

GOVERNMENT OF PAKISTAN  
CUSTOMS APPELLATE TRIBUNAL  
BENCH-I, KARACHI  
3<sup>rd</sup> FLOOR JAMIL CHAMBER  
SADDAR KARACHI

Before: - (1) Mr. Muhammad Nadeem Qureshi, Member (Judicial-I), Karachi  
(2) Mr. Ghulam Ahmed, Member (Technical-II), Karachi

Customs Appeal No.K-264/2013

M/s. Ahsan Brothers,  
67-B, Steel Sheet, (Meco)  
Market, Landa Bazar, Lahore.

Appellant

Versus

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

Respondent

Mr. Arif Moton, Advocate along with Mr. Arif Moton, Advocate, present  
for the Appellant.

Mr. Muhammad Aslam, P.A, present for the Respondent.

Date of Hearing: 30.07.2013  
Date of Order: 12.12.2013

ORDER

Mr. Muhammad Nadeem Qureshi, Member (Judicial-I): This order shall dispose of the instant appeal filed by M/s. Ahsan Brothers, against Order passed by Director General, Directorate General of Customs Valuation, Karachi vide C.No. MISC/13/2011-VIA/7848 dated 08.11.2012.

2. Brief facts of the case that the valuation of Flat Rolled Iron & Steel products (HRC, CRC & GP) secondary quality was determined under section 25A of the Customs Act, 1969 vide Valuation Ruling No. 325 dated 25-05-2011. This ruling was contested by M/s Shahrukh & Co, who approached the office of FTO, whereupon directions were issued by FTO order dated 25-01-2012 "to implement the direction of the Hon'ble Sindh High Court in letter and spirit within 21 days". In compliance to the direction, the Valuation instead issued a letter dated 27-02-2012 addressed to MCC (Appraisalment) and MCC (PaCCS), advising acceptance of import values in respect of six specific GDs. Subsequently, the aforesaid petitioner moved another application before the High Court Sindh for release of security amount deposited with the Nazir of the

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Court in CP No.D-1001/2009, as a consequence of acceptance of their import value, which was not the clearance Collectorate. The application was taken for hearing by the Hon'ble High Court on 16-10-2012, which was attended by Respondents as well as the then Director Valuation, who was summoned by the Hon'ble High Court to reply to the queries of the Court. After recording detailed observation, the Honorable Court has held that:

"Perusal of relevant and reproduced portion of the letter reflects that no value whatsoever was determined, the letter does not describe the declared value and or how the value of the goods was verified for the relevant period and what value was found which was even lower than the declared value, therefore letter dated 27<sup>th</sup> February, 2012, can by no stretch of imagination be termed as Valuation Ruling entitling the petitioner to claim refund.

However, in order to provide an opportunity to the petitioner to plead his case fairly, let the matter be placed before Director General, Customs Valuation for passing appropriate order in accordance with law, Petitioner's entitlement to withdrawal of differential or otherwise in respect of the amount lying with the Nazir of this Court would be determined on the basis of decision of Director General. We direct the Director General, Customs Valuation to decide this issue within 15 days hereof after hearing the Petitioner".

3. In compliance with the directions contained in the Honourable Court's order issued on 24.10.2012, the parties to the case were afforded opportunity of hearing on 01.11.12 which was attended by the representative of the Collectorate and the appellant and the Directorate General of Customs Valuation decided the matter vide C.No. MISC/13/2011-VIA/7848 dated 08.11.2012 as under.

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The above cited submissions have been examined in the light of document/ data placed on record. The Petitioner has made a repetition of their earlier stance that the Valuation Ruling No.325 dated 25-05-2011 was issued without associating them but this argument holds no validity in the wake of current proceedings under taken in pursuance of the Hon'ble Court orders. Whereby, verification of value contained in letter dated 27-2-2012 was held to be beyond the meaning of referred valuation ruling, for entitlement of any refund claim. While giving directives for passing appropriate order in accordance with law, it was observed by the Honorable Court that "the Customs authorities in compliance have issued Valuation Ruling No.325 under Section 25A of the Customs Act, 1969 on 25-05-2011 i.e after six days of the order when the petitioner sought disposal of his petition on the basic of order passed by this Court in various petitions in consequent whereto the Valuation Ruling No.325 was passed, therefore, the petitioner had six days' time to explain his point of view before the Customs authorities.

