

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACH

File No. DG (V) Val.Rev/04/2021

1236

24th March, 2021

**Order in Revision No. 13 /2021 under Section 25-D of the Customs Act, 1969,  
against Valuation Ruling No. 1507/2021 Dated: 04-01-2021**

- 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. Bilal Corporation & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

04-02-2021 and 24-02-2021

For the Petitioners

Mr. Omar Arshad Hakeem Advocate  
Mr. Mudassar  
Mr. Fahad Butt  
Mr. Amjad Wazir  
Mr. Ismail  
Mr. Ahsan of M/s Akhtar Ali Associates,  
for M/s Pak Association of Automotive Parts  
& Accessories Manufacturers, M/s Infinity Engg.,  
M/s Millat Tractor Ltd.,  
Mr. Abdul Razzak  
Mr. Shahzad Riaz, M/s Shahzad Trade Link  
Mr. Sameer H. Samoo Advocate  
Mr. Umair Kumar  
Mr. Hassaan Akhter  
Mr. Ahmed Ibrahim  
Mr. Rehan Ahmed

For the Respondent

Mr. Iqbal Hussain Kalyar, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969, against customs values determined vide Valuation Ruling No. 1507/2021 dated 04.01.2021, issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

## FACTS:

Brief facts of the case are that customs values of Agriculture Tractor Parts were determined by the Directorate of Customs Valuation, Karachi, vide valuation ruling 1424/19 dated 05.11.2019 under section 25A of the Customs Act, 1969, and subsequently an addendum/corrigendum was issued vide No. Misc/25/2008-VIIIA(Part 3)/2622 dated 13.11.2019 which in turn was contested by the importers/traders before this good office and the learned Director General vide Order-in-revision No.37/2020 dated 12.11.2020 upheld the corrigendum/addendum, however in wake of the parent ruling having been in field since one year the learned Director valuation was directed to issue a fresh ruling. Therefore, subsequently impugned valuation ruling No.1507/2021 dated 04.01.2021 was issued, of which the present applicant are aggrieved, hence, this review application.

## 2. GROUND:

1. Before going into the merits of the case, it is humbly solicited that as the review petitioners are firms located in Lahore, therefore, in the interest of convenience and fair play the review application may graciously be heard at the Directorate's office Lahore.
2. It is noted at the outset that although section 25-A of the Customs Act, 1969, has been assigned an independent identity as far as statutory applicability of values determined thereunder are concerned, however, the formulations of these determinations are dependent on section 25 of the Customs Act, 1969, ibid the rules of 2001. Indubitably Section 25 is the sole repository of law governing valuation of goods under the Act.
3. A holistic view of section 25 of the Act would reveal that machinery constructed thereunder envisages a stepwise, sequential scheme for the purposes of valuation of imported goods. The primary mechanism of valuation of merchandise prescribed under section 25 pivots on the inquest to determine the true transaction value of imported goods. Manifestly, the concept of 'transaction value' envisaged under subsection (1) of section 25 hinges on the notion of determination of value of imported goods for customs purposes on the actual price of the imported merchandise, put simply, the price actually paid or payable for the imported goods;
4. It is iterated with reverence that mere casting of suspicion on importer's transaction is not sufficient to reject it as evidence of value of imported goods. Undervaluation has to be proved in each and every case through clear and valid evidences. If the charge of undervaluation cannot be sustained the benefit of doubt must go to the importer. It is necessary for sustainability of allegations of undervaluation that these be supported by adequate evidence and to collect such material it is imperative that necessary inquiries be made in order to check veracity of importers claims and even during assessment proceedings under 25A of the Act, the valuation officer has to examine the probative value of the documentary evidences on which reliance is placed in support of allegation of undervaluation.
5. Once the burden of proof to the above extent is discharged, the same shifts to the importer to establish that his transaction is valid therefore mere casting of suspicion on the transaction would not be sufficient to reject it as evidence of value of imported goods, necessitating statutory movement towards other methods of valuation. Therefore, in absence of conducive statutorily dictated circumstances the question of exiting primary methods of valuation and resultantly resorting to subsection (7) of Section 25 does not arise. It may be clarified that strict rules of evidence do apply to valuation proceedings. Therefore, the learned competent authority



has to apply its independent mind and examine the probative value of the documents which forge the allegation of undervaluation.

6. A bare perusal of impugned valuation ruling clearly reflects that the impugned proceedings are bereft of anything which could forge the specifics of evidences which firstly brought about rejection of importers transaction values and secondly which necessitated an exorbitant ballooning of values of impugned tractor parts thus it is evident that the impugned ruling being violative of dictates of section 25 of the Act of 1969 cannot survive in its present form.

