

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

Before: - Mr. Abdul Jabbar Qureshi, Member (Judicial-I), Karachi
Mr. Abdul Basit Chaudhry, Member (Technical-I), Karachi

Customs Appeal No. K-713/2022

The Director,
Directorate of Post Clearance Audit (South),
Karachi.

..... Appellant

Versus

M/s. JW SEZ (Private) Limited,
78-D, 8th Floor, Ashiana Shopping Centre,
Main Boulevard, Gulberg-III, Near Liberty Chowk,
Lahore.

The Collector of Customs (Adjudication-I),
Customs House,
Karachi

..... Respondents

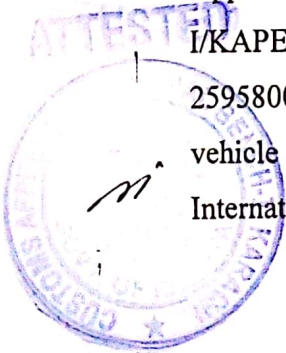
Mr. Sultan Orangzeb, P.A, present for the Appellant.
Mr. Ghulamullah Shaikh, Advocate, present for the Respondents.

Date of Hearing : 28.07.2022
Date of Judgment : 30.08.2022

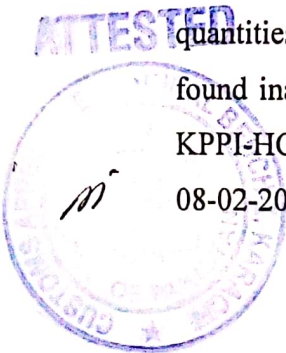
J U D G M E N T

Mr. Abdul Jabbar Qureshi, Member Judicial-I, Karachi : By this judgment we intend to dispose of the instant appeal filed by appellant, against Order-in-Original No. 587/2021-22 dated 10.02.2022 passed by Collector of Customs (Adjudication-I), Karachi.

2. Facts of the case as reported by the Directorate of Post Clearance Audit (South), Customs House, Karachi vide its contravention report No. PCA/5949/2021/Audit/345 dated 15.06.2021 are that in pursuance of news item captioned as "FBR investigating automobile under-invoicing scam" published in Business Recorder dated 14.02.2021 regarding under-invoicing in import of MG HS vehicles, the Collector MCC Appraisal & Facilitation (East), Custom House, Karachi, vide letter No. 146/DC-I/KAPE/2021 dated 17.02.2021, stated that "M/s JW SEZ (Pvt) Ltd, Lahore, (NTN # 2595800-3) has cleared new 1490cc MG HS Trim 1.5 T 7DCT G. Lux 2WD SUV vehicle in CBU condition, Model Year 2020/2021 supplied by M/s. SAIC Motor International Co., Ltd., China vide GDs, which were processed by the Collectorates in



terms of Section 25(1) of the Customs Act, 1969. In order to ascertain factual position of under invoicing and resultant loss of revenue, the Board has directed to conduct post clearance audit of the aforesaid clearances". Directorate therefore, initiated a comprehensive audit of imports of 747 SUV MG HS / MG ZS and MG ZS EV vehicles in CBU condition under HS code 8703.2260 to ascertain the actual transaction value as envisaged under Section 25 of the Customs Act, 1969, required documents from the importer under Section 26A and Section 155M of the Customs Act, 1969. However, M/s JW SEZ (Private) Limited, Lahore vide letter No. nil, dated 17.04.2021 through M/s. Franklin Law Associates, responded but could not provide required complete information. The declared customs/ transaction value by M/s. JW SEZ (Pvt.) Limited, Lahore cannot be accepted as actual transaction value in terms of Section 25 (1) (d) and 25 (3) of the Customs Act, 1969, as being the buyer M/s JW SEZ (Pvt.) Limited, Lahore and seller, M/s SAIC International Co., are related parties. Hence, declared custom values are found to be influenced, while M/s. JW SEZ (Pvt.) Limited, Lahore as importer have failed to demonstrate that relationship between M/s. JW SEZ (Pvt.) Limited, Lahore and seller M/s. SAIC International Co., did not influence the price. Furthermore, M/s. JW SEZ (Pvt.) Limited, Lahore, also failed to demonstrate that the declared transactional values under the provisions of Section 25 (1) (d) and 25 (3) (b) (i), (ii) & (iii) of Customs Act, 1969 closely approximates to transactional value in sales to the unrelated buyers of identical and similar goods for export to Pakistan or the customs value determined under deductive value method and computed value method as envisaged under section 25 (7) & (8) of Customs Act, 1969 respectively. In this regard, this Directorate further observed that identical / similar goods value method provided in Sub-Sections (5) & (6) of Section 25 ibid for applicability to determine Customs value of subject vehicles is not applicable. The import data only provided references of imports made by M/s. JW SEZ (Pvt.) Limited, Lahore being the sole importer for the subject goods, and the same cannot be solely relied upon due to the absence of absolute demonstrable evidence of quantities, and quantities of commercial level to un-related buyers. Information available was, hence, found inappropriate. In this regard, the GD Nos. i) KAPW-HC-130493-18-05-2020, ii) KPPI-HC34665-07-11-2020, iii) KAPE-HC-119055-04-01-2021, iv) KAPE-HC-145152-08-02-2021, v) KAPE-HC-119054-04-01-2021, vi) KAPE-HC-97970-05-12-2020, vii)