The subject goods were imported in the year 2009 and GD filed by the appellant for its clearance was assessed by the clearance Collectorate in accordance with the prevailing values determined under section 25A of the Customs Act, 1969. This was contested by the appellant and the disputed



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values set aside and High Court ordered for issuance of fresh determination of customs value were duly complied. While analyzing and deciding the values afresh, it was ensured that the determination of customs value was made applicable to relevant period, in accordance with the explicit directions of the Honorable Court of Sindh in its order dated 28-02-2011 in CP 2673/2009. Since the petitioner's referred consignments (six GDs) were related to the same period and connected to petitions, it was obvious that a discriminatory treatment to single out specific importer / import was not justifiable in the eyes of law. The ruling prevailing at that point in time was a legal document and its sanctity could not be altered merely by issuance of a letter.

It has been observed that the determination of value of subject goods was based upon the background that there were wide variation in the value of iron and steel products in the international market. To discourage the misuse of this situation, it was deemed appropriate to link the prices with the LC period and by referring to the prevailing international prices, the same represents a fair and transparent value determination. In view of the foregoing factual position applicability on petitioner's referred six GDs as per Valuation Ruling 325 dated 25-05-2011 appears to have been equitably based and correctly enforceable under the law. Based upon the above findings, the Customs values for HRC, CRC and GP sheet secondary quality and hereinafter specified shall be determined under section 25A(3) of the Customs Act, 1969, in respect of the referred six GDs of the petitioner and shall be assessed to duty/taxes on the customs values mentioned against them in the table below:

Description of goods	PCT Heading	Period	Origin	Customs Value (US\$ PMT)
Iron & Steel HRC Secondary Quality	7208.1010, 7208.3910	November to December 2008	All origin	530
	7208.2510, 7208.4010			
	7208.2610, 7208.5110			
	7208.2610, 7208.5210			
	7208.3610, 7208.5310	January to February 2009		439
	7208.3710, 7208.5410			
	7208.3810, 7208.9010			
	And other respective			
		March to May		325
Iron & Steel CRC Secondary Quality	7209.1510, 7209.2610	November to December 2008	All Origin	665
	7209.1610, 7209.2710			
	7209.1710, 7209.2810			
	7209.1810, 7209.9010			
	7209.2510	January to February 2009		494
	And other respective			
	HSC			
		March to May		345

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Iron & Steel GP Secondary Quality	7210.4910 And other respective HSC	November to December 2008	All Origin	657
		January to February 2009		583
		March to May		425

4. Being aggrieved and dis-satisfied with the impugned Order-in-Review the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal.

5. Before going to the facts and merits of the case, the question/objection raised thereon about the maintainability of the appeal as the same was barred by limitation of 73 days at the time of its institution, on that very point, the advocate was directed to explain the above discrepancy in the first instance. The advocate of the appellant contended that the impugned order passed by the Director General of Customs (Valuation) was never served upon the Appellant. He referred to the last page of the impugned review order whereby the said order was not served directly at his address at Lahore which transpires that the compliance of Section 215 of the Customs Act, 1969 which is mandatory has not been

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complied with. Since the impugned order was never received by the Appellant of which a certified copy on the specific request of the Appellant was issued by the Respondent vide letter No. Misc/ 13/2011-Law/579 dated 7.3.2011. The subject Appeal was immediately filed after receipt of the copy of the order within statutory time limit as envisaged under Section 215 of the Customs Act, 1969. Since the delay was beyond the control of the Appellant, the Advocate requested for condonation of the same. The Advocate also pointed out that Section 5 of the limitation Act was not applicable to proceedings before the Tribunal and the Tribunal had wide discretionary powers to condone such unintentional and non-contumacious delay if there is sufficient cause shown by the Appellant. He further added that even otherwise it would cause undue hardship and irreparable loss to the Appellants. He relied upon judgment of Lahore High Court delivered in the case of M/s Laser Praxis Deplex Clinic Lahore versus , Customs, Central Excise and Sales Tax Appellate Tribunal Lahore



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reported as (2002) 85 Tax 18 ( H.C.Lah). The representative of the respondent with respect to these contentions of the Appellant didn't take any objections. Considering the aforesaid facts and circumstances we prefer to maintain the principles and norms of natural justice and equity and order to condone the subject delay for the purpose of giving opportunity to the appellant to plead his case on merits in accordance with law. This is also supported by the judgment of the Honourable Supreme Court of Pakistan reported as 2002 SCMR 343, which stipulates as under:-

"where aggrieved party was neither served nor was aware of institution of proceedings affecting his rights, period of limitation provided by law would commence from the date the aggrieved party became aware of such proceeding or adverse order. Order appealed against found to be a nullity, about which affected party had no earlier knowledge. --- Plea of limitation that it started from the date of order could not be pressed against such party, as he would be entitled to challenge same within the prescribed time counting to period from date of his knowledge."

