

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/30/2018

15<sup>th</sup> August, 2018

**Order in Revision No. 27/2018 under Section 25-D of the Customs Act, 1969**  
**against Valuation Ruling No. 1298/2018 dated 25-04-2018**  
**in compliance of the Order dated 23-07-2018 passed in WP No.226604/2018**  
**by the Honourable Lahore High Court, Lahore**

- i. This copy is granted free of charge for the private use of the person to whom it is issued.
- ii. An appeal against this Order-in-Revision lies to the Appellate Tribunal, Customs having jurisdiction, under Section 194-A of the Customs Act, 1969, within stipulated period as prescribed under the law. An appeal should bear a court fee stamp of Rs.1000/- (Rupees one thousand) only as prescribed under Schedule-II item 22 of the Court Fee Act, 1870 and must be accompanied by a copy of this Order.
- iii. An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.
- iv. If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.



M/s Isuzu Motors, Lahore,  
M/s PASPIDA & Others

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

26-07-2018 and 15-08-2018

For the Petitioners

Mr. Abdul Wahab, M/s HMC Hafeez Motors  
and M/s Isuzu Motors, Lahore  
Mr. Abdul Rahim, M/s Prime Enterprises  
Mr. Mushtaq Ahmed, M/s Al-Rehman Ent.  
Mr. Ahmed Waqar, M/s Tariq Waqar Autos  
Mr. Emran Tahir, M/s Buksh Industries  
Sh. Usman M/s Naeem International  
Mr. Raza Noman, M/s Universal Auto Engg.  
Mr. Adnan Moton, Advocate

For the Respondent

Mr. Muhammad Tahir, Additional Director  
Dr. Abdul Qudoos Sheikh, Deputy Director  
Mr. Iqbal Hussain, Principal Appraiser

Brief facts of the case are that values of 'Brake Lining and Friction Material (Clutch Facing)' were earlier determined vide Valuation Ruling No.426/2012 dated 08.02.2012. Being more than six years old, the afore-mentioned values were re-examined to streamline the same according to the current market prices. For this purpose exhaustive enquiries were made and meetings were conducted with relevant stakeholders including trade bodies and importers. Consequently, values of afore-mentioned item were determined afresh vide Valuation Ruling No.1298/2018 dated 25-04-



2018. However, M/s Isuzu Motors and ten other commercial importers filed revision petitions under Section 25-D of the Customs Act, 1969 through their Counsel Mr. Adnan Moton, Advocate against Customs values determined vide Valuation Ruling (VR) No.1298/2018 dated 25-04-2018 issued under Section 25-A of the Customs Act, 1969.

2. Meanwhile, a Writ Petition No.226604 of 2018 was also filed by M/s Isuzu Motors, Lahore before the Honorable Lahore High Court, Lahore against the impugned VR # 1298/2018 dated 25-04-2018 on the following grounds:

*"That the petitioner imported a consignment of Brake Lining etc from Thailand declaring the total C & F value of USS 28552 and filed G.D. No. LAPR-HC-938, dated 17-07-2018 (copy of the G.D along with copy of invoice, packing list, examination report & bill of lading at Annex-A, B, C, D & E respectively) with respondent No.1 for Custom clearance. After detailed examination, declaration of the petitioner regarding description and quantity was found correct. Instead of assessing the imported goods according to the customs value (transaction value) in terms of Section 25(1) of the Customs Act, 1969, respondent No. 1 enhanced the value of the said consignment by following the Valuation Ruling No. 1298/2017 dated 25-04-2018 (Annex-F). The petitioner filed a review petition dated 25-05-2018 (Annex-G) against the said valuation ruling dated 25-04-2018 before the respondent No. 2. Earlier, the petitioner along with others have filed a Constitutional petition bearing No. 4348/ 2018 before the Hon'ble Sindh High Court, Karachi challenging therein the said valuation ruling dated 25-04-2018. The Hon'ble Sindh High Court vides its orders dated 31-05-2018 (Annex-H) was pleased to provisionally release the consignments of brake lining. In the presence of a valid order of the Hon'ble Sindh High Court, Karachi, respondent No. 1 illegally enhanced the value of the petitioner's consignment and is not releasing provisionally."*

*That the aforementioned unlawful action of respondent No. 1 resulted in heavy increase in the form of duty and taxes, rendering the petitioner unable to clear his imported goods. The consignments in question are still lying at the customs port and is under heavy demurrage, thus causing the petitioner irreparable loss, and since no efficacious remedy is available, the constitutional jurisdiction of this Hon'ble Court is being invoked through the instant writ for immediate relief. The petitioner is aggrieved on the following.*

#### **GROUND**

A. That in terms of Section 25(4) of Customs Act, 1969, respondent No. 1 was required to intimate the petitioner 'of his reservations in writing' if the declared transaction value was not acceptable and to give the petitioner "an opportunity to justify the price difference....". The compliance-of the provisions of sub-Section (4) of Section 25 ibid read with Chapter IX (Valuation) of the Customs Rules is mandatory and the same has not been complied with by the respondent No.1. Therefore, the impugned assessment is not sustainable under law.



B. That despite enactment of Section 25-A in the Customs Act, 1969 during 2007, under which respondent NO.2 determined Customs values vide his above mentioned memo dated 11-11-2016, Section 25 *ibid* remains the primary law as to how the Customs value was to be determined and that is why even the respondent No.2 was required under sub-Section (1) of Section 25-A *ibid* to determine the Customs value of any goods or category of goods imported into.... Pakistan, after following the methods laid down in Section 25, whichever is applicable". The provisions of Section 25 *ibid* have to remain the governing provisions for the purposes of determination of Custom's value of imported/exported goods and even the Collector of Customs/Director of Customs Valuation, empowered to determine Customs value under Section 25-A, are required to follow "the methods laid down in Section 25....". The phrase... "Notwithstanding the provisions contained in Section 25", appearing in the beginning of sub-Section (1) of Section 25-A does not provide an absolute freedom to Collector of Customs/Director of Customs Valuation not to follow the methods of valuation laid down in Section 25 *ibid* since later part of sub-Section (1) of Section 25-A *ibid* made it obligatory on them to 'determine' the customs value of any goods or category of goods imported into.. .Pakistan, after following the methods laid down in Section 25, whichever is applicable". It would mean that appropriate customs officer (respondent No. 1) has first to take into consideration the declared transaction value of the imported/exported goods and in case he is not satisfied with the declared transaction value because of the value determination having taken place under Section 25-A, he is required, in terms of Section 25(4) *ibid* to "inform the importer of his reservations in writing and give the importer-an opportunity to justify the price difference. If the importer fails to justify the price difference, the customs value cannot be determined under the provisions of sub- Section (1)", only then resort can be made to the value having been determined under Section 25A *ibid*. The value determined under Section 25A *ibid* cannot be applied arbitrarily and blindly without the importer having been informed in writing of the reservations in accepting the declared transaction value and providing the importer an opportunity to justify the price difference. Rule 109(3) of the Customs Rules 2001, notified vide SRO 450(1)/2001 dated 18-06-2001 (as amended from time to time) required that "when a final decision is made, the appropriate officer shall communicate to the importer in writing his decision and the grounds therefor". In case, the respondent No. 1 had reservations in accepting the declared transaction value, he was required to follow the mandatory provisions of sub-Section (4) of section 25 *ibid* read with Rule 109 of the Customs Rules 2001. The respondent No. 1's action of directly applying the value determined by respondent No. 2, in terms of Section 25-A *ibid*, without following the mandatory provisions of sub-section (4) of section 25 *ibid* read with Rule 109 of the Customs Rules 2001 was not sustainable in law (2006 PTD 909, 2006 PTD 674). As held by the Hon' able Supreme Court of Pakistan vide its Judgment reported as PTCL 2002 CL 1, "It is well settled proposition of law that a thing required to be done in a certain manner must be done in the same manner as prescribed by law or not at all". The whole action against the petitioner is in flagrant violation of the mandatory provisions of Section 25(4) *ibid* read with Rule 109 [Chapter IX (Valuation)] of the Customs Rules, 2001 and hence is ab-initio illegal.





