

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/15/2019 /2937

04th March, 2020

Order in Revision No. 08 /2020 Under Section 25-D of the Customs Act, 1969 against Valuation Ruling No. 1379/2019 dated 27-06-2019

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

M/s. Dollar Industries (Pvt) Ltd & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

20-02-2020

For the Petitioners

Mr. Zia Taqdees, Mr. Jamaluddin, Mr.Nasim Yousaf,
Mr. Sohail Shamin, Barrister Asad Khan.

For the Respondent

Mr. Imtiaz Hussain Khan (Principal Appraiser)
Mr. Nadeem Sheikh, (Valuation Officer),

This revision petition was filed under Section 25-D of the Customs Act, 1969, against customs value determined vide Valuation Ruling No. 1379/2019, dated 27-06-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

FACTS

- 1) That the petitioner is a company incorporated under the laws of Pakistan and is engaged in the business of manufacturing, marketing, supplying and exporting large varieties of high quality stationery products and writing materials, including black lead pencils and colour pencils (hereinafter collectively referred to as "the imported pencils"). Through years of hard work, commitment to professional excellence and by manufacture of highest quality products at reasonable cost, the petitioner has earned the trust and confidence of millions of dedicated customers all over the country as well as abroad. As a result, by the grace of the Almighty Allah, the petitioner's brand has led in the field of stationery products. The present petition has been filed through the authorised officer of the petitioner. Copy of the board resolution of the petitioner is attached.



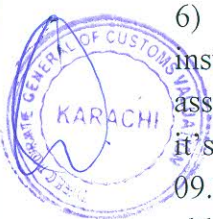
That, whereas, the respondent Director of Customs Valuation has been entrusted by the legislature through the enactment of section 25-A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods imported into or exported out of Pakistan, which are then used and applied for calculation of leviable Customs duties as well as allied taxes.

3) That in spite of its obligations under the law, the respondent Director has unlawfully, arbitrarily, and in dire contradiction and violation of Section 25-A of the Customs Act, 1969, and the Customs Rules, 2001, framed there-under, purportedly 'determined' the values of, inter alia, Colour Pencils (Half/Full size) and Black Lead pencils with or without rubber tip of Chinese origin vide Sr. Nos. 12 and 13 of the impugned Valuation Ruling No. 1379 of 2019, dated 27.06.2019 (hereinafter referred to as 'the impugned Valuation Ruling'). The respondent Director has acted in violation and excess of the powers conferred thereupon under the Customs Act, 1969, and the issuance of the impugned ruling has resulted in serious harm and loss to the petitioner as well as other stakeholders. The actual price paid / payable for the impugned goods remains significantly lower than the value unlawfully fixed through the impugned valuation ruling, however, despite the patent illegalities therein, the respondent Director has deemed the impugned ruling fit for the purposes of assessment of imported consignments of the impugned goods. The petitioner submits a brief background to the issue as follows.

4) That in due course of its business, the petitioner conducts imports of various stationery items, including black lead pencils and colour pencils (both full and half size) of Chinese origin. The price paid/payable for the imported pencils purchased for import into Pakistan by the petitioner at present remains between US\$ 3.71/Kg and US\$ 4.20/Kg (average US\$ 3.96/Kg) for black lead pencils, whereas the price paid/payable for colour pencils at the time of import into Pakistan remains at or about US\$ 4.50/Kg to US\$ 5.30/Kg (average US\$ 4.90/Kg). Under the Customs Act, 1969, duties and taxes are levied/collected on the basis of the actual/assessed value of the imported goods, which is assessed in accordance with the provisions of Section 25 of the Customs Act, 1969.

5) That under the scheme of the Customs Act, 1969 (hereinafter 'the Act, 1969'), the assessment / valuation of imported goods is carried out either under Section 25 of the Act, 1969, or under Section 25-A r/w Section 25 of the Act, 1969. Assessment / valuation is carried out under Section 25-A of the Act, 1969, where customs / assessable values of imported goods are determined in advance by the respondent Director or the Collector of Customs, as the case may be, through the issuance of a valuation ruling issued after strict adherence to the methods of valuation laid down in Section 25 of the Act, 1969.