6. In view of the stated reasons supra, the delay in filing of appeal is condoned in terms of Section 194-A(5) of the Customs Act, 1969.

7. On the date of hearing Mr. Arif Moton, Advocate alongwith Mr. Adnan Moton, Advocate appeared on behalf of the appellant and reiterated the contents mentioned in the grounds of appeal and further contended that two consignments of galvanized coils secondary quality of German origin were imported @ US\$ 4.90 per Metric ton and one consignment of CRC Secondary quality of Belgium Origin was imported at US\$ 405 per Metric Ton. However, these goods were assessed @ US\$ 583 per Metric Ton in terms of Valuation Ruling No. 143 of 2009 dated 13.3.2009 which was contrary to the provisions of Section 25 A of the Customs Act, 1969. As such the aforesaid Valuation Ruling was challenged by the Appellants as well as other importers in the Honourable High Court of Sindh at Karachi vide CP Nos. 1434/2009 and 1439/ 2009. All the Constitutional Petitions on this subject in respect of Valuation Ruling No.143 of 2009 were disposed off by the Honorable High Court by their order dated 18.2.2011 in C.P No. 2673/ 2009. The aforesaid Valuation Ruling along with other Valuation Rulings agitated against were declared ultra virus of Section 25 of the Customs Act. 1969 and the department was directed to issue fresh Valuation Ruling in terms of Sections 25 and 25 A of the Customs Act, 1969 in each case. The Constitutional Petitions filed by the Appellants were also disposed off by the Honourable High Court by their order dated 19.5.2011 on

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the basis of an earlier judgment of this Honourable High Court in CP No. 1439/2009 in the following manner:-

31. "In view of what has been stated above, we allow these petitions to the extent that the valuation rulings impugned thereby ( and corresponding orders in revision, if any) are quashed and set aside. The concerned officer may, in each case, make a fresh determination of the customs value of the concerned category of goods under section 25 A in light of what has been stated herein above within 90 days from today, after following the procedure applicable to the method actually adopted and giving an opportunity to the stakeholders to make representations. If such customs values are determined within this period, then the imported goods of the petitioners shall be assessed to duty on that basis. If however, no such determination is made within the stipulated period, then the imported goods shall be assessed to duty on the basis of customs values determined under section 25. In either case, if on such determination, it is found that the concerned importer has made an over payment of customs duty and / or any other taxes or duties assessed on an ad valorem basis) then the overpaid amount shall be refunded forthwith. If any security is given for, or amount deposited by way of any differential amount, such security shall stand discharged or amount deposited refunded, as the case may be. If of course, an underpayment has been made, the balance amount may be recovered from the importer in accordance with the provisions of the Act."

8. He further contended that the Appellants were not associated along with other stakeholders while determining fresh values in terms of Valuation Ruling No. 325/2011 dated 25.5.2011 by the Respondent Directorate General of Customs Valuation Custom House Karachi in pursuance of orders of the Honourable High Court dated 19.5.2011 in CP No.1439/2009. In fact, the other stakeholders were associated in the aforesaid exercise by Directorate General of Customs Valuation since their Constitutional Petitions were decided much earlier vide CP No.2673/2009 decided on 18.2.2011. The Appellants needed to be associated in the aforesaid exercise of issuance of fresh Valuation Ruling 325/2011 dated 25.5.2011 since the orders issued by Honourable High Court in the Constitutional Petition of the Appellant were very much in the knowledge of law officers of the Directorate General of Customs Valuation who were physically present during the course of hearing before the Honourable High Court on 19.5.2011, yet did not associate the Appellants or their Advocate before the issuance of the fresh Valuation Ruling No. 325/2011 on 25.5.2011. The Appellants therefore did not get a chance to put forth their view point before the Directorate General of Customs Valuation Custom House Karachi along with other stakeholders. It is not the case of the Appellants that other stakeholders were associated or not but it is their focal / pivotal argument that their point of view was not heard, considered and recorded at all and which could have a significant bearing in disposal of their

