

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

**Before: Mr. Muhammad Nadeem Qureshi, Member (Judicial-I),
Karachi
Mr. Muhammad Nazim Saleem, Member (Technical-II),
Karachi**

01. Customs Appeal No. K-1623/2016

M/s. Al-Amin Cera,
Younus Plaza Show Room # 4,
Chandni Chow, Old Sabzi Mandi,
New Town, University Road,
Karachi.

02. Customs Appeal No. K-1624/2016

M/s. Ceramic City,
4th Floor, C-9-C, Khayaban-e-Etihad,
DHA, Phase-II Ext.
Karachi.

03. Customs Appeal No. K-1625/2016

M/s. Royal Corporation,
Shop No.1, Ground Floor, Arries Plaza,
Shamsabad Muree Road
Rawalpindi.

ATTESTED



04. Customs Appeal No. K-1626/2016

M/s. Aman Enterprises,
5th Floor, 21st Street, Phase-V,
Karachi.

05. Customs Appeal No. K-1627/2016

M/s. Taimoor Trading Co.,
Mashallah house, Mo. Islamabad,
Sialkot.

06. Customs Appeal No. K-1628/2016

M/s. Zohaid Ali Company,
251-2, Sadar Main Bazar,
Hyderabad, Sindh.

07. Customs Appeal No. K-1659/2016

M/s. Abu Yousaf Traders,
186-Ferozpur Road,
Lahore.

08. Customs Appeal No. K-1662/2016

M/s. The City Tiles,

F-41/3, Block-4, Clifton,
Karachi.

09. Customs Appeal No. K-1663/2016

M/s. Cosmos International,
89/II, 23rd Street, Khayaban-e-Sehr,
DHA Phase-VI,
Karachi.

10. Customs Appeal No. K-1664/2016

M/s. Euro Tiles & Granites,
F-40/3-A, Main 26th Street,
Near Abdullah Shah Ghazi, Clifton Block-4,
Karachi.

11. Customs Appeal No. K-1665/2016

M/s. Shahji Traders,
B/16, Firdous Colony, Nazimabad,
Karachi.

12. Customs Appeal No. K-1666/2016

M/s. Hashim Abdullah & Co.,
13-Zainab Centre, Behind Motandas Market,
M.A. Jinnah Road,
Karachi.

13. Customs Appeal No. K-1686/2016

M/s. Dyna Trading company,
Shop No.21, Ittifaq Shoe Market,
Near Tyre Bazar,
Rawalpindi.

14. Customs Appeal No. K-1687/2016

M/s. Yaha International,
115-A, First Floor, Khurram Sanitary Store,
Ferozepur Road,
Lahore.

15. Customs Appeal No. K-1688/2016

M/s. Umair International,
128 L, DHA,
Lahore.

16. Customs Appeal No. K-1689/2016

M/s. Saad International,
P-4, Fazlia Colony Ichra,
Ferozepur Road,
Lahore.

17. Customs Appeal No. K-1719/2016

M/s. Ibrahim Traders,



50-R 1, Johar Town,
Lahore.

18. Customs Appeal No. K-1720/2016

M/s. Azeem Enterprises,
Khadim Ali Road,
Sialkot.

19. Customs Appeal No. K-1721/2016

M/s. M I Sanitary Store,
186-Ferozepur Road,
Lahore.

20. Customs Appeal No. K-1722/2016

M/s. Hussain Traders,
189-F, 2nd Floor, PIA Society,
Lahore.

21. Customs Appeal No. K-1724/2016

M/s. Commercial corporation,
174, Shah Jamal,
Lahore.

22. Customs Appeal No. K-1725/2016

M/s. N.A. Mukhtar & Co.,
Feroze Road,
Sialkot.

23. Customs Appeal No. K-1726/2016

M/s. Butt Sons,
185-A, DHA,
Lahore.