C. That the provisions of sub-Section (1) of Section 25-A of the Customs Act, 1969 merely empowered the Collector of Customs and the Director of Customs, Valuation to determine the "Customs value" of any imported/exported goods/category of goods but they were made to follow "the methods laid down in Section 25, whichever is applicable". A plain reading of Section 25 *ibid* reveals that if the Customs value cannot be determined in terms of its sub-Section (1) (declared transaction value), then its sub-Section (5) (transaction value of identical goods) is to be followed, and if the Customs value cannot be determined in terms of its sub-Section (5), then sub-Section (6) (transaction value of similar goods) is to be followed, and if Customs value cannot be determined by following the said sub-Sections (1), (5), (7) and (8), then sub-Section (9) (fall back method) is to be followed. Despite amendment in sub-Section (10) of Section 25 *ibid* that observance of sequential order of sub-Sections (1), (5), (7), (8) and (9) was not mandatory, still it has to brought on record in the form of proper exercise that such and such was' done but the customs value could not be determined in terms of sub-Section (1) of Section 25 *ibid* and hence resort has been made to sub-Section (5) but after doing so and so, customs value could not be determined and hence resort has to be made to sub-Section (6) and by following this method to reach the final method for determination of customs value. Each sub-Section like (5), (6), (7), (8) and (9) started with the phrase... 'if the Customs value of the imported goods cannot be determined under sub-Section...', then the method given in the subsequently following sub-Section was to be applied. The respondent no. 2 has issued the subject memo dated 25-04-2018 without following the provisions of Section 25 *ibid*, as aforesaid. Therefore, the said determination of values by respondent No. 2 was an arbitrary exercise of authority, being in violation of the aforementioned provisions of Section 25 and merit to be declared unlawful.

D. That no direct evidence of actual import of identical goods at the higher value of the level at which the petitioner's goods have been assessed has been confronted to the petitioner. It is a settled law that the Customs authorities cannot arbitrarily enhance the value of imported goods without direct evidence to substantiate the enhancement.

E. That the contents of the impugned valuation ruling dated 25-04-2018 failed to establish the actual local market enquiry being carried out by respondent No. 2. No calculation methods were incorporated in the said valuation ruling in order to show that cost profit / ratio of sale / purchase by importers / whole sellers / dealers / retailers after proper application by work back method right from point of sale at the retailers end up to the point of purchase at the importers end.

#### **PRAYER**

In view of the above, it is prayed that:

a. The assessment order of respondent No. 1 on G.D Nos. LAPR-HC298 & LAPR-HC-299, both dated 06-07-2018 by way of enhancement in value through application of titled valuation ruling No. 1298/2017 dated 25-04-2018 may be set aside. Since, the petitioners consignment is already under heavy demurrage and further delay in the clearance of the imported goods from the port area is not only going add up demurrage



*charges but would also lead to further deterioration and pilferage, causing irreparable loss. Therefore, respondent No. 1 may be directed to allow provisional release of the petitioner's imported consignment on payment of duty/taxes on the declared transactional value and the difference in duty/taxes on account of enhanced value may be obtained in the form of bond/postdated cheque.*

b. *Respondent No.2 may be directed to decide the petitioner's review application pending before him at the earliest.*

c. *Any other relief by this Hon'ble Court.*

3. The Honorable Lahore High Court, Lahore passed an Order dated 23-07-2018 in WP No.226604/2018 filed by the petitioner i.e. M/s Isuzu Motors, Lahore. The operative para of the said order is as under:

*".....this petition is disposed of with direction to the Respondent No.2 to decide the aforementioned review application of the Petitioner (if pending) after providing proper hearing to all the concerned including the Petitioner within two (02) weeks and application for grant of interim relief within a period of four (04) days strictly in accordance with law from the date of receipt of certified copy of this order."*

4. M/s PASPIDA and Others were filed revision petitions through their Counsel, inter alia on the following grounds:



"1). That the applicants being aggrieved and dissatisfied with the impugned Valuation Ruling No. 1298/2018 received on 25.04.2018 issued by the respondent namely Director Customs Valuation, Custom House, Karachi in respect of determination of Customs values of Brake Lining and Friction Material (Clutch Facing) under Section 25A of the Customs Act, 1969 issued in unlawful and malafide manner the applicant above named prefer to file review petition on the following terms inter-alia given below:-

2). That the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 has been issued without granting an opportunity of hearing to the applicant, thereby depriving the applicant of a fair trial, as envisaged under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Further, such callous handling by the respondent namely Director Customs Valuation has also resulted in the effective denial of the right of the applicant under Section 25A of the Customs Act, 1969.

3). That the said impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 the respondent acted in non-bonafide manner in violation to the Article 10-A, 189, 201 of the Constitution of Islamic Republic of Pakistan 1973 as to cause injury to the applicant. That the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 with respect to determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under section 25-A of the Customs Act, 1969 of origins namely China, Japan & other origins namely Malaysia, Thailand, Indonesia, Korea, Taiwan, Europe which is in absence of material evidence and in defiance to the provisions of Section 25 of the Customs Act, 1969 and passed behind back of the applicant, stakeholders in violation to



internationally accepted principle of law "Audi Altenn Partem" by playing fraud with the facts and law of the cause.

4). Scrutiny of the case record reveals that the applicant was not heard by the respondent while issuing impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 in exercise of the powers conferred under Section 25-A of the Customs Act, 1969. This fact can be substantiated from the fact that no dates were mentioned with respect to the meeting notices issued to all stake holders / association which can be seen in Para-(3) of the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018, in the impugned Valuation Ruling the Para-(3) with respect to stakeholders participation in determination of Customs values which indicates that numerous meetings with stakeholders, including representatives of clearance Collectorates were held in this Directorate General. Hence they have not mentioned the particular dates on which numerous meetings were held with the stakeholders participation in determination of Customs values of Brake Lining and Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969.

5). This clearly shows that an ex-party impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 has been issued by the Director Customs Valuation without giving a proper opportunity to the stakeholders participating in determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A, of the Customs Act, 1969, including Chairman and members of the Association based in Karachi and Punjab. It is now well-settle principle of law that a subject whose rights are being affected must be given an adequate opportunity to defend his case.

6). The Federal Board of Revenue vide letter C. No. e-dox 118215 dated 11.09.2013 informed the Directorate General to conduct public hearing for issuance of all Valuation Ruling and to properly record the proceedings. But these instructions of the board have not been followed while issuing impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969.

7). There are various judgments of the Superior Courts of the country whereas it has been specifically directed that no adverse order shall be passed against any person unless he is provided with an opportunity to defend himself.

8). That respondent in paragraph-(2) of the Impugned Valuation Ruling stated that earlier the Customs values of the Brake Lining and Friction Material (Clutch Facing) were determined vide Valuation Ruling No.426/2012 dated 08.02.2012. As the existing Valuation Ruling was more than six year old therefore, required to be revised in line with the prevailing prices in the international market. Keeping in view the prevailing prices in the international markets this Directorate General initiated an exercise for determination of the Customs Valuation of the Brake Lining and Friction Material (Clutch Facing) in terms of Section 25A of the Customs Act, 1969.