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case. The Appellants took up the same issue of violation of the principle of "Audi Alteram Partem" against Directorate General of Customs Valuation Custom House Karachi through filing of Complaint No.441/KHI/ CUST/194 /1070 / 2011 dated 23.9.2011 with Federal Tax Omdusman Karachi where the Appellants also vehemently contested the legal standing of the fresh valuation ruling itself which linked up the determined values with LC dates which was patently unlawful and illegal being ultra vires the mandatory provisions of Section 25(1) of the Customs Act, 1969 read with Rule 107(a) of Customs Rules, 2001, besides being discriminatory and confiscatory to the detriment of the Appellants in as much as it favored importers whose LCS were negotiated subsequently at much lower prices or consignments imported against cash payments in wake of rapidly falling prices during the (90) days Valuation period. On the basis of the directives of the Honourable Federal Tax Omdusman Karachi the Appellants were associated with the Valuation Exercise and consequently a thorough and exhaustive examination of records and documents produced by the Appellants before the Director Valuation Customs House Karachi was conducted by the Director Valuation Customs House Karachi in exercise of his powers under Section 25A of the Customs Act, 1969. The Director Customs Valuation issued letter C. No. Misc/13/2011 /VIA/567 dated 27.2.2012 whereby the declared transaction values of the Appellants were found in order hence correct in wake of the factual position that the values worked out on the basis of the record, data and documents by the Director Customs Valuation Custom House Karachi were in fact slightly lower than the aforesaid declared transaction values of the Appellants. On the basis of above findings of the Director Customs Valuation, approached the Collector of Customs, Model Customs Collectorate, Karachi for release of the amount which was deposited as a security in terms of the Interim Orders of the Honourable Sindh High Court. The Nazir of the Court directed that NOC of the respondents may be provided before the final instrument is released and the amount is returned. The respondents refused to issue the NOC and instead agitated the matter before the Honourable Sindh High Court challenging the order of the Director Valuation dated 27.2.2012. He further contended that after hearing the department as well as the Appellant, the Honourable High Court vide its order dated 16.10.2012 observed that the letter of Director Customs Valuation C.No.Misc/13/2011-VI-A/5367 dated 27.2.2012 by no stretch of imagination fulfilled the criteria of Valuation Ruling and was not issued

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after exhausting the prescribed procedure under the statute and as such did not entitle the Appellant to claim refund. Infact, Director Customs Valuation could not revise the existing Valuation Ruling No.325/2011 dated 25.5.2011 without legal mandate under Section 25-D of the Customs Act, 1969 and could not also issue a fresh Valuation Ruling in exercise of his powers under Section 25-A of the Customs Act, 1969. The Honourable High Court of Sindh at Karachi in view of the entailing situation where the Appellants did not agree with the Valuation Ruling No.325/2011 dated 25.5.2011 ordered that "However, in order to provide an opportunity to plead his case fairly let the matter be placed before Director General Customs Valuation for passing appropriate order in accordance with law". He further contended that the Director General Customs Valuation has Revisional Powers entrusted to her by dint of Sections 25 A (3) of the Customs Act, 1969 and Section 25D ibid respectively. Since the subject matter pertaining to the aforesaid disputed Valuation Ruling No.325/2011 dated 25.5.2011 being a bone of contention between the Appellants and Respondents was pending in the Honourable High Court was referred by the Honourable High Court to the learned Director General Customs Valuation vide their order dated 16.10.2012 in terms of Section 25D of the Customs Act, 1969. For ease of reference Section 25D of the Customs Act, 1969 is reproduced below:-

**ATTESTED 25D. REVISION OF THE VALUE DETERMINED:**



[Where the customs value has been determined under Section 25A by the Collector of Customs or Director of Valuation the revision petition may be filed before the Director General of Valuation within 30 days from the date of determination of customs value and any proceeding pending before any court, authority or tribunal shall be referred to the Director-General for the decision.]

