

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

File No. DG (V)Val.Rev/68/VI/2022 *1173*

Dated *15th* February, 2023

**Order in Revision No. *03* /2023 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1696/2022 Dated 24-11-2022**

- 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. Sadiq Jahan Lahoree & Company & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

02-02-2023 and 09-02-2023

For the Petitioners

Mr. Ashraf
Mr. Khalid Mavani
Barrister Asad Khan
Mr. Anil Zia Advocate



For the Respondent

Mr. Osama, Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No.1696/2022 dated 24.11.2022 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"2. Being aggrieved and dissatisfied with the subject Valuation Ruling No. 1696/2022 dated 24.11.2022, passed by the Respondent Director, the Petitioner prefers this Revision Petition under Section 25D of the Customs Act, 1969, before this Hon'ble Authority on the following facts and grounds, namely:

3. **FACTS**

1) That the Petitioner is a partnership concern engaged in the business of, inter alia, commercial trade of assorted cutting blades and parts (hereinafter collectively referred to as "the Cutting Blades"). Through years of hard work, commitment to professional excellence and by merchandizing of highest quality products at reasonable cost, the Petitioner has earned the trust and confidence of dedicated customers. The present petition has been filed through the partner of the Petitioner.

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 the Cutting Blades of Chinese origin vide the impugned Valuation Ruling No. 1696/2022 dated 24.11.2022 (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 in due course of its' business, the Petitioner conducts imports of various Cutting Blades of different shapes and sizes. The price of such Cutting Blades has remained at or about US\$ 1 to US\$ 1.50/Kg. 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 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.

That in the recent past, the assessment of the imported pencils has previously been subject to assessment carried out in terms of Section 80 read with Section 25 of the Act, 1969. The said assessments carried out for the imports of the Petitioner are valuable evidences of the assessable and assessed customs values of the Cutting Blades at the time of import into Pakistan.

8) That however, to the surprise and dismay of the Petitioner, the Respondent Director has issued the impugned Valuation Ruling No. 1696/2022 on 24.11.2022 without associating or otherwise even inviting the Petitioner to participate in the proceedings. In spite thereof, the Respondent Director has proceeded to increase the assessable value of the goods by eight (08) times, from US\$ 1.00/Kg to 8.62/Kg, rendering the business of the Petitioner unsustainable in a manner utterly violative of the provisions of the Customs Act, 1969, as well as the Constitution of Pakistan, 1973.

9) That the impugned Ruling states that three (03) meetings were convened, on 09.06.2022, 21.10.2022 and 15.11.2022, whereas only Meeting Notice No. Misc/05/2022-VI/1131-05 was issued to the Petitioner for the meeting supposedly held on 15.11.2022. However, as can be seen from the tracking receipt of the UMS Courier, the said Meeting Notice was delivered to the Petitioner on the same day, i.e. 15.11.2022 at 3:37 PM, in spite of being aware that the Petitioner's business is situated in Lahore. As such, the Petitioner, through its representative, immediately addressed a letter seeking another meeting in the matter in order to be avail the opportunity of being heard, however, no such hearing / meeting was held and the impugned Valuation Ruling was issued in an ex parte manner.

10) That 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, inter alia, the said Cutting Blades.

11) That in fact, paragraph 4 of the shows that the Respondent attempted to create circumstances that would permit it to issue a list of values of its choosing without regard for the actual price paid/payable for the Cutting Blades at the time of import into Pakistan.

12) That the Respondent has rejected the transaction values on the pretext that documents were not submitted, however, as stated hereinabove, there has been no opportunity given to the Petitioner to make such submission nor has the point of view of the Petitioner taken onboard prior to issuance of the impugned Ruling.

13) 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.

14) That however, the Respondent has asserted that a market survey was conducted independently which resulted in the issuance of the impugned Valuation Ruling. 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, nor does it provide any values uncovered in said market survey. This deliberate concealment leads to the conclusion that any such survey was not conducted at all.

15) 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.

16) That paragraph 4 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.