9). That the above stated applicants namely Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) contended that the Customs values of clutch facing may not be increased because the item is based on asbestos material which is much cheaper item. The applicants further stated that the clutch facing is mainly imported from China which is not in ready form. The applicants further contended that it is furnished on old clutch disc and generate employment. The view point of the representatives of clearance Collectorate was diagonally opposed to the contention of importers. The applicants further contended that values of the subject items is very low and even lower than the raw material prices and also contended that the Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) have not substantiated their contentions with any corroborative. The applicant further contended that the subject item is made from phenolic resin, friction dust, copper dust, magnesium oxide etc., which shall be considered to arrive at Customs values. The applicant further produced the clearance data of relevant period indicating that the Customs value in the existing Valuation Ruling are much on lower side and required to be rationalized upward in accordance with prices in international markets. That the view point of all participants was heard in detail and considered to arrive at Customs value for subject goods.



10). That the subject method adopted to determined Customs values in the subject impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under section 25-A of the Customs Act, 1969 is reproduced as under for ease of reference and better understanding of the learned Director General of Customs Valuation while deciding the subject Review Petition pending before her:-

“Valuation Methods provided in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive all Customs values of subject goods. The transaction values method as provided in sub-Section (1) of Section 25 of the Customs Act, 1969 was found inapplicable due to wide variation of values displayed in the import data. Hence requisite information required under law as not available to arrive at the correct transaction value. Therefore, identical / similar goods value method as provided in sub-Section (5) & (6) of Section 25 ibid were examined for applicability to the valuation issue in the Instant case but due to wide variations in declarations this method could not be relied upon exclusively. In line with the statutory sequential order of Section 25, this office conducted market inquiries under sub-Section (7) of Section 25 of the Customs Act, 1969. As there was certain difference in prices in different markets therefore, a number of surveys were conducted to arrive at Customs values. Finally reliance had to be made on sub-Section (7) of Section 25 of the Customs Act, 1969 to determine Customs values of Brake Lining & Friction Material (Clutch Facing).

11). That the respondent No.1 vide Para-(5) of the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 observed that valuation methods given in Section-25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. The transaction value method provided in sub-Section (1) of Section-25 of the Customs Act 1969



was found inapplicable due to wide variations of value displayed in the import data as alleged by the respondent namely Director of Customs valuation and also that the requisite information required under the law was not available to arrive at the correct transaction value. That identical and similar goods valuation methods provided in sub- Sections (5) and (6) of Section 25 of the Customs Act, 1969 were examined for applicability to the re-valuation issue in the instant case which provided some references values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of the subject goods. Thereafter, market enquiries as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. However no detail about the working was provided before the issuance of the impugned Valuation Ruling and also not reflecting in the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation, Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969. However, no valuation method as stipulated under Rule No.113 to 121 of the Customs Rules, 2001 as notified vice SRO 450(I)/2001 dated 18.06.2001 was applied. The use of such breathtakingly contradictory expressions by the respondent in the impugned Valuation Ruling which tantamount to malafide and ulterior motive which render the impugned Valuation Ruling is to be outright illegal.



12). Without prejudice to the above, it is submitted that there is no visible indication in the contents of paragraph 2, 4 & 5 of the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation, Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under section 25-A of the Customs Act, 1969 that do not contain any valuable proposal / input put forth by concerned Directorate of Customs Valuation / Collectorate, same have been considered / applied in the determination of impugned Valuation Ruling, whereas no input given by local assemblers / Manufacturers are available / incorporated in the Valuation Ruling.

13). It is submitted that the contents of impugned Valuation Ruling don't establish the actual local market enquiry had indeed been carried out by Customs function are as suggested, no calculation, method incorporated in impugned Valuation Ruling in order to show that cost-profit ratio the sale / purchase by importers / whole sellers / dealers / retailers after proper application by work back method right from point of sale at the retailers end up to the point of purchase at the importers end.

14). It is humbly submitted that the view points of the representatives of PASPIDA were not duly considered during the various meeting held which dates have not been mentioned in the impugned Valuation Ruling and they agitated against enhancement in value as proposed by PAMA, PAPAAM and local assemblers / vendors, but their suggestion were vehemently ignored PASPIDA suggested for decreasing the valuation of replacement parts with view to encourage frequent import and in order to curb smuggling which are beyond their reach. Resultantly impugned Valuation Ruling is irrational, not logical same has been issued in violation of the hall mark judgment of the Honorable High Court of Sindh at Karachi in the case of Rehan Umer reported as (2006 PTD 909), where in it was observed by the Honorable



High Court that an exercise of market enquiry cannot be termed as legal without accommodating the view of majority of stockholder. Since the majority of the users are using the values of Brake Lining and Friction Material (Clutch Facing) therefore the impugned Valuation Ruling is not applicable on the strength of the above stated judgment of the Honorable High Court of Sindh at Karachi.

15). That there is no justification or reason to increase the prices of Brake Lining & Friction Material (Clutch Facing) parts under Section 25-A of the Customs Act, 1969 vide impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation, Custom House Karachi in respect of determination of Customs values of Brake Lining and Friction Material (Clutch Facing) under section 25-A of the Customs Act, 1969 while ignoring the international economic conditions as the prices of oil and raw materials has drastically decreased resulting in reduction in prices for all the products including values of Brake Lining And Friction Material (Clutch Facing) products in the international markets. The above stated view point and contention of the applicant has already been stated which are already on record in the relevant file of the Director General of Customs Valuation of Customs House Karachi and the above stated view point have been placed on record vide review applications made to the Director General Customs Valuation from time to time. Price increase of Brake Lining and Friction Material (Clutch Facing) with different Customs values (C & F) US\$ /Kg as per their origin which is not logical and factual as reflecting in the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation, Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 item wise.



16). The members of PASPIDA contended that the prices of Brake Lining and Friction Material (Clutch Facing) may not be increased because the item is based on asbestos material which is much cheaper item. The applicants further stated that the clutch facing is mainly imported from China which is not in ready form. The applicants further contended that it is furnished on old clutch disc and generate employment. The view point of the representatives of clearance Collectorate was diagonally opposed to the contention of importers. The applicants further contended that values of the subject items is very low and even lower than the raw material prices and also contended that the Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) have not substantiated their contentions with any corroborative. The applicant further contended that the subject item is made from Phenolic Resin, Friction Dust, Copper Dust, Magnesium Oxide etc., which shall be considered to arrive at Customs values. The applicant further produced the clearance data of relevant period indicating that the Customs value in the existing Valuation Ruling are much on lower side and required to be rationalized upward in accordance with prices in international markets. That the view point of all participants was heard detail and considered to arrive at Customs value for subject goods and which is already mentioned in Para-IV of the Impugned Valuation Ruling No. 1298/2018 dated 25.04.2018.



17). That the impugned Valuation Ruling is defective and unlawful as it fails to adhere to the specific provisions of Section 25 and Section 25A of the Customs Act, 1969, and the supplementary Customs Rules, thereby having been issued by the respondent Director Valuation in subversion of his powers. While applying the deductive value method as provided under sub-Section (7) of Section 25 of the Customs Act, 1969 the respondent has completely abandoned the other valuation methods. The respondent has not provided any valid reason or justification as to why the other methods prescribed under Section 25, sub-Sections (1), (5), (6) were not found applicable. The submissions of the applicant in this regard have surprisingly escaped the attention of the respondent namely Director Customs Valuation.

18). It is further stated that no market enquiry was ever conducted by the respondent namely Director Customs Valuation. The market inquiry, as per SOP 01/05 and Rule 119, Customs Rules, is to be conducted in line with strict rules laid down therein which inter alia, includes in line with strict rules laid down therein which, inter alia, includes inclusion of all the stakeholders in such a market inquiry.

