

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

File No. DG(V)Val.Rev/39/2022 /935.

Dated 2nd September, 2022

**Order in Revision No. 76 /2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1644/2022 Dated: 29-04-2022**

- This copy is granted free of charge for the private use of the person to whom it is issued.
- 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.
- An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.
- If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.

M/s. Azam Enterprises & Others

VERSUS

PETITIONERS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

15-08-2022 & 01-09-2022

For the Petitioners

Mr. Azam Sarwar
Mr. Sohail Yaseen

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. 1644/2022 dated 29.04.2022 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"The instant revision is assailed being distressed of unjustified/exaggerated values pertaining to electric guitar with amplifier under PCT heading 9202.1000 @ 2 to 4.78 USD, IOA-Musical Guitar (Manual) under PCT heading 9202.9000 @ 5 to 10.50 USD and Digital Portable Musical Keyboard under PCT heading 9202.1000 @ 9USD mentioned at S.No. 1 to 3 respectively determined u/s 25 (9)-fall back method vide impugned valuation ruling no.1644/2022 dated 29-04-2022 ("the VR") @ 90 USD/pc issued U/s 25-A by the Director Of Customs Valuation, Karachi without following/exhausting the express provisions of customs valuation envisaged U/s 25 of the Customs Act, 1969 read with Customs Rules,2001 notified vide SRO 450(I)/2001 dated 18-6-2001. Therefore, the impugned VR is issued in blatant violation of the article 10-A of Constitution of Pakistan and article 24-A of the General Clauses Act, 1897 is not sustainable under the Customs Laws, rules and regulations and vogue. Copy of Impugned Violation Ruling is enclosed as Annex-A.

FACTS OF THE REVISION PETITION

- Precisely stated facts necessary for revision of the determined values under the impugned valuation ruling no.1644/2022 dated 29-04-2022 are that M/s. M. Azam Enterprises ("The Importer/Petitioner") is a regular importer of miscellaneous goods from different stockists and not from manufacturing

companies. These are of different prices, sizes, colours and brands @140 USD /Pc, 190 USD /Pc and 120 USD /Pc under Valuation Ruling No. 1644/2022 dated 29-04-2022 and the Importer/Petitioner is importing above-mentioned goods for the Beginners / Learners who are at the earliest stage to learn how to play any musical instrument according to the Pakistani Market.

- 2- In this context & contest, it is pertinent of point it out that the subject items imported by the petitioner from Taiwan/China were regularly been assessed @140 USD/Pc, 190 USD/Pc and 120USD /Pc as per consistent country wide evidential data in terms of Section 25(5) and (6) of the Customs Act, 1969 copy of the consistent evidential GDs and data is enclosed Annex-B.
- 3- That, however, the Respondent / Director Customs Valuation has issued the impugned ex-parte Valuation Ruling No.1644/2022 dated 29-04-2022; whereby the values of the petitioner's item i.e. Electric Guitar with Amplifier, IOA-Musical Guitar (manual) and Digital Portable Musical Keyboard has been determined in terms of Section 25(9)-fall back method without exhausting the express provisions envisaged under sub-Section (1-6) in letter and spirit rather slipped / skipped in stereo type manner are eventually not sustainable under the customs laws valuation rules, regulations and procedures in vogue inter alia on the following;

ii- PROCEDURAL / LEGAL GROUNDS.