17) 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 the exercise undertaken purportedly to arrive at the values contained in the impugned Ruling and to substantiate the same through documentary proof.

18) That as can be demonstrated, the price actually paid / payable for the said Pencils 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 Cutting Blades imported by the Petitioner.

19) 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 Cutting Blades, 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.

20) 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.

21) That it is imperative to note that any determination not on the basis of sub-Sections (4) & (5) of Section 25 of the Act, 1969, is contrary to the scheme of the Act, 1969.

22) 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 therefore, the Respondent utterly and miserably failed to consider the declared and assessed values in the imports over the previous ninety (90) days, which evidence the actual prices payable / paid for imports.

23) 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 there under 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, where under similar goods and values thereof have to be considered.

24) That instead, however, the Respondent Director has given a bald statement to the effect that the said sub-Sections could not be invoked or utilized due to absence of grade/ technical number on the GDs – However, it must be questioned as to what “grade / technical number” was sought by the Respondent Director, such that it is also absent from the impugned Ruling itself. 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.

25) That in fact, it is submitted that the statement of the Respondent Director with respect to sub-Sections (5) and (6) of Section 25 are relevant considerations for the purposes of a determination under sub-Section (9). However, as its own statement shows, this task was neither carried out nor could it be, rendering the entire purported determination unlawful, illegal, arbitrary and mala fide.

26) 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.

27) That thereafter, the Respondent Director has stated as to sub-Section (7) that a market enquiry was conducted, however, purportedly “... said survey result could not be solely relied upon for determination of values of subject goods because of wide variation of retail sale prices which provided a wide range”. It is also pertinent to note that while no evidence has been provided to substantiate that an actual market enquiry was conducted, even then it is evident that values of the said Cutting Blades could not be lumped together in the manner done in the impugned Valuation Ruling.

28) That furthermore, as stated hereinabove, the impugned Ruling covers numerous values, however, paragraph 4 thereof states that "a market inquiry" was conducted. This indicates that the magnitude of conducting a proper market survey for the sheer number of items / goods covered by the impugned Ruling could not have been conducted and was, therefore, abandoned. It is submitted that the responsibility taken upon by the Respondent Director in issuing an instrument in terms of Section 25A is heavy, and had to be discharged thoroughly and strictly in accordance with the law.

29) 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.

30) That as to sub-Section (8), it is evident from the record that the same has also been wrongly applied. At the time of issuance of the impugned Valuation Ruling, the rulings for the constituent material, were already in field and are issued from time to time. However, for the Respondent Director to state that conversion costs from materials were not available is not reason enough to discard the provisions of sub-Section (8) of Section 25 of the Act, 1969.

31) 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.

32) 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 said Cutting Blades. 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 Cutting Blades are available in the International market, nor is permissible under the law in such a manner.

33) 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 Cutting Blades 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.

34) 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), (6), and (7) were not followed. As to sub-Section (9), the Respondents have 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.

35) That, in addition to the above, it is submitted that the Respondent Director, while undertaking such an exercise for the determination of values of the said Cutting Blades, was required to strictly adhere to the provisions of the Customs Act, 1969, as well as the Customs Rules, 2001, and apply those in a transparent, judicious and lawful manner in determining the values of the said Cutting Blades. The Respondent Director, however, while causing serious prejudice and harm to the Appellant, completely ignored the dictates of the Act, 1969, as well as the Rules, 2001, and, instead, fixed values of the said Cutting Blades in an entirely arbitrary, capricious and unreasonable manner, as has been demonstrated herein.

36) That in view of the foregoing, it is submitted that the values for the said Cutting Blades fixed through the impugned Ruling by the Respondent Director are absolutely unsustainable, being, *inter alia*, contradictory, unreflective and motivated/monopolistic on the factual plane while being highly illegal and unlawful on a legal plane. The values of said Cutting Blades have been fixed by the Respondent Director without any determination whatsoever.

37) That the actions of the Respondent Director 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, and 25A, thereof.

