that valuation ruling 846/2016 was involved in this case. The importers challenged this ruling before the Director General under s. 25D who enhanced the same. An appeal was preferred to the learned Appellate Tribunal which not only set aside the order of the Director General but also directed the Director Valuation to revisit the valuation ruling itself as it had been made in terms that were held to be contrary to law. Learned counsel submitted that subsection (3) of s. 25A used the words "any conflict", which had to be broadly construed and applied. In particular, these words were not limited to determining a conflict between a value determined by the Director Valuation on the one hand and the Collector of Customs on the other. It was submitted that ss. 25A(3) and 25D had to be read together. The power under the latter section included the power to enhance the value determined under s. 25A. It was submitted that the Director General himself had the power to carry out the exercise contemplated in terms of s. 25A(1) in any matter before him under s. 25D. Reliance was placed on SRO 495. The key to understanding the two sections was that they were concerned with the determination of customs value, which could (at the stage of s. 25D) either be increased or decreased.

9. Learned counsel who appeared for the respondent importers in SCRA 744/2016 submitted that the powers under s. 25A on the one hand and s. 25D on the other were distinct and separate and had to be exercised in their own respective spheres and conditions. Section 25A(3) was confined to a conflict between values determined under subsection (1). In this regard learned counsel submitted that the powers of the Director Valuation and the Collector of Customs were co-extensive and that could lead to a situation of conflict. That was what was resolvable in terms of subsection (3). It was submitted that the remedy provided by this subsection was only available to the Department itself to resolve this intra-departmental conflict. There was no power to re-determine the value. Either the value as determined by the Director Valuation had to be accepted or that as determined by the Collector. The Director

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General's jurisdiction was limited only to a making a decision to this extent and no more. Certainly, he could neither increase nor decrease the value. The remedy for the importer only lay by way of a petition under s. 25D and learned counsel submitted that this could be availed even if there were conflicting determinations by the Director Valuation and the Collector, which conflict had not yet been resolved. Insofar as a local manufacturer was concerned it had no standing at all, either in terms of s. 25A or s. 25D. These provisions applied only to importers or exporters. Learned counsel submitted that the local manufacturer's case was invariably that it was being caused injury on account of the value at which goods were being imported. But any such determination lay outside the Customs Act. It could only be determined in terms of the Anti-Dumping Duties Act, 2015. That remedy could be availed in appropriate circumstances, but the local manufacturer could not circumvent that law by proceedings under either s. 25A or s. 25D.

10. Learned counsel for the respondent importers in SCRA 38/2017 submitted that the questions before the Court were (i) whether the Director General could determine values under s. 25D; (ii) if the answer be in the affirmative, whether the power had been properly exercised in the facts and circumstances of the case at hand; and (iii) whether local manufacturers had any standing in these matters. Learned counsel submitted that the cases under s. 25D were such that they either involved an importer seeking a reduction or nullification of the valuation ruling, or a local manufacturer who wished for an enhancement, or elements of both. It was submitted that the powers under s. 25A on the one hand and s. 25D on the other were separate and distinct and in this regard reference was made to s. 194(1)(e) in terms whereof an appeal lay to the learned Appellate Tribunal only against a determination made under the latter (and not the former). Learned counsel submitted that s. 25A conferred a positive power on the Director General. It allowed him to determine the value, but only the limited context of a conflict between a value determined by the Director Valuation on the one hand and the Collector of Customs on the other. It had no other application. Thus, according to learned counsel, s. 25A was a safeguard measure, intended to resolve intra-departmental conflicts. It was for this reason that it was cast in mandatory terms; any such conflict had to be resolved. If however, in respect of a valuation determination there was no conflict in the sense just stated, then s. 25D became applicable. Learned counsel submitted that the power conferred by s. 25D was limited. It was confined only to a determination as to whether the valuation ruling was lawful or not. If found lawful, it stood as it was. If found unlawful, it had to be struck down. That was the scope of the power conferred on the Director General. He could not, thus, touch, or concern himself with, the quantum of the determination, i.e., could neither increase nor



decrease the value. As regards the local manufacturers, learned counsel submitted that they had no standing whatsoever in terms of ss. 25A and/or s. 25D. They could not become party to any such proceedings. Furthermore, learned counsel submitted, no new product or goods, not included in the valuation ruling, could be adjudicated upon or included by the Director General in his determination under s. 25D.