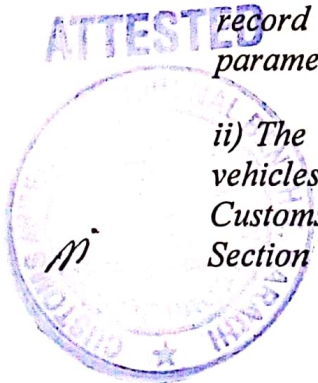
KAPE-HC-97965-05-122020, viii) KAPE-HC-91746-27-11-2020, ix) KPPI-HC-44802-14-12-2020, have been audited vide powers conferred under Notification SRO 500(I)/2009 dated 13-06-2009 and it is found that M/s. JW SEZ (Pvt.) Ltd, Lahore have caused the total loss of revenue to the government exchequer in shape of duty and taxes or other taxes as Rs. 823,700,261/- on import of MG vehicles (687 MG HS, 53 MG ZS and 07 MG ZS EV) determined on the basis of values worked out on MG China MSRP. Therefore, M/s. JW SEZ (Pvt.) Ltd, Lahore, has violated the provisions of Section 26, 26(A), 155L, 155M, 32(3A), 32(2) and 32A punishable under clause 12, 12A, 12B, 14(i), 14(ii), 14A of Section 156 of the Customs Act, 1969 *ibid*. Section 3, 6 & 11 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001, punishable under clauses (12), (12A), (12B), 14(i), 14(ii), 14A of Section 156(1) of the Custom Act, 1969, Sections 33 and 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001.

3. The Collector of Customs (Adjudication-I) passed the impugned Order-in-Original No. 587/2021-22 dated 10.02.2022. Operative part of the impugned Order-in-Original is reproduced as under:-

"I have gone through the records of the case and the grounds taken by the Directorate of PCA, Karachi and by the consultant to respondent importer and also by the clearing agent. The evaluation of the records and arguments advanced by the parties has led to the following conclusions and factual position

i) The Directorate of PCA has rejected the declared values on the grounds that importer M/s. JW SEZ (Pvt.) Lahore and their supplier M s. SAIC Motor International Co. Ltd. China have tripartite Joint Venture as confirmed by the Engineering Development Board, Islamabad. Therefore their transactions have become "related party transactions" hence taking them out of the ambit of Section 25(1) of the Customs act, 1969. The importer has raised the question that why they were not given an opportunity by the Directorate of PCA as prescribed under Section 25 (3) (a) (b) of the Customs Act, 1969 to demonstrate that their declared value is fair and not affected by the related party transaction. The record does not support that the declared values were scrutinized on the parameters as given in the Section 25 (3) (a) (b) of the Customs Act, 1969.

ii) The Directorate of PCA has determined the values of different brands of the vehicles under the Fall Back Method as envisaged under Section 25(9) of the Customs Act, 1969 by taking into account the declared transaction value under Section 25(1), import data under sections 25 (5) & (6), prevailing market prices

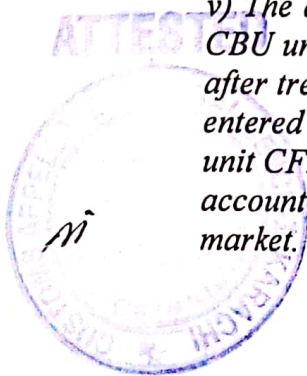


of the subject vehicles under section 25 (7), information and MRSP (Manufacturer Suggested Retail Price) available from the official Morris Garages (MG) websites of MG China, MG Middle East / Gulf, MG UK and MG Australia. Then the valuation method us envisaged under Valuation Ruling No. 1051/2017 dated 21.02.2017 was followed for allowing adjustments for determination of correct customs value of the imported vehicles. The MSRP taken for calculations of value was from websites of different countries and not certified by the manufacturer or authenticated by their local agent, therefore, cannot be termed as valid source of MSRP as per CGO 14/2005 dated 06.06.20005 and VR 1051/2017 dated 21.02.20217.

iii) The Directorate of PCA relied upon the MSRPs available on official MG China websites to determine / calculate FOB values of vehicles on the basis of price of vehicles indicated in MSRP at country of export, after allowing 20% discount on account of consumption taxes, acquisition taxes, commission and other charges while adding freight charges along with 1% insurance and 1% landing charges at the time of assessment in terms of Para 4 of the Valuation Ruling No 1051 / 2017 dated 21.02.2017. However, the respondents objected that the website relied upon for taking MSRP of their vehicles are totally irrelevant, no MSRP is available at MG China, websites of other countries were not authentic, and the vehicles advertised there are not meant for Pakistan market as these websites are for Middle East, Russia and Australia markets. Therefore the ground taken by the importer that PCA has taken wrong and irrelevant base value of MSRP which is not applicable to import value of their vehicles is based on the factual position and confirmed from the contravention report of the case.

iv) The method of determination of Customs value in terms of para 4 of the Valuation Ruling No 1051 / 2017 dated 21.02.2017 as followed by the PCA has also been examined. The para 4 of the ruling stated that for determination of value of Japanese vehicles above 1800cc MSRP of different grades and models of Japanese origin were obtained from M/s Indus Motors Co. Ltd. Karachi. And this MSRP was made base for allowing adjustments and addition of other costs. The VR suggests the MSRP was taken from the authorized agent of M/s Toyota Japan which is M/s Indus Motors Co Ltd. Karachi. Therefore, the methods as given in the above said VR was not followed by the PCA in the case of importer M/s JW SEZ as they have taken MSRP of similar vehicles from the websites of other countries which were not relevant for the sale in Pakistan market. The VR laid down the MSRP be taken from the authorized agent of Supplier Company in Pakistan which is not followed in this case.

v) The argument by the respondent that initially they imported only 03 vehicles / CBU units of MG HS at declared value of \$ 14,793 USD in May, 2020. Whereas after tremendous response from market and pursuant to tripartite agreement they entered into sale agreement of bulk supply of 2080 units of MGHUS vehicle at unit CFR price amounting to \$ 11,632 USD. Therefore, they secured discounts on account of purchase of a large number of vehicle units for import to Pakistan market. The tripartite joint venture agreement SMIL-JW-001 bAv M/s, SAIC



