

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Justice Yahya Afridi, CJ
Justice Irfan Saadat Khan
Justice Aqeel Ahmed Abbasi

Civil Petition Nos. 306-K to 329-K of 2024

(On appeal against the order dated 29.02.2024 passed by the High Court of Sindh, Karachi in Spl. Customs Ref. Application Nos.650 to 661, 669 to 680/2022)

M/s Seven-Star Tyre

(in CPLA Nos.306-K, 312-K, 318-K & 324-K/2024)

M/s Tyres Sales Corporation

(in CPLA Nos.307-K, 313-K, 319-K & 325-K/2024)

M/s Sultan Muhammad Tyre & Co.

(in CPLA Nos.309-K, 315-K, 321-K & 327-K/2024)

M/s Autobax

(in CPLA Nos.310-K, 317-K, 322-K & 329-K/2024)

M/s Seven Star Old and New Tube and Tyre

(in CPLA Nos.311-K, 314-K, 323-K & 326-K/2024)

M/s Tyre Master

(in CPLA Nos.308-K, 316-K, 320-K & 328-K/2024)

VERSUS

...Petitioner(s)

The Director General Customs Valuation
and another

(in CPLA Nos.306-K and 308-K to 317-K/2024)

The Director General of Customs Valuation

(in CPLA No.307-K/2024)

The Collector of Customs

(in CPLA No.318-K to 329-K/2024)

...Respondent(s)

For the Petitioner(s):

Mr. Affan, Spl. Attorney for all
Petitioners
(via Video Link Karachi)

For the Respondent(s):

Raja Muhammad Iqbal, ASC
(in CPLA Nos.306-K to 317-K)
Dr. Farhat Zafar, ASC
(in CP Nos.318-K to 329-K)

Date of Hearing:

15.07.2026

JUDGMENT

AQEEL AHMED ABBASI, J. - Above Civil Petitions for Leave to Appeal have been filed against combined order dated 29.02.2024 passed by the Division Bench of Sindh High Court, Karachi ("**High Court**") in above titled 24 Special Customs References, whereby, the Reference Application filed by the respondent department against a common judgment dated 26.07.2022 passed by the Customs Appellate Tribunal, Karachi in Custom

Appeals No. K-109 to K-114/ 2022, K-116 to K-120/ 2022, and K-125/2022 were allowed by reformulating two questions of law as mentioned in para No.7 of the impugned order, which were duly answered in negative against the petitioner and in favour of the respondent department.

2. From perusal of the impugned order passed by the High Court, it has been observed that entire facts giving rise to the dispute between the importers and the Custom Authorities relating to determination of the value of the subject imported consignments i.e. tyres and tubes to be used for cars, trucks etc have not been recorded in detail. Therefore, it will be appropriate to narrate the facts as recorded by the Customs Appellate Tribunal, Karachi in detail for the sake of brevity and resolution of the dispute between the parties on the legal issues decided by the High Court in the impugned order which are primarily based on facts which appear to have been disputed between the parties: -

2. The Brief facts of the case are that the appellant is the Importer of goods having description "Tyres & Tubes" classifiable under HS Codes 4011.1000, 4011.2011 and 4011.2091 from China, Japan, Indonesia and Thailand. The customs values of such goods were determined earlier by the Director, Directorate General of Customs Valuation, Karachi in exercise of its powers conferred Under Section 25A of the Customs Act, 1969 vide Valuation Ruling bearing No. 1318/2018, 1319/2018 and 1320/2018 issued on 03.08.2018 which were revised on requests of the various importers including appellant and fresh determination of customs values of such goods was made Under Section 25A of the Customs Act, 1969 vide Valuation Ruling bearing Nos. 1543/2021, 1544/2021 and 1545/2021 all dated 03.08.2021. The Valuation Rulings dated 03.08.2021 were challenged before the Director General, Directorate General of Customs Valuation, Karachi by the various importers including the appellant through review petitions filed under Section 25D of the Customs Act, 1969. The Director General, Directorate General of Customs Valuation, Karachi rejected the review petition of the appellant while upholding the impugned Valuation Rulings dated 03-08-2021 vide impugned Order-in-Revision bearing Nos. 60/2021 dated 14.12.2021, No. 65/2021 and 66/2021 both dated 22.12.2021 passed Under Section 25D of the Customs Act, 1969. The appellant still aggrieved with Orders-in-Revision filed appeals before the Member (Custom Policy), FBR, Islamabad in terms of second proviso of Section 25-D of the Customs Act, 1969 added through Tax Laws (Third Amendment) Ordinance, 2021 dated 16.09.2021 and clause (e) of subsection (1) of Section 194-A of the Act, 1969 and after its lapse the instant appeal has been transferred to this Tribunal for hearing and its disposal under clause (f) of subsection (1) of Section 194-A of the Customs Act, 1969 inserted by the Finance (Supplementary) Act, 2022 dated 17.01.2022.

