

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS (VALUATION)  
CUSTOM HOUSE, KARACHI

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File No. DG (V) Val.Rev/22/2022/660

Dated 28<sup>th</sup> June, 2022

Order in Revision No 54/2022 under Section 25D of the Customs Act, 1969,  
against Valuation Ruling No. 1618/2022 Dated 25-03-2022

- 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 San Tex Products (Pvt.) Ltd.

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

30-05-2022

For the Petitioners

Barrister Asad Khan

For the Respondent

Mr. Nadeem Shaikh, Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1618/2022, dated 25.03.2022, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"FACTS"

1. That the Petitioner is incorporated under the laws of Pakistan and is engaged in the production of various sanitary products under the "BUTTERFLY" brand, including Sanitary Pads and Panty Liners. Through years of hard work, commitment to professional excellence and by providing highest quality products to consumers across the Country, the Petitioner and its brand "BUTTERFLY" have earned the trust and confidence of millions all over the country. As a result, the Petitioner has established itself as by far the largest local producer of sanitary pads and is responsible for 20% of the market share and supply of such sanitary products. Naturally, the Petitioner is also responsible for some of the largest contributions to the National Exchequer and is also responsible for provisioning employment to hundreds.
2. That, whereas, the Respondent Director of Customs Valuation has been entrusted by the Legislature through the enactment of section 25A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods



imported into or exported out of Pakistan, which values are then used and applied for calculation of leviable Customs duties as well as allied taxes.

3. That in spite of its obligations under the law, the Respondent Director has unlawfully, arbitrarily, and in dire contradiction and violation of Section 25A of the Customs Act, 1969, and the Customs Rules, 2001, framed there-under, purportedly 'determined' the values of, inter alia, imported Sanitary Towels / Napkins vide the impugned Valuation Ruling No. 1618 of 2022 dated 25.3.2022 (hereinafter referred to as 'the impugned Valuation Ruling').
4. That as submitted herein, the Respondent Director has acted in violation and excess of the powers conferred thereupon under the Customs Act, 1969, and the issuance of the impugned Ruling has resulted in serious harm and loss to the Petitioner as well as other stakeholders. The actual prices paid / payable for the impugned goods remains significantly lower than the value unlawfully fixed through the impugned Valuation Ruling, however, despite the patent illegalities therein, the Respondent Director has deemed the impugned Ruling fit for the purposes of assessment of imported consignments of the impugned goods. The Petitioner submits a brief background to the issue as follows.
5. That the Petitioner does not ordinarily conduct imports of ready-to-use Sanitary Pads and, instead, locally manufactures such pads at its manufacturing facilities. However, from time to time, in order to meet demand of its products beyond manufacturing capacity, the Petitioner is compelled to meet such demand through the import of Sanitary Pads. In case of such imports, prices paid / payable for the imported Sanitary Pads purchased for import into Pakistan by the Petitioner is many times lower than that fixed through the impugned Valuation Ruling.  
  
As such, in terms of Section 25 of the Act, 1969, the actual price paid / payable for the said goods at the time of import into Pakistan remains significantly lower than those fixed / notified through the impugned Valuation Ruling.
6. That it is pertinent to note at this stage that the Petitioner purchases the imported Sanitary Pads from its supplier in China and all payments to the said supplier are made thereto through banking channels.
7. That under the scheme of the Customs Act, 1969 (hereinafter 'the Act, 1969'), the assessment / valuation of imported goods is carried out either under Section 25 of the Act, 1969, or under Section 25A r/w Section 25 of the Act, 1969. Assessment / valuation is carried out under Section 25A of the Act, 1969, where customs / assessable values of imported goods are **determined** in advance by the Respondent Director through the issuance of a valuation ruling issued after strict adherence to the methods of valuation laid down in Section 25 of the Act, 1969, and the Customs Rules, 2001, framed there under.
8. That in the recent past, the assessment of the imported Sanitary Pads has been subject to Valuation Ruling No. 1284 of 2018 dated 13.4.2018 issued under Section 25A of the Act, 1969, by the Respondent Director / its predecessor. The said Valuation Ruling was issued after taking onboard stakeholders and the prices / values contained therein remained at or about the same level for most of its subsistence.
9. That it must be noted that whenever the Petitioner has purchased and imported the said Pads at a value higher than the values contained in the earlier Valuation Ruling No. 1284 of 2018, the Petitioner has made declarations as such and has paid higher amounts of duties and taxes compared to those leviable on assessments carried out as per the said earlier Ruling.
10. That in spite of the foregoing and to the surprise and dismay of the Petitioner, the Respondent Director initiated proceedings for re-determination of values under Section 25A of the Act, 1969, for the imported Sanitary Pads. In this regard, a meeting was scheduled to be held on 18.11.2021 for,





inter alia, the Petitioner and other importers of the said Sanitary Pads. However, as per the Respondent Director, the said meeting was adjourned due to a lack of sufficient attendance and quorum.