6) That in the recent past, the assessment of the imported pencils has been subject to various instruments issued Section 25A of the Act, 1969, by the respondent Director / its predecessors. The assessment of the imported pencils was carried out as per the Valuation Ruling No. 585 of 2013 from its issuance on 30.09.2013 until it was superseded by the Valuation Ruling No. 868 of 2016 dated 09.06.2016. The Valuation Ruling No.585 of 2013 subsisted for a considerable period of time as, although the values listed therein were at or about the actual price paid / payable for the items listed therein, such difference was not prejudicial to the international trade, local industry and national exchequer. This situation prevailed throughout the activity of the Valuation Ruling No. 585 of 2013. Furthermore, even after the Valuation Ruling No. 585 of 2013 had been superseded by the Valuation Ruling No. 868 of 2016, the actual price paid / payable for the imported pencils at the time of import into Pakistan remained much lower than the values fixed thereby, i.e. through the Valuation Ruling No.



868 of 2016. Copies of the Valuation Rulings No.585 of 2013 and Valuation Ruling No. 868 of 2016 are attached.

7) That the respondent Director, thereafter, issued Valuation Ruling No. 868 of 2016 dated 09.06.2016 whereby the earlier Ruling No.585 of 2013 was rescinded and a list of values was issued in respect of various stationery items, including the imported pencils. The values issued vide Valuation Ruling No.868 of 2016 were unreflective and destructive of the stationery industry and caused considerable loss and harm to the importers thereof, including the petitioner. Through the Ruling No.868 of 2016, the values of the imported pencils already determined in the Valuation Ruling No.585 of 2013 were increased by huge margins whereas no corresponding increase was seen in the various factors of pricing since 2013. In light of the above, all aggrieved importers, including the petitioner, filed Review petitions against the said determination.

8) That thereafter, Valuation Ruling No. 868/2016 was set aside by the Customs Appellate Tribunal as being ultra vires the law, not having been issued in accordance with the provisions of Section 25 of the Act, 1969, and the Customs Rules, 2001. The Respondent Director, however, during the pendency of the appeals before the Customs Appellate Tribunal, issued yet another instrument purportedly under Section 25-A of the Act, 1969, being Valuation Ruling No. 961 of 2016 dated 11.11.2016. Copy of the Valuation Ruling No. 961 of 2016 is attached.

9) That while the Valuation Ruling No. 961 of 2016 was also set aside by the Customs Appellate Tribunal, yet another determination was carried out purporting to be under Section 25A of the Act, 1969, in the form of Valuation Ruling No. 1182 of 2017 dated 16.06.2017. In similar vein to the earlier rulings referred to hereinabove, Valuation Ruling No. 1182 of 2017 suffered the same fate and was set aside by the Customs Appellate Tribunal vide Judgment dated 28.08.2018 passed in, inter alia, Customs Appeal No. K-1590/2017. Copies of the Valuation Ruling No. 1182 of 2017 and Judgment dated 28.08.2018 are attached.

10) That in spite of the foregoing proceedings, the imports of pencils conducted by the petitioner were being subjected to assessment pursuant to Valuation Ruling No. 1182 of 2017 under Section 25-A of the Act, 1969. This was so despite the fact that, in light of the Judgment dated 28.08.2018; the petitioner was entitled to assessment in terms of Section 25 of the Act, 1969, i.e. on the basis of the actual price paid / payable for the pencils at the time of import into Pakistan.

11) That accordingly, the petitioner was constrained to, inter alia, address multiple letters to the respondent Director for rescission of the Valuation Ruling No. 1182 of 2017 and determination afresh of Customs assessable values for the imported pencils strictly in terms of Section 25 of the Act, 1969. As submitted hereinabove, the requests for redetermination were motivated by the serious and debilitating loss and harm being caused by the subsistence of the said ruling No. 1182/2017, which had already been set aside due to the various irremediable and grave illegalities present therein.

