

JUDGMENT

MUHAMMAD NADEEM QURESHI, MEMBER JUDICIAL-I, KARACHI:

By this Judgment, we shall dispose of the all above identical appeals filed by the appellants against Order-in-Appeal No. 10282 to 10431 dated: 07-07-2015, passed by the Collector of Customs (Appeals), Karachi. These appeals have identical issue of law and facts therefore, being heard dealt with and dispose of simultaneously though this common order in the light of the judgment of the Honorable High Court of Sindh in Customs Reference No.157 of 2008, S.M. Naqi S/o Syed Muhammad Hussain, Karachi Vs Collector of Customs (Adj-I) and Others.

02. Brief facts of the case are that M/s. Waheed Sons and their sister concerns namely M/s. Home Life, M/s. MAW & Company, M/s. MSW and Company and M/s. Agility and Co., had imported number of consignments of China origin tiles of various sizes during the years 2010 and 2011. The Goods Declarations pertaining to the subject goods were filed under Section 79(1) of the Customs Act, 1969, duties and taxes were paid upfront as per self assessment, considering the declared value as Customs value for assessment purposes. The assessment was not accepted by the respondents and Customs value determined by the Directorate General of Valuation under Section 25A vide Valuation Ruling No. 216 dated 03-02-2010, were applied. The vires of the said Ruling were challenged before Hounourable Islamabad High Court vide W.P. No. 1756/2010. The Honourable Court vide interim order directed the respondents to release the goods on provisional basis by securing the differential amount of duty/taxes against post dated cheques pending Court's decision. The goods were accordingly released as per Court order. The W.P. No. 1756/2010 along with identical petitions was decided vide consolidated order dated 29-05-2012. Vide the said order the impugned

ATTESTED



Valuation Ruling was set aside and all the cases were remanded back with direction that Collector of Customs value of the impugned goods in accordance with law and rules as well as guidelines provided in the judgment. The said order was assailed by the department before Islamabad High Court vide Intra Court Appeal Nos. 439/2012 and 376/2012. The Islamabad High Court vide interim order dated 28-03-2013 suspended the judgment passed in W.P. 1756/2010 and the connected petitions. In pursuance of the orders in W.P. No. 1756/2010, some officers below the rank of Collector and Director finalized a few provisionally assessed cases by issuing assessment orders as early as July 2012, which were assailed before Collector Appeals and Customs Appellate Tribunal. The Appellate Tribunal accepted the appeals and directed the department to accept declared prices as the actual transaction value vide order dated 09-12-2012 in Customs Appeal No. K-16 to 19/2013. This order also disposed of 25 GDs pertaining to M/s. Home Life and M/s. MSW & Co. These 25 GDs were however excluded from the purview of this order. The responding Collectorate filed a reference before High Court, challenging the order by Customs Appellate Tribunal.

03. While on 20-10-2012, Committee of three Collectors, in order to implement the decision of Honorable High Court Islamabad in WP 1756/2010 and to resolve disputes pertaining to valuation of tiles imported during the period 03-02-2010 to 29-05-2012, held a meeting with trade bodies and similarly placed importers and decided customs values for the purposes of finalizing past provisional clearances. The said values were without prejudice to out come of pending review and ICA before the Islamabad High Court and were equally applicable to clearances through MCC, PaCCS, MCC Port Qasim and MCC



Appraisement. This was also brought to the knowledge of department's council pursuing the review petition so that he could apprise the Court.

04. It is apparent that matters were accordingly finalized and post dated cheques were put up for encashment. Perusal of judgment of Islamabad High Court in WP 4628/2013 and attending identical Writ Petitions shows that some of the importers including M/s. MSW & Co in WP No. 4426/2012, M/s. Home Life in WP No.4386/2012, M/s. Waheed Sons in WP No. 4257/2012 and M/s. MAW & Co in WP No.2195/2014 had prayed for stopping coercive measures with regard to recovery proceedings and acceptance of declared value in accordance with judgment in WP No. 1756/2010. The Islamabad High Court in pursuance of order dated 14-06-2013, by Honourable Supreme Court of Pakistan in Civil Appeal No. 371 to 379 of 2013 decided that Islamabad High Court lacks territorial jurisdiction as dominant object of filing these writ petitions existed at Karachi. The Honourable High Court Islamabad also held that interference of this Court would amount to allow the use of remedy of writ petition was a mischief against the state functionaries to compel them to act and proceed against the mandates of law. Accordingly all the writ petitions were dismissed due to lack of territorial jurisdiction, vide order dated 23-01-2015.