11. That furthermore, the impugned Ruling falsely claims that two meetings were held on 2.8.2021 and 18.11.2021, the latter of which has been dealt with above, whereas as to the purported meeting stated to be held on 2.8.2021, no such hearing was in fact held due to the ongoing wave of the Covid-19 pandemic.
12. That thereafter, no meeting whatsoever was called at any time and neither was any information called by the Respondent Director nor was the Petitioner informed that the impugned Ruling is about to be issued.
13. That instead, however, the Petitioner was and remains possessed of detailed submissions and documentary evidences which not only substantiate its claim that the actual price paid / payable for such imported Sanitary Pads is significantly lower than that fixed through the impugned Ruling but also completely belies the values arbitrarily and unlawfully and mala fide fixed through the impugned Ruling. Copies of Import Documents, including both import and export GDs, Invoices, PLs, BLs are attached.
14. That the Petitioner was in a position to make incontrovertible and irrefutable submissions on, inter alia, what the current values should be while supporting the same with irrefutable documents and the fact that the earlier values contained in Valuation Ruling No. 1284 of 2018 are still valid in view of the prevailing values for the said Sanitary Pads, whereas any purchases made on the higher said are accordingly declared. Some of the crucial points in this regard are summarized below for ease of reference, namely:
  - A. That the values determined through the earlier Ruling are at or about the same price as the imported Sanitary Pads are presently available.
  - B. That the Petitioner is one of the biggest stakeholders in the local market of Sanitary Pads, and, consequently, is also one of the biggest suppliers thereof in Pakistan.
  - C. That the products sold and supplied by the Petitioner in the local markets are also bound by the Price Lists issued by the Petitioner from time-to-time to wholesalers and retailers.
  - D. That furthermore, the prices of its goods are easily verifiable from online sources such as the online storefront "Daraz" (at <https://www.daraz.pk/shop/butterfly/>) maintained by the Petitioner.
  - E. That the actual price paid / payable for the imported goods (i.e. the transaction value) is also evidenced by the declarations made at the export stage by the Chinese Supplier through GDs filed with the GAC, Copies of Price List, Sales Tax Invoices a/w Sales Tax Returns and Extracts from Website are attached.
15. That as submitted hereinabove, despite holding no meetings in pursuance of proceedings under Section 25A of the Act, 1969, the Petitioner was confronted with indeterminate silence by the Respondent Director and no further steps vis-à-vis determination of fresh values in accordance with the law were taken.
16. That however, after the passage of more than four (04) month without any further meeting being held or otherwise, the Petitioner was suddenly confronted with the impugned Valuation Ruling No. 1618 of 2022 issued on 25.3.2022, whereby, the values of, inter alia, the said Sanitary Pads were increased by abhorrent and unsustainable margins.
17. That in view of the contents of paragraphs 3 and 4 of the impugned Ruling, the following questions naturally arise:





- i. In what manner were the points of view and documents submitted by the stakeholders considered for purportedly determining the impugned values, especially since no meeting was actually conducted on either of the dates stated in the impugned Ruling?
  - ii. If no meeting was conducted, then why were no further meeting held?
  - iii. If another Ruling issued on 25.3.2022 is considered, the last meeting in that case was held on 23.2.2022; as such, why was no further meeting granted in the instant case?
  - iv. How were the values contained in the impugned Ruling arrived at if there were submissions by stakeholders?
  - v. Whether the Respondent Director was attempting to force a certain conclusion and merely gave bald statements to achieve such conclusion?
18. That nonetheless, the impugned Ruling is self-evident of high-handed, unlawful, illegal and mala fide acts, whereby the Respondent Director has failed to carry out any determination of values and, instead, has given stereotypical statements in an attempt to justify the imposition of unrealistic and unlawful values on the imports of the said Sanitary Pads.
19. That the Respondent Director, at paragraph 5, proceeded to make general statements as to the methodology adopted in arriving at the values for, inter alia, the imported Sanitary Pads in the impugned Valuation Ruling.
20. That it must be seen without prejudice to other grounds taken herein that the Respondent Director has attempted to claim at line 12, paragraph 5 that the "... item was not readily available in the market ..." Not only does this statement refer to an "item", despite being a ruling for numerous goods, the statement itself is not sustainable in view of the fact that the goods under reference are meant for consumption by end-consumers and their prices can easily be verified online as stated above.
21. That it is an indisputable fact that the Petitioner's contentions are supported by incontrovertible documents in the shape of demonstrated evidences, in support of its contentions, including Export GDs as mentioned above, proofs of payment for such purchases having been made through proper banking channels and, as such, no question as to the bona fide of such documents has either arisen or can arise. The Petitioner also declares the actual price paid / payable for the imported Sanitary Pads at the time of import into Pakistan in the Goods Declarations filed before the respective Collectorates. Furthermore, the Sales Tax Invoices, Price Lists and Online Storefront of the Petitioner also reflect the price at which such imported Sanitary Pads are sold by the Petitioner, which can be utilized in order to verify the claims of the Petitioner.
22. That the Respondent Director, however, grossly abused the powers conferred upon it in order to issue an arbitrary list of values which is not permissible under the law.
23. That the Respondent Director must be invited to show the manner in which the values contained in the impugned Ruling have been arrived at. Mere cyclostyle statements regurgitated from other rulings issued in the past are not sufficient as an exercise under Section 25A of the Act, 1969, is mathematical in nature and is regulated by the law as contained in Sections 25 and 25A of the Act, 1969, read with Chapter IX of the Customs Rules, 2001. In spite of the foregoing, the Respondent Director has refused to place on record such exercise and, instead, has reiterated the bald statements that are reproduced in paragraph 5 of the impugned Valuation Ruling.
24. That however, the Respondent has asserted that a market survey was conducted independently and to the exclusion of the Petitioner, however, it has been claimed that the "... item was not readily available in the market ...". Again, the Respondent department, in an effort to keep the determination process obscure and riddled in uncertainties, fails to contextualize the said market survey and does not provide any details as to when this market survey was conducted. This deliberate concealment leads to the conclusion that any such survey was not conducted at all.