We may in the above regards resort to Collector Port Muhammad Bin Qasim v/s Zymotic Diagnostic International Faisalabad 2008 SCMR 438 wherein it was held to the effect that;

*"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 consignment after rejecting declared value. However for rejecting or refusing to accept the value declared by a consignee in respect of the imported goods, the concerned officer is required to give cogent plausible and satisfactory reasons for non acceptance of declared and rejection thereof cannot be proceeded on whims and or desire of officer of customs department. Assessing officer is required to point out some flaw or such circumstances which create doubt with regard to veracity and correctness of declared value. From a perusal of order of collector of customs it transpires that neither satisfactory convincing grounds for not accepting the declared value of the imported consignment were given nor the factors and grounds necessarily required to be taken into consideration for determining the fair and normal value of imported goods were adhered to. In absence of such an exercise action in rejecting declared value of consignment would amount to an arbitrary and capricious exercise."*

7. It is further contended on behalf of the review petitioners that the purpose of issuance of valuation rulings under section 25A of the Customs Act, 1969, is primarily to correct the value streams created in the customs repository so as to curb undervaluation, however in the instant case the values created vide ruling 1424/2019 dated 05.11.2019 which admittedly was issued subsequent to due deliberations and inquests by the learned Director, have in only a year's time been exorbitantly enhanced. The impugned ruling fails to impart any explanation to the effect as to how in such a short period of time the values of impugned tractor parts ballooned by approximately 400%, especially in wake of international recession owing to Covid pandemic, which in turn crystallizes the fact that the suggested values are imaginary and highly speculative in nature and more of a fixation than determination of value thus cannot be sustained.
8. That although the impugned valuation ruling vide its para-5 prima facie suggests application of section 25 in a sequential manner for arrival at the correct price however even a plain reading thereof does not emanate any cogent explanation which could crystallize any application of mind in consonance with precepts of sequential order ibid valuation law stipulated under the Act of 1969;
  - a. That subsection (1) of section 25 has been rendered inapplicable on the premise of dearth of substantiality in documents provided by the importers as well as different

values being declared by different importers for the same product according to different origins specifications. It would be pertinent to mention here that these observations are non-speaking and generic in nature and against the spirit of section 25 therefore not sustainable more so in absence of impartation of any case sensitive statutorily devised logic, discussion or cogent reasoning by the learned Director.

- b. That valuation processes of subsections (5) and (6) of the section 25 have also been bypassed on the following premise;

*“identical similar goods value methods provided in sections 25(5) (6) ibid were examined for applicability to determine customs values of subject goods. The data provided some references; but due to wide variations in declarations varieties and specifications the same could not be relied upon exclusively”*

The above conclusion not only pivots itself upon conjectural moorings but also is violative of tenets of 25(5) and (6) of the Act ibid rule 117 of customs valuation rules, 2001, which provide for a very flexible manner for application of values of identical similar goods. Had the valuing authority properly applied the impugned provisions of law, it could easily have slotted valuation of impugned Tractors Parts. The impugned statutory provisions having thus been wrongly by passed renders the impugned ruling of no statutory consequence at all.

To consolidate above stances reference may be drawn to M/s Sadia Jabbar Vs Federation of Pakistan reported as (PTCL 2014 CL 537) wherein it has been held at para 31 to the effect that;

*“the exercise carried out under section 25A is a “determination and not a mere “fixation” (as was the case, e.g., under section 25B, or subsection (14) of section 25, both omitted from the Act in 2004 and 2005 respectively). The determination is a 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 section 25A has been properly applied. Furthermore, the fact that the determination is subject to revision by the Director General Valuation under section 25D and latter’s decision is now appealable to the Appellate Tribunal (see sect 194A(1)(c) , also make it necessary that the valuation ruling should be a speaking order”.*

9. That even the valuation under 25(7) has been effectuated on some market inquiry without associating the review petitioners, a question was raised in this context in M/s Rehan Omer V/s Collector of Customs and others, 2006 PTD 909, as to whether an assessment can be made on basis of a working committee constituted for that purpose to adopt method under section 25(7) without associating the importer or its representative in each case?

The Honorable Court went on to hold that *“no assessment can be made on basis of a working committee constituted for the purpose of determining the deductive valuation under section 25(7) without associating the importer or its representative in each case”*

Needless to reiterate that in the instant cases too, while conducting the market surveys neither the petitioners in review nor their representatives were ever associated which clearly violates dictates of the aforementioned judgment and PLD 1959 SC 25 ibid section 25(7) ibid Rule 119.