ATTESTED



order to facilitate payment of stuck up revenue, respondents made fresh calculation on the basis of Valuation Ruling 538/2013 dated 16-01-2015, issued by Director Valuation under Section 25-A of the Customs Act, 1969. The said calculation sheet was handed over to the appellants to make payment. The said calculation sheet is being termed as an assessment order by the appellants, which shows that it is not an order in sensu stricto. The appellants sought relief from Honourable High

Court of Sindh, vide WP No. D-1453/2015. The Honourable Court vide order dated 27-05-2015 issued direction to decide the subject matter within a period of 30 days. Accordingly the appeals were filed before the Collector of Customs (Appeals) Karachi. The Collector of Customs (Appeals) Karachi decided the matter and concluded his observations as follows:

"It appears that the department also succumbed to the ploy by the appellant and provided them a probable fresh cause of action by way of handing over reconciliation statement of payable amount calculated on the basis of Valuation Ruling 538/2013 dated 16.01.2013. This valuation ruling was issued after the judgment of Islamabad High Court had been complied. The description of the valuation issue contained in this valuation ruling is fresh determination of customs values in line with the prevailing international prices. Though there is a passing reference to ruling 216/2010, being set aside by court, yet the ruling 538/2013 does not redetermine or revise the value of tiles pertaining to the period of import of impugned goods which has been specifically dealt with earlier by the Collector's Committee. The valuation ruling 538/2013 is therefore with prospective application and not applicable in the instant case.

In view of the aforesaid discussion I hold that the appellants are not aggrieved in terms of section 193 of the Customs Act, 1969. The matter regarding determination of value of tiles imported during the period 03.02.2010 to 29.05.2012 stood decided finally by the Committee of Collectors in pursuance of judgment of Islamabad High Court. There is no room available to the appellants to bring in view pretensions. The department is also not on sound legal footings to drag valuation ruling 538/2013 to apply to old cases."

06. Being aggrieved and dis-satisfied with the impugned Order-in-Appeal, the appellants filed these appeals on the grounds mentioned in the Memo of Appeal.

ATTESTED



07. Learned counsel for the appellant appeared and argued that orders passed by both the lower authorities are illegal, against the facts of the case and without any material evidence, hence liable to be set aside. The impugned assessment has been passed without issuance of the show cause notice and without material evidence as well as the show cause notice and without material evidence as well as direction given by the Collector (Appeals) to calculate the value of the goods on the basis of the valuation ruling dated 20-10-2012 against the appellant is illegal,

without lawful authority is liable to be set aside. The impugned assessment order has been against the judgment of the Honourable High Court passed in W.P. No. 1756/2010 titled as M/s. Facto Trading vs. FBR etc, hence, issuance of assessment order as well as direction given by the Collector (Appeals) to calculate the value of the goods on the basis of the valuation ruling dated 21-10-2012 is illegal, ultra vires and without lawful authority liable to be set aside. The application of Section 25(5) of the Customs Act, 1969, has also made against the provisions of law, as per sub-section (5) clause (d) of the Section 25 of the Customs Act, 1969, the value of the identical goods, whichever is the low will be applicable, hence, the entire increase in the value of the goods is in violation of Section 25 in toto, hence, illegal, without lawful authority. Learned counsel further contended that the rejection of the declared value as well as the direction given by the Collector (Appeals) to calculate the value on the basis of ruling dated 20-10-2012 of the Appellant has been made without requiring, reference and without applying requirements of Section 25(5) in true sense in respect to the transaction of bills of entries specifically, hence, entire valuation made by the respondent is based on arbitrarily, flimsy as well as based on assumption, hence, same is illegal and without lawful authority. Without

ATTESTED



calling the specific information as well as without determining the value under Section 25 (1) as well as direction given by the Collector (Appeals) to calculate the value of the goods on the basis of the valuation ruling dated 20-10-2012 is against the law and facts, no such deprive of the appellant from the declared value under section 25(1) of the Customs Act, 1969, can be made. The appellant entered into agreements with the exporters having huge production volume and enjoying the lowest cost of their production, the said exporters are known as under:

1. Foshan Bellacasa Co Ltd., 2F, Hualei Bldg,
10# Quing Shui Road, Chancheng, Foshan, P.R. China.

2. *Hengyan Building Materials Limited,
5/F, No. 198, Dong Feng Road West, Guangzhou, China*
3. *Foshan Junjing Industrial Co Ltd.,
7/F, Jinqiao Building Hua Yuan Road East, Foshan,
Guangdong, China.*
4. *Tangshan Huida Ceramic Group Import & Export Co Ltd
Huanggezhuang Town, Fengnan District Tangshan City,
Hebei, China.*

08. Learned counsel for the appellant further argued that the prices of the goods were settled according to the volume of import as well as the said manufacturers are the biggest manufacturers of China. It is pertinent to mention that the said data is very much available with the assessing authority in the light of the import of the appellant. The declared value of the goods of the appellant were based on the actual price paid to the exporter and the said aspect is verifiable from the concerned quarters of China. Hence, the value of the goods declared by the appellant is the actual price paid and same is required to be accepted by the Customs authority under Section 25 sub-section 1 of the Customs Act, 1969, hence, no addition on account of the value declared by the importers can be made by the assessing authority, therefore, the entire addition and estimation made by the assessing authority are illegal and against the facts of the case. The value declared by the appellant is based on actual export price and same cannot be rejected by the respondent summarily, arbitrarily and against the provisions of the Customs Act,

ATTESTED



The orders passed by the respondent is based on flimsy mind and appeared in person nor attended the proceedings, hence, entire proceedings are based on harassment to the appellant as well as direction given by the Collector (Appeals) to calculate the value on the basis of ruling dated 20-10-2012 is against the law and facts. The respondent has no jurisdiction to reject the declared value of the goods of the appellant under Section 25(1) of the Customs Act, 1969, without confronting the material evidence to the appellant against the declared value. The respondent without comparing the tiles of the others without

considering the specification, brand, composition etc with reference to the tiles imported by the appellant no identical goods of other party can be used against the appellant in such circumstances, hence, entire proceedings are baseless. The aspect of similar tiles/identical tiles could not be establish while estimating the value of the goods of the appellant and also the direction given by the Collector (Appeals) to calculate the value of the goods on the basis of valuation ruling dated 20-10-2012 is against the provisions of law, authorities below have violated the guidelines given by the Honourable Court in WP No.1756/2010, hence entire act of the respondent regarding non acceptance of the declared value of the goods of the appellant being the highest value of the goods, is illegal, without lawful authority. The respondents have violated the provisions of Section 25 (1) & (2) of the Customs Act, while making the assessment and same is also based on mis-application of law and facts as well as the direction given by the Collector Appeals to calculate the value on the basis of valuation ruling dated 20-10-2012 is without any basis and justification. The final assessment subject matter of appeal is time bared; hence, same is without jurisdiction. The assessment authority as well as the learned Collector Appeals have ignored the aspect of the appeal as without show cause notice no assessment, order

ATTESTED



can be passed and without passing the final assessment order, the declared value becomes final, hence the declared value as per provisional assessment has attained finality, same need to be accepted. The respondents have no jurisdiction to apply the value of the other goods of the other party without comparison of the same and also without consulting with reference of nature, type, shape, brand of the goods, hence such exercise by the respondent is purely against the law and fact of the case. Counsel for the appellant prayed that appeals be accepted and the orders passed by the authorities be declared illegal, without

lawful authority and ultra vires and value declared by the appellants be accepted under Section 25 sub-section (1) of the Customs Act, 1969, as transactional value, respondents be directed to return the post dated cheques against the differential amount to the extent of disputed amount submitted in the compliance of stay orders of the Honourable High Court.