12) That the petitioner addressed letter dated 24.10.2018 to the respondent Director, whereby re-determination of Customs assessable values for the imported pencils was sought. The Petitioner argued that, inter alia, the values contained in the Valuation Ruling No. 1182 of 2017 were extremely unreflective of the actual price paid / payable for the said imported goods, and nowhere in China are the imported pencils sold at such rates. It was highlighted that, although the Valuation Ruling No. 1182 of

2017 had in any case been rendered nugatory due to flux of time, even at the time of issuance of the said ruling it was unreflective of and higher than the actual prices of the said pencils. Copy of the Letter dated 24.10.2018 along with annexures is attached.

13) That as narrated hereinabove, the petitioner also elaborated upon the unending litigious cycle surrounding valuation rulings over the past half decade, and the indisputable fact that none of the Rulings issued in such period have withstood independent judicial scrutiny and all such proceedings have resulted in the setting aside of all the previous three rulings. Furthermore, the fact that valuation rulings have been issued in order to address the grievances of local manufacturers was also addressed: local manufacturers were now entitled to zero-rating of sales tax as well as customs duty upon import of relevant raw materials, hence their grievances stood abated. This submission is without prejudice to the fact that entities in their capacity as local manufacturers are disentitled from participating in proceedings for determination of values for imported goods in terms of Section 25-A of the Act, 1969. Furthermore, it is also pertinent to note that instruments issued under Section 25-A of the Act, 1969, are not supposed to be issued and implemented as regulatory devices, which is the function of customs duties imposed by the Parliament and through delegations to the Federal Government.

14) That thereafter, a meeting of stakeholders was held on 2.01.2019, where not only importers but also local manufacturers were invited. At this juncture, it is pertinent to note that, as stated hereinabove, the inclusion of entities in their capacity as local manufacturers in proceedings being conducted under Section 25-A of the Act, 1969, is impermissible under the law, as also held by the Hon'ble Sindh High Court in the case of Director General of Customs Valuation versus Al-Amin Cera (reported as 2019 PTD 301).

15) That without prejudice to the foregoing, at the meeting held on 2.01.2019, the local manufacturers submitted a work-back sheet, a copy whereof was also provided to the petitioner. As evidenced from the Letter dated 9.01.2019 and its accompanying annexures submitted by the petitioner, the work-back sheet was an attempt by the local manufacturers to direly misrepresent the values of imported pencils. The Petitioner, along with the Letter dated 9.01.2019, submitted a detailed work-back sheet of the actual taxes and expenses incurred during the post-importation stage up until sale at the trade prices published by the Petitioner. For the sake of brevity, the contents of the letter dated 9.01.2019 may be read as an integral of the instant pleadings. Copy of the letter dated 9.01.2019 along with annexures is attached.

16) That the petitioner also made additional submissions vide Letter dated 17.01.2019, and highlighted the reduction in costs of raw materials since 2013, in large part due to the shifting of manufacturing from Linden Wood to the cheaper Poplar Wood. This fact, it was submitted, is also reaffirmed by the import declarations made by the local manufacturers at the time of import of wooden slat / sandwich with black lead. It was further reiterated that the imports of finished / manufactured pencils by some of the local manufacturers themselves showed transaction values in the range of USD 3.85/kg to USD 4.52/Kg, further reaffirming the stance of the Petitioner vis-à-vis actual transactional values. Copy of the Letter dated 17.01.2019 along with annexures is attached.

17) That at this juncture it is also pertinent to note that certain imports made by local manufacturers for the sole purpose of re-export have also been made at significantly lower transaction values. Being

consignments destined for re-export, the declarations of value made in respect thereof cannot be said to be under-invoiced in any event, thereby lending further support to the contention of the Petitioner.

18) That the Petitioner also highlighted the fact that the local manufacturers, at the time of export, sold locally manufactured pencils @ USD 3.81 to USD 4.42/Kg. If the contention of the local manufacturers was to be accepted that the transaction value at the time of import from China was at or higher than what has been subsequently fixed through the impugned Ruling, the same would indicate that Pakistani manufacturers offer such pencils for sale at a price lower than that at which Chinese manufacturers are supposedly selling. If this were the case, an obvious and indefeasible consequence would be that buyers the world over would purchase pencils from Pakistan and not China, which is obviously not the case.

