**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

CIVIL PETITIONS NO. 3215 & 3644, 3656, 3657 to 3689/2021, 3731 to 3732/2021, CP.3216, 3745 to 3749/2021, CPs.3217, 3634 to 3643, 3645 to 3655, 3690 to 3730, 3733 to 3744, 3750 to 3780/2021. (Against the judgment passed by the High Court of Sindh at Karachi dated 22.03.2021 in SCRA.Nos. 212-323, 324-329 & 330-361 of 2016.)

Mian Azam Waheed **(In CPs. 3215 & 3644, 3656, 3657 to 3689, 3731 to 3732/2021)**

Shehzad Waheed **(In CP.3216, 3745 to 3749/2021)**

Azam Waheed **(In CPs.3217, 3634 to 3643, 3645 to 3655, 3690 to 3730, 3733 to 3744, 3750 to 3780/2021)**

...Petitioner

***VERSUS***

The Collector of Customs through Additional Collector of Customs, Karachi. ...Respondent

For the Petitioner: Mr. Shafqat Mehmood, ASC

For Respondent: Dr. Farhat Zafar, ASC

Date of Hearing: 07.06.2022

**JUDGMENT**

**MUHAMMAD ALI MAZHAR, J.** These one hundred & fifty Civil Petitions for leave to appeal are directed against the common judgment dated 22.03.2021, passed by the learned High Court of Sindh at Karachi in SCRAs. No.212, 324, 330, 214 to 219, 220 to 323, 325 to 329, 331 to 361 of 2016, whereby the questions of law framed in the aforementioned Reference Applications were answered in favour of present respondent (Collector of Customs) and as a consequence thereof, the impugned judgment passed by the Customs Appellate Tribunal, Karachi, dated 23.11.2015 was set aside and the orders passed by the lower *fora* were restored.

2. The cursory features of the case are as under:

> The Petitioners imported tiles from China in 2010-2011. The Goods Declarations were filed and duties & taxes were paid for self-assessment on the basis of transactional value which was not accepted and the Valuation Ruling No.216 was applied. The vires of the Valuation Ruling No.216 was challenged in the Islamabad High Court by dint of W.P.No.1756/2010 with some other connected writ petitions for release of goods on provisional basis against postdated cheques. On the basis of interim orders, the goods were provisionally released. The aforesaid Writ Petitions were decided on 29.05.2012 whereby the matter was remanded with the directions to the Director of Customs Valuation to reassess the value of the goods. The Department filed ICA and vide interim order dated 28.03.2013, the judgment passed in W.P.No.1756/2010 was suspended. During pendency of the proceedings, one more W.P.No.4628/2013 was filed for acceptance of the declared value in the light of judgment passed in W.P.No.1756/2010. The department approached this Court in Civil Appeals No.371 to 379 of 2013 and vide order dated 14.6.2013, the impugned judgment of the High Court dated 23.5.2012 was set aside and matter was remanded back to first decide the jurisdiction in the matter. Finally, the said writ petitions were dismissed on 23.1.2015 due to lack of territorial jurisdiction. The department issued the assessment order which was again challenged in the High Court of Sindh but during pendency, appeals were also filed before the Collector Customs (Appeals), hence the High Court directed to decide the appeals within a period of 30 days. The said appeals were dismissed on 07.07.2015 with the observation that the petitioners were not aggrieved in terms of Section 193 of the Customs Act. The petitioners preferred appeals before the learned Customs Appellate Tribunal, which were allowed on 23.11.2015 which was set aside by the learned High Court of Sindh vide impugned judgment dated 22.03.2021.

3. The learned counsel for the petitioners argued that the learned High Court failed to consider the basic question decided by the Appellate Tribunal. The calculation sheet could not be considered as assessment order, hence, the assessment of the goods should have been accepted under Section 25 of the Customs Act, 1969 ("**Customs Act**") on transactional value. It was further averred that orders in dispute were issued on the basis of Valuation Ruling No.538/2013 dated 16.01.2013 when the Valuation Ruling No. 216/2010 dated 03.02.2010 was not in field, hence, the learned High Court erred in law while reversing the order of the learned Tribunal and while accepting the reference applications based its decisions on such questions of law which were not arising out of the order of the Tribunal and decided the valuation of goods without considering the application of Section 25 of the Customs Act and also failed to consider that the Valuation Ruling No. 538/2013 will be applied

prospectively. It was further contended that the learned High Court passed the order for provisional release of consignment under Section 81, hence it was a legal obligation of the department to pass a final assessment order within the limitation period provided under Section 81 of the Customs Act.