09. The departmental representative appearing on behalf of the respondents vehemently denied the grounds of appeal and argued in favour of the impugned Order-in-Appeal and contended that the assessment of subject consignment of Glazed Porcelain un-polished tiles has been made in terms of Valuation Ruling No. 538/2013 dated 16-01-2013 which has been issued in terms of Section 25-A of the Customs Act, 1969. The Divisional Bench of the Islamabad High Court vide order dated 28-03-2013 in ICA No.376/2013 has already suspended the previous order passed by the Honourable Islamabad High Court in case of WP No.1756/2010 and the Valuation Ruling No. 538/2013 dated 16-01-2013 was issue which has been agreed by the majority of importers of tiles, that is why, since January 2013, all importers are paying duty and taxes as per aforesaid Valuation Ruling. The assessment in the subject

ATTESTED has been made as per the Valuation Ruling No. 538/2013 which has been issued when the Intra Court Appeal filed by the Directorate General of Customs Valuation was admitted. The contents of Valuation Ruling would reveal that valuation methods given in Section 25-A of the Act were examined so that to ascertain that which method would be appropriate to be applied thereon. The meetings were also held with stake holders on various dates to ascertain that the international market prices of ceramic and porcelain tiles. He further contended that since the methods i.e. 25(1), (2), (5), (6) and (8) of the Act, was not found to be



applicable, therefore the deductive value methods was adopted to determine customs values of ceramic and porcelain tiles. Tiles importers were never ever able to substantiate their declared value as true payable transaction value to be considered as customs value for charging duties and taxes in terms of Section 25(1) of the Act. The majority of the importers were aware of this fact that is why all the importers are paying duty and taxes as per Valuation Ruling No. 538/2013. As regards the appropriate method is concerned after applying all method in terms of Section 25 of the Customs Act, 1969, the most appropriate method was deductive value method under Section 25(7) of the Act, which was duly applied. The assessment was made in terms of Valuation Ruling No. 538/2013 dated 16-01-2013 which was issued by the competent authority in terms of Section 25-A of the Act and has the legal binding upon filed formation to be implemented in letter and spirit for the purpose of assessment. Respondent's representative further contended that every declared value cannot be accepted as a true transaction value until the same is proved through corroborative document and in failure the appropriate officer has no other choice but to reject the declared value for the assessment purposes. Therefore, by virtue of powers conferred under sub-section (11) of Section 25 of the Customs Act, 1969,

ATTESTED



read with Rule 109(2), 111 and 121 of the Customs Rules, 2001, the appropriate customs officer has a right to satisfy himself whether the declared paid value is true payable transaction value to be considered as customs value for the assessment purpose. The contents of Valuation Ruling No. 538/2013 dated 16-01-2013 would clearly reveal that the aforesaid Valuation Ruling was issued since the Intra Court Appeal against the previous order of the Honourable Islamabad High Court was suspended, and the Valuation Ruling is within the provision of law and prayed for dismissal of the appeals filed by the appellants.

10. Arguments heard and concluded. After hearing both the parties, arguments extended thereon and perusal of record it transpires that the subject controversy arises against the import of Porcelain Polished Floor Tiles from China and after filing the Goods Declaration all the subject appeals the respondents did not accept the declared value and applied the rates of the Tiles on the basis of Valuation Ruling No.216 dated 03.02.2009. Against the subject dispute the appellants filed the Writ Petition before Islamabad High Court for declaration of the Valuation Ruling and the Honourable High Court passed the initial order and appellant's goods provisionally released. The subject appellant's petition was accordingly decided in the W.P. No.1756/2010 by the Honourable Islamabad High Court with the direction that *"In the above said circumstances, impugned Valuation Orders are set aside and all the cases are remanded back with the direction that the Collector of Customs or the Director of Customs valuation may pass a fresh order regarding determination of customs value of above said items in accordance with law and rules as well as guidelines provided in this judgment. All the writ petitions are disposed off in the above terms."*

ATTESTED



On 20.10.2012, a Committee comprises of three Collectors, in order to implement the decision of the Honourable High Court Islamabad in W.P. No.1756/2010, and to resolve the disputes pertaining to valuation of tiles imported during the period from 03.02.2012 to 20.05.2012, held a meeting with Trade Bodies and similarly placed importers and decided customs values for the purpose of finalizing past provisional clearance. According to the respondents / department, the said value was, without prejudice to, outcome of pending review and Intra Court Appeal before Islamabad High Court and were equally