24. Customs Appeal No. K-1731/2016

M/s. JBR Traders,
UG-429, Deans Trade Centre
Peshawar.

25. Customs Appeal No. K-1753/2016

M/s. Salman Sanitation Service,
Shop No. K-86, Gulbahar No.1,
Near Soneri Bank Ltd.,
Gujranwala.

26. Customs Appeal No. K-1754/2016

M/s. Al-Nafeh Trading Company,
2nd Floor, Al-Sharijah Tile Centre,
Gujranwala.



27. Customs Appeal No. K-1755/2016

M/s. Iqbal Global Trading Co.,
R-77, Block-15, Federal-B Area,
Karachi.

28. Customs Appeal No. K-1756/2016

M/s. Ayesha Enterprises,
Office No.1-4, Nazimabad No.4,
Karachi.

29. Customs Appeal No. K-1757/2016

M/s. Qureshi Sons,
12 Alpine Street, Cavalry Ground
Lahore.

30. Customs Appeal No. K-1758/2016

M/s. Mehdi Tiles,
Ground Floor, Jilani Plaza,
Main Service Road, Gangal East,
Islamabad.

31. Customs Appeal No. K-1759/2016

Haseeb & Co.,
First Floor, 85-Ferozepur Road,
Trade Ichra Shopping Centre,
Lahore.

32. Customs Appeal No. K-1760/2016

M/s. Artica Ceramics,
H-1065, Umar Block, Section-B,
Bahria town,
Lahore.

33. Customs Appeal No. K-1761/2016

M/s. Safa Corporation,
206-207, Trade Tower, New Challi,
Altaf Hussain Road, Shahra-e-Liaquat,
Karachi.

34. Customs Appeal No. K-1775/2016

M/s. Ash hub Enterprises,
15/16, Muhammad Arcade LMQ Road,
Multan.

35. Customs Appeal No. K-1776/2016

M/s. Carwan Cement Store,
Near Vegetable Market, Multan Road,
Lahore.

36. Customs Appeal No. K-1777/2016

M/s. Javed Traders,
1st Floor, Pak Mushtarrka Mohmand
Goods transport Company Building,
Opposite Dastagir Petrol Pump, G.T. Road,
Gujranwala.

37. Customs Appeal No. K-1778/2016

M/s. A.S. Enterprises,
88 Raza Block, Allama Iqbal town,
Lahore.

38. Customs Appeal No. K-1800/2016

M/s. H.H. Traders,
Shop No. K-21, Gulbahar No.2,
Karachi.

39. Customs Appeal No. K-1801/2016

M/s. Farooq Corporation,
Farooq Centre Shamsabad,
Muree Road,
Rawalpindi.

ATTESTED**40. Customs Appeal No. K-1839/2016**

M/s. Karachi Tile Home,
C-975, Sector 11-B, North Karachi,
Karachi.

41. Customs Appeal No. K-1840/2016

M/s. Mughal Corporation,
Khanna Road, Al-Noor Colony,
Near Abdullah Masjid,
Rawalpindi.

42. Customs Appeal No. K-1841/2016

M/s. Asiatic International,
A-970, 11-B, North Karachi,
Karachi.

43. Customs Appeal No. K-1842/2016

M/s. Saaz Traders,
MR 7/37, Kazi Usman Road,
Jodia Bazar,
Karachi.

44. Customs Appeal No. K-1843/2016

M/s. FL Enterprises,
K-49, Gulbahar No.2,
Nawab Siddique Ali Khan Road,
Gulbahar No.2,

Karachi.

45. Customs Appeal No. K-1890/2016

M/s. M.Y. Trading Company,
167-B/4, WAPDA Town, Gujranwala,
Through M/s. A&H Law Associates,
Office No.79-A, 6th Floor, Farid Chambers,
Abdullah Haroon, Saddar,
Karachi.