- A. That, the Director of Customs Valuation has issued impugned VR for "Electric Guitar with Amplifier, IOA-Musical Guitar (manual) and Digital Portable Musical Keyboard" mentioned under PCT heading 9202.1000, 9202.9000 and 9202.1000 at S.No. 1 to 3 @ 224.78USD/pc, 5210.50USD/pc and 9USD/pc respectively in terms of sub section (9)-fall back method of the section 25 ibid has issued under section 25-A of The Customs Act, 1969.
 - B. That, where as the impugned VR has not been issued consonance with the measures postulated under express provisions envisaged U/s 25(1)-(9) of the Customs Act, 1969. Moreover, the procedure and methods mentioned in the impugned VR are stereo type neither exhausted practically nor followed in letter in spirit of the fore-stated provisions of law. Furthermore, so called documentary exercised showed in the impugned VR does not reflect the ground realities, facts and circumstances of the import prices of the impugned items. The impugned VR has been issued with the proper application of valuation method sequential order in terms of the express provisions in envisaged U/S 25(1) to (9) of The Customs Act, 1969.
 - C. That, the impugned frivolous & void valuation ruling has been issued haphazard & hasty manner and without application of judicious mind is totally against the facts & circumstance of the instant case. Hence the impugned VR been in blatant violation of the article 10-A of the constitution and article 24-A of the General clauses Act, 1897 is not sustainable under the customs laws, rules & regulations.
 - D. In this context & contest, it is pertained to point it out here that the impugned VR has been passed with the following the express provisions envisaged U/S 25-A ibid read with 25-A in sequential and principal of qasi & judicial proceedings; hence being void ab initio and illegal vehemently denied and rebutted inter alia on following objection / observations;
- i) That, **section 25 {value of imported and exported goods}**, comprised of sub section 1-9 wherein the methods customs valuation lay down under sub section 1-4 are known as **primary methods of valuation**. The taxation through customs valuation under these methods is called actual taxation.
 - ii) The above stated primary methods of valuation are to be applied in sequential order by exhausting all the sequential steps as per law. Accordingly, first of all department has to accept rebut transaction value (price actually paid or payable) claimed by the importer consonance with the measures postulated U/S 25(1) and rules made there-under. Whereas, the transaction value has not been rebutted in the instant case wherein the price of impugned goods has been actually paid through legal channels as provided under the IPO in vogue.
 - iii) That, contrary to be above, the methods of customs valuation lay down under sub-section 5-9 are known as **secondary methods of valuation**. The taxation through customs valuation under these methods is called **presumptive taxation**. While, in the instant case the impugned VR have been issued U/S 25(9)-fall back method without exhausting the application of sub-section (1)-(9) in sequential order.



- E. That Section 25-A of the customs Act, 1969 can not be applied one sided determination of the customs value which transforms the "determination" in view of section 25-A to an impressible fixation of value. In the instant matter, the director of customs valuation in contrary to the provisions envisages U/S 25-A has fixed the customs value of impugned goods which is not impressible as held by the Hon'ble Sindh High Court in case of Sadia Jabbar Vs The Federation of Pakistan & other (C.P No. 2673 of 2009). As such, the customs valuation directorate instead of determining the value under section 25 in sequential order has made malpractice assessing impugned goods on the base of the **Retail market value** on the alleged ground under invoicing from time to time which is not permissible under the law.
- F. That, the customs scrutiny of the impugned VR transpired that in order to fulfill the formalities, the Transaction value of identical similar goods method provided under the sub-section (5) & (6) of the customs Act, 1969 where merely mentioned without carrying out any material exercise, which clearly established that impugned ruling as arbitrary and has been issued blatant valuation of the letter & spirit of section 25(a) of the customs Act, 1969. Therefore, the impugned **VR void ab initio**, frivolous and totally against the customs laws, rules and regulations is not sustainable under the law.
- G. That, the impugned VR refer to the Deductive value method U/S 25(7) of the customs Act, 1969, while it does not disclose any discrete / direct evidence obtained from the whole sale market. However, it appears that exercise if any Market Inquiry (**work back method**) where carried out from the retail market instead mandatory exercise from whole sale market require under corresponding rule 199 of the customs valuation Rules; Therefore, the impugned valuation ruling is illegal uncorroborated and devoid of merits, not maintainable under the customs laws, rules & regulations.
- H. That, as reported under para *supra*, the customs value is to be determined U/S 25(7), subject to corresponding rules-119 made there under, according to which the market inquiry can only to be conducted at first commercial level in term of the corresponding rules-119 envisages under the customs Rules, 2001, reproduced verbatim as under:-

"119-DEDUCTIVE VALUE METHOD – (1) for the purpose of this rule, expressions "unit price at which goods are sold in greatest aggregate quantity" means the price at which the greatest number of unit is sold in sales to persons who are not related to the persons from whom they by such goods at the first commercial level after importation at which such sales takes place".