Therefore, such values based on a market survey conducted to the exclusion of present petitioners in each case cannot be relied upon for assessment under section 25(7) of the Act ibid thus the impugned ruling being based on infirm footings cannot be sustained.

10. It is also to be noted that the impugned valuation ruling shall have its effect on imports all over Pakistan, and major wholesale markets of tractor parts are in Lahore however while determining local market prices of impugned parts, no conclusive market survey was conducted in the biggest upcountry markets. Had there been a comprehensive market study, the outcome could have been rational. The impugned ruling therefore not being in accordance with tenets of subsection (7) of section 25 is not sustainable under law.
11. That subsection (7) of section 25 read with rule 119 of customs valuation rules, 2001, lays down foundations of application of "deductive value method" however the impugned valuation ruling is bereft of any source values or calculations adopted for arrival at the finally created assessments of Agricultural Tractor parts, therefore, in absence of the statutory procedure and non confrontation of source evidences in the body of impugned valuation ruling relegates the same to mere hearsay with no statutory force behind it.
12. Even a bare reading of charted out valuations under impugned valuation ruling emanates that the same carries a plethora of grave flaws and legal infirmities;
  - a. On a bare perusal of column 9 of table to impugned valuation ruling it transpires that caption of the same suggests "*minimum prices for all origins of goods*", the suggested unit of scale is based on placement's weight however it is startling to note that the same is inclusive of retail packing, which is in total violation of items (ii) & (iii) of clause "b" of subsection (2) of section 25 of the Customs Act, 1969, and the principles of non inclusion of weight of packing in valuation rulings issued under section 25A of the Act as settled in WP.3000/2010 decided on 15.11.2011, which was later on ratified by the Model Collectorate of Customs West Customs House Karachi vide letter C.No.SI/MISC/177/2014-R&D-A/A(W), C.No.SI/MISC/152/2014-R&D-A/A(W) dated 27.03.2014, wherein the learned collector was pleased to communicate that;

*"Para-5 In view of above, it is obvious that non inclusion of essential packing while assessing the goods means that the cost (value) of packing thereof is not included in the value of the goods, which obviously has been paid or payable by the buyer while importing the goods. It is, therefore, not in line with the applicable provisions of law and the Honourable Lahore High Court's above stated orders. Therefore, weight of essential packing need not be specified separately in the examination report and it should remain an indispensable part of assessable weight of goods. It may, however, not be added in those cases where a valuation ruling issued under section 25A of the Customs Act 1969, specifically prescribes so and assessment be determined/ finalised on basis of weight of net content as has been done in cases of Valuation Ruling No.588/2013 and 589/2013 dated 30-9-2013."*
  - b. Although the concept of minimum values (envisaged in column 9 ibid clauses 6 & 7) not only finds no support in the customs import valuation law thus melting the whole superstructure of impugned ruling within the realms of illegality, but also the aforementioned defect has indeed seeped into each and every cranny of assessed values as the last column applies in *toto* to all the suggested assessable values which in turn has had an exorbitant/ irrational/illegal expansion in value on items which are secured in heavy



packing some illustrative examples are reproduced below for assistance of this learned forum;

- i) Sr.No-21 of impugned ruling inter alia suggests assessable values of gaskits of MF Massey 3 cylinder Agricultural Tractors @\$0.12/Kg at net wt however, if we include the packing material, it balloons to \$0.21/Kg which a 75% increase in assessable value.
- ii) Sr.No-6 of impugned valuation ruling inter alia suggests assessable values for Engine Valves of MF 240 @ \$0.45/Kg on net wt however, if packing material is included same balloons to \$0.55/kg which is a 20% enhancement in assessable value.
- iii) Sr.No-5 of impugned ruling inter alia suggests assessable values of liner of MF Massey MF240 Agricultural Tractors @\$0.7/Kg at net wt however, if we include the packing material, it balloons to \$0.85/Kg which a 20% increase in assessable value.

13. Even if we peruse the constituents of impugned ruling it is evident that the same is technically incorrect as there is a huge disparity between the per unit values and the weight based values of Agricultural Tractor Parts. We may reiterate that weight based values per ruling are minimum values therefore cast their effect on whole structure of impugned ruling some examples are quoted below to prove our contention;

- i) Sr.No22 weight of Clutch Plate of MF240 with packing comes to 2.55kgs while its per piece value is suggested to be \$6.45, however, if we apply the per Kg value of \$8.45 the assessable value comes to \$21.55 per pc.
- ii) Sr.No22 weight of Clutch Plate of Fiat 480 with packing comes to 1.62 kgs while its per piece value is suggested to be \$6.85, however, if we apply the per Kg value of \$8.45 the assessable value comes to \$13.69 per pc.
- iii) Sr.No19 weight of Crown wheel of MF 240 with packing comes to 14.55 kgs while its per piece value is suggested to be \$27.72, however, if we apply the per Kg minimum value of \$3.21 the assessable value comes to \$46.71 per pc.