46. Customs Appeal No. K-1827/2016

M/s. Master Tiles & Ceramic
Industries Ltd & Others,
Gujranwala/Karachi

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Appellants

All Versus

1. The Director General,
Directorate General of Customs Valuation,
Custom House,
Karachi.



2. The Director,
Directorate General of Customs Valuation,
Custom House,
Karachi.

- The Chief Collector (South),
Model Customs Collectorate/Appraisalment,
Custom House,
Karachi.

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Respondents

Mr. Aqeel Ahmed, Advocate, Mr. Fawad Haider Janjua, Advocate, Mr. Shamshad Younus, Advocate & Mr. M. Aslam Soomro, Advocate, present for the Appellants.

Mr. Umair Mahmood - DC, Mr. M. Aslam, P.A., Abdul Hameed, P.A. M. Aslam, P.A., Mr. M. Umer V.O. & Mr. Zahid Aziz, A.O., present, for the Respondents

Date of hearing: 19-09-2016, 17-10-2016 & 28-11-2016
Date of Order: 03-12-2016

J U D G E M E N T

Muhammad Nadeem Qureshi, Member Judicial-I, Karachi: By this Judgment, we intend to dispose of above appeals filed by the appellants under Section 194-A of the Customs Act, 1969, against, Order-in-Revision No.225/2016, passed under Section 25-D of the Customs Act, 1969, against Valuation Ruling No.874/2016, dated 22-06-2016. These

appeals have identical issues of law and facts and are therefore being heard, dealt with and disposed of simultaneously through this common order in the light of judgment passed by the Hon'ble High Court of Sindh in Customs Reference No.157/2008 (S.M. Naqi S/o Syed Muhammad Hussain, Karachi Vs. Collector of Customs (Adjudication-I) & Others, Karachi).

02. Since these forty six (46) appeals are based on similar facts and question of law, therefore, it is needless to reproduce facts of each case separately, hence for reference the fact of Appeal No.K-1623/2016 are taken into consideration for decision, wherein, facts of the case are that, the Appellant is conducting business of import and trader of goods

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having description "Ceramic & Porcelain Tiles" covered under PCT Headings 6908.9010 and 6907.9000 and he is a member of their association M/s All Pakistan Sanitary Tiles Merchants Association. The Appellant is also a registered taxpayer and subject goods are covered under PCT Headings 6908.9010 and 6907.9000 which are subject matter of impugned Valuation Ruling and in consequences of the impugned valuation ruling the actual transactional values of the aforesaid goods imported and to be imported by the Appellant are being rejected and enhanced by the Respondents for assessment of duties & taxes. The Appellant through his association made submissions and produced material evidences before the Respondent No.1 in proceedings initiated u/s 25A establishing and supporting his contention that the prices of subject goods have been decreased in the international markets particularly in markets of China. The Respondent No.1 has preferred departmental favoritism and deliberately not considered the submissions and material evidences of the Appellant and determined the impugned values and issued the impugned Valuation Ruling being order *in rem* on 22-06-2016 without adopting due process and procedure of determination of values prescribed under Section 25 of the Customs Act,

1969 read Customs Rules, 2001 and without following the law set by the Hon'able High court of Sindh, Karachi in it's judgments reported as PTCL 2014 CL.537 Sadia Jabbar vs Federation of Pakistan and 2014 PTD 176 Goodwill Trader vs Federation of Pakistan and a consolidated Order-in-Review has been passed on 04-08-2016. The operative part of the order, reproduced below:-

"15. During hearing the manufacturers (Al-Shabbir, Master Tiles, Al-Karam etc.) contended that their market share is being shrunked. Presently, the imports have captured around 75% of the market and 25% share is with manufacturers. Units like Emco is closed and others are on the verge of collapse because of China's dumping and under valuation in this section policy due to which they are facing difficulties to compete and level playing field is not available to them. The further stated that values of tiles are being lowered down continuously by the department in last 3 valuation rulings. Industry needs a fair value. They contended that the values are around 30-40% more as compared to the valuation ruling.