19) That thereafter the Petitioner was confronted with indeterminate silence by the Respondent Director and no further steps vis-à-vis rescission of the earlier Ruling nor determination of fresh values in accordance with the law were taken, constraining the Petitioner to address Reminder dated 21.03.2019, whereby a summary of the earlier proceedings and submissions made in support of its contention were made. Copy of the Reminder dated 21.03.2019 is attached.

20) That perhaps as a consequence of the Reminder dated 21.03.2019 or otherwise, the Respondent Director was spurred to action and called a meeting of stakeholders for 24.04.2019. At this juncture it is pertinent to reiterate that the Respondent failed to act in accordance with the law while inviting the local manufacturers through M/s Writing Instruments Manufacturers Group of Pakistan to participate in such proceedings. The local manufacturers were invited to participate in the proceedings in spite of the fact that the afore-cited Judgment of the Hon'ble Sindh High Court was passed with specific reference to, inter alia, local manufacturers of stationery. Copy of the Meeting Notice dated 12.04.2019 is attached.

21) That at the meeting, the Petitioner highlighted the contentions raised earlier through the Letters / Reminder alluded to hereinabove. Furthermore, it was also submitted that the fact that exporters of such pencils in China are entitled to Value Added Tax (VAT) refund at the time of such exports evidences the fact that declaring lower values for consignments is not in their interest and, in fact, if anything motivation may exist to inflate prices, which is not done. Therefore, it was submitted, the Respondent Director can verify such export prices with impunity through the Federal Board of Revenue which would certainly vindicate the Petitioner.

22) That it is also pertinent to note that the local manufacturers yet again claimed that higher prices need to be fixed for import in order to protect the local industry, which is in spite of the fact that local manufacturers are regularly selling their manufactured pencils at lower prices than the Petitioner. This argument is without prejudice to the fact that, as stated hereinabove, such matters are beyond the domain of the Directorate General of Customs Valuation. Copy of the Letter dated 25.04.2019 is attached.

23) That thereafter, an officer of the respondent Director, namely, the Deputy Director of Customs Valuation, addressed Notice dated 27.05.2019 to the petitioner, whereby information regarding ten consignments was sought. The Petitioner was requested to provide proof of miscellaneous charges @ 5% and 9% distributor's margin, as listed in the work-back sheet provided earlier. Copy of the Notice dated 27.05.2019 is attached.

24) That the petitioner addressed reply dated 30.05.2019 to the officer of the respondent and elaborated that miscellaneous expense vary from consignment to consignment, and are in the range of 3% to 6%. In fact, as a matter of practice, the Directorate General of Customs Valuation attributes 5% as margin for miscellaneous costs, therefore, usage of such margin cannot be withheld from the Petitioner. Vis-à-vis distributor's margin @ 9%, the petitioner submitted that the same is also reflected in the Sales Tax Invoices issued. Copy of the reply dated 30.05.2019 is attached.

25) That then the Petitioner was finally issued notice dated 14.06.2019 under Section 26 of the Act, 1969, whereby various documents were sought with reference to the consignments mentioned in the notice dated 27.05.2019. The Petitioner duly provided all the record vide Reply dated 21.06.2019. Copies of the notice dated 14.06.2019 and the reply dated 21.06.2019 are attached.

26) That it is pertinent to note that the requests for re-determination of values were made by the petitioner without prejudice to the fact that the respondent Director has failed to provide any cogent and lawful reasons for persisting with issuance of Valuation Rulings vis-à-vis Black Lead and Colour Pencils and its insistence upon assessment thereof under Section 25A of the Act, 1969. Such insistence is in spite of the fact that, as has been amply demonstrated by the sheer amount of litigation which has culminated against the respondent Director, the petitioner is entitled to assessment of its consignments of imported pencils strictly in terms of Section 25 of the Act, 1969, i.e. at the price actually paid / payable therefor at the time of import into Pakistan.

27) That in addition to the foregoing, it is submitted that the Collectors of Customs, MCC Appraisement (West) and MCC Appraisement (East) had, on 30th March 2019 determined the customs assessable value of Black Lead Pencils and Colour Pencils to be US\$ 4.60/kg and US\$ 5.60/kg, respectively. This value was determined by the said Collectors, pursuant to a market survey conducted in the aforesaid period. The determination was made while finalizing the assessment of consignments provisionally assessed under, inter alia, Valuation Ruling No. 1182 of 2017. While the values arrived at by the said Collector of Customs is still in excess of the actual price paid / payable for the pencils at the time of import into Pakistan, it is nonetheless an important benchmark beyond which no values could have been determined in view of, inter alia, sub-Sections (5) and (6) of Section 25 of the Act, 1969. Copies of the Goods Declarations assessed by the Collectorate of Customs pursuant to market survey are attached.