38) That, in light of the preceding factual narration, the Petitioner prefers this petition on, *inter alia*, the following grounds, namely

4. GROUND

A. That the impugned Ruling is illegal, arbitrary, unjust, *ex-parte* and without any lawful authority and, as such, is liable to be set-aside with immediate effect.

B. That the impugned Ruling has been issued in a manner impermissible by the law. It is contrary to the provisions of Section 25 of the Act, 1969.

C. That in spite of the provisions of sub-Section (5) and (6) of Section 25 of the Act, 1969, the impugned Ruling is ignorant of the import data and assessment carried out at the time of import of the said Cutting Blades.

D. That without prejudice to the foregoing, the impugned Ruling has also failed to adhere to the provisions of sub-Section (9) of Section 25 and the relevant rules, as has been enumerated herein above.

E. That the slipshod manner in which the impugned Ruling has been issued is also visible from the fact that the Respondent evidently forgot to state on which date the impugned Ruling has been issued.

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

PRAYER

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

a. Set aside/quash the impugned Valuation Ruling No. 1696/2022 dated 24.11.2022 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.

b. Declare that the impugned Valuation Ruling No. 1696/2022 dated 24.11.2022 is unsustainable for the purposes of assessment of any imported consignments of the said Cutting Blades.

c. 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.

d. Direct that the Petitioner's imports be assessed in accordance with Section 25(1) of the Customs Act, 1969.

e. Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1696/2022 dated 24.11.2022, and the values contained therein for any purposes, including but not limited to assessment.

f. Suspend the operation of the impugned Valuation Ruling No. 1696/2022 dated 24.11.2022 till final disposal of the title petition.

g. Grant any other relief deemed just and appropriate in the circumstances of the case.

h. Grant cost of the petition."

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

"FACTS OF THE CASE"

An information was received in this Directorate General of Customs Valuation that different cutting blades for Stone, Diamond and Wood cutting are being cleared at the import stage as iron & steel products. Representative samples were received from the market and, on seeing the samples, it was noticed that cutting blades are made up of different sizes and composition. The assessed values were not reflective of prevailing prices in international market; therefore, an exercise was undertaken by the Directorate General to determine the customs values under Section 25A of the Customs Act, 1969.

Meetings were convened on 09-06-2022, 21-10-2022 & 15-11-2022 which were attended by all the relevant stakeholders. The issues pertaining to the valuation of the subject goods were deliberated upon in detail in the afore-referred meetings. All stakeholders were requested to provide the relevant import documents but no any documents were received from them.

Finally, keeping all the factors in view and after carefully analyzing all the available information from different sources and exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, customs values of under reference goods were determined in terms of Section 25(9) of the Act, and notified under Section 25A of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1696/ 2022 dated 24-11-2022 accordingly.

PARAWISE COMMENTS

- Para-(1) Need no comments being introduction of the petitioners and their imports.
- Para-(2) Need no comments being introduction of the respondent regarding powers and working strategy relating to determination of customs values.
- Para-(3) Not Agreed. It is submitted that it is not correct that customs values have been determined unlawfully, arbitrarily rather the same have lawfully been determined in terms of Section 25(9) of the Customs Act, 1969, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, for uniform assessment all over the country.
- Para-(4&5) Not Agreed. It is submitted that transaction value could not be accepted being on lower side and there was found wide variation in declared values of under reference goods. 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 of the case. Further, it is submitted that import data of previous imports of subject goods was also duly considered and after exhausting and examining all the valuation methods as envisaged under Section 25, Customs values were determined in terms of sub-Section (9) of Section 25 of the Customs Act, 1969, by giving reasons for rejecting the previous sub-Sections of Section 25 of the Customs Act, 1969. Further, concepts of "fixation of



value" no more exist in the Customs Tariff rather customs values are being determined in terms of Section 25A of the Customs Act, 1969. As such the impugned valuation ruling is not unlawful or otherwise rather it is based on ground realities of the case. Assessments are being made as per said ruling but only under reference Petitioner seems to be aggrieved with the same.