3. The Respondent No.1 while disposing of various revision petitions filed against the Valuation Ruling No.1543/2021,

1544/2021 and 1545/2021 all dated 03-08-2021 passed impugned common Orders-in-Revision which have been applied mutatis mutandis to the case of the appellant treating to be identical on facts and law points. The operative part of Order-in-Revision against Valuation Ruling No.1543/2021 dated 03.08.2021 which applies to other Valuation Ruling No. 1544/2021 and 1545/2021 is reproduced below:-

"After listening to the detail discussions/ arguments of the Petitioners and Respondents and perusal of the case record it is apparent that the department has adopted prescribed methodology under Section 25 of the Customs Act, 1969 in determination of customs values and had consulted the stakeholders while issuing the impugned Valuation Ruling. They were given sufficient time and opportunity to provide inputs including documentary proof/evidence to substantiate their claim that their declared values were indeed the true transactional values. The contention of the DR that since issuance of VR No.1318/2018 dated 30.08.2018, the prices of major input raw materials i.e. Natural Rubber, Synthetic Rubber, Carbon black, Steel Cord etc. have increased with similar impact on international prices of tyers/tubes is both logical/rational. Moreover, the freight costs in the international markets have witnessed a distinct increase which manifests in a concomitant increase in the prices of finished goods i.e. tyers & tubes. On account of forgoing discussion, I therefore, see no reason to interfere with the values determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1543/2021 dated 03-08-2021 and accordingly the review petitions are rejected and Valuation Ruling is upheld"

3. The petitioners, being aggrieved with the hereinabove finding as recorded in the Orders-in-Revision passed by the Director General of Customs Valuation Karachi in respect of Valuation Ruling No.1543/2021, which has also been applied to Valuation Ruling No. 1544/2021 and 1545/2021, all dated 03.08.2021 filed appeals before the Custom Appellate Tribunal, Karachi, which were allowed after hearing the parties at length vide combined judgment dated 26.07.2022, wherein, it was held that the above-mentioned Valuation Rulings, have been issued in disregard of the express provisions of the Customs Act, 1969 and therefore, are declared to have been issued without lawful authority having no legal effect. Consequently, the impugned Orders-in-Revision were held to be illegal and without lawful authority and set aside with further directions that subject consignments be valued on the declared values for assessment of duty and taxes as per dicta laid down in the judgments cited as *Goodwill Traders, Karachi v Federation of Pakistan (2014 PTD 176)*. The respondent department being aggrieved filed Special Customs Reference Applications before the Division Bench of Sindh High Court, which vide impugned order dated 29.02.2024, while formulating two questions of law, has allowed the same by setting aside the impugned

judgment of the Tribunal and answered the questions proposed in negative, in favour of the respondent department and against the petitioners. The petitioners being dissatisfied with the impugned order passed by the High Court have filed instant petitions for leave to appeal with a prayer to grant leave and set aside the impugned order dated 29.02.2024.

4. The aforesaid petitions were taken up for hearing on 05.11.2024 and the following order was passed: -

“...

2. *The petitioners have challenged three valuation rulings i.e. 1543/2021, 1544/2021 and 1545/2021 dated 03.08.2021 on the ground that they were not consistent with the transactional values. They have also placed on record certain documents i.e. invoices and letter of credit and C&F Price List of subject goods of foreign exporters to establish the transactional values. It is also alleged that said documents were not controverted by the respondents. Despite the same, valuation ruling was upheld and the goods were released on the basis of the valuation ruling.*

3. *We would first like to satisfy ourselves whether the aforementioned documents were placed by each and every petitioner before the Tribunal to establish transactional values. The said documents are not available on the record at the moment. Let the petitioners file these documents in every case to establish that they had produced these documents in terms of Section 25(1) of the Customs Act, 1969. Let the needful be done before the next date of hearing. To come up after a month.”*

Pursuant to aforesaid order, petitioners placed on record various documents including commercial invoices, letter of credit and C&F Price list of goods of foreign exporters to establish transactional values in terms of Section 25 (1) of Customs Act, 1969, through various CMAs.