25. That in continuation of the above, even if such a survey was conducted by the Respondent, the willful exclusion of the concerned stakeholders in the process, including the Petitioner, raises suspicion about the substantive content of the survey and the manner in which it was conducted. This, coupled with the lack of any evidence or details pertinent to the survey, raises suspicion about whether the survey was actually conducted in the first place or whether it is being used to justify the Respondent's arbitrary and capricious customs values.
26. That paragraph 5 further lends credence to the above. The Respondent states that the transaction value, the similar goods value, inquiries from markets and even the conversion value of goods at the country of export could not be applied to the goods at hand as they were either too varied or unavailable.
27. That given the nature of the instant proceedings, it is prayed of this learned Authority that the Respondent Director / its officers be mandated to place on record details of the entire exercise undertaken purportedly to arrive at the values contained in the impugned Ruling and to substantiate the same through documentary proof.
28. That, moreover, the Respondent has acknowledged by way of receiving the listed documents that it was in possession of the documents listed hereinabove, the Respondent has attempted to distance itself from its legal responsibilities by stating that they did not submit "substantial documentary evidences to prove that their declared values were true transactional value". However, this is a blatant falsehood as no meetings were in fact conducted by the Respondent.
29. That however, these irrefutable instruments and demonstrated evidences such as certified payment evidences and goods declarations filed at the time of export, were rendered of no value as the Respondent proceeded ex parte against the Petitioner. It is submitted that it is impossible for the Petitioner to be protected from the whims of the Respondent Director in the given circumstances.
30. That as can be demonstrated, the price actually paid / payable for the said Sanitary Pads remain significantly lower than the value unlawful, illegally and arbitrarily fixed through the impugned Ruling by the Respondent Director, and the demonstrated value is the determinable and correct value for the purposes of assessment of consignments of the said Sanitary Pads imported by the Petitioner.
31. That without prejudice to the foregoing, it is submitted that the impugned Valuation Ruling is not sustainable on a legal plane in addition to being, inter alia, misconceived on the factual plane in light of the foregoing submissions. While it is an undisputed fact that the Respondent Director has not carried out any determination for the said Sanitary Pads, it is submitted that the Respondent Director has acted in dire contradiction to and has flouted the provisions of Section 25 of the Act, 1969; the Respondent Director has given unlawful reasons while refusing to adhere to the sequentially provided methods of valuation in Section 25 and has invoked sub-section (9) thereof only in order to justify values which have been arrived at in an arbitrary manner which is alien to the Act, 1969.
32. That, under the Act, 1969, and the Customs Rules, 2001, the Respondent Director was required to act in a strict manner while considering the application of each method of valuation provided under Section 25 of the Act, 1969. Further, as required by the aforesaid provision, the Respondent Director needed to state lawful grounds for rejecting any particular method of valuation as being not applicable as given under the Act, 1969, whereas the Respondent Director has failed to provide any such grounds.
33. That firstly, it is submitted that there is no lawful reason to restrain the Petitioner from making its submissions and furnishing documents, which irrefutably establish the actual prices paid / payable for the said Sanitary Pads in terms of sub-section (1) of Section 25 of the Act, 1969.





34. That the Respondent Director has incorrectly rejected the methods of valuation contained in Section 25 of the Act, 1969. As to sub-section (1) of Section 25 of the Act, 1969, the Respondent merely deemed it inapplicable without any cogent reasons having been provided therefor. The Respondent utterly and miserably failed to consider the declared values in the imports over the previous ninety (90) days, which evidence the actual prices payable / paid for imports.
35. That without prejudice to the foregoing, it is submitted that as to sub-sections (5) & (6) of Section 25 of the Act, 1969, the Respondent Director has refused to apply the same in spite of the fact that irrefutable evidences created thereunder and fully applicable for the purposes of determination are in the knowledge and possession of the Respondent Director. It is evident from the contents of the impugned Valuation Ruling that the Respondent Director did not have any lawful reason to reject application of methods of valuation contained in sub-sections (5) and (6) of Section 25. Firstly, the Respondent Director has failed to appreciate that sub-sections (5) and (6) envisage two separate / independent methods of valuation, wherein sub-section (5) requires consideration of identical goods being assessed by the respective Collectorates, evidence whereof is provided hereinabove. Concomitantly, where no identical goods are available as envisaged in sub-section (5), the Respondent Director must invoke sub-section (6) of Section 25 of the Act, 1969, whereunder similar goods and values thereof have to be considered.
36. That instead, however, the Respondent Director has given a bald statement to the effect that the said sub-sections could not be "...solely relied upon." While the Respondent Director has made the foregoing bald statement, it has absolutely failed to state as to what the actual information / data was and how the same would lead to inapplicability of sub-sections (5) and (6) of Section 25 of the Act, 1969. Without prejudice to the foregoing, the Respondent has failed to refer to even one specific item covered by the impugned Ruling wherein such issue was faced, or that what the found values were.
37. That furthermore, the Respondent has failed to highlight the specific provisions of sub-sections (5) and (6) which make application of the same redundant in the absence of such information, which is evidently available.
38. That, without prejudice to the preceding, the Respondent Director has excluded the occasion to consider market surveys purportedly carried out by him / his officers in order to justify the fixation of values which are otherwise unlawful and highly prejudicial to the Petitioner through subsequent invocation of sub-section (9) of Section 25 of the Act, 1969. Even if the existence of such a market survey is accepted for the sake of argument, it is submitted that a market survey conducted without the association of any independent party and/ or the stakeholders is a nullity in the eyes of the law.
39. That the market survey purportedly conducted had to be conducted in violation of the principles of natural justice and equity, as well as the Act, 1969, and the Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in the "greatest aggregate quantity", which has to, firstly, be in respect of the items actually imported by, inter alia, the Petitioner both in terms of quality as well as nature thereof and, secondly, be at least at par with the quantities of sale of the Petitioner, as well as other importers, dealing on a wholesale basis. Whereas, the Respondent Director has failed to produce any evidence in support of its contention that a lawful market survey was conducted. It is, indeed, a fact that no such market survey has been conducted.
40. That the phrase "greatest aggregate quantity" has been further explicated in Rule 119 of the Rules, 2001, wherein it has been stated that such quantity, in addition to being the greatest aggregate, also needs to be the greatest number in units sold at the first commercial stage after importation. Further, the provisions of Rule 119(3) also necessitate the involvement of the importers, including the Petitioner, in the process of market survey and determination in consequence thereof.