He further contended that, in fact the Director General of Valuation exercised her powers in pursuance of the aforesaid orders of the Honourable High Court dated 16.10.2012 in her capacity as a revisional authority under Section 25D of the Customs Act, 1969 and not under Section 25(3) ibid as misconceivedly mentioned in her impugned order dated 8.11.2012. The proceedings conducted during hearing proceedings simply indicate that no effort whatsoever has been made by the Director General Customs Valuation nor any exercise in terms of Section 25(3) of the Act has been conducted by her for determination of the values. The above contention is also supported by a plain reading of the Para 6 of the impugned order of the learned Director General Customs Valuation dated 8.11.2012 wherein it is crystal



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clear that the Director General has in unqualified and unequivocal terms observed that "in view of the foregoing factual position applicability on Petitioners referred six Goods Declaration as per Valuation Ruling No.325/2011 dated 25.5.2011 appears to have been equitably based and correctly enforceable under the law. However, the Director General in a whimsical, arbitrary manner and with malafide intention decided the case vide the impugned order dated 8.11.2012 wherein the values were illegally determined under Section 25-A (3) of the Customs Act, 1969. This determination of valuation by the Director General is illegal and void ab-initio, against the law as contained in Section 25 and 25 A of the Customs Act, 1969 and against the case law established on the subject. The order of the Director General is illegal, abinitio and liable to be set aside. The Appellants being aggrieved by the aforesaid order of the learned Director General Customs Valuation issued in pursuance of the Honourable Courts order dated 16.10.2012 and in exercise of her revisional powers under Section 25D thoughtfully exercised their legislative right of filing appeal before this Honourable Customs Appellate Tribunal in the first instance in terms of Section 194-A clause (e) of the Customs Act, 1969 for rectification of their grievance.

10. Representative of respondent Principal Appraiser Valuation, Mr. Muhammad Aslam, reiterated the contents of para-wise comments filed, and controverted the arguments of the Appellants advocate. He emphasized the point that Director General of Customs Valuation is empowered to determine the Customs Value under Section 25A (3) of the Customs Act, 1969. The Appellant Six Goods Declaration determined as per Valuation Ruling No.325/2011 dated 25.5.2011 are equitably based for all imports effected through out the country. It is submitted that the order of the Director General vide No. Misc/13/2011-VIA/7848, dated 8.12.2012, is a speaking one in compliance with directives of Honourable High Court of Sindh, Karachi and incorporated submissions made by the Petitioner, MCC, PaCCS, Karachi, MCC, Appraisement. Karachi and MCC, Port Qasim, Karachi and in terms of Section 25A of the Customs Act. 1969. Finally, the Customs Values were determined for uniform application on all Customs Collectorates on equitably based for the imports of the Appellant. It was obvious that a discriminatory treatment to single out specific importer/ import was not justifiable in the public interest and in the eyes of law. This is so

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because of the reason that importer who cleared their consignments on Valuation Ruling No.325, dated 25.5.2011 may suffer stoppage of their sales in local market as against the Appellant's consignment consisting 06 GDs with lower declared values. That considering the rules of consistency and to eliminate the discrimination with other importers who paid duties and taxes as per Valuation Ruling No. 325 dated 25.5.2011, the said order dated 18.11.2012 is obviously a natural justice for each and every importer and in the interest of local consumer of the goods. That the values of the iron and steel products keeps varying in the international market and once a particular buying contract had been established, through LC, the imports against such contract were not subject to subsequent valuation changes. In fact pinning the value with date of LC ensured that apples were compared with apples. If such a binding was not there then purchases made at a higher value could be cleared at lower value which might have prevailed at a subsequent date. The specific situation arose in the wake of international market crunch of 2008-2009, when prices were rapidly falling and unscrupulous importers wanted to exploit the situation by taking further benefit of claiming yet lower values than the ones at which purchases were made. It was in this background that prices were linked with date/month of establishing the LC.

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11. We have examined the case record and given due consideration to the arguments put forth by both the parties. The pivotal and basic contention raised by the Appellants that the impugned Order of the Director General Customs Valuation Custom House Karachi is perverse on the basis of non fulfillment of the prescribed parameters and criteria whether under Section 25 A or 25D of the Customs Act, 1969. The whole proceedings culminating with the issuance of fresh Valuation Ruling No.325/2011 dated 25.5.2011 and the impugned order by the Director General Customs Valuation dated 8.11.2012 could only be appreciated had the same were conducted in conformity with the prescribed procedure and parameters enunciated by the relevant statutes and rules. In this regard the Supreme Court of Pakistan in the case of M/s Zymotic Diagnostic International CP No.434-K/2005, has held that the fixation of value must be done by following the provisions of law in 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 25 A.....The language of section 25 A 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-section 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 have given the ruling without any reasoning nor it has 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.

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such 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 2206 PTD 1635, 2006 PTD 2142, SCMR 1446, 2007 PTD 523 & 2007 SCMR 1357.