16. The contention of the importers is that the Pakistan industry is in competent and in-efficient and they cannot cut price due to high wastages. They stated that the data support their contention and actual values are low as compared to the valuation ruling. They said that prices can be confirmed from websites. They said that the values are increased by 25-30% and may be lowered down. They also agitated that one of the party is Oasis; which is not a manufacturer but a NGO (to protect local employment and industry) and should not be party to proceedings. The plea was accepted and M/s Oasis was barred from giving any arguments. They also showed cuttings of newspaper advertisement in which rate are shown. During market inquiry the shopkeepers were unaware of any such advertisement and charged their own cost in general market. The advertisement was published in newspaper before hearing. The importer told that no such advertisement was published in last one year but it used to be published in the past.

17. I have gone through the record of the case. The previous ruling was seen and it was observed that in few categories like 12"x12", 12"x18", 16"x16" the values have been decreased whereas in rest of the categories the values have been remained as such. These are the sizes which are mostly traded. If there is a downward trend then whole range of values had to be lowered down but it was observed that values were declined in only 3 categories in ceramic and porcelain whereas rest of the values remained unchanged.

18. During market inquiry it was found that prices of ceramic, porcelain etc. varied as per colour, design, quality etc. It was found that all work back calculations were made at the lowest of the quality as stated by Principal Appraiser (PA) and Valuation Officer (VO) of the group. The value of large sizes tiles is on higher side by 150 - 400 rupees per SQM. The Valuation Officer said that the prices which were revised downward (of major import volume) is on the basis of market inquiry but could not give reason why other prices were not reduced, if there was a general downward trend. The PA/VO accepted that they did not took into account factor of colour, design, quality etc. The difference comes around (Rs 50 - 300/sq. meter). In view of above discussion, the prices have been fixed on lower side for Chinese origin tiles. Taking average values, it is ordered that prices of Chinese origin tiles shall be enhanced by 12.5% with immediate effect."

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03. Being aggrieved and dis-satisfied with the Order-in-Revision, the appellants filed these appeals before this Tribunal on the facts and grounds incorporated in the memo of appeal.

04. On the date of hearing, Mr. Aqeel Ahmed, Advocate, appeared on behalf of the Appellants, reiterated the contents of facts and grounds of Memo of Appeal and contended that, the impugned determination of values and valuation Ruling dated 22-06-2016 are arbitrary, illegal and without jurisdiction and of no legal effect. He further contended that, the concerned officer has no valid reasons for not adopting methods of valuation provided under Sub-Section (5) and (6) of Section 25 while making impugned determination of customs values. The impugned



Valuation Ruling being an order in rem is violative of Section 24A of the General Clauses Act, 1897. He also contended that no proper and independent market enquiry was conducted nor any market enquiry report has been placed on record by the concerned officer which establishes that the impugned values are arbitrary and the impugned valuation ruling has been issued on the basis of no evidence. The methodology adopted in the impugned Valuation Ruling is contrary to the law and provision of Section 25 and against the guidelines given by the Hon'able High Court of Sindh Karachi in its hall mark reported judgments PTCL 2014 CL537 Sadia Jabbar vs FOP and 2014 PTD 176 Goodwill Trader vs FOP, therefore, impugned Ruling and determination is *ab-initio* arbitrary, void, illegal and without jurisdiction and of no legal effect. He argued that a bare perusal of the 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 transaction value. Hence, the provisions contained in Section 25(1) to (4) contain primary method of valuation and in the first stance the primary method of valuation is mandatory and required to be adopted in each case of valuation (2006 PTD 909). The impugned