applicable on to the goods cleared through MCC, PaCCS, MCC Port Qasim and MCC Appraisement. But on the contrary, it has been noticed and observed that present appeals and period defined thereon, the subject value advice issued by the Committee comprises of three Collectors dated 20.10.2012 never been applied, evidently there in no show cause notice nor any recovery notice or assessment thereon issued or made by the respondents / department. There is no iota of evidence available on record which proves that the provisional assessment was finalized in compliance of statutory provisions of Section 81 sub-section (4) of the Customs Act, 1969, nor there is any evidence in compliance of Section 81 sub-section (5) of the Customs Act, 1969, wherein any adjustment has been done by the concerned quarters, resultantly the assessment what so ever caused and created by the department under cover of letter dated 16.06.2015 accordingly declared time barred. Even otherwise, the Honorable Islamabad High Court in pursuance of Order dated 14.06.2013, passed by the Honorable Supreme Court of Pakistan in Civil Appeal No. 371 to 379 of 2013 decided that, the Honourable High Court Islamabad also held that, interference of this court would amount to allow the use of remedy or writ petition was a mischief against the state functionaries to compel them to act and proceed against the mandates of law. Accordingly all the writ petitions were dismissed due to lack of territorial jurisdiction, vide order dated 23.01.2015. It is also observed from the record that before final decision dated 23.01.2015, in order to facilitate payment stuck of revenue, they made fresh calculation on the basis of Valuation Ruling No.538/2013 dated 16.01.2013, issued by Director Valuation under Section 25-A of the Customs Act, 1969. The said calculation sheet is being termed as an assessment order by the appellants. A cursory look on these sheets of paper shows that, it is not an order in sensu stricto and the appellant sought relief from Honourable

High Court of Sindh vide W.P. No. D-1453/2015. The Honourable High Court of Sindh vide order dated 27.05.2015 issued direction to decide the subject matter within a period of 30 days. Accordingly the Collector of Customs (Appeals), Karachi, passed the impugned order on 07.07.2015, the matter was assailed before this Tribunal through present appeals.

12. Being the custodian of law, it is the responsibility of the Court to follow the dictum of law, statutory obligations and interpretation of law decidendi observed by the Superior Court. It is important to note and observe here that in these appeals the respondent had issued notice about the recovery of dues on 16.07.2015 without issuing any show cause notice or assessment, said act caused and created by the respondents / department is without lawful authority, jurisdiction and otherwise time barred. After close scrutiny of that notice, wherein the respondents preferred to initiate the process of recovery relying on the judgment passed by the Honorable High Court Islamabad in W.P. No. 1756/2010 and with effect of that all the appellants are directed / required to pay all outstanding government dues in terms of Section 195-

TESTED



of the Customs Act, 1969 read with Section 202 and Customs Recovery Rules, 2001. It is also mentioned in the said notice that if the appellant failed to pay the amount within 10 days of the receipt of this letter, further necessary action under Recovery Rules 2001 which may include blocking of imports, will be taken. The subject letter / recovery notice is ultra vires, without lawful authority on the basis of two folds (i) all the proceedings caused before the Honorable High Court Islamabad vide order / judgment dated 23.01.2013 passed thereon are been declared without territorial jurisdiction by the Honorable Supreme Court in Civil Appeal No. 371 to 379 of 2013, (ii) contents of the said section

are not mandatory under any statutory provisions of law, in present of Article 10-A of the Constitution of Islamic Republic of Pakistan are directory in nature. Even otherwise, if it is necessary the application under Section 195-B of the Customs Act, 1969 may be placed or filed before the Collector (Appeals) or the Appellate Tribunal for any appropriate orders, but for better reasons known to the respondent that application never been filed either before Collector (Appeals) nor before this Tribunal. It is also important to observe here that after the decision / judgment passed by the Honourable Supreme Court of Pakistan dated 23.01.2015 all proceedings conducted, caused, created and orders / judgment passed by the Honourable High Court Islamabad are became corum nonjudice and action initiated thereon by the respondent following the judgment / order passed by the Honourable High Court Islamabad are also falls under the dictum of corum nonjudice. As such the Valuation Ruling No.538/2013 dated 16.01.2013 does not have any warrant of law to be implemented or to be treated admissible for any assessment in these present appeals. The last order passed by the Honourable High Court of Sindh in W.P No.1453/2015 dated 27.05.2015, wherein the Collector (Appeals) was directed to decide the

ATTESTED



appeals of the appellants within a period of 30 days. Although the subject impugned order has not been passed in compliance of the orders passed by the Honourable High Court but on the contrary, the impugned order have the legal vires and infirmities which are highlighted herein above. By doing so, we prefer to observe that the observation given by the Collector (Appeals) in Para-9 of impugned order is ultra viral without lawful authority. The reasons which are already been known to the Collector about the proceedings pending and decision/judgment passed by the Honourable High Court and the Honourable Supreme Court of Pakistan, contrary to that, such

observations made by the Collector (Appeals) are deliberate and transgressional from their legal objectives. There would be no room left for the Collector to bring in, new pretensions against the norms of law and justice, as such, same are ultra viral and without lawful authority.