As such the subject mandatory requirements were not opted by the person having the jurisdiction to issue a Valuation Ruling or revised it in violation thereon prescribed and defined under the relevant statutes of the Customs Act, 1969. Since the proceedings conducted by the Director Customs Valuation in issuance of fresh Valuation Ruling No. 325/2011 dated 25.5.2011 nor the letter issued by Director Customs Valuation bearing C.No. Misc/13/2011/-VI-A /5367 dated 27.2.2012 was in accordance with the legal mandate under Section 25 A. All the proceedings carried on in this context including the Valuation Ruling itself become unlawful and illegal and no limitation would run against such proceedings or Valuation Ruling in view of the dictum of law as defined and settled by Superior Courts.

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12. Exercise conducted by Director General Customs Valuation Custom House, Karachi regarding the confirmation of the Valuation Ruling as reflecting in Para 5 of her impugned Order dated 8.11.2012 infact constitutes a review of the earlier Valuation Ruling No.325/2011 dated 25.5.2011 since no fresh exercise in terms of Section 25 A(3) of the Customs Act, 1969 was undertaken. The Director General Valuation in her order dated 8.11.2012 has simply jotted down different view points of all participants namely the Appellants, MCC (PACCS), MCC (Appraisement), MCC (Port Qasim) and without going into the merits of Valuation Ruling 325/2011 dated 25.5.2011 has observed that the aforesaid Valuation Ruling appears to have been equitably based and correctly enforceable under the law. For sake of ready reference the operational part of the impugned order of Director General Customs Valuation dated 8.11.2012 is reproduced below:-

*"The subject goods were imported in the year 2009 and GD filed by the petitioner for its clearance was assessed by the clearance Collectorate in accordance with the prevailing values determined under section 25A of the Customs Act, 1969. This was contested by the petitioner and the disputed values set aside and High Court ordered for issuance of fresh determination of customs value were duly complied. While analyzing and deciding the values afresh, it was ensured that the determination of customs value was made applicable to relevant period, in accordance with explicit directions of the Honourable Court of Sindh in its order dated 28.2.2011 in CP 2637/2009. Since the petitioner's referred consignments (six GDs) were related to the same period and connected to petitions, it was obvious that a discriminatory treatment to single out specific importer/ import was not justifiable in the eyes of law. The ruling prevailing at that point in time was a legal document and its sanctity could not be altered merely by issuance of a letter.*

*It has been observed that the determination of value of subject goods was based upon the background that there were wide variation in the value of iron and steel products in the international market. To discourage the misuse of this situation, it was deemed appropriate to link the prices with the LC period and by referring to the prevailing international prices, the same represents a fair and transparent value determination.*

*In view of the foregoing factual position applicability on petitioner's referred six CD's as per Valuation Ruling 325 dated 25.5.2011 appears to have been equitably based and correctly enforceable under the law.*

*Based upon the above findings, the Customs Values for HRC, CRC and GP sheet secondary quality and hereinafter specified shall be determined under section 25A (3) of the Customs Act, 1969. in respect of the referred six GDs of the petitioner and shall be assessed to duty/*





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*taxes on the customs values mentioned against them in the table below."*

13. Before dialing upon the issue of patent legal infirmity floating on the surface of the impugned Valuation Ruling 325 2011 dated 25.5.2011 and its subsequent authentication order dated 8.11.2012 by Director General Customs Valuation pertaining to the linkage of the LC dates for determination of transaction values in terms of section 25 of the Customs Act, 1969, it is deemed essential in the first instance to scrutinize the circumstances which prevailed in the international market of iron and steel products. As per record presented before us the prices of the subject goods rapidly declined during the relevant period of the year 2008-2009 when these goods were imported by the trade at large. Brushing aside the provisions of Section 25(1) of the Customs Act, 1969 read with Rule 107 (a) of the Customs Rules, 2001 the Customs Administration went ahead with unlawful and illegal mode of linkage of prices of different importers with the dates when these LC were opened by these respective importers in pursuance of the concluded contracts. By doing so the Customs Authorities were trying to maximize duty and taxes which other wise could not have been collected in terms of 90 days Valuation Data in terms of the aforesaid mandatory provisions of the Customs Act and Rules. At this juncture we may refer to the erst while regime under Brussels Definition of Value where the notional concept of value was in vogue and was linked with the dates of establishment of contracts. Even then LC dates were immaterial. One more feature of the regime under Brussels Definition of Value in terms of Customs General Order 1 of 1971 and Customs General Order 2 of 1981 advocated element of time tolerance during periods of abnormal fluctuation of prices variation of 10% or more resulting in large differences between the contractual price and those current at or near the time of Valuation and where the price of the date current at the time of Valuation was used as the basis for determining the dutiable value. Such concept does not exist in the present regime under concept of Transaction Value. Section 25(1) in relation to transaction value states that "The Customs Value of the imported good, subject to the provision of this Section and the Rules, shall be the transaction value that is the price actually paid or payable for the goods when sold for export to Pakistan .....". Section 25 (5) ibid states that "If the Customs Value of the imported goods cannot be determined under the provisions of sub-section (1) it shall subject to rules, be the transaction value of identical goods sold for export to Pakistan and exported at or about the same