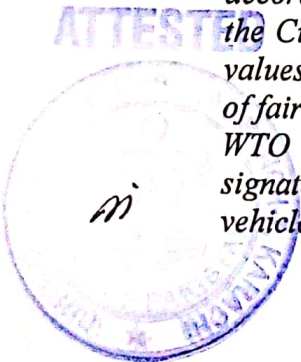
Motors International Co. Ltd., M/s. JW-SEZ (PVT). Ltd. and M/A. MG - JW Automobile (Pvt.) Limited leads to the fact that the transactions are between related parties, however, the PCA could not scrutinize the actual element of discount to reach at the fair and admissible amount of discount given by the supplier to importer in the GDs under audit,

vi) It was brought to record that the Board vide letter C. No.3(2) SS, Val & Audit/2021 dated 30.09.2021 has constituted a committee consisting of the Collectors, Collectorates of Customs Appraisement East / West / Port Qasim to determine the customs value of the vehicles being imported by M/s. JW SEZ (Pvt.) Ltd. Lahore and the committee has determined the value of vehicles being imported from China under Section 25 (7) of the Customs Act, 1969 which is different from the value of the HS variant vehicle as worked out by the PCA in impugned Goods Declarations. It is pertinent to mention that the committee has pointed out various discrepancies in declared value by the importer indicating that the declared value of MG variant of vehicles is influenced by the relation between seller and the importer and, as such, the declared value of HS variant of MG vehicles cannot be accepted as transaction value under section 25(1) of the Customs Act, 1969.

In view of aforementioned discussions, examination of the case record brought before me, considering the arguments advanced during course of hearings of the case, in light of the provisions of the section 25 of the Customs Act, 1969 and based on the conclusions made at para (14) above, the case is decided in the following terms:

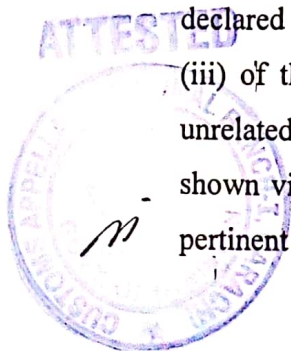
(i). The Directorate of PCA, Karachi framed the case of under invoicing and determination of actual customs value thereof, against the import of MG vehicles of different variants imported under nine (9) Goods Declaration in the case, by M/s. JW SEZ (Pvt.) Ltd, Lahore. On the basis of the findings by the PCA and in light of Tripartite Joint Venture between supplier and the importer, the transactions in the case have become "related party transactions", hence the declared customs value by the importer is influenced, therefore, cannot be determined under section 25 (1) of the Customs, Act, 1969.

(ii). On the other hand, the customs value of MG variants vehicles as determined in the case by the Directorate of PCA, Karachi is found defective in light of the provisions of the Customs, Act, 1969. The basis of ascertaining assessable values of different variants of MG vehicles by the Directorate of PCA indicates that the methodology for determination of customs value applied by them was not in accordance with the valuation methods as provided under section 25(1) to (9) of the Customs Act, 1969. The comparison of values of the impugned vehicles with values of similar vehicles in domestic market of other countries, for determination of fair value in Pakistan, is a prohibited method of valuation under article 7 of the WTO Customs Valuation Agreement which is binding on Pakistan, being signatory to the said Agreement. It is also observed that value of the similar vehicles taken from the websites of foreign countries and applying the same as to



domestic models of MG vehicles is not legally a valid source for taking a base value in terms of CGO-14/2005 dated 06.06.2005. The CGO ibid prescribes the base value of vehicle should be taken and certified by manufacturer or their authorized local agent. Therefore, the base value taken by PCA for calculating customs value of the impugned vehicles is not found in conformity of the provisions of law, In view of above, the customs value of MG vehicles (687 MG HS, 53 MG ZS and 07 MG ZS EV) imported vide aforementioned (9) Goods Declarations as determined by the Directorate of PCA are not found correctly determined as per the Provision of Section 25 of the Customs Act, 1969 read with CGO 14/2005 dated 06.06.2005. Therefore, the charges of evasion of duty and taxes on the basis of such value determined by the PCA in aforementioned manner as levelled in the show cause notice are not established. The show cause notice is therefore vacated accordingly."

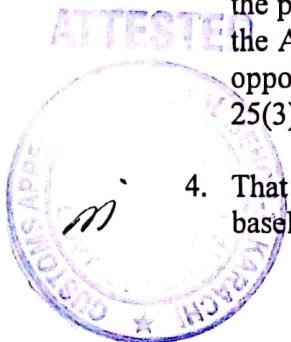
4. The appellant being aggrieved with the impugned Order-in-Original No. 587/2021-22 dated 10.02.2022 passed by Collector of Customs (Adjudication-I), Karachi., filed appeal before this tribunal on the grounds that the Collector of Customs (Adjudication-I), Karachi failed to appreciate the facts, figures before him and incorrectly decided the case in favor of the respondent no (importer). That the adjudicating authority in total disregard of the factual position and without properly considering the facts and merits of the case has disposed of the case without considering the basic canons of natural justice. The abovementioned position as envisaged by Order in Original No. 587/2021-22 dated 10.02.2022 clearly demonstrate that both M/s. JW SEZ (Pvt.) Ltd & M/s. SAIC Motor International Ltd are related parties since September 2020 and thus valuation of Import vehicles falls outside the ambit of Section 25(I) of Custom Act, 1969 and the said fact was never disclosed to Customs at the time of clearance during the period from September 2020 to February 2020. It is further stated that following position emerges relating to import of MG vehicles from by JW SEZ (Pvt) Ltd from M/s. SAIC International Motors China during the period from May 2020 to February 2021. In the light of above, it is stated that as M/s. JW SEZ (Pvt.) Ltd and M/s. SIAC Motor International are related parties and both the parties have failed to demonstrate that the declared transactional value under provisions of Section 25(i)(d) and 25(3)(b)(i), (ii) and (iii) of the Custom Act, 1969 closely approximates to transactional value in sales to unrelated buyers which is evident from the variation in declared value of major variant shown vide table above ie. MG HS i.e. 14,793 US\$ (as related party transaction). It is pertinent to mention that The Adjudicating Officer Clearly supports the