28) That furthermore, multiple consignments imported by the petitioner, as well as others, were also finally assessed at the prices stated at paragraph 27 at the time of assessment in terms of Section 80 of the Act, 1969, by the aforesaid clearance Collectorates. Copies of the Goods Declarations assessed in terms of Section 80 of the Act, 1969, are attached.

29) That however, in spite of the foregoing, the respondent Director proceeded to issue the impugned Valuation Ruling No. 1379 of 2019 on 27.06.2019, whereby, to the surprise and dismay of the petitioner, the entirety of the exercise conducted in the preceding six months was rendered obsolete and values without any basis in the law were issued / fixed.

30) That as evident from paragraph 4 of the impugned Valuation Ruling, the respondent Director correctly appreciated that the Petitioner had submitted, inter alia, voluminous record in support of its contention, including Goods Declarations of Export from China and Sales Tax Invoices, as contrasted to

the local manufacturers who failed to submit anything beyond a work-back sheet (which had already been proven to be incorrect and unreliable by the petitioner). In spite of such admission, the respondent Director, at paragraph 5, proceeded to make general statements as to the methodology adopted in arriving at the values for, inter alia, the imported pencils appearing at Sr. Nos. 12 and 13 of the impugned Valuation Ruling.

31) That no reason whatsoever has been given for rejection of the submissions of the petitioner, whereby, inter alia, the export GDs and other documents have been rejected, with the result that values for the imported pencils contained in the impugned Valuation Ruling are unreflective of the actual price paid / payable for the imported pencils at the time of import into Pakistan. As stated hereinabove at paragraph 4, the values of the imported pencils are considerably lower than the values unlawfully fixed through the impugned Ruling.

32) That it is an indisputable fact that the Petitioner has supported incontrovertible documents in support of its contentions, including export GDs, proofs of payment for such purchases having been made through proper banking channels and, as such, no question as to the bona fide of such documents has either arisen or can arise. The petitioner also declares the actual price paid / payable for the imported pencils at the time of import into Pakistan in the Goods Declarations filed before the respective Collectorates. Furthermore, the Sales Tax Invoices of the petitioner also reflect the price at which such imported pencils are sold by the Petitioner, which can be utilized in order to verify the claims of the Petitioner. The respondent Director, however, completely ignored all of the submissions made before it and grossly abused the powers conferred upon it in order to issue an arbitrary list of values which is not permissible under the law.

33) That, in addition to the foregoing failings evident from the impugned Ruling, the respondent Director has also gravely erred in applying the provisions of Sections 25A and 25 of the Act, 1969. The respondent Director has purportedly issued the impugned Ruling under sub-Section (9) of Section 25 of the Act, 1969, whereas the respondent Director has failed to provide any lawful and / or cogent reasons for failing to adhere to the preceding sub-Sections of Section 25.

34) That while 'determining' values under the impugned Ruling, the respondent Director ignored the sequential methods of valuation contained in Section 25 of the Act, 1969, and, in a patently arbitrary and whimsical manner, chose Section 25(9) of the Act, 1969, as the appropriate instrument of 'determination' of values. It is submitted that the Respondent Director has utterly failed to adhere to the provisions of the Act, 1969, and has failed to elucidate any cogent reasons for not applying / following the methods of valuation preceding sub-Section (9) of Section 25 the Act, 1969.

35) That, without prejudice to the foregoing, it is submitted that the respondent Director has even failed to properly follow the dictates of Section 25(9) of the Act, 1969, and has misused the provisions thereof in an attempt to justify unlawful fixation of values of the imported pencils. The respondent Director has, in fact, used sub-Section (9) of Section 25 of the Act, 1969, in order to issue a list of values which is neither reflective of the actual transaction values at which the imported pencils are available in the international market, nor is permissible under the law in such a manner.