valuation ruling is based on some presumptions without having supporting evidences. The impugned order-in-revision dated 04-08-2016 is arbitrary, illegal and has been passed without jurisdiction and of no legal effect being based on favoritism and passed on basis of submissions made by the local manufacturer(s) for whom proper remedy for redressal of their grievances is available under the Anti Dumping Laws and whose taxable activities being manufacturer have been defined under Section 2(16) of the Sales Tax Act, 1990 which are not falls within the ambit of Customs Act, 1969. The impugned customs values has been determined under Section 25A(3) in violation of Rule 110 (i) of the Customs Rules, 2001 wherein the selling prices of identical goods produced / manufactured in Pakistan are prohibited method for determination of Custom values, therefore, the local manufacturer whose selling prices are prohibited has no right being "aggrieved person" in the proceedings of determination under Section 25-A and 25-D of Customs Act, 1969 who has not illegally and wrongfully deprived from anything to which they were legally entitled to. The impugned order under section 25D has been passed arbitrarily without giving any proper finding and without considering the submissions of the aggrieved importers and material evidences placed on record. While passing impugned order under section 25D the violations of provisions of Section 25(5), (6) and (7) as well as violations of valuation rules prescribed in Customs Rules, 2001 as apparent from the record on part of the Respondent No. 1 have been deliberately ignored by preferring departmental favoritism. No finding has been given on the issue of determination of impugned values vide valuation ruling dated 22-06-2016 on the basis of information sought from internet sources which are neither prescribed under any valuation method or customs rule nor permissible under the law and violation of judgments of Hon'ble High court Sadia Jabbar, v/s Federation Of Pakistan (PTCL 2014 CL537). He prayed that this Appellate Tribunal may



kindly be pleased to pass an order and allow the appeals in the interest of natural justice. On behalf of local manufacturer Mr. Shamshad Younus, Advocate appeared and extended the arguments that M/s. Master Tiles & Ceramic Industries Limited also filed appeal against the same Order-in-Revision No.225/2016 under Section 25-D of the Customs Act, 1969 against Valuation Ruling No.874/2016 dated 22-06-2016 and made the ground and claiming the prayer that the Customs Valuation of the tiles imported from the Chinese origin may be enhanced upto 25% to 30% in the comparison of Valuation Ruling No.874/2016 dated 22-06-2016 same may be enhanced/ revised according to the formula provided by M/s. Master Tiles and Ceramics during the hierarchy of the proceedings before the Director General Valuation. He further contended that, the revision order passed by the Director General Valuation in accordance



with law, the only purpose to challenge the same is only for the purpose of the enhancement of determined value upto 25% to 35%.

The cross objections filed by the respondent in compliance of the sub-section (4) of Section 194-A of the Customs Act, 1969. However, the learned representatives of the department/Respondents, contended that, valuation methods given in Section 25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. Transaction value method under sub-section (1) of Section 25 of the Customs Act, 1969 was found inapplicable because required information under the law was not available. Identical and similar goods valuation methods provided in sub-section (5) and (6) of Section 25 of the Customs Act, 1969 provided some reference values but due to wide variations the same could not be relied upon. In the sequential order this Directorate conducted market inquiries in terms of sub-section (7) of Section 25 of the Customs Act, 1969. Stakeholders meetings were also conducted for their input and feedback. On line values were also checked. Accordingly customs values of Ceramic and Porcelain Tiles are determined under

sub-section (7) of Section 25 of the Customs Act, 1969. He further contended that, the Valuation Ruling No.874 dated 22.06.2016 is within the stipulations of Section 25 of the Customs Act, 1969. All factors were taken into considerations to arrive at fair value and taken in the international market before determining values thereof under the said Valuation Ruling. He further contended that valuation methods given in section 25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. In view of the above stated facts and legal position, he prayed that, the impugned Order-in-Revision No.225 dated 04.08.2016 and Valuation Ruling No.874/2016 dated 22.06.2016 being legal, valid and lawfully issued may be allowed to hold filed for uniform assessment all over the country, accordingly the subject appeals may kindly be rejected in the interest of justice.