14. A conjoined reading of sections 25A, 25D, along with section 194(1)(c) of the Customs Act, 1969, a valuation ruling is subject to review before the Director General and subsequent appeal before the Appellate Tribunal, therefore it can conclusively be derived that a ruling issued under section 25A is an order. It has been settled in PTCL 2014 CL 537 that a ruling under section 25A ought to be a speaking order. Indubitably, the whole edifice of impugned valuation ruling is tainted with silence which indeed is a digression from the settled framework of law. The impugned valuation fails to give cogent reasons or impart legally sustainable discussion (in consonance with section 25 ibid the rules made thereunder) on the basis of which impugned prices of agricultural tractor parts were determined/ enhanced. The emphasized legal position is that for an order to be valid and binding, it must contain the reasons on the basis of which it has been passed and in the absence of any reason it could not be said to be a speaking order.

- i) It may stressed that right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before court or authority. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made.
- ii) It has been time and again held by the superior fora of this Country;

*"A judicial order must be a speaking order manifesting by itself that the Court has applied its mind to the resolution of the issues involved for their proper adjudication Reasons should reveal*

*rational nexus between facts considered and conclusions recorded and they be manifestly just and proper --- Rule requiring reasons to be given in support of order is like principles of natural justice which must be inform every authority to act within the parameters of natural justice and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law". 2005 MLD 1844, 1998 SCMR 2419, 1998 SCMR 2268, PLD 2002 SC 630, 1998 SCMR 2268AIR 1974 SC 87, 1998 SCMR 2419 2005 YLR 1019, PLD 1966 SC 357, 1984 SCMR 1014, 2002 CLC 739, 2005 YLR 1019, PLD 1966 SC 357, 1984 SCMR 1014, 2002 CLC 739.*

- iii) The impugned ruling therefore being sketchy, slipshod and devoid of reasons cannot be called a speaking order within the parameters of law thus is liable to be quashed on this score alone.

3. **PRAYER:**

In view of above submissions, it is most respectfully prayed that in the interest of justice, the impugned valuation ruling No. 1507/2021 being devoid of any legal sustainability may kindly be set aside/set at naught/ quashed and fresh values for impugned Agricultural Tractors Parts be ordered to be re-determined in accordance with law.

4. The respondents were asked to furnish comments to the arguments submitted by the petitioner in the case. Para-wise comments on the petition are given as under:-

5. **COMMENTS BY THE DEPARTMENT**

**BRIEF OF THE CASE**

Earlier the customs values of Tractor Parts were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1424/2019 dated 05-11-2019. Subsequently, an addendum / corrigendum was issued vide dated 13-11-2019, wherein values of items falling at serial No.1 to 9 were determined. Being aggrieved by this valuation ruling, revision petition was filed by various importers / traders under Section 25D of the Customs Act, 1969, before Director General of Customs Valuation. The competent authority vide Order-In-Revision No.37/2020 dated 12-11-2020 upheld the ruling and ordered that since the valuation ruling was 01 year old, the Director of Customs Valuation may issue a fresh ruling in accordance with laid down procedures. The Directorate General of Customs Valuation, Karachi was tasked by FBR to identify the items / goods where variations w.r.t. values in exporting countries viz-a-viz import values in Pakistan were observed and where Valuation Ruling already exists. Accordingly, a special team was constituted in Directorate General of Customs Valuation, Karachi which identified the subject items where vast variations in declarations/ specifications were observed. Accordingly, an exercise was initiated to re-determine the customs values of Tractor Parts under Section 25A of the Customs Act, 1969. Meeting with all stakeholders, trade bodies including representatives of clearance Collectorates were held in the Directorate General on 09-11-2020. The importers / stakeholders were requested to submit their proposals / suggestions as well as following documents before or during the course of stakeholders' meeting so that Customs values could be determined :-

- i) Invoices of imports during last three months showing factual value.
- ii) Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.