36) That, although sub-Section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the respondent Director has implemented the same in order to fix

arbitrary values which are alien to the prices paid / payable for the imported pencils at the time of import into Pakistan. The respondent Director has failed to elaborate the 'flexible manner' in which the valuation methods were supposedly applied. The respondents were under a positive duty to identify the provisions of Section 25, which were flexibly applied in arriving at the values purportedly determined in the impugned Valuation Ruling.

37) That, in addition to the above, the respondent Director has arbitrarily and without assigning any lawful or cogent reason thereto refused to carry out a proper determination of values under sub-Sections (1), (5), (6), (7) or (8) of Section 25 of the Act, 1969. While the respondent Director has attempted to provide some general statements as to the inapplicability of sub-Sections (1), (5), and (6), which are otherwise not sustainable under the law, the respondent has failed to state why sub-Section (7) was not adopted for the purposes of determination.

38) That although the respondent Director has purportedly relied upon some market survey, no such market survey has been carried out nor such market survey could be carried out to the exclusion of the Petitioner as well as other stakeholders. The respondent has not bothered to put forth any evidence of such market survey. Further, the respondent has not even deemed it necessary to narrate the findings of the market survey through the impugned Valuation Ruling. Despite the foregoing, the respondent has proceeded to impose values of the imported pencils without any cogent reason and / or lawful authority.

39) That such purported survey, if even conducted, has been done on an ex-parte basis without association of the importers, which in and of itself is an irremediable illegality. As such, the survey / enquiry even on the statements of the respondent itself is not sustainable. Without prejudice to the preceding, the market survey purportedly conducted appears to have been conducted at an entirely different commercial level and commercial area, i.e. retail shops only, as compared to the business operation of the Petitioner. The respondent has utterly failed to appreciate the nature of trade carried out by the importers, including the petitioner, and have attempted to use the purported market survey, which is even otherwise riddled with illegalities, to justify the imposition / fixation of arbitrary, unlawful and highly prejudicial values through the impugned Valuation Ruling.

40) That as a result of the patently unlawful and illegal actions of the Respondent, the consignments of the imported pencils being imported by the Petitioner shall be assessed at grossly high values which are not sustainable under the law. As a result of the assessment on the basis of these unlawful values, huge amounts of duties and taxes which are otherwise not leviable under the law shall be demanded. Being unable to satisfy such demands due to the prejudicial effect thereof, the Petitioner will suffer great prejudice and shall be unable to get possession of its lawfully imported consignments unless this learned Authority is pleased to suspend the operation of the impugned Valuation Ruling.

41) That the actions of the respondent to the extent of Sr. Nos. 12 and 13 of the impugned Valuation Ruling, vis-à-vis the imported pencils, are in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the petitioner as enshrined in the Constitution of Pakistan, 1973, including Articles 4, 8, 10A, 18, 19A and 25A, thereof.

42) That, in light of the preceding narration, the Petitioner prefers the instant appeal on, inter alia, the following grounds, namely:

43) **GROUND**S

- A. That the impugned Valuation Ruling is unlawful, illegal and liable to be set aside.
- B. That the impugned Valuation Ruling has been issued without carrying out any determination as envisaged by the law, including but not limited to Section 25 of the Act, 1969, and the Customs Rules, 2001, framed thereunder. In fact, the values for the imported pencils have merely been fixed for the purposes of assessment, and are in dire contrast to the law.
- C. That the respondent Director has failed to attribute any lawful reasons as to why the transaction values / actual prices paid or payable for the pencils at the time of import into Pakistan have been disregarded. The respondent Director has acted in ignorance in spite of being in possession of irrefutable evidences in the shape of, inter alia, the export GDs, and proofs of payment through banking channels. As enumerated hereinabove, the respondent Director, in addition to the foregoing, remains in possession of import data of the past ninety (90) days which includes imports conducted by local manufacturers as well as others, including finalization of provisional assessments of the imports conducted by the Petitioner by the clearance Collectorate.
- D. That the respondent Director has wrongly adopted sub-Section (9) for the purposes of determination of values. In light of the Judgment of the Hon'ble Sindh High Court in the case of Sadia Jabbar versus Federation of Pakistan, the respondent Director was under a positive obligation to carefully consider each of the methods of valuation provided under Section 25 of the Act, 1969, and only upon having lawful reasons for rejecting a method could the respondent Director have considered any subsequent method. In light of this, it is submitted that the respondent Director gave unlawful reasons for rejecting sub-Section (1); if in fact wide variations in declared values were observed, no evidence whereof has otherwise been given, the same would have no impact on consideration of the actual price paid / payable for the pencils at the time of import into Pakistan. In fact, the respondent Director, being possessed with irrefutable evidences as mentioned hereinabove, had a responsibility to rescind the earlier Valuation Ruling No. 1182 of 2017 and issue directions to the clearance Collectorates to make assessment in terms of Section 25 of the Act, 1969, on a case to case basis.
- E. That without prejudice to the foregoing, even sub-Sections (5) and (6) have been rejected in an unlawful manner. The respondent Director admits that the said sub-Sections provided some reference values, however, without elaborating on why the same are unreliable proceeded to reject the same. In fact, when sub-Section (7) was considered, the respondent Director has not claimed that the same was found to be inapplicable or otherwise improper, and has merely made unsubstantiated statements vis-à-vis some market inquiry.
- F. That without prejudice to the foregoing, it is reiterated that market surveys / enquiries, if conducted, have been done so on an ex-parte basis and without associating the necessary stakeholders thereto. As such, it is not reliable evidence by any measure and is liable to be struck down.
- G. That the market survey, if at all conducted, has been conducted in violation of the principles of natural justice and equity, as well as the Customs Act, 1969, and the Customs Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in



the “greatest aggregate quantity”, which has to be at least at par with the quantities of sale of the petitioner, as well as other importers, dealing on a wholesale basis.

- H. That the phrase “greatest aggregate quantity” has been further exposted in Rule 119 of the Rules, 2001, wherein it has been stated that such quantity, in addition to being the greatest aggregate, also needs to be the greatest number in units sold at the first commercial stage after importation. It is submitted that the statements of the Respondent Director are in direct contradiction to the positive requirements contained in the aforesaid provisions.
- I. That, further, the provisions of Rule 119(3) also necessitate the involvement of the importer, such as the Petitioner, in the process of market survey and determination in consequence thereof.
- J. That, as to the first submission, it is submitted that the respondents have failed to provide reasons in conformity with Section 25 of the Act, 1969, as to why the methods of valuation laid down in sub-Sections (1), (5), (6), and (7) were not followed as per law. This by itself is an incurable defect in the impugned Valuation Ruling and, hence, the impugned Order which fails to appreciate the same.
- K. That it is pertinent to draw the attention of this Hon’ble Tribunal to paragraph 7 of the impugned Valuation Ruling, whereby the respondent Director has attempted to direct the field formations to apply the transaction value under sub-Section (1) of Section 25 of the Act, 1969, wherever the said value is higher than the value fixed in the impugned Valuation Ruling. It is submitted that the inclusion of such a paragraph in a Valuation Ruling is ultra vires of the provisions of Section 25 and 25-A of the Act, 1969. This has also been held by the Hon’ble Sindh High Court in the case of Sadia Jabbar (Supra), at paragraph 25, as follows,
- “25. [...] finally, it also purports to apply the “invoice value” (i.e. the transaction value) if it is “higher” than the value determined in the ruling. This ruling is therefore, also ultra vires Section 25-A.”
- L. That in fact, it is evident from the foregoing that the respondent Director has merely given vague and unsustainable reasons in order to utilize sub-Section (9) in order to justify fixation of values decided through its own whims. In fact, the respondent Director has failed to appreciate that even sub-Section (9) requires mutatis mutandis application of each of the foregoing sub-Sections, and does not permit fixation of arbitrary and whimsical values. The respondent Director failed to also discharge its statutory and Constitutional function of ensuring that the manner in which sub-Section (9) has been implemented is communicated to the stakeholders, including the petitioner.
- M. That without prejudice to the foregoing, it is further submitted that the proceedings are rendered void and unlawful merely through inclusion of local manufacturers in the proceedings for determination, which is also against the express dictates of the Judgment of the Hon’ble Sindh High Court in the case of Al-Amin Cera (supra).
- N. That the petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments.