11. The other learned counsel appearing in the various matters adopted one or the other of the submissions made above, depending on whether they appeared for importers or local manufacturers:

12. We have heard learned counsel above and considered the record and material referred to. As is apparent from the above, the focus of attention remained the orders of the learned Appellate Tribunal challenged in the SCRA's and hence the orders of the Director General that were appealed against before that forum. In many (if not most) of the petitions the underlying valuation rulings, issued by the Director Valuation, have also been challenged. Inasmuch as there is a direct link between the submissions that were made before us and the valuation rulings, and the questions that need to be answered here, the answers so given will also settle the fate of the rulings. We proceed accordingly.

13. We begin with the fourth question. In our view, the local manufacturers have no standing to ask for a determination and/or enhancement of the customs value of any goods under s. 25A or s. 25D and for this purpose to file an application or petition under either section or intervene or be allowed or asked to participate in any pending proceedings or be made a party thereto, whether as "stakeholders", or otherwise. The interest of the local manufacturers is to have the value set at as high a level as possible on the ground that the transaction value or the value set in the valuation ruling (as the case may be) is otherwise too low and is causing them injury. As correctly submitted by learned counsel for the importers, this matter is exclusively in the domain of the Anti-Dumping Duties Act, 2015 ("ADD Act"). A Division Bench of this Court (of which one of us was a member) has recently had occasion to consider the ADD Act in judgment dated 19.02.2018 in CP D-4780/2017 and others, and whatever is said here should be read and understood in the light of that decision. The ADD Act has been enacted to give effect in our municipal law to a WTO agreement, the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994, just as several years ago s. 25 of the Customs Act was substituted and cast in a wholly new form to give effect to the WTO Agreement on Valuation. Section 25 and the agreement last mentioned, along with s. 25A, have been

considered in detail by a Division Bench of this Court in *Saadia Jabbar v. Federation of Pakistan and others* PTCL 2014 CL 537 ("*Saadia Jabbar*") Briefly put (and at the risk of some oversimplification), under the ADD Act, a local manufacturer (or rather, the domestic industry) is entitled to have an anti-dumping duty imposed on imported goods if the export price is less than the normal value and there is injury within the meaning of the ADD Act. Both these conditions must apply. If so, then a dumping margin is calculated and anti-dumping duty imposed accordingly. The authority that has jurisdiction to act in this regard is only the National Tariff Commission (itself a statutory body). The question of whether there is any injury caused to a local manufacturer is wholly beyond the scope of the Customs Act and the jurisdiction of the officers and authorities acting under this statute. What the local manufacturers are, in reality, complaining of is dumping and that is exclusively the domain of the ADD Act, as held in the aforesaid judgment (see, *inter alia*, para 14 thereof). It is to be noted that in the order of the Director General involved in SCRA 744/2016, there is an express reference to "dumping". In our view, neither the Director Valuation nor the Collector of Customs nor the Director General has any jurisdiction in this regard. The local manufacturers cannot be allowed to circumvent and evade the requirements of the ADD Act by asking for a customs value under s. 25A or any enhancement therein or being involved in the determination of the same. The position is likewise in relation to s. 25D. Any ruling or order determining or enhancing a customs value under these sections on such basis or with such involvement must be regarded as fatally and irremediably tainted with illegality and cannot be allowed to stand. Question No. 4 stands answered accordingly.