6. Arguments heard and concluded. Perused the entire case record and given careful consideration to the arguments advanced by both the parties, it has been noticed and observed that the appellant assailed the vires of Valuation Ruling No.874/2016 dated 22.06.2016 on the ground that the impugned values has been determined on the basis of no evidence, the methodology adopted in the impugned Valuation Ruling is contrary to the law and provision of Section 25 of the Customs Act, 1969 and against the guideline given by the Honorable High Court of Sindh in its reported judgement PTCL 2014 CL 537 Sadia Jabbar Vs Federation of Pakistan and 2014 PTD 176 Goodwill Traders Vs Federation of Pakistan. They also raised the issue and controversy on the point that no proper and independent market inquiry was conducted nor any market inquiry report has been placed on record and the concerned respondent has not placed any valid reason for not adopting the methods of valuation provided under sub-section (5) & (6) of Section 25 of the Customs Act, 1969 while making the impugned determination of customs values. The importers/appellants repeatedly agitated against the determined values

and requested to re-determine the values on the ground that the prices in international market specially that of China is considerably on lower side. It is important to refer and mention here that apart from the importers/appellants mentioned at Sr. No.1 to 12, the remaining appellant has not participated in the revision proceedings because they were not given notice nor called by the Director General, Customs Valuation during the proceedings conducted under Section 25-D of the Customs Act, 1969. When the appeals were filed on their behalf before the Tribunal, office raised the objection and advocates were called to clarify the objection when they are not a party in the proceedings conducted by the Director General Valuation under Section 25-D of the Customs Act, 1969, how the subject appeals are maintainable. After giving opportunity of hearing, on that point the subject appeals are admitted for hearing by observing the point that when the Order-in-revision was passed in persona, the rights of other importers have been infringed as the impugned order caused the effect as order in rem. The court has also followed dictum of law envisaged under Section 194-A sub-section (1) and (e) of the Customs Act, 1969 under which any person aggrieved by any of the order may appeal to the Appellate Tribunal. As being so, the collective order required to be passed for dispensation of justice, while considering grievance of the appellants referred above, it is the duty of the court to grant a proper redressal under the contents of legal warrant and statute. The subject Valuation Ruling was challenged by the local manufacturers and by the importers (names mentioned at Sr. No.1 to 12 in Para-19 of the impugned Order-in-Revision) separately during hierarchy of the proceeding conducted before the Director General, Customs Valuation (herein-after referred as Respondent No.1) the vires of the Valuation Ruling have been discussed at some length.

07. Now, under the circumstances, question arises whether the Director General Valuation while sitting under the jurisdiction in terms



of Section 25-D of the Customs Act, 1969 can exercise authority under the law by assuming jurisdiction under Section 25-A of the Customs Act, 1969 simultaneously. No doubt, SRO-495(1)/2007 dated 90.06.2007 specify the powers and duties of the officers of the Directorate General of Customs Valuation. At the S.No.1 of the table of SRO-495(1)2007 dated 09.06.2007, the Director General, Customs Valuation is empowered to exercise powers and discharge duties under Section 25-A and 32 of Customs Act, 1969. Sub section (3) of Section 25-A of the Customs Act, 1969 empowers the Director General of Customs Valuation to determine the customs value of any imported goods in case of any conflict in the customs value determined under Section 25-A of the Customs Act, 1969. It is further observed that, the contents of Section 25-D envisage that a revision petition may be filed before the Director General within thirty days from the date of determination of customs value under Section 25-A in case of jurisdiction of Director General under section 25-A (3), he is competent to determine applicable value on his own motion on a reference from Collector of Customs or Director, Customs Valuation. The Director General only has the power or jurisdiction under sub section (3) of Section 25-A of the Customs Act, 1969, in case of any conflict in the customs values determined under sub-section (1) of Section 25-A, to determine the "applicable" Customs value. The intent and wisdom of the legislature by coining two distinct phases "applicable customs value" and "determination of customs value" is quite evident. Determination of customs values exclusively lie within the jurisdiction of Director, Customs Valuation and Collector of Customs only. But, jurisdiction with reference to "applicable customs values" is restricted to "conflict" arising out of application of customs value determined in terms of Section 25-A(1) of the Customs Act, 1969. In this particular case, only Revision Petition was filed before the Director General under Section 25D, and no



Application or Reference under Section 25-A(3) was pending before the Director General at the time of passing the impugned Revision Order.