view Point of Directorate of PCA (South), Karachi to the extent that case of under invoicing of the declared values has been framed correctly in the light of tripartite / Joint venture between Supplier and importer and the transactions hence the declared custom value by the importer is influenced therefore, cannot be determined under Section 25(1) of Custom Act, 1969. It is therefor, established beyond any doubt that Directorate of PCA (South) Karachi has rightfully pointed out the instance of under invoicing of import value based on the fact that both the supplier and importer are related parties and declared import values have been influenced which clearly reflects the transaction to be related parties transactions taking them out of ambit of Section 25(1) of Custom Act, 1969.

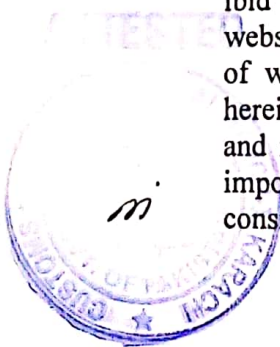
5. The Advocate for the Respondent No. 1 submitted parawise comment/counter submission grounds which are as under:-

1. That, the contents of Para 1 of the grounds of appeal are misleading, baseless and frivolous in nature, hence denied at full length. It is respectfully submitted that the learned Collector of Customs (Adjudication-I) has passed the order in original in accordance with the law by keeping in view the factual grounds and evidence put forth by the concerned parties. The learned Collectorate Adjudication-I's Order is sustainable in law as the same is passed by considering all facts and relevant provisions of law.
2. That the contents of Para-2 of the grounds of appeal are incorrect, hence vehemently denied and the same require no comments in the light of submissions made in Para 1 of ground of the appeal above.
3. That the contents of Para-3 of the grounds of appeal are incorrect, hence vehemently denied. That it may be reiterated here that subject clearance are not related-party transactions so as to be taken out of the ambit of section 25(1) *ibid*. Even when the seller and buyer are related, the transaction value is accepted for the purposes of sub-section (1) when the importer satisfies either the clause (a) or (b) of sub-section (3) of the Act. The Appellant's department has unilaterally and arbitrarily concluded that the declared customs values of subject clearances are influenced. It is not correct that answering Respondent has failed to demonstrate that the declared transactional values under the provisions of section 25(1)(d) and section 25(3)(b)(i), (ii) & (iii) of the Act, rather answering Respondent was not provided with any such opportunity to demonstrate its case within the parameters of section 25(3)(a) or section 25(3)(b) of the Act.
4. That the contents of Para-4 of the grounds of appeal are misleading, baseless and frivolous in nature, hence denied at full length. Further



repetition is avoided for reasons of brevity and the submissions made above address this issue and may be read as a part of this Para.

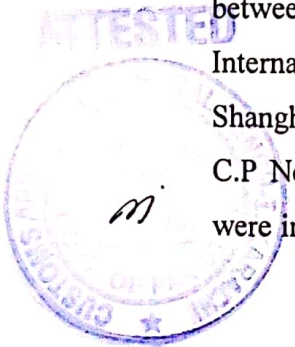
5. That the contents of para-5 of grounds of appeals are in patent contradiction of Appellant's own stance hence denied. Further, the reporting agency strikes off sub-section (1), (5) and (7) of section 25 of the Act, to be inapplicable methods for determination of customs values of present goods, and on the other hand, the reporting agency purports to take into consideration the declared transaction value under section 25 (1) and import data under section 25 (5) & (6) of the Act and prevailing market prices of subject vehicles under section 25(7) *ibid*, amongst others methods, as is reflected in the tenor of sub-para (0) of the audit observation. In fact, the reporting agency has not conducted any constructive exercise as is envisaged under section 25 of the Customs Act, 1969, and has rather resorted to arbitrarily fix the value of subject prices on the basis of values retrieved from websites alone of which even no reference has been provided. This is patently illegal in the light of judicial precedents hitherto mentioned. The Board has already intimated to the customs authorities, vide its letter dated 12.07.2021, regarding the authenticity of the invoices of answering Respondent and directed to finalize the matter in the light thereof.
6. That in the light of submissions made in the above paragraphs, contents of para-6 of the grounds of appeal are denied. Further repetition is avoided for reasons of brevity and the submissions made above address this issue and may be read as a part of this Para.
7. That the contents of Para-7 of the grounds of appeal are formal and legal in nature as such, does not warrant a reply.
8. That the contents of Para-8 of the grounds of appeal are misleading, baseless and frivolous in nature, hence denied at full length. That Without prejudice, the reporting agency resort to the sub-section (9) of section 25 of the Act is unwarranted, in the absence of exhausting reasonably and objectively the previous methods of valuation envisaged under section 25 of the Act. In view of the provisions of section 25 (9) of the Customs Act, 1969, read with the decision of the Hon'ble High Court in Goodwill Traders' Case, regard may only be had to the previous methods of valuation provided under section 25 *ibid* and still no reference could be made to prices retrieved from websites. It is beyond consideration, how a price derived on the basis of website alone {of which even no reference has been provided herein] could be used to determine value of goods in the instant case and made applicable to the instant case as well as goods still being imported by answering Respondent specifically taking into consideration a pivotal fact a huge import of about 10000 MG vehicles



imported by answering Respondent who is sole importer / distributor of MG brand vehicles in Pakistan.