41. That the Respondent has also erred in relying upon the provisions of Section 25(7) of the Act, 1969, to purportedly 'determine' the values of the said Sanitary Pads under the impugned Valuation Ruling. Firstly, the Respondent has not provided any lawful reasons for not following the methods of valuation contained in the preceding provisions of Section 25 of the Act, 1969. Secondly, the Respondent has wrongly applied the provisions of Section 25(7) of the Act, 1969.
42. That without prejudice to the preceding, the Respondent Director had a positive obligation to ensure that market survey was conducted, and values and categories of goods generated in the manner found in a lawful survey. A lawful survey would, of course, be one which is strictly compliant with the law, including conduct of stakeholders, at the same commercial level and quantities at the first stage after import, etc.
43. That it is reiterated that the Respondent has failed to provide reasons in conformity with Section 25 of the Act, 1969, as to why the methods of valuation laid down in sub-sections (1), (5), and (6), were not followed. As to sub-section (7), the Respondent has not even attempted to state why determination proceedings were limited thereto. This by itself is an incurable defect in the impugned Valuation Ruling, which is, therefore, liable to be immediately set aside.
44. That, in addition to the foregoing failings evident from the impugned Ruling, the Respondent has also gravely erred in applying the provisions of Sections 25A and 25 of the Act, 1969. The Respondent has purportedly issued the impugned Ruling under sub-section (9) of Section 25 of the Act, 1969, whereas the Respondent has failed to provide any lawful and / or cogent reasons for failing to adhere to the preceding sub-sections of Section 25.
45. That while 'determining' values under the impugned Ruling, the Respondent ignored the sequential methods of valuation contained in Section 25 of the Act, 1969, and, in a patently arbitrary and whimsical manner, chose Section 25(9) of the Act, 1969, as the appropriate instrument of 'determination' of values. It is submitted that the Respondent has utterly failed to adhere to the provisions of the Act, 1969, and has failed to elucidate any cogent reasons for not applying / following the methods of valuation preceding sub-section (9) of Section 25 the Act, 1969.
46. That, without prejudice to the foregoing, it is submitted that the Respondent has even failed to properly follow the dictates of Section 25(9) of the Act, 1969, and has misused the provisions thereof in an attempt to justify unlawful fixation of values of the imported Sanitary Pads. The Respondent has, in fact, used sub-section (9) of Section 25 of the Act, 1969, in order to issue a list of values which is neither reflective of the actual transaction values at which the imported Sanitary Pads are available in the international market, nor is permissible under the law in such a manner.
47. That, although sub-section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the Respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable for the imported Sanitary Pads at the time of import into Pakistan. The Respondent has failed to elaborate the 'flexible manner' in which the valuation methods were supposedly applied. The Respondent was under a positive duty to identify the provisions of Section 25, which were flexibly applied in arriving at the values purportedly determined in the impugned Valuation Ruling.
48. That in view of the foregoing, it is submitted that the values for the said Sanitary Pads fixed through the impugned Ruling by the Respondent Director are absolutely unsustainable, being, inter alia, contradictory, unreflective and motivated / monopolistic / exploitative on the factual plane while being highly illegal and unlawful on a legal plane. The values of said Sanitary Pads have been fixed by the Respondent Director without any determination whatsoever.
49. That the actions of the Respondent including issued of the impugned Valuation Ruling are in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the Petitioner as





enshrined in the Constitution of Pakistan, 1973, including Articles 4, 8, 10A, 18, 19A and 25A, thereof.

50. That, in light of the preceding narration, the Petitioner prefers the instant petition on, inter alia, the following grounds, namely:

**GROUND**S

- A. That the impugned Valuation Ruling is unlawful, illegal and liable to be set aside.
- B. That the impugned Valuation Ruling has been issued on an ex-parte basis and without providing any opportunity to be heard to the Petitioner. Resultantly, the irrefutable evidences possessed by the Petitioner have been utterly ignored, which renders the impugned Ruling in dire violation of Article 10A of the Constitution of Pakistan, 1973, as well as the Act, 1969, and the Rules, 2001.
- C. That the Respondent Director has failed to adhere to the methods of valuation laid down in the Act, 1969, and the Rules, 2001.
- D. That the Respondent Director has merely given cyclostyle and bald statements in paragraph 5 of the impugned Ruling, which are evidently copied from numerous previous instruments / rulings issued under Section 25A of the Act, 1969. This alone renders the proceedings nugatory.
- E. That the impugned Valuation Ruling has been issued without carrying out any determination as envisaged by the law, including but not limited to Section 25 of the Act, 1969, and the Customs Rules, 2001, framed thereunder. In fact, the values for the imported Sanitary Pads have merely been fixed for the purposes of assessment, and are in dire contrast to the law.
- F. That the documents possessed by the Petitioner leave no room for ignoring the provisions of sub-section (1) of Section 25 of the Act, 1969, i.e. reliance could not have been placed on any other method of valuation than the transaction value, insofar as the Petitioner is concerned.
- G. That it is submitted that there is no lawful reason to ignore the contentions and documents submitted by the Petitioner, which irrefutably establish the actual prices paid / payable for the said Sanitary Pads in terms of sub-section (1) of Section 25 of the Act, 1969.
- H. That the Respondent Director has incorrectly rejected the methods of valuation contained in Section 25 of the Act, 1969. The Respondent merely deemed sub-section (1) of Section 25 inapplicable without any cogent reasons having been provided therefor. The Respondent utterly and miserably failed to consider the declared values in the imports over the previous ninety (90) days, which evidence the actual prices payable / paid for imports.
- I. That the Respondent Director has failed to attribute any lawful reasons as to why the transaction values / actual prices paid or payable for the Sanitary Pads at the time of import into Pakistan have been disregarded. The Respondent Director has acted in ignorance in spite of being in possession of irrefutable evidences in the shape of, inter alia, the Export GDs, and proofs of payment through banking channels. As enumerated hereinabove, the Respondent Director, in addition to the foregoing, remains in possession of import data of the past ninety (90) days which includes imports conducted by local manufacturers as well as others.
- J. That, in addition to the foregoing failings evident from the impugned Ruling, the Respondent has also gravely erred in applying the provisions of Sections 25A and 25 of the Act, 1969. The Respondent has purportedly issued the impugned Ruling under sub-section (9) of Section 25 of the Act, 1969, whereas the Respondent has failed to provide any lawful and / or cogent reasons for failing to adhere to the preceding sub-sections of Section 25.