- iii) Copies of Contracts made / LCs opened during the last one year (Prior to VR No.1448/2020 dated 02-06-2020) showing the value of item in question.
- iv) Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

The meeting was attended by importers and stakeholders and their points of view were heard in detail to arrive at customs values of subject goods. The stakeholders claimed that their declared values were true transactional values and may be accepted as such. The stakeholders also submitted their proposal regarding values of tractor parts but failed to substantiate said values with documentary evidences. Valuation methods provided in Section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at Customs Values of subject goods. Transaction value method as provided in Sub-Section (1) of Section 25 of the Customs Act, 1969, was found inapplicable because no substantial documents were provided by the stakeholders to prove that their declared values were true transactional values. Moreover, different values were declared by different importers for the same product according to different origins / specifications. Identical / similar goods value methods provided in Sections 25(5) and (6) *ibid* were examined for applicability to determine customs values of subject goods. The data provided some references; but due to wide variations in declarations; varieties and specifications, the same could not be relied upon exclusively. In line with statutory sequential order of Section 25, this office conducted various market enquiries under sub-Section (7) of Section 25 of the Customs Act, 1969. Finally, reliance had to be made on sub-section (7) of Section 25 of the Customs Act, 1969, to determine customs values of subject Tractor Parts vide Valuation Ruling No.1507/04-01-2021.

#### 6. PARAWISE COMMENTS

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

Para (1)        Need no comments being mention of hearing at Lahore.


Para (2&3)    Denied. It is submitted that the customs value of under reference goods had been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioners, on the other hand, did not submit requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No.450(I)/2001, dated 18-06-2001 (Chapter-IX), in the absence of valid import documents, the burden to prove the of transaction value shifts to the importers / applicants. As such the same is not against the principles of law rather the same is based on factual ground realities.

Para (4&5)    Denied. It is respectfully submitted that the said Valuation Ruling No.1507 / 2021 dated 04-01-2021, was issued after thorough investigation and all aspects were considered. In this regard it is submitted that this Directorate General has determined the minimum customs values vide Valuation Ruling No.1507 / 2021, dated 04-01-2021 for level playing field and for uniform assessment all over the Customs Stations of the country. Provisions of Section 25(1) to 25(9) were duly exhausted while issuing the said Valuation Ruling. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Section 25(7) of the Customs Act, 1969, vide above referred Valuation Ruling.

Para (6&7) Not Agreed. It is submitted that the petitioners have simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. However, the said Valuation Ruling No.1507/2021, dated 04-01-2021 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. Further, record of previous Valuation Ruling No.1424/2019 dated 5-11-2019 was also duly considered while determining the customs values of under reference goods. Market enquiries were conducted in this case which revealed higher prices of under reference goods in the local markets and international market. As such on the basis of said inquiries customs values were determined and notified in terms of Section 25A of the Customs Act, 1969.

Para (8) Not Agreed. However, it is submitted that it is not mandatory for Customs to accept each and every transactional value. As such the transaction value cannot be accepted in absence of any relevant import evidences and import documents etc. in terms of Para-108 of the Customs Rules, 2001. It is further submitted that the meeting with the stakeholders was held on 09-11-2020. It was attended by commercial importers as well as local manufacturers of under reference goods and official bearers / representatives of concerned Association. The participants as well as the Association were requested to provide documents like copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meeting. Again during the meeting the participants were requested to submit:-

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



Instead of furnishing any documentary evidence about downfall in prices in international market, they relied upon their rhetoric of decline in International market prices. They were repeatedly requested to furnish sales tax invoices along-with monthly sales tax return filed with Inland Revenue Department as sales tax invoices are authentic document to ascertain local market price and as the Customs has authority in terms of sub-Section (11) of Section 25 of the Customs Act, 1969, to call any documents to satisfy themselves about the truthfulness or accuracy of any information or declaration made to Customs for valuation purpose. None of them submitted sales tax invoices along with monthly sales tax return, on one excuse or the other. Since the matter was lingering on, it was decided to proceed on merits in the light of available record as well as local market enquiry conducted by the Department.

Para (9) It is submitted that Para-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(5) states that the all the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. The petitioners, on the other hand, did not submit requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109

of the Valuation Rules issued under SRO No.450 (I)/2001, dated 18-06-2001 (Chapter-IX), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers / applicants. Moreover, the customs values were determined after properly following and exhausting all the valuation methods in sequential manner and giving reasons for rejection therein and finally the values were determined in terms of Section 25(7) of the Customs Act, 1969, for uniform assessment purposes. As such the Respondent has acted in accordance with law and under powers vested upon him under the law.