13. After a plain reading of the impugned order passed by the Collector of Customs (Appeals) shows that it is not a speaking order in which all issued raised by the appellant pertains to the controversy involved in the said appeal has been discussed and dealt with properly. Such orders have been deemed to be without jurisdiction in which the competent authority has not discussed questions of fact and questions of law addressed by the taxpayer. This position has been discussed at length in the case of National Bottlers decided by the Hon'ble Lahore High Court reported as PTCL 1995 CL 123 wherein it has been ruled that orders passed by the authorities were not only laconic and sketchy but there was no application of mind by either of the two authorities. It was further observed that it is now a well settled law that authority exercising statutory powers of appeal and revision affecting valuable rights of the parties act in quasi judicial if not judicial capacity and it must pass an

ATTESTED



speaking order duly supported by reasoning showing due application to facts and law applicable while disposing of the case before it. Orders lacking this criteria have been declared to be without lawful authority and of no legal effect and hence beyond jurisdiction and coram non iudice. The above position is also fortified by judgments of superior courts reported 2005 YLR 1019, 2007 PTD 2500, 2004 PTD 1973, 2005 YLR 1719, 2003 PTD 777, 2003 PTD (Trib) 2369, 2002 MLD 357, 1983 CLC 2882, 2005 PTD 2519, 2005 PTD 1189, 2003 PTD 2369, 2002 MLD 357. As regards non-speaking orders the Hon'ble Supreme Court of

Pakistan has time and again disapproved the passing of such perfunctory orders in the cases invoking valuable rights of the parties.

14. It is settled law that the judicial order must be a speaking order manifesting by itself that the Court has applied its judicial mind to the issues and the points of controversy involved in the causes. Furthermore, when the reasons would not be forthcoming, obviously the Appellate Court would be deprived of the views of the subordinate Court. In any way the impugned order, which is not a speaking order and devoid of reasons is not sustainable in law being in contravention of law declared by the Hon'ble Supreme Court of Pakistan in various cases reported as PLD 1995 SC (Pak) 272, PLD 1970 SC 158, PLD 1970 SC 173. The Adjudicating Officer failed to take into consideration power vested with application of mind judiciously and independently despite mandated under law. In case where the transactional value has not been accepted by the department, the denial could have some mandatory reasons based on legal proposition as prescribed under the law along with the interpretations made by different Superior Courts on the issue. In these appeals we are under the legal obligation to deliberate the subject issue in the light of statutory obligations and interpretations of law made thereon. It is important to observe that Rule 110 of the Customs Rules

ATTESTED



2001 impose some of the apprehensions and embargo where the value of imported goods can not be determined under sub-section (1), (5), (6), (7) and (8) of Section 25 of the Act, the Customs value shall be determined on the basis of data of imports available with the Customs Department.

However no value shall be determined. The Rule 113 of the Customs Rules 2001 under sub-chapter III also provides the primary method of valuation where the description of price actually paid or payable has been clarified. Activities undertaken by the buyer on his own account,

other than those for which an adjustment is provided in sub-section (2) of section 25 of the Act are not considered to be an indirect payment to the seller, even though they might be regarded as of benefit to the seller. The costs of such activities shall not, therefore, be added to the price actually paid or payable in determining the value of imported goods. The price actually paid or payable refers to the price of the imported goods. Thus the flow of dividends or other payments from the buyer to the seller, which do not relate to the imported goods, shall not be part of the customs value. Charges for interest under a financing arrangement entered into by the buyer and relating to the purchase of imported goods shall not be regarded as part of the customs value provided that the financing arrangement was made in writing. In this particular case the instance of financing seller and purchaser and the objections raised by the respondent with regard to the Rules mentioned thereon at Para-9 of this order are not attracted in this present case.