9. That the contents of Paras-9 are vehemently denied as misleading. Repetition is avoided for reasons of brevity; the contents of preliminary submissions and para-8 above may be read as part of this para.
10. That the contents of Paras-10 are vehemently denied as misleading. It is respectfully submitted that the Board has already intimated to the customs authorities, vide its letter dated 12.07.2021, regarding the authenticity of the invoices of answering Respondent and directed to finalize the matter in the light thereof.
11. That the contents of Para-11 of the grounds of appeal are misleading, baseless and frivolous in nature, hence denied at full length. However, in pursuance of the audit exercise, the Board received verification of import documents from China Council for Promotion of International Trade, China Chamber of International . Commerce, as such the Board has, vide its letter bearing C. No. 4(8) ICM/2006pt dated 12.07.2021, directed the authorities to finalize the matter in the light of verification of import documents as mentioned above. Therefore, any further fishing and roving enquiry or investigation under the garb of audit is mala fide and without jurisdiction.

6. Heard arguments of both the sides and examined the case record. In the instant case, the declared values at import stage by the respondent were found to be lower even than much smaller cars with minimal features. The respondent was asked time and again to substantiate the point as why a vehicle with luxury features had price tag lesser than an ordinary car. However, he had no plausible justification to convince us. He stated that for the introduction and bulk supply of the MG vehicles a substantial discounted price was offered to the importer. He was asked to submit the evidences that importer was given any written offer at par with other countries where the MG vehicles were introduced and supplied in bulk quantity. However, he could not submit any evidence to this effect. We have been told that there has been a Joint Venture Agreement dated 09.09.2020 signed between importer M/s. JW SEZ Private Ltd and the exporter M/s. SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone. The appellant pleaded that M/s. JW SEZ (Pvt.) stated in the C.P No. D-1556/2021 in the Hon'ble High Court of Sindh, Karachi that consignments were imported under a tripartite Joint Venture Agreement wherein importing company is



holding 49% shared while the manufacturer is holding 51% shares. This clearly reflects the transactions to be "related party transactions", taking them out of the ambit of sections 25(1) of the Customs act, 1969. The same fact was also confirmed from Para 15.11 of joint Venture Agreement SMIL-JW-001 between M/s. SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone Co. Ltd. and M/s. JW SEZ (Pvt.) Ltd provided by the Engineering Development Board, Islamabad. We do not agree legally with the contention of the respondent that the shareholding of the supplier with the respondent in another local company or a joint venture cannot ipso facto render the transaction to be "related party transactions". It may be observed here that M/s. SAIC Motors International is not the manufacturer of vehicles rather M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China is the manufacturer. Hence, it is a transaction between an exporter and related importer. Therefore, technically these are related parties in context of sub-section (3) of Section 25 of the Customs Act, 1969. The valuation mechanism of imported goods between the related parties is categorically laid down in sub-section (3) & (4) of Section 25 of the Customs Act, 1969 which are reproduced below:-

"(3) If the buyer and seller are related in terms of the rules the transaction value shall be accepted for the purposes of sub-section (1); whenever:

- (a) the examination of the circumstances surrounding the sale of the imported goods as demonstrated by the importer, indicate that the relationship did not influence the price; or*
- (b) the importer demonstrates that such value closely approximates to one of the following Test Values occurring at or about the same time:*
 - (i) the transaction value in sales to unrelated buyers of identical or similar goods for export to Pakistan.*
 - (ii) the customs value of identical or similar goods as determined under the provisions of sub-section (7) (deductive value);*
 - (iii) the customs value of identical or similar goods as determined under the provisions of sub-section (8) (computed value).*



Provided that in applying the foregoing tests due account shall be taken of demonstrated differences in commercial levels, quantity levels, the elements enumerated in sub-section (2) and costs incurred by the seller in sales in which the seller and the buyer are not related that are not incurred by the seller in sales in which the seller and the buyer are related;

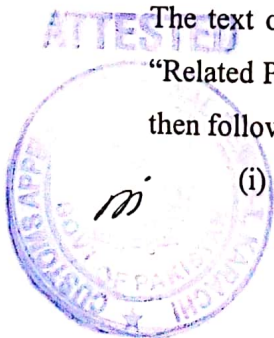
(4) Where, in relation to the goods being valued, the appropriate officer is of the opinion that the importer has not, for the purposes of clause (a) of sub-section (3), demonstrated that the relationship did not influence the price or, for the purposes of clause (b) of sub-section (3), that the declared price at which the goods are imported does not closely approximate to one of the test values mentioned therein, the appropriate officer shall inform the importer of his reservations in writing and give the importer an opportunity to justify the price difference. If the importer fails to justify the price difference, the customs value cannot be determined under the provisions of sub-section (1)."

The term "Related" is defined in para 4 of Article 15 of Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade 1994 reproduced hereunder for ease;

4. For the purposes of this Agreement, persons shall be deemed to be related only if:

- (a) they are officers or directors of one another's businesses;*
- (b) they are legally recognized partners in business;*
- (c) they are employer and employee;*
- (d) any person directly or indirectly owns, controls or holds 5 per cent or more of the outstanding voting stock or shares of both of them;*
- (e) one of them directly or indirectly controls the other;*
- (f) both of them are directly or indirectly controlled by a third person;*
- (g) together they directly or indirectly control a third person; or*
- (h) they are members of the same family.*

The text of sub-section (3) of section 25 of the Customs Act, 1969, the definitions of "Related Persons" when juxtaposed to the Agreement between the importer and Exporter then following picture emerges:-

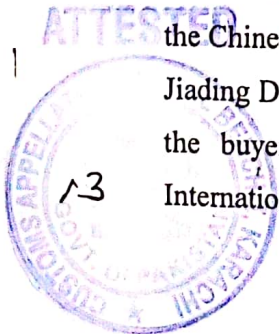


- (i) That importer and exporter both are not independent buyer and independent seller

- (ii) That both have acted to favour each other
- (iii) That none of the importer and exporter furnished any plausible reason for such extra ordinary suppressed value of the MG vehicles imported in Pakistan.
- (iv) That exporter abroad is not manufacturer himself and he has not shown the circumstances, evidence and facts surrounding the sale of MG vehicles to the importer in Pakistan at the unit price which is less than the unit price declared by the Manufacturer.