- K. That while 'determining' values under the impugned Ruling, the Respondent ignored the sequential methods of valuation contained in Section 25 of the Act, 1969, and, in a patently arbitrary and whimsical manner, chose Section 25(9) of the Act, 1969, as the appropriate instrument of 'determination' of values. It is submitted that the Respondent has utterly failed to adhere to the provisions of the Act, 1969, and has failed to elucidate any cogent reasons for not applying / following the methods of valuation preceding sub-section (9) of Section 25 the Act, 1969.
- L. That, without prejudice to the foregoing, it is submitted that the Respondent has even failed to properly follow the dictates of Section 25(9) of the Act, 1969, and has misused the provisions thereof in an attempt to justify unlawful fixation of values of the imported Sanitary Pads. The Respondent has, in fact, used sub-section (9) of Section 25 of the Act, 1969, in order to issue a list of values which is neither reflective of the actual transaction values at which the imported Sanitary Pads are available in the international market, nor is permissible under the law in such a manner.
- M. That, although sub-section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the Respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable for the imported Sanitary Pads at the time of import into Pakistan. The Respondent has failed to elaborate the 'flexible manner' in which the valuation methods were supposedly applied. The Respondent was under a positive duty to identify the provisions of Section 25, which were flexibly applied in arriving at the values purportedly determined in the impugned Valuation Ruling.
- N. That without prejudice to the foregoing, even sub-sections (5) and (6) have been rejected in an unlawful manner. The Respondent Director admits that the said sub-sections provided some reference values, however, without elaborating on why the same are unreliable proceeded to reject the same. In fact, when sub-section (7) was considered, the Respondent Director has not claimed that the same was found to be inapplicable or otherwise improper, and has merely made unsubstantiated statements vis-à-vis some market inquiry.
- O. That without prejudice to the foregoing, it is reiterated that market surveys / enquiries, if conducted, have been done so on an ex-parte basis and without associating the necessary stakeholders thereto. As such, it is not reliable evidence by any measure and is liable to be struck down.
- P. That, as to the first submission, it is submitted that the Respondents have failed to provide reasons in conformity with Section 25 of the Act, 1969, as to why the methods of valuation laid down in sub-sections (1), (5), (6), (7), (8) and (9) were not followed as per law. This by itself is an incurable defect in the impugned Valuation Ruling and, hence, the impugned Order which fails to appreciate the same.

That the Petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments

#### **PRAYERS**

In light of the preceding narrations, the Petitioner prays of this Hon'ble Authority that this petition may graciously be allowed, and

- I. Set aside / quash the impugned Valuation Ruling No. 1618 of 2022 dated 25.3.2022 as being unlawful, illegal and contrary to the Customs Act, 1969, the Customs Rules, 2001, and the Constitution of Pakistan, 1973, and having been issued in dire contradiction to the Judgments of the Hon'ble Superior Courts.



- II. *Declare that the impugned Valuation Ruling No. 1618 of 2022 dated 25.3.2022 is unsustainable for the purposes of assessment of any imported consignments of Sanitary Pads of Chinese Origin.*
- III. *Declare that the Respondent Director has failed to provide any cogent reasons justifying the issuance of an instrument / valuation ruling under Section 25A of the Customs Act, 1969.*
- IV. *Direct that the Petitioner's imports be assessed in accordance with Section 25(1) of the Customs Act, 1969.*
- V. *Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1618 of 2022 dated 25.3.2022, and the values contained therein for any purposes, including but not limited to assessment.*
- VI. *Suspend the operation of the impugned Valuation Ruling No. 1619 of 2022 dated 25.3.2022 till final disposal of the title petition.*
- VII. *Grant any other relief deemed just and appropriate in the circumstances of the case."*



2. 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:-

#### **"FACTS OF THE CASE"**

Earlier the Customs values of Baby Diapers and Sanitary Towels / Napkins and Tampons were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1284/2018 dated 13-04-2018. Several representations from importers were received for revision of this valuation ruling in line with the current market prices and freight factor. In view of the foregoing, an exercise was undertaken by the Directorate General of Customs Valuation to re-determine the customs values of subject goods in terms of Section 25A of the Customs Act, 1969. Meetings were held on 02-08-2021 and 18-11-2021 which were attended by various stakeholders including the representatives of trade bodies i.e. FPCC&I, KCC&I, GCC&I & QCC&I, manufacturers, importers as well as representatives of Clearance Collectorates. All the participants were requested to submit following documents so that correct customs values could be determined :-

- (i) Invoices of imports made 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 value of item in question and ;
- (iv) Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was passed on to the local buyers.

The meetings was attended by stakeholders and their points of view were heard in detail to arrive at customs values of subject goods. None of the importers submitted any documents in support of their contention. While some importers stressed the point of view that customs values may be fixed by keeping in view the element of freight, import prices of raw materials and the values prevailing in the local and international market. Some of the stakeholders stated that subject goods are being declared and assessed on very lower side and there is a need to determine the customs values under Section 25A for uniform assessment across the board.



Accordingly, after exhausting and examining all valuation methods as envisaged under Section 25 of the Customs Act, 1969, customs values of under reference goods had been determined in terms of Section 25(9) and notified in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1618/2022 dated 25-03-2022 accordingly.

### PARAWISE COMMENTS

#### Para-1&2

Need no comments being introduction of the petitioners, their imports and Powers of Respondent regarding issuance of valuation rulings in terms of Section 25A of the Customs Act, 1969.

#### Para-3 to 6

Not Agreed. It is respectfully submitted that the impugned Valuation Ruling No.1618/2022 dated 25-03-2022 has lawfully and justifiably been issued by the Respondent in terms of Section 25A of the Customs Act, 1969, under vested powers upon him. The Director (Valuation) has been empowered by the Board to issue valuation rulings after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969. No deviation from laws / rules has occurred while determining the customs values of under reference goods. Further, it is submitted that concept of fixation of values no more exists in the Customs Tariff rather Customs values are being determined in terms of Section 25 of the Customs Act, 1969. As far grievances of under reference petitioners are concerned, it is submitted that they seem to be not satisfied with any valuation ruling because they are continuously aggrieved with all Valuation Rulings including previous No.1284/2018, dated 13-04-2018 and impugned Valuation Ruling No.1618/ 2022 dated 25-03-2022 and filing review petitions against the same. However, all valuation rulings are being issued lawfully by considering record of previous rulings and taking all stakeholders on board. As such the Respondent has acted according to law and procedure.



#### Para-7 to 10

It is submitted that the contents of Para-(4&5) are denied to the extent declared value of the consignment is not reliable and not acceptable in terms of Section 25 (1) of the Customs Act, 1969, in presence of Valuation Ruling available under Section 25-A of the Customs Act, 1969. The Valuation Ruling is exhaustive which is always taken for assessment purpose in cases where the declared value is on lower side. The Valuation Ruling has been issued under Section 25-A of the Customs Act, 1969, which always prevails upon the declared value, which in turn is not proof of exact transactional value. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioner is aggrieved. In these paras petitioners have negated the impugned Valuation Ruling but did not give any substantive and cogent reason for not accepting the same. Further, import related documents which are essentially required in the process of determination of customs values were never been submitted by any of the stakeholders.