- I. In view of the above stated express provisions, it is quite evident that the impugned VR being silent on whole sale market has eventually been passed without adaptation of the requisite mandatory legal procedures; hence no legal force being fractionous is not maintainable under the customs laws, rules & regulations.
- J. That the impugned VR being non-speaking and non-exhausted above the market inquiry is not justified under the law. It is humbly submitted that there is nothing on record that the market inquiry was conducted at first commercial level after importations at which such sales took place. It is pertinent to mentioned here that market inquiry from open market (Retailer) is neither permissible nor can be conducted for determination of the customs value of the imported goods. **However, reportedly the so-called market inquiry was conducted at 3rd and 4th commercial level from the shops and stores i.e. Retailers, which action is patently void and illegal.**
- K. That in this contest it is evident from the scheme of impugned VR haphazardly issued on the plea that prices varied according to the selling points in market, the provisions of section 25(7) where skipped. Moreover, the express provision U/S 25(8)-computed value skipped on one pretext or the others. As such the impugned valuation ruling is based on the assumption / presumptions & summarizes. The previous data of identical / similar goods has also not been taken into the consideration and the alleged Valuation Ruling being abnormally on higher side is vague, illegal and blatant violation of the independent determination of value under the law.
- L. That valuation ruling reflecting the impugned values as result of colorable exercise, which is prohibited under the law. Moreover, the importers where not issued the mandatory / requisite hearing notices deliberately so that fair market value may not come on record regarding subject goods an no opportunity was provided to the petitioner to provide imports documents required under Rules The Valuation of chapter X of the Customs Rules, 2001, therefore, such exercise is **illegal, void ab initio** and vitiates the determination exercised under Sub-Section 25(7) of the customs Act, 1969.
- M. That the sub-section envisaged U/S 25 ibid provide the determination of (I) transaction value i.e. price actually paid or price payable (25(1-4)), (ii) transaction value of identical goods (25(5)), (iii)



Transaction Value of similar goods (25)(6), (IV) Deductive Value (25(7), (V) Computed Value (25(8)) and fall back method (25(9)). Admittedly, these provisions are equally applicable on valuation ruling and the same was also not restored to the customs valuation authorities, therefore valuation ruling is illegal and devoid of merits and is liable to be set aside/revised in the best interest of fair play and natural justice.

- N. That, it is further pointed out that the hon'ble Sindh High Court, Karachi in another judgment in case no. 2679 of 2009 was pleased to set aside a number of Valuation Rulings which are against of the customs Act, 1969; hence on the touchstone of these judgments, the impugned ruling is illegal frivolously on higher side and issued without following the relevant provisions of law; hence liable to be set aside / revised.
- O. That, in case the transaction value is not accepted on cogent reason, the next mandatory method under sub-section (2), (3) & (4) in the respect of other factors, relationship between importer / exporter notice to the importer respectively are to be applied / exhausted, which has not been done in the instant case. That the transaction value cannot be rejected because there are some contemporaneous imports higher price, if has to be shown that invoice price is not genuine and does not show the real price paid to the imports, moreover, an invoice price cannot be discarded except on the strength of clear evidence which shows that the real price has been transactional between the importer and foreign supplier is not genuine, and that something else has passed clandestinely between the parties {PTCL 2003 CL 180}. Thus the impugned valuation ruling being void ab initio not sustainable under the law **vehemently denied and rebutted.**
- P. That there is not any ambiguity in the words or meaning of section 25(7) *ibid* reads with customs valuation rules-119 for the determination of custom value under deductive value method. The explicit condition cannot be interrupted in any other scene as being a settled principal of law, it has already being held by the hon'ble Supreme Court.
"That in taxing statute one has look merely at what is clearly said and implement the law in accordance with the plan reading of language of statute. There is no room for any intendment of presumption as to tax or sprit of the law by ignoring the ordinary plain reading of the language of statute (PTCL 2007 CL559), (PTCL. 2010 CL 856)".
- Q. That is settled principal of law that "where things have not been done in the manner, as required by law and procedure, the same cannot be given legal sanctity particularly when the same are resulting in panel consequences or causing rights of individual 2014 PLD 224 SINDH, 2006 SCMR 129 & 2003 SCMR 1505".
- R. That the petitioner craves the rights to file additional documents / arguments any stage during hearing proceedings.