That above gives credence to the contention that the instant case is not a case of an independent buyer and independent seller and, hence, cannot be finalized under sub-section (1) of Section 25 of the Customs Act, 1969.

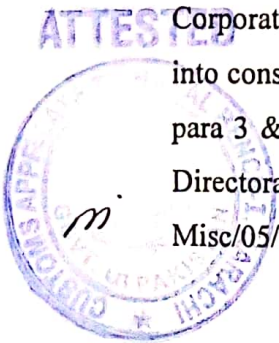
7. The values declared by M/s. JW SEZ (Pvt.) Ltd, Lahore were not accepted as transaction values in terms of section 25(1)(d) and 25(3) of the Customs Act, 1969. The importer, M/s. JW SEZ Private Ltd imported MG HS at declared value of USD 14,000, MG ZS at declared value of USD 9000 and MG ZSEV at declared value of USD 22,000 vide GD No. KAPW-HC-130493-18-05-2020 but later he imported MG HS vehicles at DV of USD 11,632 (decreased by USD 2368), MG ZS at USD 9,245 (increased by USD 245) and MG ZS EV at USD 18,282 (decreased by USD 3,748). The appellant pleaded that he requested the clearance Collectorates to provide FOB values of the vehicles under audit, duly verified from the Chinese manufacturer, M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China Limited or their authorized local agents in terms of CGO 14/2005 but no reply from any of the Collectorates was received. The appellant also approached Chinese Original Equipment Manufacturer (OEM) i.e. M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China but no response was received perhaps for the reason that the sales were routed through SAIC Motors International. It is observed that world over manufactures of vehicles issue invoices themselves and not through their subsidiaries or marketing companies etc. The appellant also requested FBR to approach the Chinese manufacturer, M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China and get verified the invoices but to no avail. Moreover, the buyer M/s. JW SEZ (Pvt.) Limited, Lahore and seller, M/s. SAIC Motors International were found as related parties on account of JV signed on 09.09.2020. The



Directorate of PCA Karachi found that the importer, M/s. JW SEZ (Pvt.) Limited, Lahore had not disclosed at the time of import to Customs that MG vehicles were imported under a Tripartite/Joint Venture Agreement (51% shares held by M/s. SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone Company and 49% by M/s. JW SEZ (Pvt.) Limited). Hence, declared customs values were found not to be at arms' length transaction. The appellant pleaded that the OEM, SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China Annual Report 2020 (www.saicmotor.com) provides the name of its related parties/subsidiaries, however, M/s. SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone has not been found in the list. Hence, it is not a subsidiary or sister concern of the manufacturer, M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China.

8. The Directorate of PCA, Karachi framed the case of under invoicing and determination of actual customs value thereof, against the import of MG vehicles of different variants imported under nine (09) Goods Declaration in the case, by M/s. JW SEZ (Pvt.) Ltd., Lahore. On the basis of the findings by the PCA and in light of Tripartite Joint Venture between supplier and the importer, the transactions in the case have become "related party transactions", hence the declared customs value by the importer is influenced, therefore, cannot be determined under section 25 (1) of the Customs, Act, 1969.

9. It has been observed that the case making agency correctly applied section 25 of the Customs Act, 1969 in sequential manner for determination of Customs values of imported MG vehicles. The declared values under section 25(1), import data under section 25(5) & (6), prevailing market prices of the imported MG vehicles under section 25(7) on the official MG website i.e. <https://www.saicmg.com/> of SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China were taken into consideration in line with CGO 14/2005. The Valuation method as envisaged under para 3 & 4 of Valuating Ruling No. 1051/2017 dated 21.02.2017 and clarification vide Directorate General of Customs Valuation Custom House Karachi's letter No. Misc/05/2008-V-III A/1084 dated 18.04.2017 were also taken into account before

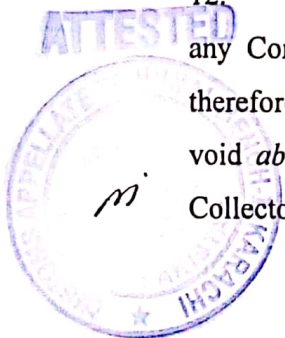


finalizing Customs values of the imported MG vehicles under the Fall Back Method as envisaged under section 25(9) of the Customs Act, 1969. In addition, all information was utilized to determine/calculate Customs Value of imported MG Vehicles under the Fall Back Method under section 25(9) of the Customs Act, 1969 to calculate assessable Customs values of imported MG vehicles (16,581 USD for MG HS, 12,735 USD for MG ZS and 22,991 USD for MG ZS EV). It is further observed that the case making agency did not use any sources for determination of Customs value which were not valid as per the relevant provisions of law.

10. The Manufacturer's Price in the country of export are usually relied upon to work out FOB values on the basis of price of vehicles indicated in a valid and authentic documents of country of export. This is an established practice of clearance Collectorates to determine FOB values of imported vehicles. There is no doubt that the Directorate of PCA, Karachi finalized the assessable Customs values in accordance with the procedure/mechanism mentioned under Valuation Ruling Number 1051/2017 dated 21.02.2017 read with CGO 14/2005 and established practice adopted by the clearance Collectorates in case of vehicles lower than 1800cc and non Japanese models.