14. We take up the third question. In our view this question must be answered in the negative. As is clear from a bare perusal of s. 25D, it applies if, and only if, a customs value has been determined under s. 25A by the Collector of Customs or the Director Valuation. There is no direct (or "original") power conferred under this section on the Director General to himself determine a customs value for goods for which no valuation ruling has been issued. Likewise, in terms of subsection (3) of s. 25A, the jurisdiction of the Director General is only to determine the customs value if there is a conflict in the value determined under subsection (1). Thus, the Director General has no power to determine a customs value for any goods in addition to or other than those for which a valuation ruling has been issued under s. 25A. Any such purported determination is void. Question No. 3 stands answered accordingly.

15. We turn to address the first question and since the second is clearly allied to it, take up both together. As is clear from the submissions made by

learned counsel, as well as those of the learned Additional Director, there is a divergence in the views that have been expressed. Both s. 25A(3) and s. 25D confer a power or jurisdiction on the Director General. In both the power is to be exercised in relation to the "customs value". This expression is defined in s. 25, which is the key provision in this regard. Subsection (13)(a) defines "customs value of imported goods" as meaning "the value of goods for the purposes of levying duties of customs and other taxes on imported goods". Although subsection (13) specifies that the definitions contained therein are for purposes of s. 25, in our view the definition ought also to be applied to ss. 25A and 25D. It is not without significance that the expression "customs value" is apparently not to be found in the Customs Act other than in ss. 25, 25A, 25C and 25D. (Section 25C is not relevant for present purposes, and putting it to one side does not affect the present analysis.) Thus, when the Director Valuation or the Collector of Customs or the Director General are acting in terms of s. 25A and/or s. 25D, what they are doing is only establishing the value of the imported goods for a specific purpose. This, incidentally, is another reason why the local manufacturers have no standing to be involved in the exercise of determining the customs value or to ask for any enhancement thereof under these sections: they have no concern with the levy of customs duties or other taxes.

16. When subsection (3) of s. 25A is considered, it confers a power on the Director General to determine "the" "applicable customs value" if there is a conflict in the customs value determined under subsection (b). The determination under the latter subsection is to be made either by the Director Valuation or the Collector of Customs. Thus, it is clear that the jurisdiction conferred under subsection (3) is exercisable only if there are two customs values, one determined by the Director Valuation and the other by the Collector of Customs (or, perhaps, by two Collectors of Customs). (In principle of course, there can be more than two customs values but we can put this complication firmly to one side.) Unless such a conflict exists, subsection (3) has no application. Assuming that the conflict has arisen, what then is the power of the Director General? At first sight, it may seem that his jurisdiction is confined only to determining which out of the two is applicable as "the" customs value. In other words, he is only to select either the one or the other. However, to this conclusion must be added the effect of SRO 495, which was relied upon by learned counsel for the Department. This notification has empowered the Director General in terms of s. 25A. One effect of this could be that he can exercise the power conferred by subsection (1) on the Director Valuation and the Collector of Customs. While we leave this question open in general, it is treated below in para 21 on the basis of an assumption as therein stated. More pertinently in the immediate context, in our view another aspect

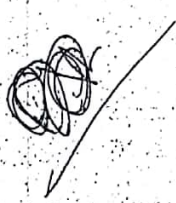
of SRO 495, is that it can be regarded as empowering the Director General in terms of subsection (3). Thus, rather than him being confined to choosing between the two customs values, he can resolve the conflict by making a determination on his own, and that would be "the" "applicable customs value". In such a situation it may of course be that the value determined by the Director General is greater than either of the conflicting values referred to him. In this sense it could be argued that there has been an "enhancement", but in our view such a conclusion would be incorrect. It should be kept in mind that whatever value is found to be applicable by the Director General under subsection (3) is his determination. Even if he only picks one of the conflicting values, that value would cease to be that determined by whoever was the relevant officer under subsection (1) who decided upon it; it would become the value determined by the Director General. Needless to say, this will necessarily apply if the Director General were to make his own determination under subsection (3) in terms of SRO 495, as just stated.