Para (10) It is submitted that the contention of the petitioners is based on presumptions as in support of the claim no tangible documents have been submitted as required under Para-(108) of the Customs Rules, 2001. A declaration disclosing full and accurate details relating to the value of imported goods as claimed by the petitioner. Further, customs value have been determined after all the information so gathered was evaluated and analyzed in flexible manner applying the provisions of Section 25(7) of the Customs Act, 1969. Contrary to above, the petitioner has even not disclosed the import data or local selling prices of imported goods.

Para (11&12) In this regard it is submitted that the customs values are to be determined under Section 25-A of the Customs Act, 1969, after detailed deliberations and after exhausting all valuation methods sequentially as envisaged in Section 25 of the Customs Act, 1969. Meetings with all stakeholders were arranged and they were requested to provide corroboratory import documents but no one furnished the same to this office. Valuation Ruling clearly reveals the whole process and methods used for the determination of customs values of under reference goods. Had there been any evidence against the subject goods, the petitioner is supposed to submit in any the methods of Section 25 applicable but non-submission of any concrete evidence proves that the claim is based on presumption only.

Para (13&14) In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1507/2021, dated 04-01-2021, for level playing field and for uniform assessment all over the Customs Stations of the country. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Section 25(7) of the Customs Act, 1969, vide above referred Valuation Ruling. In this regard, it is submitted that the determined customs values are not on higher side as the same have been determined after carefully consulting last 90 days import data of clearances made at the Collectorate. Para-(5) of said Valuation Ruling clearly narrates whole the process for determining the custom Values of under reference goods by giving reasons for rejection of previous valuation methods. As such the customs values in the said Valuation Ruling have correctly and lawfully been determined in terms of Section 25(7) of the Customs Act, 1969. Moreover, in absence of authentic import documents, the transaction value cannot be accepted.

#### 7. PRAYER

It is respectfully prayed that the customs values of the subject goods were determined after exhausting all primacy methods of valuation as well as by associating of all importers / stakeholders. Moreover, the importers never furnished the requisite documents, particularly, copies of sales tax invoice issued during last four months showing the difference in prices (excluding duty / taxes) to substantiate their contention. Finally, reliance had to be made on sub-Section (7) of Section 25 of the Customs Act, 1969. The above referred documents have not also been furnished with this revision

petition. Accordingly, in the absence of such documents, the revision petition have no merit for consideration and liable to be rejected.

### ORDER

08. Hearings in this case were fixed for 04-02-2021 and 08-03-2021 at Directorate of Customs Valuation, Lahore, and another hearing was conducted on 24-02-2021 at Directorate General of Customs Valuation, Karachi. Mr. Omar Arshad Hakeem, Advocate, representing many petitioners reiterated the same arguments as advanced in their petitions. The counsel stated that values of tractor parts were highly regulated by the Directorate under Section 25A and the Directorate had fixed the value of same vide ruling No.1424/19 dated 5-11-2019. The evidence of values under sub-Sections (5) & (6) of Section 25 has been conveniently ignored by the Directorate while issuing the impugned valuation ruling.

09. The counsel further added that the whole structure of impugned valuation ruling is tainted with illegality as the same emanates vide its para-6 and 7 as the values determined thereunder to be the minimum customs values. The counsel stated that holistic perusal of Rule 119, Customs Valuation Rules 2001, as a whole and specifically Rule (3) thereof reveals that the valuation under deductive value method of sub-Section (7) of Section 25 statutorily requires association of importers to arrive at the correct calculations under that method. However, the counsel pleaded that none of the review petitioners were ever associated with the impugned process and thus the determined values vide such valuation exercise are liable to set-aside.

10. Other petitioners and their counsel contended that the impugned valuation ruling shall have its effect on imports all over Pakistan, and major wholesale markets of tractor parts are in Lahore however while determining local market prices of impugned parts, no conclusive market survey was conducted in the biggest upcountry markets. The petitioners therefore contended that the impugned ruling is not issued in accordance with tenets of subsection (7) of section 25 of the Customs Act, 1969. Moreover, the petitioners contested that no market survey was shared with any other stakeholders and no reasons of enhancement customs values were shared with the stakeholders and the values were enhanced to the tune of 400 % especially in wake of international recession owing to Covid pandemic. The petitioners further pleaded that they also shared the import data of past clearances which should have been taken into consideration for determination of values. In addition to that, the petitioners agitated that the weight of tractor parts have not been properly taken into consideration and thus subsequent values determined in the impugned VR are totally incorrect and do not reflect proper values.