44. **PRAYERS**

- a. In light of the preceding narrations, the petitioner prays of this Hon'ble Authority that this appeal may graciously be allowed, and
- b. Set aside / quash the impugned Valuation Ruling No. 1379 of 2019 dated 27.06.2019 to the extent of Sr. Nos. 12 and 13 as being unlawful, illegal and contrary to the Customs Act, 1969, the Customs Rules, 2001, and the Constitution of Pakistan, 1973, and having been issued in dire contradiction to the Judgments of the Hon'ble Superior Courts.
- c. Declare that the impugned Valuation Ruling No. 1379 of 2019 dated 27.06.2019 to the extent of Sr. Nos. 12 and 13 is unsustainable for the purposes of assessment of any imported consignments of Black Lead Pencils and Colour Pencils (Half / Full size).
- d. Declare that the respondent Director has failed to provide any cogent reasons justifying the issuance of an instrument / valuation ruling under Section 25A of the Customs Act, 1969, in respect of Black Lead Pencils and Colour Pencils (Half / Full size).
- e. Direct that the petitioner's imports be assessed in accordance with Section 25 of the Customs Act, 1969.
- f. Restrain the officers of the respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1379 of 2019, dated 27.06.2019 to the extent of Sr. Nos. 12 and 13, and the values contained therein for any purposes, including but not limited to assessment.
- g. That, in the meanwhile, the pending and impending imports of the petitioner may be allowed to be provisionally released in terms of Section 81 of the Customs Act, 1969.
- h. In the alternative, suspend the operation of the impugned Valuation Ruling No. 1379 of 2019 dated 27.06.2019 to the extent of Sr. Nos. 12 and 13 till final disposal of the titled petition.

ORDER

45. Hearing for the subject petition was held on 20.02.2020. During the hearing proceedings, it was revealed that the Director Customs Valuation, Karachi, has issued a fresh valuation ruling No. 1407/2019 dated 02nd November, 2019, therefore, this revision petition loses its relevance and petition is accordingly disposed off.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

M/s. Dollar Industries (Pvt) Ltd,
C/o G.A. Jahangir & Associates,
Office No.401, 4th Floor, Clifton Centre, Block-5, Clifton, Karachi.

M/s. Brothers Pen Company,

32/19 Block "A", Shabbirabad, DBCHS, Karachi.

M/s. Sayyed Engineers Limited,
16-L, Model Town Extension, Lahore.

M/s. Sultan & Co,
197, Qasoor Street, Marriot Road, Karachi-74000.

M/s. ORO Industries,
Plot No. 86-87, Sector 23, Korangi Industial Area, Karachi-74900.

M/s. Global Pen Company,
MR 2/5, 184, Room No.1, Second Floor, Bombay Wala Center, Marriot Road, Karachi-74700.

M/s. Kings Pen Company,
MR 2/5, 184, Room No.2, First Floor, Bombay Wala Center, Marriot Road, Karachi-74700.

M/s. MAXI Inc,
Al-Janat Road, Saggian Ravi by Pass, Nain Sukh, Lahore.

M/s. Zentax,
Al-Janat Road, Saggian Ravi By Pass, Nan Sukh, Lahore.

M/s. Indus Pencil Industries (Pvt) Ltd,
B-54, S.I.T.E. Manghopir Road, Karachi-75700.

Copy to:

1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/ (North) Islamabad / (Central) Lahore.
3. The Collector, MCC Appraisement (East) / Appraisement (West) /Port M. Bin Qasim/ Preventive, Karachi.
4. The Collector, MCC Appraisement/Preventive, AIIA, Lahore/Quetta/Peshawar/Faisalabad/ Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. The Directorate General of Intelligence & Investigation (Customs), Islamabad /Lahore /Peshawar / Multan / Hyderabad / Gawadar / Quetta.
6. The Director, Customs Valuation, Karachi/Lahore.
7. The Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for Uploading in One Customs and WeBOC Database.
8. Deputy Director (Revision), Directorate General of Customs Valuation, Karachi.
9. All Deputy/Assistant Directors (Valuation).
10. Guard File.