11. We hold that the Chinese supplier i.e. M/s SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone purchased CBU vehicles from the Chinese manufacturer i.e. M/s SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China and sold the same vehicles to the Pakistan based importer i.e. M/s JW SEZ (Private) Limited at much lower values, which cannot be considered as bonafide fair transactions Customs value. The correct values of said SUVs as appearing at the official website of the Chinese manufacturer M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China are much higher which establishes that the Chinese supplier was engaged in undervalued transaction of the supply of SUVs to Pakistan.

12. We are also constrained to hold that the Customs Act, 1969 does not provide for any Committee to be constituted for determination of value of any imported goods, therefore, the Committee so constituted by the FBR was illegal without jurisdiction and void *abinitio*. There is no precedence in the department where a Committee of three Collectors has been constituted to decide a Valuation issue. Moreover, FBR's letter C.

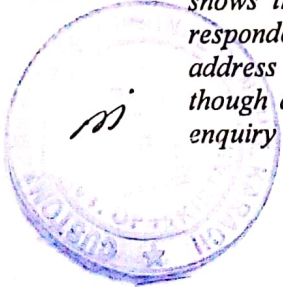


No.1(19)-S/VCA/2004- Pt-1 dated 11.11.2006 categorically instructs that cases released under section 81 of the Customs Act, 1969 be finalized by the Collectorate under section 25(1), (2)(a)(b)(c), (5) and (6) and by the Directorate General of Customs Valuation under section 25(2) (d)(e)(f), (3), (4)(7)(8) and (9). In the instant case, on the directions of FBR, the provisionally assessed GDs were finalized on the basis of findings of the subject Committee of three Collectors and that too on lower than the provisionally assessed values which were in turn lower than the values determined by PCA. We hold it to be an illegal assessment. We are also constrained to hold that this tantamounts to misuse of authority. That no such special arrangement has ever been in place for any other importer by FBR for Customs Valuation and no such a favorable and preferential treatment has ever been meted out to any importer. This smacks unfair / foul. The Honorable Supreme Court of Pakistan and other superior courts of Pakistan have time and again ruled that all importers engaged in the activity of import of identical items may be provided level playing field. The Constitution of Pakistan also provides that all citizens are equal and must be treated with equality. We have found no such pricing mechanism for any other importer / manufacturer of vehicles, which confirms that price finalization by three Collectors for MG was not legal and as per law enunciated in section 25 of Customs Act, 1969, read with Customs Valuation Rules but was a special arrangement for the importer which is not provided in the law.

13. That Verifications by Chinese Customs, China Council for Promotion of International Commerce do not have any legal cover under the Customs Act 1969. We are constrained to observe that the concerned officers in FBR shall not have directed field formations to make such verifications any basis of valuation of the subject vehicles. Needless to say, the only authentic document is by the manufacturer which is hopelessly missing in this case. We relied upon a judgment of Honorable of High Court of Sindh in SCRA No. 154/2008 [*Collector of Customs VS China National Water Resources Hydropower Eng.*] The operative para reads as under;

ATTESTED

"The perusal of the two documents, which have been relied upon for raising of demand, shows that it is not based upon the enquiry of this particular import made by the respondent nor is based upon information collected from the exporter whose name and address is given in the bill of entry which is in Tokyo Japan nor from the manufacturer though as mentioned in the bill of entry the consignment is made in Japan. No such enquiry or source is quoted in the letter of the Commercial Counselor of Embassy of



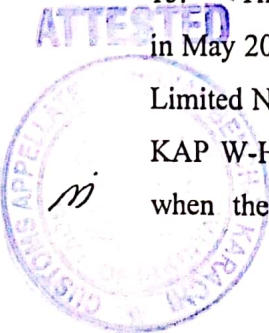
Pakistan, Japan nor any such material is mentioned in the letter of Valuation Department on which letter the demand is squarely based. Learned counsel for the applicant has referred to the case of M/s. Abdul Aziz Ayoob (supra) which is a Division Bench judgment of this Court in which the Court considered the implication of section 25 of the Act for determination of normal value of the imported consignment and as regards certificate issued by the Embassy of Pakistan at page 386 of the judgment observed as follows:

"6. This brings us to the next question whether the basis which was adopted by the Customs to determine the price of the imported goods was contrary to law. As seen above, learned counsel has placed reliance on Collector of Central Excise and Land Customs v. Imdad Ali 1969 S C M R 708 in which case, for the various reasons detailed in the judgment, the Supreme Court declined to uphold reliance on a certificate issued by the relevant Embassy of Pakistan as regards the price of the imported commodity. We would straightaway record that such basis, as a rule, suffers from serious infirmity and should be avoided. Where such a letter or certificate is relied upon the Embassy concerned should be asked, as opined in the Supreme Court judgment, to attach a price list or certificates from traders or their own certified assessment in the relevant country and short of this the version of the Embassy should not be accepted or relied upon."

The above observation is made by relying upon an earlier judgment of Hon'ble Supreme Court of Pakistan referred to therein and it has been emphasized that the Embassy concerned should be asked to attach the price list or certificate from the traders or their own certified assessment in the relevant country and short of this the version of the Embassy should not be accepted or relied upon. There is no price list or certificate from the traders attached to the letter dated 20.2.2004 of the Embassy of Pakistan nor the Commercial Counselor has given his own certified assessment regarding the value of the imported consignment. Thus, in our view the demand raised by the demand notice dated 17.3.2004 does not find support as to the valuation of the imported consignment and to this extent we agree with the finding of the Tribunal that it is based merely upon hearsay and does not reflect either transaction value or the correct value of the imported consignment."