17. Clearly once the Director General has exercised his power under s. 25A(3), then s. 25D will have no application. The reason is that the latter section only applies in respect of a customs value determined by the Director Valuation or the Collector of Customs. A value determined under s. 25A(3) is neither. In any case, there cannot be a revision to the Director General against a determination that he has himself made. In our view therefore, s. 25A(3) is separate and distinct from s. 25D. The two are not complementary. They operate in their own spheres. In particular, s. 25A(3) applies only if there is a conflict between two (or more) customs values and not otherwise. Incidentally, there appears to be an anomaly in the law in that while an appeal lies to the Appellate Tribunal against a decision of the Director General under s. 25D, no appeal lies against an exercise by him of the power under s. 25A(3). We will shortly consider one aspect of this lack of a right of appeal while considering s. 25D, to which we now turn.

18. This section contemplates a "revision petition" being filed before the Director General against a customs value determined by either the Director Valuation or the Collector Customs. Before proceeding further one situation may be considered here. What happens if there are two conflicting customs values and an importer files a revision petition under s. 25D against one or both of them? How is the Director General then to proceed? In our view, he must proceed in terms of his jurisdiction under s. 25D and not his power under s. 25A(3). The reason is that his decision under the former is appealable whereas the latter is not. In our view, a statutory path that allows for, or leads to, an appeal is to be preferred over one that does not. While we will return to the situation now under contemplation, i.e., two conflicting customs values

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being considered in a revision petition, for the time being we proceed with the analysis on the basis that there is only one customs value that has been determined, and it is this value that is brought before the Director General under s. 25D.

19. What is the nature of the Director General's jurisdiction under the section? In our view, the answer lies in the description given of the petition that can be filed, i.e., it is a "revision petition". Thus, the jurisdiction is revisional in nature. Such a jurisdiction is well known to the law. It allows for relief of a particular sort being sought from a higher authority or forum. The Director General is certainly that in relation to the Director Valuation or the Collector of Customs. The civil revisional jurisdiction with which the law is most familiar is that conferred by s. 115 CPC. One aspect of s. 115 is that the power can be exercised by the High Court or the District Court of its own motion. This however is not possible for the Director General under s. 25D since the section states clearly that the jurisdiction can only be exercised if a revision petition is filed. Absent such filing, the Director General cannot purport to exercise any power under s. 25D. This position may also be contrasted with s. 195, which empowers either the Board or the Collector (within his jurisdiction) to call for the record of any proceedings in order to satisfy itself or himself of the legality or propriety of any decision taken or order made by a subordinate officer in any proceedings under the Customs Act. This position does not obtain under s. 25D, which applies only when invoked by the filing of a revision petition and not otherwise. (Before proceeding further, we may note that in this judgment we have considered s. 195 as it stood at the material time. It has undergone certain changes since then, brought about by the Finance Act, 2017. However, those changes do not materially affect or alter the analysis undertaken here.)



20. A revision is different from an appeal inasmuch as the scope of the former is regarded as narrower, and more restricted, than the latter. A revision petition under s. 25D cannot therefore be regarded as an appeal, and certainly not a first appeal. The importance of the distinction lies in that, as is well known, in a first appeal the whole of the controversy, in the entirety of the factual and legal issues involved, is open before the appellate authority. In particular it can if it so deems appropriate (but of course while remaining within well understood and established bounds) substitute its own decision for that of the forum whose decision is being appealed against. A revision does not operate in such broad terms. It is confined to considering the decision under challenge within a more restricted scope. That must be regarded as true also of s. 25D. What then is the scope of s. 25D? In our view, the answer lies in what it is that is brought before the Director General. It is the determination