11. The petitioners further pleaded that valuation ruling is full of grave flaws and legal infirmities. They stated that a bare perusal of column 9 of table to impugned valuation ruling transpires that caption of the same suggests "*minimum prices for all origins of goods*". The suggested unit of scale is based on weight; however, it is surprising to note that the same is inclusive of essential packing. The petitioners agitated that it is in total violation of (ii) & (iii) of clause "b" of subsection (2) of section 25 of the Customs Act, 1969, and the principles of non inclusion of weight of packing in valuation rulings issued under section 25A of the Act has been settled by various legal foras.

12. During hearing proceedings, Mr. Sameer Hussain Samo, Advocate, Mr. Shahzad Riaz along with other petitioners raised the question that why the customs values of Belarus brand of tractor parts determined separately under Section 25A of the Customs Act, 1969, vide impugned VR No.1507/2021 dated 04-01-2021. However, in the previous Valuation Ruling No.1424/2019 dated 05-11-2019 the customs values were not separately determined and were on the basis of Horse Power (HP). The Advocate and petitioners pleaded that impugned ruling has been issued without any speaking orders and thus is bad in law. The petitioners also submitted that the department has failed to apply judicial mind to the facts of the case and the Director Valuation has not followed the mandatory procedure as envisaged in section 25 of the Customs Act, 1969.

13. In addition to that, Mr. Ahsan, counsel of M/s Infinity Engineering, Lahore and M/s Millat Equipment Limited, Lahore, submitted that the customs values of the (i) Connecting Rods & Caps [serial No.9] (ii) Oil Pump [serial No.14] (iii) Water Pump [serial No.15] (iv) Cam Shaft [serial No.18] (v) Crank Shaft Assembly [serial No.20] and (vi) Clutch Plate [serial No.22] have been determined in the impugned Valuation Ruling which are significantly lower than even their local manufacturing cost. The counsel further submitted that the basic raw material for the manufacturing of these parts is alloy steel bars of grade and Peoples Steel Mills (Pvt.) Ltd., Karachi, is the only manufacturer of these grades in the country. Moreover, the counsel pleaded that the input output ratio for the manufacturing of these tractor parts from alloy steel bars is in accordance with the IOR determined by the EDB which means that the quantity of raw material used in each of these parts is absolutely authentic and can duly verified by EDB.

14. The petitioners M/s Anwar Trading, M/s United Corporation, M/s Agro Impex and M/s A.S. Links filed revision petitions through Mr. Zain A. Jatoti Advocate, and contended that the impugned VR is highly discriminatory in nature since only one manufacturer has been singled out i.e. Belarus. The petitioners pleaded that this gives undue advantage to importers of tractor parts of other brands and no justification has been mentioned in the impugned VR as to why the basis of "Horse Power" criterion as in the previous VR was made. The petitioners also pleaded that the impugned VR has totally ignored the fact that in an agricultural economy like that of Pakistan tractors and their parts provides the mainstay for harvest-producing activity. This has caused a grave disservice to the country and agriculture since the impugned valuation has been made unfeasible for the importers as well as the traders to import the goods on such arbitrary values.

15. On the other hand, DR submitted that the background of the impugned Valuation Ruling has been clearly mentioned vide Para-(2) that this Directorate General was tasked to identify items where variations with reference to values in exporting countries viz-a-viz in Pakistan exist in respect of variations and specifications. Accordingly, exercises were conducted and vast variations and discrepancies were found in prices of Tractor Parts and thus the valuation exercise was initiated in terms of section 25A of the Customs Act, 1969.

16. During the course of hearing proceedings, the departmental representative (DR) explained in detail the valuation methodologies adopted by department to arrive at the customs values determined vide impugned valuation ruling. In support of their contention, the DR presented details of their valuation exercises/ workings. The DR further added that proper hearing opportunities were given to stakeholders and all importers/manufacturers/stakeholders were associated during the process of the determination of customs values under Section 25A of the Customs Act, 1969. Moreover, valuation

methods provided in section 25 of the Customs Act, 1969, were duly exhausted in their regular sequential order to arrive at customs values of the subject goods. Consequently, the customs values of the subject goods were determined under Section 25 (7) of the Customs Act, 1969. Furthermore, the market inquiries were conducted from various wholesale markets of Karachi, Hyderabad and Lahore and all the valuation methods were followed in sequential order to determine the Customs values of the imported goods. Subsequently, the Customs values were determined by the Directorate of Valuation vide Valuation Ruling No.1507 / 2021, dated 04-01-2021 to safeguard Government revenue and the values were determined after fulfilling all requirements as laid down under the law.