19). It was incumbent upon the respondent to refer to and confront the applicant with the material relied upon in determining / fixing the enhanced value after allowing them an opportunity to controvert the same. There is no evidence of contemporaneous import of the same brand / item which prompted the respondent to refuse to accept the proposed prices of Brake Lining and Friction Material (Clutch Facing) provided by the PASPIDA and its members namely Commercial Importers before the issuance of the impugned Valuation Ruling No. 1298/2018 issued by the respondent namely Director Customs Valuation Customs House, Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 on behalf of the various importers as submitted by the applicants before the Director Customs Valuation. That in view of lack of evidence, the action for rejection of the proposed prices of Brake Lining and Friction Material (Clutch Facing) submitted by PASPIDA & its members namely Commercial Importers before the issuance of impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 by the applicants is arbitrary, whimsical, capricious and in complete disregard of the provision of Section 25 and 25A of the Customs Act, 1969. Such action is not only contrary to the provisions of law but also against the principle of natural justice and various judgments of the Superior Courts of Pakistan including Apex Court.

20). That Section 25-A of the Customs Act, 1969 does not give unbridled powers to respondent for determination of the values on presumptions. Moreover, the respondent has fixed prices mentioned in the Impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under section 25-A of the Customs Act, 1969 without resorting to the methods provided under Section 25 ibid, and fulfilling the requirements of





the relevant provisions of law. Thus the entire action of fixing price is void illegal and tainted with malafide intention.

21). That respondent instead of determining whether the impugned Valuation Ruling No.1298/2018 dated 25.04.20 18 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining and Friction Material (Clutch Facing) under Section 25A of the Customs Act, 1969 was properly issued after fulfilling all the legal formalities / parameters as highlighted by this Honorable Court in the hall mark judgment of the Honorable High Court of Sindh at Karachi in the case of Sadia Jabbar V/s Federation of Pakistan reported as PTCL 2014 CL 537 and upheld by the Honorable Supreme Court of Pakistan in the case of M/s. Sadia Jabbar V/s Federation of Pakistan and others reported as PTCL 2014 CL 586, M/s. Good Will Traders vs Federation of Pakistan reported as 2014 PTD 176 and Islamabad High Court M/s. Faco Trading vs Customs Federal Board of Revenue and others reported as 2013 PTD 825 and has arbitrary enhanced the Customs Values.



22). That without prejudice to the foregoing, it is submitted that the respondent namely Director Customs Valuation has, infact, increased already unlawful values of Brake Lining and Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 without adherence to the strict requirements of the Customs Act, 1969, including but not limited to Section 25 and 25A, thereof, as well as the Customs Rules, 2001. Such act of increase in values is merely a fixation of values which is not permissible under the law.

23). That the respondent namely Director Customs Valuation has issued the Impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the Respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 after the issuance of previous Valuation Ruling No.426/2012 dated 08.02.2012 therefore, being older more than 6 years old / more than 90 days in the light of the hall mark judgment of the Honorable High Court of Sindh at Karachi reported as 2016 PTD 702 in the case of Danish Jahangir versus Federation of Pakistan & others further endorsed by the Honorable Supreme Court of Pakistan and not fulfilling the legal parameters as laid down by the Honorable High Court of Sindh at Karachi in the case of M/s Sadia Jabbar versus Federation of Pakistan reported as PTCL 2014CL.537 followed by M/s Good Will Traders versus Federation of Pakistan reported as 2014 PTD 176 & M/s Ayesha Impex versus Federation of Pakistan reported as 2012 PTD 1 of the Honorable Lahore High Court and has arbitrary enhanced the Customs value.

24). Even the Director Customs Valuation issued a letter No. V/49/2009-Law/6830 dated 16.11.2015 in the light of judgment of the Honorable High Court of Sindh at Karachi in CP No. 6918/2015 dated 13.11.2015 in the case of M/s. Danish Jahangir versus Federation of Pakistan & others reported as 2016 PTD 702 which was circulated to all the clearance Collectorate all over Pakistan and its copy was duly endorsed to Member Customs FBR Islamabad, Director General Customs Valuation, Customs House Karachi, Chief Collector of (South) Appraisement Custom House Karachi, Chief Collector of Customs (South) enforcement Custom House Karachi, Chief Collector of Customs (Central) Lahore and Chief



Collector of Customs (North) Islamabad. The above stated letter No.V/49/2009-Law/6830 dated 16.11.2015 was issued with respect to validity of Valuation Rulings and recurrent interim relief of provisional release by courts. The contents of the letter are reproduced below for ease of reference of the learned Director General Custom Valuation, Custom House Karachi.

Kindly find enclosed Honorable High Court of Sindh, Karachi's judgement / directives in C.P.No.6918/2015, dated 13.11.2015 on the subject noted above.

In pursuance of Honorable Court's directives, this Directorate General has initiated exercise of revising Valuation Rulings older than 90 days. Meanwhile, Collectorates are advised to assess goods provisionally in terms of Section 81 of the Customs Act, 1969, by securing the differential amount of duty and taxes between declared value and value mentioned in the existing Valuation Rulings older than three months period, if such request is made by importer in each individual consignment imported by him. After allowing provisional release, the case may be referred to this Directorate General through computerized WeBOC System. Each case will be finalized in the light of initiated exercise and new ruling which is on record before Director General of Customs Valuation Custom House Karachi.



25). That the actions of the Respondent namely Director Customs Valuation are causing serious harm to the Applicant and are in violation of the constitutional rights of the Appellants as enshrined in, inter-alia, Articles 4, 18 & 25 of the Constitution of Islamic Republic of Pakistan 1973.

26). That the Federal Board of Revenue Islamabad promulgated Customs Rules, / 2001 notified vide SRO 422(1)/2001 dated 18.6.2001 which are binding on the Respondent namely Director Customs Valuation. The Valuation Rules provide that the Importer or his agent is required to furnish a declaration disclosing the accurate details of the value of the imported goods and any statement, information or document as considered necessary by the appropriate officer for determination of value of the imported goods under the Customs Act, 1969 and the Valuation Rules, It is also envisaged under Rule 109(1) of the Valuation Rules that any statement, information or document considered necessary by the appropriate officer for determination of the value of imported goods under the Customs Act, 1969 may be sought to be produced before the appropriate officer, where the appropriate officer has no reason to doubt the truth of accuracy of the particulars documents produced in support of the declaration the transaction value shall be accepted. No such document or information was required to be produced by the Appellant before appropriate officer nor was he in possession of any evidence to reject the transaction value under Section 25(1) of the Customs Act, 1969.

27). Since various importers import the subject Brake Lining and Friction Material (Clutch Facing) per month as against others resultant their declared value is the transaction value defined in Section 25(1) and even in terms of deductive value method within the meaning of Section 25(7) ibid and rule 119 of Customs Rules, 2001, rendering the valuation ruling in derogation of sub-Section 25(7) and as such not enforceable under law for levy of duty and taxes on the imported subject Brake Lining and Friction Material (Clutch Facing).