14. We also hold the PCA has followed the cardinal principle of law by following prescribed method of valuation under section 25 of the Customs Act 1969. The findings of the Adjudicating Authority in para 15(ii) of the impugned Order-in-Original are incorrect that PCA has ascertained values and framed the case on the basis of values of similar vehicles in domestic market of other countries and that the values of similar vehicles have been taken from the websites of foreign countries.

15. The whole issue gets cleared if viewed chronologically. It is on record that when in May 2020, the respondent imported (03) vehicles from M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China (OEM) vehicle GD NO KAP W-HC-130493 dated 18-05-2020, the vehicles were assessed at US\$ 14,793/- but when the bulk quantity of 2080 units were imported through M/S SAIC Motor

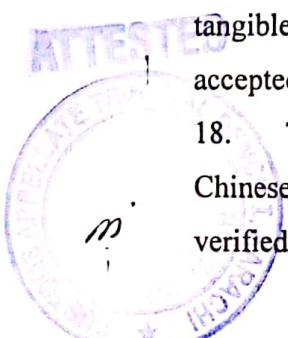


International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China. Shanghai Free Trade Zone the price came down to US\$ 11,632/-. Hence, there is a substantial difference of prices by the OEM as supplier and M/S SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone. We hold that the clearance Collectorates should not have assessed the vehicles below the ones cleared through above mentioned Good Declaration for whatever reasons. At the cost of repetition it is stated that M/S SAIC Motor International Company Limited (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone is neither the manufacturer nor included in the list of subsidiaries of manufacturer i.e. M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China.

16. We also do not agree with the contention of the respondent reproduced on page 20 of the impugned Order-in-Original that CKD Kits cost more because of freight for containerized cargo and that PPV (Pre-Production Vehicles) Kits are especially off the line manufactured and packed products, as they are off process parts and that they have special packaging. If we agree with this contention, the whole concept and rationale of value addition through local assemblers etc becomes questionable. And if the department agrees with this contention of the respondent then this shall be made applicable across the board. This would mean assemblers like Indus Motor Company, Honda Atlas Cars, Hyundai-Nishat Motor Company etc shall be importing CKD kits at higher values than their corresponding CBUs.

17. Interestingly, the respondent has mentioned management and supporting costs (approx. US\$ 664/unit), loss on rebate etc while justifying higher values of 24 CKD Kits imported from OEM i.e. M/s. SAIC Corporation Limited. No supporting documents from the OEM have been placed on record to prove this contention. It is obvious that this forum is the last forum for inquiry into the facts of the case, hence, anything for which no tangible evidence is provided and statement is based on assumption only cannot be accepted by us.

18. The contention of the respondent that export GDs/ Shipping Bills duly filed with Chinese Customs for the CBU units showing CIF values at US\$ 11,632/unit have been verified by Pakistan Customs have no bearing on the instant case because, the crux of the



case is that M/s. SAIC Motor International Company Limited, (SMIL), Room No. 429-H, No.188 Yesheng Road, China Shanghai Free Trade Zone issued invoices with lower values who is not the manufacturer of the imported vehicles. Hence, this exercise of verification was just an eye wash.

19. We are constrained to hold that during the whole controversy of valuation stretching over several months neither the clearance Collectorates nor the FBR approached the manufacturer, M/s. SAIC Motor Corporation Limited No. 201, Anyan Road, Jiading District, Shanghai, China directly or through Pakistani Embassy in China or through the Commercial Councilor for verification of declared values nor the respondent produced any document in his favour from the said manufacturer despite being its sole agent in Pakistan. This leaves no doubt in our minds that the declared values, the provisionally assessed values and the values determined by the Committee were not in accordance with the provisions of the Customs Act, 1969.

20. In view of the above, the charges levelled in the Show Cause Notice stand established without any shadow of doubt. The impugned Order-in-Original is hereby set aside and the appeal is allowed.

21. Judgment passed and announced accordingly.

sd -
 (Abdul Basit Chaudhary)
 Member Technical-I
 Karachi.

-sd-
 (Abdul Jabbar Qureshi)
 Member Judicial-I
 Karachi.

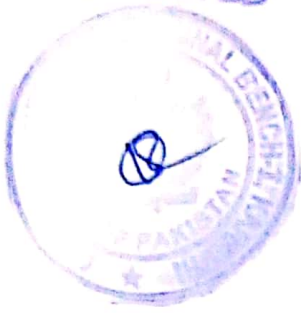
This order consist of (18) pages and each page bears mv initials and office seal.

(Approved for Reporting)

ATTESTED
sd -
 (Abdul Basit Chaudhary)
 Member Technical-I
 Karachi.

-sd-
 (Abdul Jabbar Qureshi)
 Member Judicial-I
 Karachi.

ATTESTED



GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI

CA No(s) K-713/2022 dated 31/03/22

M/s. The Director, Directorate of Post Clearance Audit (South)

against Order-in-Original/Order-in-Revision/Order-in-Appeal No. 567/2021/22 ^{Karachi v/s JW SEZ}

passed by Collector of Customs Adj-2 Karachi ^{10/2/22 (POT) LTD -}
Commissioner of Customs

1. M/s. The Director, Directorate of Post Clearance Audit (South)

2. Ghulamullah Shaikh (Adv) Resp. Karachi v/s JW SEZ (POT) ^{2+D -}

3. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

4. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

5. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

6. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

7. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

8. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

9. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

10. Commissioner of Customs, Directorate of Post Clearance Audit, Karachi

Adj-11/1011/SCN-848/PCA-5949/JW/SEZ/LAR/2021

REGISTRAR
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI

30/4/22

3844
30/08/22