4. The learned counsel for the respondent argued that since certain interim orders were in field for release of the goods hence the limitation provided under Section 81 of the Customs Act to finalize the assessment was not applicable. On directions of learned Islamabad High Court, a Valuation Committee was constituted for determination of value, where the matter was properly considered and the assessments were completed after remand of the matter by the learned Islamabad High Court through Valuation Committee, therefore no exception can be drawn to the determination of value. He further argued that the learned High Court rightly considered and decided all relevant questions of law. It was further contended that the petitioners had a statutory remedy to challenge the Valuation Ruling under Section 25D of the Customs Act which they failed to avail and preferred to approach High Court directly.

5. Heard the arguments. In order to decide the bone of contention arising out of the Reference Applications, the learned Sindh High Court had framed following questions of law:

a) Whether the learned members of the Hon'ble Appellate Tribunal erred in law and facts while directing the release of goods on declared value instead of on value as determined by the committee comprising of three collectors vide ruling dated 20.10.2012?

b) Whether under the facts and circumstances of the case, the Hon'ble Appellate Tribunal erred in law and facts while observing that there was provisional assessment and that same was not finalized in compliance of statutory provisions of Section 81 of the Customs Act, 1969?

c) Whether the Hon'ble Tribunal misread the law and facts of case, since as a matter of fact initially the goods of the Appellants were finally assessed on the basis of valuation Ruling No.216 of 2010, however later on goods were allowed provisional release on orders of the Hon'ble High Court at Islamabad where the importers had impugned the Valuation Ruling 216 of 2010 and therefore the requisites of the Section 81(4)(5) of the Act were not applicable in the case?

d) Whether the learned Appellate Tribunal was justified in passing the impugned order and whether such order has any force of law?

6. In fact, the stalemate was triggered when the concerned department of Customs disregarded the alleged transactional value of consignment and determined the value consistent with the Valuation Ruling No.216/2010 dated 03.02.2010, which was disseminated in accordance with the provisions contained under Section 25A of the Customs Act. As a matter of fact on 03.02.2010, the Ruling No. 216 was issued by the Directorate General Custom, Government of Pakistan for determination of Custom Valuation of Ceramic/Porcelain Tiles of Chinese origin under Section 25A of the Customs Act, 1969. The prelude of this Ruling flashes that Pakistan Ceramic Tiles Manufacturer Association filed a Reference regarding huge invoicing and mis-declaration in the import of Tiles, therefore, the exercise of revision of valuation was initiated. The minutiae of the Ruling divulge that a number of meetings of stakeholders (i.e. Manufacturers, Importers and representatives of FPCCI and KCCI and the department) were held on different dates and divergent views were shared and considered. The importers insisted on acceptance of declared values, whereas, the local manufacturers complained about massive under invoicing by the importers. However, after consideration of all factors i.e. cost of production, local market prices and international market prices including Customs data of tile exported to Pakistan, the reliance was placed on fallback method of valuation as envisaged under Section 25 (9) of the Customs Act for arriving at fair assessable values and ultimately, the Custom Authorities determined the value of Ceramic and porcelain tiles as mentioned in paragraph No.6 of the Ruling. It is also explicated in paragraph No.5, that an independent market survey was also conducted which showed an increasing trend in the prices of China tiles which was also supported by the statistics available on the internet, pointing out a huge variation in the prices depending on size, quality and quantity and for determination of the average prices, the custom data obtained from the China Customs was also taken into consideration.