#### Para-11 to 14

Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and view point of all the stakeholders. The record of the impugned Valuation Ruling No.1284 / 2018, dated 13-04-2018 and arguments put forward by the Appellants were duly considered during process of issuance of impugned Valuation



Ruling No.1618 / 25-03-2018. However, petitioners still seem to be aggrieved despite two Valuation Rulings have been issued for Baby Diapers etc. The Appellants were asked to furnish relevant documents so as to enable that forum to verify the truth and accuracy of their contentions but no corroboratory import documents were provided by any of them. No evidence was placed on record to indicate any deviation from the existing laws / provisions as envisaged in Section 25 readwith Section 25-A of the Customs Act, 1969. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. As such Valuation Ruling No.1618/ 2022, dated 25-03-2022 had lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969.

**Para-15 to 18**



It is submitted that the contents of Paras-(15 to18) are denied to the extent that declared value of the consignment was not reliable and not acceptable in terms of Section 25 (1) of the Customs Act, 1969, in presence of Valuation Ruling available under Section 25-A of the Customs Act, 1969. The Valuation Ruling is exhaustive which is always taken for assessment purpose in cases where the declared value is on lower side. The Valuation Ruling has been issued under Section 25-A of the Customs Act, 1969, which always prevails upon the declared value, which in turn is not proof of exact transactional value. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved.

**Para-19 to 21**

Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and view point of all the stakeholders. The record of the impugned Valuation Ruling No.1284 / 2018, dated 13-04-2018, and arguments put forward by the Appellants were duly considered during process of issuance of under reference Valuation Ruling No.1618 / 25-03-2022. The Appellants were asked to furnish relevant documents so as to enable that forum to verify the truth and accuracy of their contentions but no corroboratory import documents were provided by any of them. No evidence was placed on record to indicate any deviation from the existing laws / provisions as envisaged in Section 25 readwith Section 25-A of the Customs Act, 1969. The petitioners could not substantiate their claim with supporting documents on record. No any supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. As such Valuation Ruling No.1618/ 2023, dated 25-03-2022 had lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969 by the Respondent for uniform assessment all over the country.

**Para-22 to 24**

Not Agreed. It is submitted that while issuing the Valuation Ruling for any imported commodity under Section 25-A, the Director of Customs Valuation has been empowered to exhaust all the valuation methods i.e. Sub-Sections (1), (5), (6), (7), (8) & (9) of Section 25 of the Customs Act, 1969 sequentially. It is submitted that customs values for issuance of Valuation Rulings are properly determined in terms of Subsections (1) to (9) of Section 25 of the Customs Act, 1969, sequentially. However, the word "whichever is



applicable" as used in Sub-Section (1) of Section 25A gives discretion to the competent authority to adopt the method as suited to the determination of value under Section 25-A of the Act, which may or may not be applied in a sequential manner. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences.

**Para-25 to 27**



Denied. It is respectfully 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 the requisite corroboratory 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 laws rather the same is based on factual ground realities. Further, the petitioners were requested to provide corroboratory documents like sales tax paid invoices, proforma invoice, copies of L/Cs and other import related documents but they never furnished the same to this office which are essentially required in the process of determination of customs values for assessment purposes. As such burden of proof that their transaction value is correct and fair lies upon the petitioners who may satisfy the Customs Authorities.

**Para-28 to 30**

Not Agreed. It is submitted that customs values in the impugned Valuation Ruling have been determined sequentially by following all valuation methods as provided in Section 25 of the Customs Act, 1969, and giving reasons for rejection thereof. After exhausting Sub-Sections to (9) of Section 25, the customs values have been determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country. Moreover, it is submitted that view point of petitioners was also considered and they were requested to provide corroboratory import documents but the same were never provided to this office for purpose of determination of customs values which are essentially required for the purpose of determination of the customs values of any imported goods into Pakistan. Petitioners were repeatedly requested to submit the import related documents which are essentially required in the process of determination of customs values any imported commodities into Pakistan. But no any stakeholder or importers submitted the requisite import documents to the Customs.

**Para-31 to 33**

Denied. It is respectfully submitted that Valuation Ruling No.1618/2022, dated 25-03-2022 has lawfully been issued in terms of Section 25A of the Customs Act, 1969 after examining whole record of the case and ground realities. The said ruling has also been issued after exhausting and applying all valuation methods as envisaged under Section 25 of the Customs Act, 1969 and 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 the requisite corroboratory 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 laws rather the same is based on factual ground realities.

Para-34 to 37



Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and view point of all the stakeholders. The record of the impugned Valuation Ruling No.1284 /2018, dated 13-04-2018 and arguments put forward by the Appellants and Respondents were considered. The Appellants were asked to furnish relevant documents so as to enable that forum to verify the truth and accuracy of their contentions but no corroboratory import documents were provided by any of them. No evidence was placed on record to indicate any deviation from the existing laws / provisions as envisaged in Section 25 readwith Section 25-A of the Customs Act, 1969, has been occurred. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. As such Valuation Ruling No.1618/ 2022, dated 25-03-2022 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. Moreover, the concept of fixation of values no more exist in the Tariff rather values are being determined under Section 25A of the Customs Act, 1969.

Para-38 to 41

Not Agreed. It is submitted that while issuing the Valuation Ruling for any imported commodity under Section 25-A, the Director of Customs Valuation has been empowered to exhaust all the valuation methods i.e. Sub-Sections (1), (5), (6), (7), (8) & (9) of Section 25 of the Customs Act, 1969 sequentially. It is submitted that customs values for issuance of Valuation Rulings are properly determined in terms of Subsections (1) to (9) of Section 25 of the Customs Act, 1969, sequentially. However, the word "*whichever is applicable*" as used in Sub-Section (1) of Section 25A gives discretion to the competent

authority to adopt the method as suited to the determination of value under Section 25-A of the Act, which may or may not be applied in a sequential manner. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences. Moreover, the concept of fixation of values no more exist in the Tariff rather values are being determined under Section 25A of the Customs Act, 1969. The impugned Valuation Ruling was properly issued in terms of Section 25A of the Customs Act, 1969, after following, exhausting and examining all the valuation methods as envisaged under Section 25A of the Customs Act, 1969. As such the same is justifiably been issued only under reference petitioners are aggrieved otherwise assessments are being made as per the same.