PRAYER

- a) In wake of the upshots of the above discussed facts and circumstances, it is most humbly requested that the impugned VR may very kindly remanded for Revisions on the following crucial factors;
- Promulgate valuation rulings hypothetical, under mining fair process of determination Normal values of assessment purpose.
 - Valid consistent evidential imports date is never considered in term of section 25(5 & 6) of the Custom Act, 1969 to support promulgated valuation ruling.
 - No represented of commercial importers was part of market survey.
 - The impugned valuation ruling has not been issued consonance with the measures postulated / exhausted in sequential order under express provisions envisaged under section 25(1) to (9) of the Custom Act, 1969 reading with corresponding Customs Valuation Rule-119 pertaining to be inquiry from whole sale market.
 - The petitioner is hopefully that your kind honor will justify the above submissions and will consider other submissions fruitfully for which we shall ever remain grateful to you and highly obliged.
 - It is further requested that the sufficient opportunity of hearing be provided to meet the ends of natural justice."



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:-

"BRIEF OF THE CASE"

It was brought to the notice of the Directorate General that value of Musical Instruments is being declared to Customs at much lower values than their current international values in absence of Valuation Ruling in field. Verification by this Directorate General re-affirmed this stance. Keeping in view this prevailing price of the subject goods, an exercise for determination of customs values of Musical Instruments in terms of Section 25A of the Customs Act, 1969, was initiated. Meeting was scheduled on 02-04-2022 but no one appeared in the meeting. All the stakeholders / importers 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.*

Neither anybody appeared for hearing scheduled for 02-04-2022 and did not avail the chance to be heard nor any one provided the import related documents essentially required in the process of determination of customs values of under reference goods.

Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied sequentially to address the valuation issue at hand. Transaction value method provided in Section 25(1) of the Act ibid was found inapplicable because the required information under the law was not available. Identical / similar goods value methods as provided in Sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, were examined for applicability to determine the customs values of subject goods which provided some reference values, but could not be relied upon due to variation in data. Market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted but could yield no results as prices varied according to selling points in the market. Online values were also checked. Since the manufacturers' costs and raw material prices of producing the goods in question in the country of exportation were not available, Computed value method as provided in Section 25(8) of the Act ibid could not be applied for valuation of the aforesaid goods. All the information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, reliance was placed upon Sub-Section (9) of Section 25 of the Customs Act, 1969, for the determination of customs values of under reference goods vide Valuation Ruling No.1644 / 2022, dated 29-04-2022, for uniform assessment all over the country.

PARAWISE COMMENTS

Para-1&2

It is submitted that the contents of Para-(1&2) 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 petitioners seem to be aggrieved. As such the said Valuation Ruling No.1644/2022 dated 29-04-2022 is



not arbitrary or exorbitant and has correctly and justifiably been issued in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country.

Para-3&4

Denied. It is submitted that the customs value of under reference goods had been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioners, on the other hand, did not submit requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No.450(I)/2001, dated 18-06-2001 (Chapter-LX), in the absence of valid import documents, the burden to prove the of transaction value shifts to the importers / applicants. As such the same is not against the principles of law rather the same is based on factual ground realities. Further, it is submitted that the concept of "fixation of value" no more exists in the Customs Tariff rather Customs Values are presently being determined in terms of Section 25A of the Customs Act, 1969. As such the impugned Valuation Ruling has lawfully and correctly been issued in terms of Section 25(9) of Section 25 of the Customs Act, 1969, for assessment of under reference goods.

GROUND

Para-A&B

Denied. It is submitted that the impugned Ruling was issued after considering the representation of the petitioners and view point of all the stakeholders. The and arguments put forward by the Appellants were duly considered during process of issuance of Valuation Ruling. 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 that any deviation from the existing laws/ provisions as envisaged in Section 25 read with 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. Further, market inquiry was conducted in terms of Section 25(7) but prices could not be determined through this method. As such after examining and exhausting all the all valuation methods sequentially by giving reasons of rejection of previous methods and analyzing and evaluating whole the information so gathered, customs values were determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969. As such Valuation Ruling No.1644/ 2022, dated 29-04-2022 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969.