of a customs value under s. 25A by the Director Valuation or the Collector of Customs. Since that determination is made in terms of subsection (1), what the Director General is concerned with is whether the jurisdiction under s. 25A(1) has been properly exercised or not. Section 25A, in respect especially of its first subsection, has been considered in some detail in *Sandia Jabbar*: see at paras 17-22, pp. 576-581, and what has been held there will apply also in the present context. In our view, the jurisdiction of the Director General under s. 25D is therefore limited to determining the legality and propriety of the exercise carried out in terms of subsection (1) of s. 25A. Was it, or was it not, in accordance with law? If it was, then the customs value stands and is to be applied as it is. If it was not, then the customs value determined must be declared to be contrary to law and set aside. Of course, in this situation the Director Valuation or the Collector Customs (as the case may be) would be entitled to carry out an exercise afresh, in accordance with law and after having removed the legal deficiencies and lacunae that were identified by the Director General. However, the Director General cannot substitute his own determination for that of the Director Valuation or the Collector of Customs, and this is so regardless of whether he would have enhanced or reduced the customs value. That would convert what is a revisional jurisdiction into an appellate jurisdiction and therefore ignore, if not obliterate, the distinction that necessarily exists between the two. In our view, such an approach would be contrary to the terms of s. 25D. We may note that SRO 495 has no application here since it only confers a power on the Director General under s. 25A and (obviously) not under s. 25D where the power already vests in him by statute. Furthermore, we note that the marginal note to s. 25D does speak of the "revision of the value determined". However, it is well established that the marginal note is only a secondary and very weak source of determining the true intent of the section to which it is attached and is not given weight except in exceptional circumstances. In our view, it has no relevance for interpreting and applying s. 25D.

21 It must be noted that s. 115 CPC expressly provides that if the High Court or the District Court come to the conclusion that the revisional jurisdiction ought to be exercised, the Court "may make such order as it thinks fit". The same words appear in s. 195: the Board or the Collector "may pass such order as it or he think fit". These words allow for not only the setting aside of the decision or order being considered but also its modification. Such words are however conspicuous by their absence in s. 25D. We can find no warrant for reading them into the section. The jurisdiction of the Director General is therefore confined to determining, as noted above, whether the Director Valuation or the Collector of Customs has acted in accordance with law while exercising powers under s. 25A(1). If the answer is in the negative,

the Director General can, as it were, wipe the slate clean and then hand it back to the concerned officer for a decision afresh. However, he cannot himself write on the slate by making such determination as he thinks would be appropriate in accordance with law. If he does so, then he has exceeded his jurisdiction under s. 25D. However, here one question that needs to be addressed is the effect of SRO 495. It will be recalled that this notification confers the power under s. 25A on the Director General, and learned counsel for the Department contended that this meant that he could make a determination under s. 25A(1). While we have, in general, left this question open, we proceed here on the assumption that learned counsel for the Department were correct in their submissions. Would this power be available to the Director General if he finds under s. 25D that the determination made by the Director Valuation or the Collector of Customs is not in accordance with law? In other words, having wiped the slate clean under s. 25D, could he then proceed simultaneously to make a determination himself under s. 25A(1) read with SRO 495? In our view, the answer to this question ought to be in the negative. It will be recalled that an appeal can be preferred against the decision of the Director General under s. 25D, but not against a determination made by him under s. 25A. The appeal (which lies under s. 194A(1)(e)) may be preferred by an aggrieved person or an officer of Customs. If therefore the Director General sets aside under s. 25D a determination made by the Director Valuation or the Collector of Customs and proceeds simultaneously to make his own determination under s. 25A, that would have the effect, paradoxically, of at one and the same time nullifying the right of the Department to file an appeal against his decision under s. 25D and creating a right of appeal on the part of the aggrieved party (importer or Department) against the determination under s. 25A. We have already concluded that ss. 25A and 25D operate in their own spheres and not in any complementary manner. They are independent powers and can only be exercised separately. In one the Director General is exercising "original" jurisdiction to determine the customs value himself by virtue of SRO 495. In the other he acts as a "supervisory" authority applying corrective measures (if so deemed necessary) to a "subordinate" decision. As is clear, there is a substantive difference in the respective positions of the Director General under these two sections. The Director General cannot be allowed to conflate the two, and in one and the same order exercise both powers together.