7. Under Section 25 of the Custom Act, 1969, the transaction value is the price actually paid or payable for goods that sold for export to Pakistan. In this Section different parameters and criteria are provided for determination of custom value of the imported goods, however, sub-Section (9) lays down a residuary clause as a fallback method which provides that if the custom value of the imported good could not be determined under sub-Section (1), (5), (6), (7) and (8), it shall subject to the Rules to be determined using "reasonable means" on the basis of value derived from among the methods of valuation set out under sub-Section (1), (5), (6), (7) and (8) in a flexible manner to the extent necessary to arrive at a Custom value. In contrast, Section 25A vested in the powers to the Collector of Custom on his own motion or the Director Custom Valuation on his own motion or on a Reference made to him by any person or the officer of Custom may determine the custom value of any goods or category of goods imported into or exported out of Pakistan after following the methods laid down under Section 25, whichever is applicable. According to the first proviso attached to this section, while determining the Custom value in this Section, the Director may incorporate the values from internationally acclaimed publications, periodicals, bulletins or official website of manufacturers or indenters of such goods. The value determined under this Section shall apply until and unless revised or rescinded by the Competent Authority. In fact, the petitioners in W.P. No.1756/2010, challenged the Ruling No.216/2010 on the ground that the method laid down under Section 25 and 25A of the Custom Act was not followed with a further plea that the manufacturer of Ceramic tiles approached the Finance Minister and the Custom Department, under the influence of the Finance Minister, issued a Valuation Ruling. Instead of challenging the Valuation Ruling directly in the High Court, the best course available to the petitioners was to file a Review Petition against the said Ruling under Section 25D of the Customs Act which was an appropriate remedy provided under the Law in which all factual disputes with regard to the valuation as well as transactional value could be raised, but this statutory remedy was circumvented. The legislature has purposely and consciously provided this remedy under Section 25D to an aggrieved person to assail the Valuation

Ruling and, at the same time, it also provides an opportunity to the Director General Valuation to rectify the legal or factual defects, if any, made while issuing the Valuation Ruling. Even before us, the learned counsel for the petitioners failed to justify how the impugned ruling was violative of any provision of Customs Act, nor the vires of the provision allowing determination of fall back method was under challenge. The ultra vires doctrine and the judicial review of administrative, judicial or legislative actions can be put into effect, if it is found in excess of power; errors of procedure; palpable errors of law or abuse of power. Where a particular act exceeds legal authority, it may be struck down but not otherwise. The term 'ultra vires' simply means "beyond powers" or "lack of power". The Valuation Ruling cannot be construed as violative or in contravention of any provision of Customs Act for the purposes of challenging it within the domain or realm of Constitutional Jurisdiction of High Court, however, the remedy provided under Section 25-D has its own wide scope and parameters where an aggrieved person may file review petition to challenge the ruling which was the best available remedy rather than approaching the High Court directly.

8. The writ jurisdiction of the High Court cannot be exploited as the sole solution or remedy for ventilating all miseries, distresses and plights regardless of having equally efficacious, alternate and adequate remedy provided under the law which cannot be bypassed to attract the writ jurisdiction. The doctrine of exhaustion of remedies stops a litigant from pursuing a remedy in a new court or jurisdiction until the remedy already provided under the law is exhausted. The profound rationale accentuated in this doctrine is that the litigant should not be encouraged to circumvent or bypass the provisions assimilated in the relevant statute paving the way for availing remedies with precise procedure to challenge the impugned action, so as in this case, the Customs Act, which is in its own wisdom a complete set of law with regard to the genus of remedies, but the petitioners, rather than filing a Revision petition against the impugned Valuation Ruling under Section 25-D of the Customs Act, directly approached the learned Islamabad High Court where the writ petitions were ultimately dismissed due to lack of