Para-C&D

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.1644/2022, dated 29-04-2022 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 not correct that the said valuation ruling was issued in hasty manner and without application of judicious mind rather the same was carefully and lawfully been issued after taking all factors into consideration surrounding the import but importers themselves did not provide the requisite import documents or any evidence to refute the impugned ruling. Market enquiries were conducted in this case which revealed higher

prices of under reference goods in the local markets and international market. However, after examining and exhausting all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, the customs values were determined under Section 25(9) and notified in terms of Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1644 / 2022, dated 29-04-2022, for uniform Assessment all over the country.

Para-E&F

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 1 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-G&H

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, 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 best suited to the determination of value under Section 25-A of the Act *ibid*, 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 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-I&K

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



/ applicants. As such the same is not against the principles of law rather the same is based on factual ground realities. The said Valuation Ruling No.1644 / 2022, dated 29-04-2022 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.

Para-L to N

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.1644/2022, dated 29-04-2022 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. Market enquiries were conducted in this case which revealed higher prices of under reference goods in the local markets and international market. As such the customs values were determined under Section 25(9) and notified in terms of Section 25A of the Customs Act, 1969. Further, the petitioners never submitted import related documents such as copies of sales tax paid invoices, proforma Invoice, Packing list, copies of L/Cs etc. which are essentially required in the process of determination of customs values of any imported commodities.

- (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.

Para-O&P

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. 1644 / 2022, dated 29-04-2022 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. Further, market enquiries were conducted in this case which revealed higher prices of under reference goods in the local markets and international market. However, after examining and exhausting all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, the customs values were determined under Section 25(9) and notified in terms of Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1644/2022 dated 29-04-2022, for uniform Assessment all over the country.



Para-Q to R

Relates to the time of hearing before the competent authority.

P R A Y E R

In view of above narrated facts, it is submitted that the petitioner is required to get the goods cleared as per Valuation Ruling issued under Section 25-A of the Customs Act, 1969, which is legal and lawful. The Valuation Ruling No.1644/2022, dated 29-04-2022 has lawfully been issued after considering all the facts and figures and after following valuation methods sequentially as per law. As such the same may be allowed to hold field for uniform assessment all over the country. The assessments made on the basis of Valuation Ruling are correct and petitioners are liable to pay duty / taxes as per Valuation Ruling. On the other side, the petitioner failed to furnish the requisite import 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 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. As such no relief is warranted to be given to the petitioners and assessments are liable to be 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."

O R D E R

3. Hearings in this case were fixed on 15-08-2022 and 01-09-2022 on which date the petitioners appeared for hearing. Mr. Azam Sarwar represented M/s M. Azam Enterprises stated that they are regular importer of miscellaneous goods i.e. electric guitar with amplifier @ US\$ 5.00 to US\$ 10.50, IOA-Musical Guitar (Manual) @ US\$ 2.00 to US\$ 4.78 and Digital Portable Musical Keyboard @ US\$ 9.00 from different stockists not from manufacturing companies, they are of different prices, sizes, colours and brands for Beginners/Learners who are at the earliest stage to learn how to play any musical instrument according to the Pakistani Market. The petitioner contended that 'guitar' is available for sale on Daraz website on very low price ranging from Pak Rs.3000/- to 10,000/- per piece whereas the customs value determined for assessment purpose are so high which discouraged the local business. Mr.Sohail Yasin represented M/s Hi-Volts contended that the method adopted to determine the values was not duly followed as prescribed in terms of Section 25 of the Customs Act, 1969 and was not shared with them. He stated that the Customs values determined, by the department, are very much on higher side and requested for a fresh market inquiry. He also stated that guitars are freely available on different websites like Daraz, Olx etc., on nominal rates vis-à-vis determined Customs values.