5. It has been vehemently argued by learned counsel for the petitioners that the impugned order is based on erroneous finding of facts which are contrary to the record, therefore, the conclusion drawn on such erroneous facts is equally erroneous and illegal. According to the learned counsel, the petitioners have discharged their onus to establish the transactional value in respect of subject consignments imported from different countries of origin including China, Japan, Indonesia and Thailand while submitting the relevant documents including commercial invoices, letter of credit and C&F Price list of goods of foreign exporters, however, the Custom Authorities without declaring such documents to be forged or fake discarded the transactional value of the subject

consignments and without adopting sequential method of valuation in terms of Section 25(1) of the Customs Act, 1969 adopted the fall back method of valuation as per Section 25(9) of the Customs Act, 1969 and applied the valuation as per Valuation Ruling Nos.1543, 1544, and 1545 of 2021 dated 03.08.2021. The aforementioned Valuation Rulings were challenged by the petitioners through Review Petitions filed under Section 25D of the Customs Act, 1969 before the Director General, Directorate General of Custom Valuation, Karachi, however, such Review Petitions were dismissed without appreciation of facts, and in total disregard of provisions of Section 25 of the Customs Act, 1969 which provides a sequential method to determine Custom Value of the consignments, in spite of the fact that such legal position has already been established through various judgments of the High Courts including the judgment passed in case of *Goodwill Traders, Karachi v Federation of Pakistan* (**2014 PTD 176**), *Sadia Jabbar v Federation of Pakistan* (**PTCL 2014 CL 537**), and *T & N Pakistan Pvt. Ltd v Collector of Customs* (**2022 PTD 1054**). While concluding his arguments learned counsel for the petitioners has submitted that Customs Appellate Tribunal is final fact-finding forum and unless it is established that such finding on facts is perverse or contrary to the record, the High Court can not deviate from such finding while exercising reference jurisdiction under Section 196 of the Customs Act, 1969. It has been prayed that leave to appeal may be granted and the impugned order be set aside.

6. Conversely, learned counsel for the respondent department has opposed the contentions of learned counsel for the petitioners and supported the impugned order passed by the High Court, which according to learned counsel does not suffer from any error or illegality. It has been further contended by the learned counsel that the High Court has properly examined the facts and reached to just conclusion while holding that petitioners could not satisfactorily establish the transactional value of the subject consignment, therefore, the value of the subject consignments have been rightly determined as per subject Valuation Rulings mentioned hereinabove. It has been prayed that instant petition for leave to appeal may be dismissed.

7. Heard the learned counsel for the parties, perused the record and the impugned order passed by the High Court and have also gone

through the judgment of the Custom Appellate Tribunal, Karachi as well as the subject Valuation Rulings.

8. As we have already observed that the High Court has not recorded the facts of the cases in detail, whereas, all the relevant facts and the chronology of the events in respect of subject controversy has been recorded and deliberated upon by the Custom Appellate Tribunal, Karachi in its judgment, according to which, the petitioners by submitting all the relevant import documents including commercial invoices, letter of credit and C&F Price list of goods of foreign exporters, discharged their primary onus to establish the transactional value of the subject-consignments. Nothing reliable or worthy of consideration has been brought on record by the respondent department either before the Custom Authorities or before Tribunal and the High Court, or even before this Court to suggest that such documents were forged or fake. It has been further noted that petitioners were never confronted with any adverse material to dispute the transactional value of the subject consignments as declared by the petitioners, which otherwise could justify the act of respondent department to adopt fall back method of Custom Valuation directly, without adopting the sequential method of valuation as provided under Section 25 of the Customs Act, 1969, which legal position was established in view of series of judgments of the High Court (s) to this effect having binding effect on the parties. As per the scheme of the Customs Act, 1969 relating to the determination of true/correct transactional customs value of the imported or exported goods provided under Section 25 of the Customs Act, 1969. Plain language of law suggest a sequential order to be adopted for custom valuation, in case there is insufficient material or evidence produced by the importer to support transactional value, and Custom Authorities are in possession of some concrete material or evidence to dispute and discard transactional value, after confronting the importer with such material or evidence in a manner as provided under Section 25 of the Customs Act, 1969. The law does not support direct resort to fall back method under Section 25 (9) of the Customs Act, 1969 while bypassing the valuation methods as provided under relevant sub-sections of Section 25 of the Customs Act, 1969. There are three elements to be taken into consideration while adopting fall back method under Section 25 (9) of the Customs Act, 1969, firstly, it is to apply only if it is determined that valuation methods contained in sub-sections (1), (5), (6),