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as well as the case under section 25B or sub-section (14) of section 25 both the sections omitted from the act (By the Finance Act of 2005 respectively)". The determination is the multi step exercise, at each stage of which there has to be proper application of mind by the concerned officer. It is therefore appropriate that the Ruling should contain sufficient details to show that the section 25A has been properly applied. Furthermore, the fact that determination is subject to revision by the Director General Valuation under Section 25D. It is necessary that the valuation ruling and orders issued subsequent thereto should be speaking orders fulfilling the requirements of section 24 A of General Clauses Act 1897 and address all the issues raised by the stakeholders in conformity with the law laid down by the Honourable Lahore High Court Lahore in the case of M/s National Bottlers (Pvt) Ltd versus Government of Pakistan. Central Board of Revenue and 2 others reported as PTCL 1995 CL 123.

16. It is also important to observe that the determination of customs value of goods should be made on specific principles. Express statutory intent was for the transactional value to be established through the procedure specified under Section 25 of the Customs Act, 1969. This was to be applied or otherwise exhausted sequentially to arrive at lawful valuation of goods.

The department in the present case instead of following specified manner and method for determination of transactional value in the prescribed sequence had straightaway adopted a novel method alien to Customs Act and Rules in enforcing LC Dates for determination of Customs import values.

17. At this point of time, we also prefer to constrain our self on a point that "whether in consequence provided in case of delay in passing the order/judgment as mentioned in proviso of Section 194-B(1) of the Customs Act, 1969 could entail invalidity or disobedience"? The legal controversies and issues involved in the subject appeal are extensively elaborated by both the parties, importantly the respondent submitted the parwise comments for the assistance of the Court. As per the assistance provided during the hearing, perusal of record and evidence available thereon, enable us to pass a speaking order/judgment which does not entail any invalidity or disobedience which could cause legal consequences in this regard. Since there is no penal consequence in case of default in passing the order/judgment within the time as mentioned in Proviso sub-section (1) of Section 194-B of Customs Act, 1969, such provision is directory and not





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mandatory hence, its non-compliance would not vitiate the proceedings of the order/judgment passed by the Appellate Tribunal.

18. Before the court of law it is mandatory for the department to show some material to justify the charge as caused and imposed by issuing the valuation ruling. In case of such lackings and legal lacunae and such disclosures discredit the impugned action. The impugned valuation ruling and its perfunctory and sketchy review by the Director General of Customs Valuation in pursuance of the Honourable High Court Order dated 16.10.2012 are devoid of the foregoing attributes and are therefore declared to be without lawful authority void and illegal up to the extent of present appellant only. The respondent is further directed to re-assess the impugned goods of the appellant in accordance with the value as declared under section 25 of the Act for similar and identical goods in terms of the 90 days Valuation Data available on their record in terms of Section 25 (1) (5) (d) of Customs Act, 1969 read with Rule 107 (a) of Customs Rules 2001. The Appeal is allowed in the above terms.

ATTESTED



Order passed accordingly.

— Scll —  
(GHULAM AHMED)  
Member (Technical-II)

— Scll —  
(MUHAMMAD NADEEM QURESHI)  
Member (Judicial-I)

GOVERNMENT OF PAKISTAN  
CUSTOMS APPELLATE TRIBUNAL  
BENCH-I, KARACHI

Appeal No. Old dated  
Appeal No. New, 264/2013 dated 21/03/2013  
M/s. Ahsan Brothers  
Order-in-O/Appeal dated 08/11/2011  
by D.G. of Customs Valuation

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