4. On the other hand, the departmental representative (D.R.) explained that values of Musical Instruments being declared to Customs at much lower values than their current international values in absence of Valuation Ruling in field. Verification by this Directorate General re-affirmed this stance. Keeping in view this prevailing price of the subject goods, an exercise for determination of customs values of Musical Instruments in terms of Section 25A of the Customs Act, 1969, was initiated. Stakeholder's consultation meeting for determination of Customs values was scheduled on 02-04-2022 but no one appeared to share their input in the meeting. All the stakeholders / importers were requested to submit import related documents so that fair customs values could be determined. Neither did anybody appear for hearing scheduled for 02-04-2022 nor did they avail the chance to be heard or provide the import related documents essentially required in the process of determination of customs values of under reference goods. However, valuation methods provided in Section 25 of the Customs

Act, 1969 were duly applied sequentially to address the valuation issue. Transaction value method provided in Section 25(1) of the Act *ibid* was found inapplicable because the required information under the law was not available. Identical / similar goods value methods as provided in sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, were examined for applicability to determine the customs values of subject goods which provided some reference values, but could not be relied upon due to variation in data. Market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted and yielded some results but prices varied according to selling points brands and origins in the market. Online values were also checked, which yielded the same results. Since the manufacturers' costs and raw material prices of producing the goods in question in the country of exportation were not available, the Computed Value method as provided in Section 25(8) of the Act *ibid* could not be applied for valuation of the aforesaid goods. All the information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, reliance was placed upon sub-Section (9) of Section 25 of the Customs Act, 1969, for the determination of customs values of under reference goods for uniform assessment across the country.

5. Following the petitioner's discussions/arguments and scrutiny of the case record, it is apparent that with a view to satisfy the percept of Natural Justice, the department sought to consult the relevant stakeholders when issuing the impugned Valuation Ruling. Furthermore, the petitioners were given the time and opportunity to give their inputs/comments, including documentary proof/evidence to support their transaction value, but no materially viable documents were forth-coming/provided nor did any one attend any meeting. Consequently the importers have been unable to shed the burden of proof as envisaged in terms of Rule 109 of the Customs Rules, as well as Section 187 of the Customs Act, 1969.



A bare perusal of the record file also showed that a thorough market enquiry was conducted. The online sites of the shops and well as other e-commerce websites, such as Daraz.com, Tejar.com, RadioTVCenter.com (Lahore site), BeatlesCenter.com (Karachi) as well as Shopsy.pk and ShopHire.com were consulted and evidences duly placed on file. The stock of all of these evidences were duly considered during the review and revealed that the prices of various instruments varied in origin and brand and went up to hundreds of thousands of rupees. The values so determined under Section 25A of the *ibid* Act, therefore, seems to be reasonably balanced and rational. The values of goods determined under Section 25A have to cater to all spectrums of the product and not partly specific. Furthermore, as for the importers claim that their imported instrument, for example, electric guitar are catered for beginners/learners does not mean that branded guitars do not cater for learners and beginners as well. Therefore, values so determined under Section 25A must be balanced to both ends on an average.

7. From the foregoing discussion, the departmental recourse to determine the Customs value in terms of Section 25A of the Customs Act, 1969 has been conducted within the legal domain of the *ibid* Act, and the revision petitions being devoid of any material, legal content are accordingly rejected.

8. Being identical on facts and law point, this order shall apply *mutatis mutandis*, to the following (03) revision petitions:-

1. M/s. Hi Volts

2. M/s. Sial Enterprises
3. M/s. Al Huda Enterprises



(Gul Rehman)
Director General

Registered copy to:

- 1 M/s.Azam Enterprises
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- 2 M/s. Hi Volts
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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, Islamabad.
- 4) The Director General, PCA & Internal Audit, Custom House, Karachi.
- 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 Appraisalment, (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, Appraisalment (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, Lahore.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisalment - West / Appraisalment - East/
Appraisalment - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad / (Appraisalment /
Enforcement), Quetta / Gawadar / (Appraisalment / Enforcement / AIIA), Lahore / Appraisalment,
Faisalabad / Appraisalment, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan /
(Appraisalment / Enforcement), Peshawar / Enforcement, Dera Ismail Khan/ 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) Deputy Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 20) Deputy Director (Revision), Customs Valuation, Karachi
- 21) Guard File.