08. The Valuation Ruling issued u/s 25A, applies only for a certain period and no more. This position has been defined in Chapter-XI of the Rules, (in Rule 107 meaning) "*within 90 days prior to the importation or within 90 days after the importation of goods being valued*". In our view, Valuation Ruling must, therefore, ordinarily be regarded valid for a period of 90 days from the date of issue. After the amendment, Section 25A Sub-section (4) of the Customs Act through Finance Act, 2010 provides that a Valuation Ruling "*shall be applicable until or unless revised or rescinded by the competent authority*". Which the Valuation Ruling will continue to hold the field unless revised or rescinded, any aggrieved importer has the right to approach the Director, Customs Valuation, after 90 days period mentioned above and he would then has to give reasons why the Ruling has not been revised or rescinded, as such, the observation made by the Director General, Customs Valuation, are perverse from the evidence, ultra vires and without lawful authority.



09. Before further conclusion, general observation must also be made on Section 25A which is only an enabling section. It permits, but does not mandatorily require, a predetermination of customs value in terms as explained. The principal method of determining customs value is, and must remain, with section 25. Section 25A is not intended to be a substitute for Section 25, nor can it be resorted to, in such manner and with such frequency that, it marginalizes the latter provision. It is merely an adjunct to Section 25, to be resorted to in particular circumstances and for an appropriate period. In our view, in enacting Section 25A, the legislatures' intent was not, nor could be for the reasons stated above, to create a statutory bye pass to the Valuation Agreement. While issuance of valuation ruling under section 25A cannot be regarded as limited only to those cases where the Department concludes that there is group under-

invoicing, the section also cannot be used for the wholesale determination of customs values. Such an approach would, in effect, transform the "determination" permissible under section 25A to an impermissible "fixation" of value, which, in essence would be violative of Valuation Agreement. This is an important point which must be kept in mind, and may be relevant in particular cases when considering the vires of a valuation ruling.

10. According to the above-referred observations (given in para supra) the subject prayer of M/s. Master Tiles and Ceramics also does not qualify under any warrant of law to be treated as admissible. For the dispensation of subject prayer, we deem it necessary to distinguish the two terms 'Review' and 'Revision' in accordance with the law. 'Review' means consideration, inspection or re-examination of the subject or thing. There are different kinds of 'Review' under the law, (i) "administrative review", means judicial review of an administrative proceeding. (ii) "Appellate review", means examination of a lower court decision by a higher court, which could affirm, reverse or modify the decision. (iii) "Discretionary review", means the form of appellate review that is not the matter of right but that occurs only with the appellate courts permission that could be granted under the dictum of "certiorari". While the "Revision" means, re-examination or careful review for correction or improvement. The revision can occur only if it will not materially prejudice the person. It is important to understand the judicial jurisprudence confined under or in these two distinctive provisions. Wisdom behind the mind of the legislature, the purpose of the Revision could only occur if it will not materially prejudice the person. After perusal of the provisions of Section 25-D of the Customs Act, 1969, wherein the purpose of revision was defined, particularly, keeping in view that aspect, legislature replaced the concept of "review" into revision, and review of the value determined has been substituted by the Finance Act, 2010. There is a fundamental distinction between the



'Appeal' and 'Revision'. The appeal is a substantive right created by the statute and the powers of a court of appeal contemporaneous with those exercised by the court of original jurisdiction. On the other hand, revisional jurisdiction is discretionally applied with some of the specific limitation, preferably evident and envisaged under Section 25-D under the cover of Section 25 and 25-A of the Customs Act, 1969, the jurisdiction under aforesaid Sections assumed by the competent authority cannot require to be invoked simultaneously, there is clear embargo defined and envisaged in the subject statute. It is also evident from the contents of Section 25-A subsection (4) of the Customs Act, 1969 that the Customs values determined under subsection (1) or, as the case may be, under subsection (3), shall be applicable until and unless revised or rescinded by the competent authority, which is in fact the Collector of Customs or the Director of Customs Valuation and not the Director General of Customs Valuation. In support of that the detail discussion already given in para (supra).