17. The DR further stated that weight mentioned in the impugned valuation ruling is not an assessment criterion per se. The purpose was, inter alia, to curb the under-invoicing as certain unscrupulous traders have been heavily indulging in mis-declaration by clearing low weight items in the garb of heavy weight items. The DR, in addition, submitted that certain importers are importing high-value goods, but the packaging is marked with low-value goods as has been found out in case of import spark plugs and ball bearings. Therefore, a caveat/check has been put in place in the impugned valuation ruling so that manipulation in weight may be curbed and revenue of the state be secured by all possible means.

18. In reply to the separate category for Belarus tractor parts, the DR rebutted the arguments of the petitioners and elaborated that the purpose of introducing new category for the Belarus tractor parts was that its parts of the same origins are 65 to 70 percent expensive when compared to other tractor parts in the market. In this regard, the most suitable solution was to develop a new category for the Belarus tractor parts in the impugned valuation ruling. The DR stated that the contentions of the petitioners are baseless and un-authentic since the separate category has been specified to safeguard the revenue of the state.

19. After listening to the discussion/arguments of the petitioners/counsels and respondent, and perusal of the case record, the undersigned is of the view that the Department fully rebutted the arguments of the petitioners and have justified the exercise of the valuation ruling. It is also evident that the Department had taken the stakeholders on board while issuing the impugned Valuation ruling. The petitioners were given sufficient time and opportunity to give their inputs including documentary proof/evidence to substantiate their contending values but they failed to justify their claims through substantive documents. In the view of aforementioned arguments, it transpires that the department has followed all the prescribed methods under the law and the valuation ruling does not suffer from any legal and procedural infirmity. In views of the foregoing, the valuation ruling is upheld and revision petitions are hereby rejected accordingly.

20. Being identical on facts and law points, this order shall apply mutatis mutandis to following (24) petitions.

M/s. Zafar Tractor Center, M/s. R.S. Traders, M/s. Crystal Impex, M/s. Faisal Enterprises, M/s. Horizon International Traders, M/s. Auto Link, M/s. Imperial Auto Store, M/s. Mudassar Traders, M/s. New Genuine Auto Parts, M/s. Pak Tractor House, M/s. Qutab Traders, M/s. World Traders, M/s. Shehryar Butt Corporation, M/s. Johar Traders Corporation, M/s. Bilal Corporation, M/s. Anwar Trading, M/s. United Corporation, M/s. Agro Impex, M/s. A.S. Links,

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M/s. Shahzad Trade Link, M/s. M.I. Enterprises, M/s. The Lahore Chamber of Commerce & Industry, Lahore, M/s. Pakistan Association of Automotive Parts & Accessories Manufacturers, M/s. Infinity Engineering and M/s. Millat Equipment Limited.

  
(Zulfikar Ali Chaudhary)  
Director General

Registered copy to:

M/s. Zafar Tractor Center, M/s. R.S. Traders, M/s. Crystal Impex, M/s. Faisal Enterprises, M/s. Horizon International Traders, M/s. Auto Link, M/s. Imperial Auto Store, M/s. Mudassar Traders, M/s. New Genuine Auto Parts, M/s. Pak Tractor House, M/s. Qutab Traders, M/s. World Traders, M/s. Shehryar Butt Corporation, M/s. Johar Traders Corporation, M/s. Bilal Corporation,  
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202, Eden Heights, 6 Main Gulberg, Lahore.

M/s. Amwar Trading, M/s. United Corporation, M/s. Agro Impex and M/s. A.S. Links  
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M/s. The Lahore Chamber of Commerce & Industry,  
11-Shahrah-e-Aiwan-e-Sanat-o-Tijarat, Lahore.

M/s. Pakistan Association of Automotive Parts & Accessories Manufacturers,  
M/s. Infinity Engineering, M/s. Millat Equipment Limited,  
**C/o Akhtar Ali & Associates,**  
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Copy to:

1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs, Appraisement (South)/Enforcement, Karachi/ (Central) Lahore/ (North) Islamabad / Quetta.
3. The Director General of Intelligence & Investigation-FBR, Islamabad.
4. The Collector, MCC Appraisement and Facilitation (East/West ) /Port M. Bin Qasim/ Enforcement & Compliance, JIAP, Karachi.
5. The Collector, MCC Appraisement & Facilitation, Lahore / Hyderabad/Faisalabad/Sambrial - (Sialkot)/ Multan/ Islamabad/ Peshawar/ Gilgit-Baltistan/ Quetta /Gawadar/ Enforcement & Compliance, Allama Iqbal Int. Airport, Lahore.
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.