28). It is established principle of interpretation of the tax law that, the plain language of the law is to be applied. A bare perusal of Section 25 shows that it is specifically provided in



sub-Section (1) of Section 25 that the Customs value of the imported goods, subject to the provisions of this Section and Rules shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to Pakistan. The detailed guidelines in this behalf are given in sub-Section (1), (2), (3), (4) and Rules 107 to 116 of Chapter IX of Customs Rules 2001. The provisions contained in Section 25 (1) to (4) and Rules 107 to 116 of Chapter IX of Customs Rules 2001 contain primary methods of valuation and in the first instance the primary method of valuation is required to be adopted in each case of the valuation of the imported consignment which is mandatory. Thus, it is very important requirement of law that before resorting to the method provided in sub-Section (5) the Customs officials shall make an exercise in accordance with the provisions contained in sub-Section (1) to (4) of Section 25 and if thereafter they find that the Customs value of the imported goods cannot be determined under the provisions of sub-Section (1) they shall resort to the method provided in sub-Section (5) and not otherwise. It shall be an exercise duly reflecting on the record so that, we may examine whether the mandatory requirement of law has been carried out or not. We are fortified in our views in this behalf with the provisions contained in sub-Rule (3) of Rule 109 which provides that 'when a final decision is made, the appropriate officer shall communicate to the importer in writing his decision and the grounds therefore.' In addition to the specific provisions contained in sub-Section (10) of Section 25 to the effect that the methods a Customs valuation are required to be applied in sequential order, find it is provided in sub-Section (6) that if the Customs value of the imported goods cannot be determined under the provisions of sub-Section (5) the method provided in sub-Section (7) shall be resorted to and similar provisions are contained in sub-Sections (7), (8) & (9). For the said reasons, it is held that different method of valuation provided in Section 25 of the Customs Act, 1969 and Customs Rules, 2001 are required to be applied in a sequential order and that it is further provided in sub-Section (6) that, if the Custom value of the imported goods cannot be determined under the provisions of sub-Section (5) the method provided in sub-Section (7) shall be resorted to and similar provisions are contain in sub-Section (7),(8) & (9).

29). For the foregoing reasons it is held that different methods of valuation provided in section 25 of the Customs Act, 1969 and the Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to sub-Section (5) and likewise without similar exercise under sub-Section (5) no resort can be made to sub-Section (6). In the same manner without an exercise in writing on record under sub-Section (6) on resort can be made sub-Section (7) and similarly to sub-Section (8) and (9). The exercise is to be made in each case separately. On the basis of exercise in the case of earlier imports by other importer it cannot be applied to any subsequent import by another importer. The reason being that it is provided in Rule 109 that where appropriate officer has reason to doubt the truth or accuracy of the particulars or of documents produced in support of declaration, such officer may ask the importer to provide further explanation, including documents or otherwise. Under sub-Section (1) of Section 25, the Customs value of the imported goods is to be determined subject to the provisions of Section 25 and the Rules. The rules envisage inquiry in case of each import giving right to each importer to provide explanation and produced documents or other evidence in support of his / her declaration.





When the provisions contained under Section 25(1) of the Customs Act and the Rules are read with Section 79 and 80 of the said Act, they lead to same conclusion. Under Section 79 the owner of any imported goods is required to file a goods declaration containing correct and complete particulars of the goods and its assessment i.e. valuation of the goods, its value and the duty, taxes and other charges payable thereon. Under Section 80, on the receipt of goods declaration under Section 79, an officer of the Customs shall satisfy himself of the correctness of the import including declaration and assessment. It indicates that initially the valuation of goods and assessment is to be given by the importer himself, which, if found satisfactory, shall be accepted. However, if the appropriate officer is not satisfied with the said declaration, he shall make his own assessment in accordance with the law. The exercise cannot be done without examination of each consignment, declaration of goods examination of assessment given by importers and of the documents in this behalf This point came for consideration before a Division Bench of Honorable High Court in the case of Collector of Customs Appraisement Karachi v. M/s. H.M. Abdullah 2004 PTD 2993 and it was held that the enhancement in value without sufficient evidence was not permissible. No enhancement in the value could be made on the recommendation of some working committee, which is not supported with any evidence. This point was considered by a Division Bench of the Customs, Excise and Sales Tax Appellate Tribunal Karachi also in the case of M/s. Dawlance Private Limited v. Collector of Customs 2002 (Trib) 3077. Honorable High Court of Sindh approve the findings given by the Tribunal in Customs Act, can only be made when the value cannot be determined under sub-Section (1) and that where no evidence to show that the disputed transaction is false or is an outcome of a fraudulent activity in possession of the Customs, the commercial documents presented by an importer cannot be rejected. That a transactional value cannot be rejected because there are some contemporaneous imports at higher price. It has to be shown that invoice price was not genuine and does not show the real price paid by the importer. In short the provisions contained are complete code in themselves, so far, the Customs valuation of the imported goods are concerned, which are required to be applied and acted upon strictly in the manner and method contained therein. There is no room for any deviation from these rules on the part of the Customs officials.

30). That the World Trade Organization executed the agreement in the member states entering into the agreement which is called Valuation Agreement as per the Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994. This agreement set for what was determined. Although the World Trade Organization assessment came into the effect from 01.01.1995, and accordingly that was enforced in Pakistan w.e.f 01.01.2000. The Valuation Agreement can, for present purposes, be regarded as falling into two parts. One part comprises of the main articles, which contain the substantive rules for determining the Customs value of goods. The second part comprises of interpretative notes to the various articles, contained in an annex to the agreement. Of course, the Valuation Agreement has to be construed as a whole, and Article 14 expressly provides that the notes in "Annex-I", from an integral part of the Agreement and that "the Articles of this Agreement are to be read and applied in conjunction with their respective notes". The system enforced in Pakistan since 01.01.2000 reflects this divide. Section 25 was substituted in it's entirely, and its various provisions primarily embody the main articles of the Valuation Agreement. Rules





framed by the Central (now Federal) Board of Revenue primarily contain, in what is now Chapter IX of the Customs Rules, 2001 ("the Rules"), notified under SRO-450(I)/2001 dated 18.06.2001, the interpretative notes of "Annex-I" of the Valuation Agreement, which describes the sequential application of law.

31). The primary basis for Customs value under this Agreement is transaction value as defined in Article 1, Article 1 is to be read together with Article 8 which provides, inter alia, for adjustments to the price actually paid or payable in cases where certain specific elements which are considered to form a part of the value of Customs purposes are incurred by the buyer but are not included in the price actually paid or payable for imported goods. Article 8 also provides for the inclusion in the transaction value of certain considerations which may pass from the buyer to the seller in the form of specified goods or services rather than in the form of money. Article-1. Where the Customs value cannot be determined under the provisions of Article 1 there should normally be a process of consultation between the Customs administration and importer with a view to arriving at a basis of value under the provisions of Article 2 or 3. It may occur, for example, that the importer has information about the Customs value of identical or similar imported goods which are not immediately available to the Customs administration in the port of importation. On the other hand, the Customs administration may have information about the Customs value of identical or similar imported goods which is not readily available to the importer. A process of consultation between the two parties will enable information to be exchanged, subject to the requirements of commercial confidentiality, with a view to determining a proper basis of value for Customs purposes. Articles 5 and 6 provide two bases for determining the Customs value where it cannot be determined on the basis of the transaction value of the imported goods or of identical or similar imported goods. Under paragraph 1 of Article 5 the Customs value is determined on the basis of the price at which the goods are sold in the condition as imported to an unrelated buyer in the country of importation. The importer also has the right to have goods which are further processed after importation value under the provisions of Article 5 if the importer so request. Under Article 6 the Customs value is determined on the basis of the computed value. Both these methods present certain difficulties and because of this the importer is given the right, under the provisions of Article 4, to choose the order of application of the two methods. Article 7 sets out how to determine the customs value in cases where it cannot be determined under the provisions of any of the preceding Articles. Agreement and procedure laid down referred above clearly describes the rights and responsibilities of both the parties, importers and the relevant department. Section 25 of the Customs Act, 1969 completely corresponded with the above noted Articles of GATT agreement and mandatorily require its implementation with its true letter and spirit as such the legal strength of the said Section, empowers the concern officials of Customs to act accordingly.