jurisdiction and the net result emerging from the entire litigation is that the impugned valuation ruling is intact. The extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. In the case of **Dr. Sher Afgan Khan Niazi Vs. Ali S. Habib & others (2011 SCMR 1813),** this Court held that the question of adequate or alternate remedy has been discussed time and again by this Court and it is well settled by now that the words "adequate remedy" connote an efficacious, convenient, beneficial, effective and speedy remedy. It was further held that the superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence. While referring to the various dictums laid down in the case of State Life Insurance Corporation of Pakistan v. Pakistan Tobacco Co. Ltd, (PLD 1983 SC 280), (Gul Ahmed Textile Mills Ltd v. Collector of Customs (Appraisement), (1990 MLD 126), Pak. Metal Industries v. Assistant Collector (1990 CLC 1022), Allah Wasaya v. Tehsildar/AC 1st Grade, (1981 CLC 1202), Syed Riaz Hussain Zaidi v. Muhammad Iqbal, (PLD 1981 Lah. 215) Abdul Hafeez v. Chairman, Municipal Corporation (PLD 1967 Lah. 1251), this Court also provided enlightened and levelheaded guiding principles to be considered by the High Courts to determine the adequacy of the alternate remedy in the following terms:-

(i) If the relief available through the alternative remedy in its nature or extent is not what is necessary to give the requisite relief, the alternative remedy is not an "other adequate remedy" within the meaning of Article 199.

(ii) If the relief available through the alternative remedy, in its nature and extent, is what is necessary to give the requisite relief, the 'adequacy' of the alternative remedy must further be judged, with reference to a comparison of the speed, expense or convenience of obtaining that relief through the alternative remedy, with the speed, expense or convenience of obtaining it under Article 199. But in making this comparison those factors must not be taken into account which would themselves alter if the remedy under Article 199 were used as a substitute for the other remedy.

(iii) In practice the following steps may be taken:-

(a) Formulate the grievance in the given case, as a generalized category;

(b) Formulate the relief that is necessary to redress that category of grievance;

(c) See if the law has prescribed any remedy that can redress that category of grievance in that way and to the required extent;

(d) If such a remedy is prescribed the law contemplates that resort must be had to that remedy;

(e) If it appears that the machinery established for the purposes of that remedy is not functioning properly, the correct step to take will be a step that is calculated to ensure, as far as lies in the power of the Court, that that machinery begins to function as it should. It would not be correct to take over the function of that machinery. If the function of another organ is taken over, that other organ will atrophy, and the organ that takes over, will break down under the strain;

(f) If there is no other remedy that can redress that category of grievance in that way and to the required extent, or if there is such a remedy but conditions are attached to it which for a particular category of cases would neutralise or defeat it so as to deprive it of its substance, the Court should give the requisite relief under Article 199;

(g) If there is such other remedy, but there is something so special in the circumstances of a given case that the other remedy which generally adequate, to the relief required for that category of grievance, is not adequate to the relief that is essential in the very special category to which that case belongs, the Court should give the required relief under Article 199.

If the procedure for obtaining the relief by some other proceedings is too cumbersome or the relief cannot be obtained without delay and expense, or the delay would make the grant of the relief meaningless this court would not hesitate to issue a writ if the party applying for it is found entitled to it, simply because the party could have chosen another course to obtain the relief which is due." (Ibrahim T.M. Ltd. v. Federation of Pakistan PLD 1989 Lah. 47, Allah Ditta v. Muhammad Saeed Vatoo PLD 1961 Lah. 479, Shamas Din and Bros. v. Income-tax and Sales Tax Officer PLD 1959 Lah. 955, Khaliq Najam Co. v. Sales-Tax Officer PLD 1959 Lahore 915).

9. The Collectorate of Customs (Appeals) in its appellate order dated 07.07.2015, held that the appellants were not aggrieved in terms of Section 193 of the Custom Act as the determination of the value of the imported tiles during the period 03.02.2010 to 29.05.2012 decided finally by the Committee of Collectors. The order depicts that the petitioners had only challenged the calculation sheets issued for payment of duties. Under Section 193, any person aggrieved by any decision or order passed under Section 33, 79, 80, 131, 179 and 195 of the Customs Act may prefer an appeal to the Collector (Appeals)

within 30 days of the date of communication to him of such decision or order. It is apparent from the conduct of the petitioners that they only challenged the calculation sheets before the Collector (Appeals) and the Appellate Authority rightly held that such calculation sheets alone could not be challenged before the appellate forum unless such order or decision passed under the list of sections which are made appealable under Section 193 of the Custom Act. This crucial aspect also escaped the attention of the learned Custom Appellate Tribunal and without adverting to the Valuation Ruling, its legality and exactitudes, the learned Tribunal perversely directed the Custom authorities to accept the transactional value of the goods as envisaged under Section 25 of the Customs Act, 1969 and in our perspective, the unpersuasive findings of the Appellate Tribunal were rightly set aside by the learned Sindh High Court.