**Para-42 to 44**

Denied. It is respectfully 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 the requisite corroboratory 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 laws, rather the same is based on factual ground realities.

**Para-45 to 47**



It is respectfully submitted that the said Valuation Ruling 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.1618/2022, dated 25-03-2022 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling for uniform assessment all over the country. It is further submitted that the Petitioner has 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 in presence of the clear Valuation Ruling in the field, transaction value cannot be accepted in absence of any relevant import evidences and import documents etc.


**Para-48 & 49**

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.1618/2022, dated 25-03-2022 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. It is respectfully 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 meetings with the stakeholders were held on 02-08-2021 & 18-11-2021 which were duly attended by the 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 the 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 any required documents before meeting. Again during the meeting



the participants were requested to submit :-

- (i) Invoices of imports made 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 value of item in question and ;
- (iv) Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was 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 alongwith 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 alongwith 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-50**

Relates to the time of hearing before the competent authority.

**GROUND S**

**Para-A to C**

Not Agreed. It is submitted that customs values in the impugned Valuation Ruling have been determined sequentially by following all valuation methods as provided in Section 25 of the Customs Act, 1969, and giving reasons for rejection thereof. After exhausting Sub-Sections to (9) of Section 25, the customs values have been determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country. Moreover, it is submitted that view point of petitioners was also considered and they were requested to provide corroboratory import documents but the same were never provided to this office for purpose of determination of customs values. Moreover, the Respondent above named had correctly issued the impugned Valuation Ruling based on ground realities of the case.

**Para-D to F**

Not Agreed. It is submitted that while issuing the Valuation Ruling for any imported commodity under Section 25-A, the Director of Customs Valuation has been empowered to exhaust all the valuation methods i.e. Sub-Sections (1), (5), (6), (7), (8) & (9) of Section 25 of the Customs Act, 1969 sequentially. It is submitted that customs values for issuance of Valuation Rulings are properly determined in terms of Subsections (1) to (9) of Section 25 of the Customs Act, 1969, sequentially. However, the word "whichever is applicable" as used in Sub-Section (1) of Section 25A gives discretion to the competent authority to



adopt the method as suited to the determination of value under Section 25-A of the Act, which may or may not be applied in a sequential manner. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences. As such impugned Valuation Ruling issued in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, is lawfully justified.

Para-G to I

In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1618 / 2022, dated : 25-03-2022 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened meetings for the determination of under reference goods and all stakeholders were invited. As such the Respondent has acted according to law while issuing the said ruling. Further, concept of "fixation of value" no more exists in the Customs Tariff rather Customs values are being determined in terms of Section 25A of the Customs Act, 1969.

Para-J to L



Denied. In this regard it is to be submitted that Respondent had correctly and lawfully issued Valuation Ruling in terms of Section 25A and the same was based on factual grounds of the case. It is submitted that the said Valuation Ruling has lawfully been issued in terms of Section 25-A by the Respondent after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the Respondent has acted in accordance with law and under powers vested upon him under the law. However, all the participants of meeting including 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 the following documents :

- (i) Invoices of imports made 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 value of item in question and ;
- (iv) Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was 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. Further, citation of Court case do not related to the under



reference case being of different nature and circumstances etc.

Para-M & N

It is submitted that para-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(4&5) states that the said ruling has not been issued only on the basis of local market enquiry rather 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(9) of the Customs Act, 1969, for uniform assessment purposes.

Para-O&P



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 Collectorates. As such the customs values in the said Valuation Ruling have correctly and lawfully been determined in terms of Section 25(9) of the Customs Act, 1969, by analyzing and evaluating whole the information so gathered. In this regard it is submitted that the said Valuation Ruling No.1618 / 2022, dated 25-03-2022 was issued after properly following all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Paras-(4&5) of the said ruling clearly states whole the process adopted for the determination of customs values of under reference goods. However, after exhausting all the valuation methods from sub-Section (1) to (9) and finally customs values were determined and notified in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country. It is submitted that the Valuation Ruling No.1618 / 2022, dated 25-03-2022 itself is a self speaking document which has lawfully been issued by the Respondent under Section 25A of the Customs Act, 1969, after exhausting all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. It is further submitted that no valuation method was abandoned as stated by the Petitioner rather all valuation methods from Sub-Section (1) to Sub-Section (9) of Section 25 of the Customs Act, 1969, were exhausted while determining the customs values of under reference goods by giving reasons for rejection of previous methods and after evaluating and analyzing all valuation methods, customs values were determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country. These values are not arbitrary or unlawful as the same have been determined after properly analyzing and evaluating so gathered from different sources. Therefore, no violation of any rules has occurred while determining the Customs values in the said ruling.

#### PRAYER

In view of above narrated facts, it is submitted that the petitioner is required to get clear the goods as per Valuation Ruling issued under Section 25-A of the Customs Act, 1969, which is legal and lawful. The Valuation Ruling No.1618/2022, dated



25-03-2022 has lawfully been issued after considering all the facts and figures and after following valuation methods sequentially. As such the same may be allowed to hold field for uniform assessment all over the country. The assessment made on the basis of Valuation Ruling is correct and petitioners are liable to pay duty / taxes as per Valuation Ruling. On the other side the petitioner failed to furnish the requisite documents particularly copies of Sales Tax Paid Invoices issued during the last four months showing the values of suppliers (excluding duty & taxes) to substantiate their contentions. Moreover, at the time of exercise of Section 25A and meetings, the petitioner did not provided requisite import documents to the Respondent in support to justify their contention which are essentially required for determination of customs values.



In view of above, it is respectfully prayed that the said Valuation Ruling may be allowed to hold field for assessment being lawful and valid. Further, transaction value cannot be accepted in absence of any tangible import documents. As such no relief is warranted to be given to the petitioners and assessments are liable to made as per said Valuation Ruling. In the light of above submissions and factual position, the under reference petition being not maintainable is liable to be dismissed and rejected accordingly."