32). The said Valuation Agreement and World Trade Organization system also provides the detailed formal mechanism for dispute resolution to which any member state can resort if it is of the view that another member state is not fulfilling its WTO obligations. This mechanism is prescribed in a separate agreement known as the "Understanding on Rules and Procedures governing the settlement of Disputes" (generally referred to as the "Dispute





Settlement", expressly provides that the DSU applies to disputes arising under it. The DSU provides for an adjudicating mechanism by which binding ruling can be made by "panels" and, on appeal, by appellate bodies. If the defaulting state fails to abide by its obligations, and the relevant panel and / or appellate body final against it, then the aggrieved member state may, if certain conditions are met, impose sanctions (known as "measures") in case of violations. Thus, the WTO system has a lot of bite in it, and member states must be, and generally are be careful to ensure that they are committed with their obligations under its various agreements, these specific norms are also overruled during the hierarchy of the Customs and preparation of subject impugned Valuation Ruling. The said important legal obligations are not been followed or conducted during the determination and issuance of the present impugned Valuation Ruling. It is the high time to think over such discrepancies and to obey and follow the international agreements, legitimately executed between the countries by the concerned officials as well as the officials of the Federal Board of Revenue having the competent jurisdiction to comply with, if otherwise, such consistent derogatory and transgression acts of dis-obedience from legal provisions of law were not eliminated, the repetition would cause the irreparable losses and damages not only to the relevant importers, but serious losses could be occurred to the government exchequer also, department needs to invoke such liabilities for their better performance.



33). That while determining the Customs value through the Impugned Ruling the respondent has failed to make any reference to the guide lines issued by the Honourable High Court of Sindh at Karachi in the case of M/s. Sadia Jabbar vs. Federation of Pakistan reported as PTCL 2014 CL. 154. The Honourable High court in its order had specifically mentioned that the provisions of Section 25 of the Act are to be followed / constructed strictly and in a sequential manner. The Honourable High Court has held that the Officer, as per the provisions of Section 25 of the Act, cannot jump to a subsequent method, prescribed in a particular sub-Section 25, while determining the Customs values and cannot jumped without explaining why the preceding sub-Section and the methods enumerated therein was not applicable. It has been further held that all Customs values are to be determined initially on the basis of declared transaction value and in case the same cannot be determined the appropriate officer shall apply the other methods as envisage in Section 25, in sequential order. The impugned ruling of the respondent does not stand of judicial scrutiny. While determining the Customs value of Brake Lining and Friction Material (Clutch Facing) in terms of Section 25-A of the Act, the respondent was obliged to follow the methods of determining of value laid down in Section 25 and further in line with the guidelines provided by the Honourable High Court, Section 25 of the Customs Act, 1969, inter-alia prescribes:-

- a. The Customs value shall be the transaction value, that is the price actually paid or payable for the goods when imported into Pakistan, sub-Section (1) of Section 25.
- b. Where the appropriate officer of Customs is of the opinion that declared price does not closely approximate to one of the test values, the officer shall inform the importer of his reservations in writing and give the importer an opportunity to justify the price difference, sub-Section (4) of Section 25.



- c. The officer shall proceed further if the importer fails to justify the price difference and Customs value shall be the value of identical goods sold for export to Pakistan at or about same time (within 90-days prior to the importation or within 90 days after the importation of goods being valued), sub-Section (5) read with Rule 107(a) of the Rules.
- d. In case value is still not determined, the Customs value shall be the value of similar goods sold for export to Pakistan at or about same time, sub-Section (6) of Section 25.
- e. If Customs value cannot be determined through methods referred to above paras, it shall be deductive value, sub-Section (7) of Section 25.
- f. If Customs value cannot be determined, it shall be the computed value, sub-Section (8) of Section 25.
- g. If Customs value cannot be determined through any of methods, it shall be determined on the basis of previously determined Customs value of identical goods assessed within 90 days, all back methods prescribed in sub-Section of Section 25.



34). Director Valuation perverse from the contention of the statutory obligation as prescribed under 25 and 25A of the Customs Act, 1969 issued the said impugned Ruling and the efforts made by the Director Valuation can only be appreciated when the same were conducted in accordance with the law. In this regard the Supreme Court of Pakistan in the case of Collector of Customs Port Muhammad Bin Qasim V/s. M/s. Zymotic Diagnostic International CP No.434- K/2005, reported as 2008 SCMR 438 has held that the fixation of value must be done by following the provisions of law in a sequential order and that too in line with the spirit of Section 25 as well as GATT Rules. Operative para of the said decision of the Supreme Court is as under:-

"Section 25 of the Customs Act Authorizes and Officer of the Customs department to reject the declared value of a consignment imported in Pakistan and to assess the same. Section 25 lays down various modes in which the officials of the Customs department are required to proceed in determining or assessing the value of the consignment after rejecting the declared value. However for rejecting or refusing to accept the value declared by a consignee in respect of imported goods the concerned officer is required to give cogent plausible and satisfactory reasons. For non-acceptance of the declared value and rejection thereof which cannot proceed on the whims or desire of the officer of the Customs".

The Sindh High Court in its recent order has observed that; "Language of Section 25 is mandatory and it requires the department to follow step by step for the purpose of determining value and if there is no result coming out then they may avail the remedy under Section 25A. The language of Section 25 of the Customs Act is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if there is no result coming out then they may avail the remedy under Section 25A, as per language of the above Section the domination of the import value should be on the basis of transaction value, provided that conditions provided in sub-Section (1) (a) of Section 25 are not available. If an importer is crossing sub-Section (1) (a) then other sub-Sections 25 of the Act to be followed.



Where the Customs Authorities have given valuation ruling without reasoning, without mentioning as to how they reached that conclusion and without giving opportunity of being heard, the ruling cannot be sustained. The Customs Authorities given the ruling without any reasoning nor has it been mentioned as to how they have reached that conclusion or do they have evidence of other imports on more value nor the affected persons have been given any opportunity to be heard.

In such a situation, ruling relied upon by the department cannot be sustained and assessment on its basis is set aside"

This view is further supported by the directions of the Superior Courts held in the cases reported in 2006 PTD 1635 2006 PTD 2142 SCMR 1446, 2007 PTD 523 & 2007 SCMR 1357.



35). From above it is clear that enhancement has been made in an arbitrary fashion without following and applying the sequential methodology of Section 25A of the Customs Act, 1969. The fact that "Replacement of new value" against previous value clearly reflects that the value have not been arrived at by means of determination by means of "Fixation" this unlawful act of valuation department is violative of the valuation method as stated in the provisions mentioned supra. Needless to mention this point alone that renders the impugned Valuation Ruling a nullity in eyes of law in view of judgment dated 28.02.2011 in CP No. D-2673/2009 (Sadia Traders V/s Federation of Pakistan & others). The Honourable High Court of Sindh in respect of Section 25-A of the Customs Act, 1969, whereby by seven Valuation Rulings issued by respondent were set-aside.

36). That the arbitrary and whimsical issuance of this impugned Ruling No. 1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 would most certainly and necessarily result in blocking of import of goods through legal channel and would only culminate in encouraging the smugglers and abusers of Afghan Transit Trade (ATT) facility. The Government exchequer is already losing in billion of rupees as result of rigid and unfair policies of various Government Organization.

37). The applicant craves leave of the Directorate General of Customs Valuation to adduce and raise further grounds at the time of hearing.