10. So far as the niceties of Section 81 are concerned, it is clear that where the officer of customs does not satisfy the correctness of the assessment of goods, then the duties and taxes may be determined provisionally, thereafter, the amount of duties as may be correctly payable on the goods shall be determined within six months of the date of provisional determination, but the Collector of Customs or the Director Valuation may, in exceptional circumstances, extend the period for final determination which may not exceed 90 days. It is further provided that if the proceedings are adjourned on account of stay order or for want of clarification from the Board or the time taking through adjournment by the importer shall be excluded from the computation of the aforesaid period. The sequence of events make it obvious that the petitioners had started litigation to challenge Valuation Ruling of 216/2010, directly in High Court which continued at different forums and ultimately they failed to succeed and after dismissal of their writ petitions by the Islamabad High Court, the impugned Ruling was revived. Undoubtedly, the forthright recital of Section 81 of the Customs Act, 1969 articulates that the provisional assessment should be finalized within six months but in our view, such stern condition and limitation is not attracted in the present set of circumstances. The learned High Court rightly held that the goods were released on the provisional assessment pursuant to an interim order passed by the High Court which was

subsequently merged in the final order whereby the writ petitions were dismissed due to lack of territorial jurisdiction. As a result thereof, the challenge to the Valuation Ruling No. 216/2010, did not survive. It is quite obvious that after dismissal of writ petitions by the learned Islamabad High Court, the interim orders were also obliterated on the well settled exposition of law that no interlocutory order survives after the original proceeding comes to an end, therefore, the learned High Court rightly held that the original Valuation Ruling for all intent and purposes had resurrected and the matter attained finality as no further challenge was made to the impugned Valuation Ruling.

11. The interim orders are made in the aid of the final order that the court may pass and which merges into final order and does not survive after the final adjudication. The issue and effect of an interlocutory order, final order and merger was considered in detail in paragraph 25 of the judgment in the case of Gen. (Retd.) Pervez Musharraf through Attorney Vs. Pakistan through Secretary Interior and others, **(PLD 2014 Sindh 389)** which was affirmed by this Court vide judgment reported as PLD 2016 Supreme Court 570**.** The relevant excerpt is replicated as under:-

> "1. Interim order exhausts or becomes merged in final order made in case.
>
> 2. All interlocutory orders made in the course of a proceeding in the nature of a suit must necessarily lapse with the decision of the suit.
>
> 3. No interlocutory order will survive after the original proceeding comes to an end.
>
> 4. An interim order does not survive after the final disposal of the Writ Petition and only on the strength of the interim order, the Court cannot grant any order.
>
> 5. An interlocutory order merges into the final order and does not survive after the final adjudication.
>
> 6. A proceeding in an action is said to be interlocutory when it is incidental to the principal object of the action.
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> 7. The word "interim" inter alia means one for the time being; one made in the meantime and until something is done; an interval of time between one event, process or period and another.
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> 8. The interim order would merge in the final order and no right could be claimed by plaintiff on the basis of interim order.
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> 9. Merger is defined generally as absorption of a thing of lesser importance by a greater whereby lesser ceases to exist but the greater is not increased.

> 10. In Corpus Juris Secundum. The verb 'to merge' has been defined as meaning to sink or disappear in something else, to be lost to view or absorbed into something else, to become absorbed or extinguished.
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> 11. It is a well-settled principle that once a final order is passed, all earlier interim orders merge into the final order, and the interim orders cease to exist.
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> 12. A judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose. In general a judgment or order which determines the principal matter in question is termed final.
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> 13. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required".

12. In the wake of above discussion, we do not find any irregularity or perversity in the impugned judgment passed by the learned Sindh High Court. Consequently, the aforesaid Civil Petitions are dismissed and leave is refused.

Chief Justice

Judge

Judge

Islamabad the
7th June, 2022
Khalid
Approved for reporting