#### ORDER

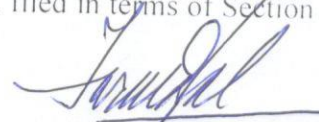
3. Hearing in this case was held on 30-05-2022 on which date both the counsel of petitioner and respondent department were heard in detail. The main contention of the petitioners was that the respondent department determined the Customs values of Baby Diapers and Sanitary Towels/Napkins at exorbitantly high prices. The counsel stated that they do not ordinarily conduct import of ready-to-use Sanitary Pads and, instead, are manufacturers of such pads at their manufacturing facilities. However, from time to time, in order to meet demand of the said products, beyond their manufacturing capacity, they are compelled to meet such demand through imports. In such cases prices paid / payable for the imported Sanitary Pads by them are many times lower than those fixed values through the impugned Valuation Ruling (VR) dated 25-03-2022. In this regard, the meeting scheduled to be held on 18.11.2021 with regards to impugned goods was adjourned by the respondent department due to a lack of sufficient attendance and quorum. Furthermore, the impugned VR falsely claims that two meetings were held i.e. on 02.08.2021 and 18.11.2021, whereas the earlier meeting, purported to be held on 02.08.2021, was in fact not held due to the ongoing wave of the Covid-19 pandemic. The counsel stated that it must be seen, without prejudice to other grounds taken herein, that the Respondent department has attempted to claim at line 12, paragraph 5 that the "... item was no readily available in the market ..." Not only does this statement refer to an "item", despite being a ruling for numerous goods, the statement itself is not sustainable in view of the fact that the goods under reference are meant for consumption by end-consumers and their prices can easily be verified online as stated above.

4. On the other hand, the departmental representative (D.R) submitted that Earlier the Customs values of Baby Diapers and Sanitary Towels / Napkins and Tampons were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1284/2018 dated 13-04-2018. Several representations from importers were received for revision of this valuation ruling in line with the current market prices and freight factor. In view of the foregoing, an exercise was undertaken by the Directorate General of Customs Valuation to re-determine the customs values of subject goods in terms of Section 25A of the Customs Act, 1969. Meetings were held on 02-08-2021 and 18-11-2021 which



were attended by various stakeholders including the representatives of trade bodies, manufacturers, importers as well as representatives of Clearance Collectorates. All the participants were requested to submit requisite documents in support of their contention so that correct customs values could be determined and accordingly, after exhausting and examining all valuation methods as envisaged under Section 25 of the Customs Act, 1969, Customs values of impugned goods was determined in terms of Section 25(9) and notified in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country vide impugned VR accordingly.

5. After having considered the views of the petitioners, the D.R. and the documents on record, the submissions of the petitioner's counsel that the prices of the goods are easily verifiable, including online sources [e.g. online storefront "Daraz" (at <https://www.daraz.pk/shop/butterfly/>)] gains traction and is consistent with such resources. Moreover the departmental contention, in para-5 of impugned V.R. that *"....item was not readily available in market...."* is not within the realms of possibility considering that such items, are of common use and freely available in market. Moreover, the contention of the petitioner that due to the quantum of their import, their suppliers are able to offer competitive prices based on quantitative discount is a normal market practice. The D.R. was requested to clarify this aspect, but was unable to controvert this claim of the petitioners. On account of the foregoing discussion, the Customs values notified for Sanitary Towels / Napkins and Tampons, vide Table-C&D of the impugned Valuation Ruling No.1618/2022 dated 25-03-2022 suffers from procedural impropriety and is accordingly set aside to the said extent only. In addition the Director Customs (Valuation) is directed to separately determine the Custom values afresh of Sanitary Towels / Napkins and Tampons [(Table-C&D) of the impugned VR] in terms of Section 25A of the Customs Act, 1969 by recourse to the valuation methodology elaborated in Section 25 of the Act *ibid* so that the respective Customs values are determined in line with the prevailing international prices of the goods. This exercise is to be completed, without delay, in accordance with law, after giving a fair opportunity of hearing to the petitioner(s)/ stakeholders. The instant revision petition, filed in terms of Section 25D of the Customs Act, 1969, is disposed off accordingly.

  
(Dr. Fareed Iqbal Qureshi)  
Director General

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C/o GA Jahangir & Associates,  
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Copy to:

- 1) The Member Customs (Policy/Operations), Federal Board of Revenue, Islamabad.
- 2) The Director General, Intelligence and Investigation (Customs)-FBR, Islamabad.
- 3) The Director General (Reforms & Automation Customs)-FBR, Islamabad.
- 4) The Director General, PCA & Internal Audit, Islamabad
- 5) The Director General, IOCO, Custom House, Karachi.
- 6) The Director General, Transit Trade, Custom House, Karachi.
- 7) The Chief Collector of Customs (North), Custom House, Islamabad.
- 8) The Chief Collector of Customs Enforcement (Central), Custom House, Lahore.



- 9) The Chief Collector of Customs Appraisement, (Central), Custom House, Lahore.
- 10) The Chief Collector of Customs, Baluchistan, Custom House, Quetta.
- 11) The Chief Collector of Customs, Khyber Pakhtunkhwa, Custom House, Peshawar.
- 12) The Chief Collector of Customs, Appraisement (South), Custom House, Karachi.
- 13) The Chief Collector of Customs, Enforcement (South), Custom House, Karachi.
- 14) The Directors, Intelligence & Investigation, Karachi / Lahore / Islamabad / Quetta / Peshawar / Faisalabad.
- 15) The Director, Directorate of Customs Valuation, Karachi / Lahore / Quetta / Peshawar.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisement - West / Appraisement - East / Appraisement - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad / (Appraisement / Enforcement), Quetta / Gwadar / (Appraisement / Enforcement / AIIA), Lahore / Appraisement, Faisalabad / Appraisement, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan / (Appraisement / Enforcement), Peshawar / Exports (Port Muhammad Bin Qasim / Custom House), Karachi.
- 17) The Secretary (Valuation & Audit), Federal Board of Revenue, Islamabad.
- 18) All Additional Directors / Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 19) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WeBOC Database System.
- 20) Guard File.