### PRAYER

a. That the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the Respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 must be set aside since the applicant was not provided with a fair opportunity by the Director Customs Valuation, the ensuing proceedings thus suffer from procedural impropriety which is in-violation of the principal of natural justice and that the case be remanded back to the Director of Customs Valuation for deciding it afresh on merit and in accordance with law and that too after giving



the applicant a fair opportunity of hearing for re-determination and issuance of fresh valuation ruling of the imported goods namely Brake Lining and Friction Material (Clutch Facing).

b. Keeping in view the various factual and legal aspects of the case highlighted above the Honourable Director General of Customs Valuation is requested to set aside the impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 being violative of the Customs Act and Chapter IX of the Customs Rules 2001 and also against the principles as laid down and the law as settled by Superior Courts as enumerated in the subject review petition place before your good self. As such the Public cannot be compelled to purchase Brake Lining and Friction Material (Clutch Facing) for Vehicles at higher value which also violate the fundamental rights of the person as enshrined in the Constitution of Pakistan. Therefore impugned valuation ruling may kindly be set-aside and revised in the interest of justice and equity.



c. That the respondent namely Director Customs Valuation has issued the Impugned Valuation Ruling No.1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House, Karachi in respect of determination of Customs values of Brake Lining and Friction Material (Clutch Facing) under Section 25A of the Customs Act, 1969 after the issuance of previous valuation ruling No. 426/2012 dated 08.02.2012 therefore, being older more than 6 years old / more than 90 days in the light of the hall mark judgment of the Honourable High Court of Sindh at Karachi reported as 2016 PTD 702 in the case of Danish Jahangir versus Federation of Pakistan & others further endorsed by the Honourable Supreme Court of Pakistan and not fulfilling the legal parameters as laid down by the Honourable High Court of Sindh at Karachi in the case of M/s. Sadia Jabbar versus Federation of Pakistan reported as PTCL 2014CL.537 followed by M/s. Good Will Traders versus Federation of Pakistan reported as 2014 PTD 176 & M/s. Ayesha Impex versus Federation of Pakistan reported as 2012 PTD 1 of the Honourable Lahore High Court and has arbitrary enhanced the Customs value.

d. In the meanwhile all are members being importers of Brake Lining and Friction Material (Clutch Facing) shall be given provisional release immediately of their consignments imported or in pipeline as an interim arrangement under Section 81 of the Customs Act, 1969 from the clearance Collectorate till the final disposal of the subject review petition.

e. To pass an interim order for suspension of the impugned Valuation Ruling No. 1298/2018 dated 25.04.2018 received on 27.04.2018 issued by the respondent namely Director Customs Valuation Custom House Karachi in respect of determination of Customs values of Brake Lining And Friction Material (Clutch Facing) under Section 25-A of the Customs Act, 1969 During the pendency of the captioned review petition. Unless such suspension orders are made the applicant will be seriously prejudiced or damaged irreparably and balance of convenience lies in favour of the applicant.



f. During the pendency of the captioned review petition. Unless such suspension orders are made the applicant will be seriously prejudiced or damaged irreparably and balance of convenience lies in favor of the applicant.

g. Documents which are appended as annexure in the memo of revision petition shall be submitted during the course of hearing and arguments and additional grounds if any to be produced at the time of hearing.

The respondent department was asked to furnish comments to the arguments submitted by the petitioners. Para-wise comments on the petitions are given as under:-

#### PARAWISE COMMENTS

Earlier the Customs values of the Brake Lining and Friction Material (Clutch Facing) were determined vide Valuation Ruling No.426/2012 dated 08-02-2012. As the existing valuation ruling was more than six year old, it was required to be revised in line with the prevailing prices in the international market. Keeping in view the current prices trends, this Directorate General initiated an exercise for determination of the Customs values of the Brake Lining and Friction Material (Clutch Facing) in terms of Section 25A of the Customs Act, 1969.

Numerous meetings with stakeholders including importers, Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) and representative of clearance Collectorates were held in this Directorate General. The importers had been requested to submit the following documents before or during the course of stakeholders meeting so that Customs values could be determined:

- A. Invoices of imports during last three months showing factual value.
- B. Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
- C. Copies of Contracts made / LCs opened during the last three months showing the value of item in question.
- D. Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

The Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) contended that the Customs values of clutch facing may not be increased because the item is based on asbestos material which is much cheaper item. They further stated that the clutch facing is mainly imported from China which is not in ready form. They contended that it is furnished on old clutch disc and generate employment. The view point of the representatives of clearance Collectorates was diagonally to the contention of importers. They contended that values of the subject items is very low and even lower than the raw material prices and also contended that the Pakistan Auto Spare Parts Importers and Dealers Association (PASPIDA) have not substantiated their contentions with any corroborative. They further contended that the subject items are made from phenolic resin, friction dust, copper dust, magnesium oxide etc. which shall be considered to arrive at Customs values. They produced the clearance data of relevant period indicating that the Customs value in the existing Valuation Ruling are much on lower side and required to be rationalized upward in



accordance with prices in international markets. The view point of all participants was heard in detail and considered to arrive at Customs value for subject goods.

Valuation methods given in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive at Customs value of the subject goods. The transaction value method as provided in Section 25 (1) was found inapplicable due to wide variation of values displayed in import data. Hence requisite information required under law was not available to arrive at transaction values. Therefore, identical/similar goods value method as provided in Sub-Sections (5) and (6) of Section 25 ibid were examined for applicability to the valuation issue in the instant case but due to wide variations in declarations this method could not be relied upon exclusively. In line with statutory sequential order of Section 25, this office conducted market inquiries under Sub-section (7) of Section 25 of the Customs Act, 1969. As there were certain differences in prices in different markets therefore, number of surveys were conducted to arrive at Customs values. Finally, reliance had to be made on Sub-Section (7) of Section 25 of the Customs Act, 1969 to determine Customs values of Brake Lining and Friction Material (Clutch Facing), which have been notified, vide Valuation Ruling No.1298/2018, dated 25-04-2018.

In reply to the contents of the instant Revision Petition, parawise comments on behalf of Respondent are submitted as under : -

#### FACTS

- 1: Denied. The applicants have not substantiated through any corroboratory documents that the Customs values of the subject goods under Section 25A of the Customs Act, 1969, is unlawful and issued in malafide manner. On other side paragraph-5, of the impugned Valuation Ruling self speaking, clearly mentioned that Customs values were determined after following all primary methods of Valuation and consequently, the Customs values were determined under Section 25 (7) of the Customs Act, 1969.
- 2: Denied. The opportunity of meeting to all stakeholders including the applicants were afforded vide meeting notice dated 12-02-2018.
- 3: Same as para 1. Moreover, the applicants were requested to furnish some requisite documents including copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contention neither at the time of exercising the Section 25A of the Customs Act, 1969, nor with this revision petition under Section 25D of the Customs Act, 1969.
- 4 & 5: Denied. The opportunity of meeting to all stakeholders including the applicants were afforded vide meeting notice dated 12-02-2018.
- 6: Same as para 1.
- 7: Denied. The opportunity of meeting to all stakeholders including the applicants were afforded vide meeting notice dated 12-02-2018.
- 8 & 9: Same as para 3



10-13: Same as para 1

14: Same as para 3

15: Denied. The decrease prices of raw material does not mean that the price of the finished goods will ever be higher as there are several factors except prices of raw material which do not allow to the supplier to reduced their export prices

16-36: Denied. The applicants have not substantiated through any corroboratory documents that the Customs values of the subject goods under Section 25A of the Customs Act, 1969, is unlawful and issued in malafide manner. On other side paragraph-5, of the impugned Valuation Ruling self speaking, clearly mentioned that Customs values were determined after following all primary Methods of Valuation and consequently, the Customs values were determined under Section 25 (7) of the Customs Act, 1969. It is to be mentioned that reasons for not accepting the primary methods of valuation have been clearly mentioned in the paragraph-5, of the impugned Valuation Ruling which were applied sequentially.

37: Need no comments being related to further grounds at the time of hearing.