22. We now revert to the situation considered earlier, i.e., where conflicting customs values have been determined and the matter is brought before the Director General by a revision petition filed under s. 25D. How is he to dispose of the matter? In our view, three possibilities exist. Firstly, he may conclude that one of the customs values has been determined in a manner not in accordance with law whereas the other has been so determined. In this

situation, the latter value will stand and be applied while the former will be set aside. The second possibility is that he concludes that both the customs values have been determined in a manner not in accordance with law. Here, both values will be set aside and, as it were, the slate wiped clean. There could also be a third possibility, which would of course be rather unusual, where the Director General concludes that both values have been determined in accordance with law. In principle such a situation may arise because a determination under subsection (1) of s. 25A is not a mathematical exercise to which only one answer can be given in relation to a particular set of facts and circumstances. The exercise of discretion is involved and that may result in two values being reasonably arrived at in accordance with the dictates of s. 25A(1). Since there would be two values they would, *ipso facto*, be in conflict. In our view, if confronted with this situation under s. 25D, the Director General must allow the lower of the two values to stand and set aside the other. The reason is that the customs value is to be determined for a specific purpose, i.e., the levy of customs duties and other taxes. It is, in other words, part of the charging scheme. The law is well settled that in fiscal statutes if two conclusions are reasonably possible as regards a charging provision, then the one more favorable to the taxpayer will be applied. In the present context, that would mean adopting the lower of the two values.


23. In view of the foregoing, the first two questions stand answered as follows: Section 25A on the one hand and s. 25D on the other are not complementary. They apply and operate in their own spheres. Insofar as s. 25A(3) is concerned, it applies only if there are conflicting customs values determined under subsection (1) and not otherwise. If such is the case, and the matter is referred to the Director General under this provision, he may either choose between the two or make his own determination. In either case it would be his determination, and it would be "the" "applicable customs value". Insofar as s. 25D is concerned, it is a revisional jurisdiction. It can only be invoked by a revision petition, i.e., is not exercisable by the Director General on his own motion. Furthermore, it applies only if there is a customs value determined under s. 25A by either the Director Valuation or the Collector of Customs. The jurisdiction being revisional, what the Director General is concerned with is whether the customs value has been determined in accordance with law. If the answer is in the affirmative, the value is affirmed. If the answer is in the negative, then the customs value must be set aside, thus opening the way for a determination afresh under s. 25A(1) by the Director Valuation or the Collector of Customs, as the case may be. The Director General cannot substitute his own determination, either by way of modification or a purported "fresh" determination or otherwise. It necessarily follows that when the Director General is exercising his jurisdiction under s.



25D there can be no question of any enhancement of the customs value as determined under s1 25A(1).

24. It follows from the foregoing that the SCRA's filed by the Department and the local manufacturers must fail. They therefore stand dismissed while the petitions filed by the importers stand allowed, all in terms of the foregoing discussion and analysis. As a result, the security given by the importers by way of interim relief stands discharged. It is to be released/returned to the concerned importer at any time after 30 days from the date of judgment on an application being made to the Nazir of this Court and on proper verification and confirmation.

25. This judgment disposes off the following references and petitions: (a) all those references and petitions ("connected bunch") that were reserved for judgment on 29.05.2017, in terms of the order made on that date in SCRA 744/2016; and (b) all those petitions or references that were reserved for judgment on any date thereafter, and directed to be treated as reserved with the connected bunch. Office may take note and act accordingly.

26. This judgment is suspended for 30 days in order to enable any aggrieved person/party so desirous to avail the remedy of appeal. During this period the interim orders made shall continue to remain operative. There will be no order as to costs.


JUDGE


T-19-19/2018

19/3/18