15. It is also important to observe and note here that section 25A is "Pre-determination of the customs value, the such determination can only apply in relation to goods not only imported at the time that the determination is issued". After years no Valuation Ruling that the goods are actually imported, it is only section 25 of the Customs Act which is applicable. The Valuation Ruling issued under section 25A, only apply for a certain period and no more, this expression has been defined in Chapter-XI of the Rules. (in Rule 107 meaning) "within 90 days prior to importation or within 90 days after the importation of goods being valued". In our view Valuation Ruling must therefore ordinarily be regarded as well as for a period of 90 days from the date of issue. After the amendment of 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"



while the Valuation Ruling will continue to hold in the filed unless revised or rescinded, any aggrieved importer has the right to approach the concerned officer after the 90 days period mentioned above and he would then have to give reasons why the Ruling has not been revised or rescinded and as such the observation made by the so called committee are perverse from the evidence, ultra viral and without lawful authority.

16. Before further conclusion, general observation must also been made in Section 25A which is only an enabling section, it permits, but does not mandatorily require, a predetermination of customs value in terms as explained above. The principle method of determining customs value is, and must remain, 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 appropriate circumstances and for an appropriate period. In our view, in enacting Section 25A, the legislatives intent was not, nor could be for the reasons stated above, to create a statutory bypass 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 as an approach would, in effect, transform the "determination" permissible under section 25A to an impermissible "fixation" of value. This is an important point which must be kept in mind, and may be relevant in appropriate cases when considering the vires of a valuation ruling.



17. It is also important to observe that the valuation ruling must be determined using one of the method of Section 25 of the Act and the

valuation agreement at least three of those methods, the identical goods method, the similar goods method and the detective value method, required the value to be determined "as or about the same time" as the goods being valued. Importantly, in this case one can readily agree that if the said impugned ruling has not lawfully been prepared and no case can be reopened or revised on the basis thereof. That while determining the customs value through the impugned ruling, the respondent has failed to make any reference to the guidelines issued by the Honourable High Court of Islamabad in the case of Sadia Jabar Vs Federation of Pakistan. The Honourable High Court of Sindh in its order had specifically mentioned that the provisions of Section 25 of the Act are to be followed/construed 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 methods, prescribed in a particular sub-section of Section 25, while determining the customs values and cannot jump 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 envisaged in Section 25, in sequential order. The impugned ruling of the respondent stands for judicial scrutiny.

ATTESTED



18. On the strength of the judgments passed by the Honorable High Court of Sindh in the case of Sadia Jabbar and in conformity of the aforesaid observations made by the Honorable Supreme Court of Pakistan along with our additional observations stated/discussed herein above particularly the interpretations of proposed question of law and legal preposition referred in the light of prescribed law and to follow the ratio decidendi in the judgments of Superior Courts, we are restraint to

direct the respondents to accept the declared prices/value, declared by the appellant as the actual prices being transactional values of the goods as envisaged under Section 25(1) of the Customs Act, 1969 and assess the same accordingly, orders passed during the hierarchy of the customs, lacks the warrant of law and has no adherence with the statutory requirements as the same are derogatory from the specific provisions of law, therefore, declared without lawful authority, void, illegal and hereby set aside, appeal is allowed accordingly with no order as to cost.

19. Judgment passed and announced accordingly.

941

(MUAHAMMAD YAHYA)
Member (Technical-I)

(MUHAMMAD NADEEM QURESHI)
Member (Judicial-I)

ATTESTED



4005
25/11/15
GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI
Appeal No. Old 10757011091/15 29/7/15 of
Appeal No. New 107827010931/15 07/07/2015 against
M/s Home Life
Order-in-Original by Collector of Customs Appeals

Copy forwarded to:

- 1- M/s Home Life -
- C/o Abdul Qadir -
2. Collector of Customs, Hyderabad / Sukkur / Gaddani / Quetta
3. Collector of Customs Hyderabad / Sukkur / Gaddani / Quetta
4. The D.G Intelligence & Investigation FBR- Karachi/ Hyderabad / Sukkur / Quetta
5. The D.G Valuation / Post Clearing Audit, Karachi
6. Office Copy

Assistant Registrar
Asstt. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench

107827010931/15/A East