(7), and (8) of Section 25 of Customs Act, 1969 cannot be applied; secondly, its application is subject to “Rules” i.e. Customs Rules 2001; and thirdly, the basic framework of how value is to be determined in terms of relevant sub-section has been specified. The customs value in terms of Section 25 (9) of the Customs Act, 1969 has to be determined on a basis that is derived from among the valuation methods specified in sub-sections (1), (5), (6), (7), and (8) of Section 25 of Customs Act, 1969 which have to be applied in a flexible manner, whereas, the above-mentioned sub-sections cannot be pushed aside or ignored during such exercise. The plain reading of the afore-mentioned provisions of law shows that the methods of customs valuation are required to be applied in **sequential order** in order to reach to just conclusion for determination of true/ correct customs valuation of the subject consignments/goods. It is pertinent to mention that in order to determine the true/correct transactional value of the imported consignment Section 25 of the Customs Act, 1969 is the main provision for such determination wherein, complete mechanism has been provided to ensure correct determination of value in sequential order as contained in sub-sections (1), (5), (6), (7), and (8) of Section 25 of Customs Act, 1969 which legal position is manifest from the plain reading of law as discussed hereinabove, whereas, such legal position appears to have been conceded by the Custom Authorities who could not refer to any judgment contrary to such law point. One of the cited judgment, titled *Sadia Jabbar supra* was assailed by the department through C.A.895/2011 titled *Federation of Pakistan vs. Sadia Jabbar* alongwith C.As.863 to 903/2011, etc. which was dismissed by this Court vide order dated 09.01.2024, therefore, the issue relating to sequential method attained finality. The importers also approached this Court, though for different reasons, however, the issue regarding sequential order for determination of value has been approved by this Court in the case of *Sadia Jabbar and 3 others v Federation of Pakistan through Secretary Revenue Division, Islamabad and others* (**2012 SCMR 617**).

9. Perusal of the subject Valuation Rulings shows that the Director General (Customs Valuation) did not collect any credible data to justify the higher determination of value of subject goods nor provided any credible evidence regarding increase in prices of input raw materials such as natural rubber, synthetic rubber, steel cord or Carbon Black etc during the period in question, which could justify determination of higher value

of subject consignments (tyres and tubes) under Section 25A of the Customs Act, 1969. The Customs Appellate Tribunal has examined all these factual aspects in detail and has reached to a conclusion that in view of the import documents, as referred to hereinabove, produced by the petitioners to establish their transactional values of the subject consignments, which have been disregarded by the respondent department without declaring such documents as forged or fake, and also without confronting the petitioners with any material or evidence whatsoever, to support the determination of customs value through above Valuation Rulings, while directly adopting the fall back method and having ignored the sequential order for the purposes of customs valuation as provided under Customs Act, 1969 read with the Customs Rules, 2001. Such finding of facts is neither perverse nor contrary to the record, whereas, the conclusion drawn by the Custom Appellate Tribunal on these facts is in line with the scheme of law and as per sequential method for determination of customs value duly established legal position in the light of judgments relied upon by the learned counsel for the petitioner.