#### PRAYER

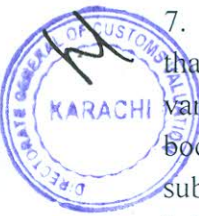
It is respectfully prayed that the Customs values of the subject goods were determined after following primary methods of valuation and finally, the Customs values were determined under Section 25 (7) of the Customs Act, 1969. On other side, the applicants were requested to furnish some requisite documents including copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contention neither at the time of exercising the Section 25A of the Customs Act, 1969, nor with this revision petition under Section 25D of the Customs Act, 1969. Accordingly, in the absence of the same the revision petition cannot be examined and is liable to be rejected.

#### ORDER

6. Hearings in the subject cases were fixed for 26-07-2018 and 15-08-2018. Mr. Abdul Wahab of M/s Hafeez Motor, Mr. Abdul Rahim of M/s Prime Enterprises, Mr. Mushtaq Ahmed of M/s Al-Rehman Ent., Mr. Ahmed Waqar of M/s Tariq Waqar Auto Store, Mr. Emran Tahir of M/s Buksh Industries, Sh. Usman of M/s Naeem International, Mr. Raza Noman of M/s Universal Auto Engineering and Mr. Adnan Moton, Advocate Counsel of the petitioners appeared for hearing. Mr. Imtiaz of M/s Isuzu Motors, Lahore faxed a letter vide number Nil dated 15-08-2018 and authorized Mr. Abdul Wahab of M/s Hafeez Motor Company, Karachi to defend their case during hearing proceeding. Therefore, Mr. Abdul Wahab of M/s HMC Hafeez Motors also represented M/s Isuzu Motors, Lahore. Mr. Muhammad Tahir, Additional Director, Dr. Abdul Qudoos Sheikh, Deputy Director and Mr. Iqbal Hussain, Principal Appraiser represented the department. The petitioners and their counsel were given ample opportunity to present their viewpoint viz. the values of Brake Lining and Friction Material (Clutch Facing), notified, vide impugned valuation ruling. The arguments as presented by the petitioners/ their Counsel as well as the defense of the DRs were heard in detail. The main points agitated by the petitioners was that the applicants were not heard by the department while issuing the impugned VR, and that the valuation methodology was not lawfully



adopted in the impugned VR as it did not fulfill the legal requirements as prescribed under Section 25 of the Customs Act, 1969. Their major contention was that the customs values of brake lining and friction material (clutch facing) determined vide the impugned VR are too high. They further highlighted that Customs values of clutch facing may not be increased because the item is based on asbestos material which is much cheaper item. They objected to the market inquiry conducted by the department in terms of Section 25 (7) of the Customs Act, 1969 and they insisted that their declared values reflected the correct market price and that these should be accepted for assessment as the correct transaction value.



7. The DRs rebutted the arguments of the petitioners. They refuted the plea of the petitioners that they were not engaged in the valuation process and stated that before issuing the subject VR various meetings were held with the stakeholders including the petitioners, their trade bodies/respective associations and representatives of the clearance Collectorates. The DRs substantiated their defense arguments with the documentary evidence available on record which indicated that the Valuation Department had duly invited the importers to participate in valuation process and attend the meetings held on 24-01-2018, 07-02-2018 and 19-02-2018, along with documents substantiating their values, and that the viewpoint of the trade was duly considered before determining the Customs values notified vide the impugned Valuation Ruling. The DRs further stressed the point that the importers did not produce the requisite documentary evidence in support of their claim despite repeated reminder from them.

8. The DRs underscored the fact that the valuation of subject item was last determined in 2012, being very old, the same was taken up by the Directorate of Valuation Karachi for re-determination according the prevalent market situation. They further contended that the point raised by the petitioners regarding low value of raw materials like asbestos is not correct as evident from import data of the given period. Besides, clutch facing is not made up of a single raw material rather the subject product is made from phenolic resin, friction dust, copper dust, magnesium oxide etc. The DRs pointed out that the matter was discussed in-depth with the representative of clearance Collectorate who participated in the meeting with stakeholders. Based on import values of raw materials of brake lining and friction material, they suggested that VR value @ US\$ 0.88/kg was much on lower side; even prices in the international markets indicated the need for re-determining the value of subject goods in accordance with current market prices.

9. As regards valuation methodology the DRs stated that the legal framework provided under the law was applied in letter and spirit; following the sequential order, deductive value method was applied and comprehensive market investigations were conducted under sub-Section (7) of Section 25 of the Customs Act, 1969 to determine Customs values of Brake Lining and Friction Material (Clutch Facing), which have been notified, vide Valuation Ruling No.1298/2018 dated 25-04-2018.

10. After listening to the detailed discussions/ arguments of respondents and perusal of the case record; it is evident that the department had duly taken the stakeholders on board while issuing the impugned Valuation Ruling. The petitioners were given sufficient time and opportunity to give their inputs including documentary proof/evidence to substantiate their declared values as true and correct transaction values but they failed to provide any such proof or fact in support of their declared values




which were abysmally low. On the other hand, the DRs presented details of comprehensive market investigations as available on record to support the values determined by them.

11. Scrutiny of the record reveals that the petitioners were required vide letter of even number dated 12-01-2018, 29-01-2018 and 12-02-2018 to furnish supportive documents but they furnished only one commercial invoice and did not provide/submitted other related/supportive documents so as to enable this forum to verify truth and accuracy of their declared values. As per Rule 109 of the Valuation Rules, issued under SRO 450(I)/2001 dated 18th June 2001 (Chapter-X), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers/appellant. The appellants did not furnish requisite documents; thus failed to substantiate cause of their grievance with conclusive evidence. To conclude, the petitioners failed to put forward any solid argument and documentary evidences to substantiate their stance, therefore, I do not find any cogent reason to interfere with the Customs values determined by the department vide Valuation Ruling No.1298/2018 dated 25-04-2018. The revision petitions are hereby rejected.

12. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (09) petitions.

S#	Petitioners Name	File No.
1	M/s. HMC Hafeez Motor Company	DG(V) Val. Rev/30/2018
2	M/s. Buksh Industries	DG(V) Val. Rev/30/2018
3	M/s. Universal Engineering	DG(V) Val. Rev/30/2018
4	M/s. Tariq Waqar Auto Store	DG(V) Val. Rev/30/2018
5	M/s. General Motor Co	DG(V) Val. Rev/30/2018
6	M/s. Prime Enterprises	DG(V) Val. Rev/30/2018
7	M/s. Al-Rehman Enterprises	DG(V) Val. Rev/30/2018
8	M/s. Amir Asim & Company	DG(V) Val. Rev/30/2018
9	M/s. Ravi Auto	DG(V) Val. Rev/30/2018

  
(Suraiya Ahmed Butt)  
Director General

Registered copy to:

- 1) M/s. Isuzu Motors
- 2) M/s. HMC Hafeez Motor Company
- 3) M/s. Buksh Industries
- 4) M/s. Universal Engineering
- 5) M/s. Tariq Waqar Auto Store
- 6) M/s. General Motor Co.
- 7) M/s. Prime Enterprises
- 8) M/s. Al-Rehman Enterprises
- 9) M/s. Amir Asim & Company
- 10) M/s. Ravi Auto
- 11) M/s. Pakistan Automobile Spare Parts Importers & Dealers Association (PASPIDA)  
C/o Moton Law Associates, 13-B, 6<sup>th</sup> Zamzama Street, Clifton, Karachi.



Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/  
(North) Islamabad / (Central) Lahore.
3. Collector, MCC Appraisement (East) / Appraisement (West) /Port M. Bin Qasim/  
Preventive, Karachi.
4. Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/  
Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. Director, Customs Valuation, Karachi/Lahore.
6. Additional Registrar (Judicial), Lahore High Court, Lahore w/r WP No.226604/2018.
7. Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for  
uploading in One Customs and WeBOC Database.
8. Deputy Director (Revision), Karachi.
9. All Deputy/Assistant Directors (Valuation)
10. Guard File.