11. All observations and relevant references along with the Judgments passed by the Superior Courts are preferably to maintain and follow the proper interpretation of law, more importantly for the Customs officers having discretion in preparation of Valuation Ruling. It is not so difficult to follow the legal dictum prescribed under the law by the concerned authorities or officials at the time of preparation of valuation ruling. The words 'look-in', provided the link, how principle of sequential application of sub-sections defined under structure of Section 25 of the Customs Act, 1969. For example, if in any particular case, the Customs officers/authorities want to jump over from non-obstinate clause without referring any specific reasons that would amount to override the provisions of Section 25. The concerned Customs officers are limited or restricted only to the methods set forth in Section 25 of the Customs Act, 1969, not to act otherwise. If, some method other than that specified in

Section 25 is complied, that would clearly be ultra vires the powers conferred under Section 25A of the Customs Act, 1969. The Department has no justification about such increase which clearly reflected against the statutory obligations, prescribed under Section 25 and 25A of the Customs Act, 1969. The determination of value under Section 25-A of the Customs Act, 1969, is not a simple thing. It is, therefore, appropriate that the ruling should contain sufficient details to show that the provisions of Section 25 have been properly applied while invoking Section 25-A. Therefore, it is imperative that the Valuation Ruling must be a speaking order, as per the mandatory requirement of Section 24-A of the General Clauses Act, 1887. In the present case, the authority/Director General, Customs Valuation ignored the directions of the Superior Courts and made observations in contradiction of provisions of Section 25-A of the Customs Act, 1969. Such ignorance is violative of law. Being custodian of law, purpose of administration of justice is to hold and not to thwart appellants' rights. We therefore, direct the respondents not to issue any fresh Valuation Ruling during the course of present judgment, (atort) wrongfully from the procedure laid down under Section 25 of the Customs Act, 1969 and observations, held by the superior courts, non-compliance shall deem to be infraction.



12. On the basis of ably deliberations, and by getting the strength, what has been stated and observed herein above particularly the interpretation of law and legal prepositions, in the light of prescribed law and to follow the ratio decidendi as observed by the superior courts, along with our additional observations made therein, we led to conclude that the impugned Order-In-Revision No.225/2016 dated 04.08.2016, passed by the Director General, Customs Valuation, which does not have any adherence to the statutory requirements, besides being derogatory to specific provision of Sections 25-D of the Customs Act, 1969. We hereby set aside the said Order being without lawful authority and jurisdiction,

(MUHAMMAD NAZIM SALEEM)
Member Technical-II
Karachi

(MUHAMMAD NADEEM QURESHI)
Member Judicial-I
Karachi



240-486-41 - 08/12/66
GOVERNMENT OF PAKISTAN
CUSTOMS EXCISE & STAMP & V. APPELLATE
TRIBUNAL KARACHI BENCH II

1. Name of Petitioner No (a) LC-161361628/16 (b) LC-1659/16 (c) LC-16628/1669/16
2. Mr. Arshad Ali
3. Nationality 205/16 Date 4/8/16 (d) LC-1719 4/22/16
4. Mr. Arshad Ali (e) LC-1724 4/22/16
5. Date of Birth 6/24/16
6. Mr. Arshad Ali (f) LC-1725 4/22/16
7. Arshad Ali (a) Ali (g) LC-1728 4/22/16
8. Name of Country LC-1800 4/22/16
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