10. It is a well-settled principle of law that the Customs Appellate Tribunal is the final forum for the determination of facts in tax and customs matters, and its findings of fact cannot be disturbed by the High Court under its reference jurisdiction unless it is shown that such findings are perverse, based on surmises and conjectures, or entirely unsupported by evidence on record. This legal proposition has been consistently enunciated by this Court in a number of judgments, including *Commissioner of Inland Revenue v. Messrs Sargodha Spinning Mills (Pvt.) Ltd.* (**2022 SCMR 1082**), *Messrs Middle East Construction Company v. The Collector of Customs* (**2023 SCMR 838**), and *National Logistics Cell, Government of Pakistan v. The Collector of Customs* (**2023 SCMR 1325**), wherein it has been clearly laid down that the domain of the High Court while exercising reference jurisdiction under relevant tax laws, including Customs Act, 1969 is strictly limited to deciding questions of law, and it cannot go behind or substitute findings of fact recorded by the Tribunal unless a proper question of law challenging the same as perverse or contrary to the record is competently raised. In the present case, it has been noted that no specific question relating to finding of fact as perverse or contrary to the record was raised by the respondent department for decision by the High Court, whereas, all the six questions of law proposed

by the respondent department were related to the powers of Director and Director General Customs Valuation, under Section 25A and 25D of the Customs Act, 1969 respectively. The controversy in the instant cases does not relate to the authority as vested in both the above referred Customs Officials, to issue Valuation Ruling under Section 25 A, or/and in case of dispute regarding the Customs transactional value viz-a-viz value determined through Valuation Ruling, to be decided by the Director General, Directorate General of Custom Valuation while exercising review jurisdiction under Section 25D of the Customs Act, 1969. The controversy which has been decided by the Custom Appellate Tribunal is based upon peculiar facts and circumstances of the instant cases wherein, specific finding of fact has been recorded by the Custom Appellate Tribunal to the effect that certain documents filed alongwith Goods Declaration by the Importers i.e. Commercial invoices, Banks Letter of credit, and C&F price list of subject goods of foreign exporters, were not controverted by the respondent department at any stage of the case, whereas, the Customs Value of the subject goods appearing in the impugned Valuation Rulings, has been determined without adopting the sequential order provided under Section 25 of the Customs Act, 1969, while directly applying the fall back method under Section 25 (9) of the Customs Act, 1969. The Custom Appellate Tribunal has further held that while determining the value of the subject consignments (tyres and tubes) in terms of Section 25A of the Customs Act, 1969, the Director, Customs Valuation, did not specify any reason for discarding the inapplicability of other applicable methods that preceded the fall back method in terms of Section 25 (9) of the Customs Act, 1969. It was further observed by the Tribunal that in view of the above uncontroverted documents produced by the petitioners before the Custom Authorities, the same were sufficient to *prima facie* establish applicability of primary valuation method provided under Section 25 (1) of the Customs Act, 1969, particularly, in the absence of any adverse material or evidence to the contrary, available with the Custom Authorities to discard such valuation. From minute perusal of the subject Valuation Ruling(s) and the order passed by the Director General, Directorate of Customs Valuation, Customs House, Karachi, under Section 25D of the Customs Act, 1969, it has been observed that finding of facts recorded by the Custom Appellate Tribunal in paras-No. 9 to 11 of its order to this effect, is neither perverse nor erroneous as it is based on uncontroverted documents produced by the petitioners. In order to ensure such aspect of the matter this Court

vide order dated 05.11.2024 directed the petitioners to place on record such documents for perusal and verification, which documents, have been placed on record through various CMAs in all these cases copies of which were supplied to the counsel for respondent department who could not dispute such admitted position.

11. In view of hereinabove facts and circumstances of these cases, we are of the view that the order passed by the Customs Appellate Tribunal was based on findings of fact on the basis of uncontroverted documents produced by the petitioners before the Custom Authorities, whereas, the legal position relating to application of sequential order for determination of custom value is also based on the judgments as cited hereinabove, which are in line with the scheme of law as envisaged under Section 25 of the Customs Act, 1969. Such finding of fact and law is unexceptionable under the facts and circumstances of these cases. The High Court while exercising reference jurisdiction under Section 196 of the Customs Act, 1969, could not dispute such finding of facts in a summary manner, particularly when no such specific question was formulated by the respondent department in this regard. Accordingly, these civil petitions are converted into appeals and allowed. The impugned judgment dated 29.02.2024 passed by the High Court of Sindh, Karachi is hereby set aside, and the judgment dated 26.07.2022 passed by the Customs Appellate Tribunal is restored in respect of all the appellants.

Chief Justice

Judge

Judge

ISLAMABAD
15.07.2026
"Approved for Reporting"
Zainab Bashir/LC