Para-(6 to 8)

Denied. It is respectfully submitted that the said Valuation Ruling No.1696/ 2022 dated 24-11-2022, 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.1696 / 2022, dated 24-11-2022 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. Declared and assessed values of under reference goods were not reflective of prevailing prices in the international markets. Import data of previous 90 days and local market surveys were analyzed and evaluated and after gathering all information, the Customs values of under reference goods have been determined in terms of Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling No.1696/2022 dated 24-11-2022 for uniform assessment all over the country. It is submitted that the Director Customs Valuation has been empowered to issue Valuation Rulings by exercising his powers in terms of Section 25A of the Customs Act, 1969, through applying valuation method as best suited to the determination of customs value of any imported goods into Pakistan. As such the Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969.

Para-(9 to 11)

Not Agreed. It is submitted that Paras-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(4) states that the said ruling has been issued in terms of sub-Section (9) of Section 25 of the Customs Act, 1969, by exhausting and following all the provisions of Section 25, for the purpose of determination of Customs values. Hearing notices were duly served upon all stakeholders including their representative Association. The petitioners, on the other hand, did not submit the 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, it is submitted that concept of "fixation of value" no more exist in the Customs Tariff rather customs values are presently being determined in terms of Section 25A of the Customs Act, 1969, by following all valuation methods as envisaged under Section 25 of the Customs Act, 1969, for uniform assessment all over the country.



Para(12 to 15)

Denied. It is respectfully 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. Market survey was also conducted; however, the said survey result could not be solely relied upon for determination of values because of wide variation of retail sale prices which provided a wide range. Moreover, Parliament of Pakistan introduced an amendment to Sub-

Section (1) of Section 25A of the Act, vide Finance Act, 2021 by inserting the following new proviso to Section 25A of the Act :

"25A. Power to determine the customs value – (1) Notwithstanding the provisions contained in Section 25, the Director of Customs Valuation on his own motion or on a reference made to him by any person or an officer of Customs may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in Section 25, whichever is applicable".

"Provided that notwithstanding anything contained in any provision of this Act and any decision or judgment of any forum, authority or court, while determining the customs value under this section, the Director may incorporate values from internationally acclaimed publications, periodicals, bulletins or official websites of manufacturers of indenters of such goods."

Para(16 to19)

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 all previous Valuation Rulings and arguments put forward by the petitioners and Respondents were considered during process of issuance of Valuation Ruling. The petitioners 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. Further, the Respondent has properly followed all valuation methods sequentially by rejecting and giving reasons of rejection thereof. As such customs values determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, after analyzing and evaluating whole the information so gathered are lawfully justified under the rules.

Para-(20 to23)

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.1696/ 2022, dated 24-11-2022 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 09-06-2022, 21-10-2022 and finally on 15-11-2022 which were duly attended by the commercial importers as well as official bearers / representatives of the concerned Association. Sub-Section (5) & (6) were also examined, however, this data provided some references but it was found that the same cannot be solely relied upon due to variation in quality and non-declaration of the grade / technical number on the Goods Declarations (GDs). 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 required documents before meeting. Again during the meetings 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.

Para-(24 to 26)

Instead of furnishing any documentary evidence about downfall in prices in international market, they relied upon their rhetoric of decline in the 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. Not Agreed. It is submitted that transaction value could not be accepted being on lower side and there was found wide variation in declared values of under reference goods. 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 of the case. Further, the said Valuation Ruling No.1696 / 2022 dated 24-11-2022, 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.1696 / 2022, dated 24-11-2022 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, market enquiry was also conducted 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. Further, it is submitted that Paras-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(4) states that the said ruling has been issued in terms of Sub-Section (9) by exhausting and following all the provisions of Section 25, 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 S.R.O. 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.

Para-(27 to 30)

It is submitted that the contention of the petitioners is based on presumptions as in support of the claim no tangible documents have been submitted as required under Para-(108) of the Customs Rules, 2001. A declaration disclosing full and accurate details relating to the value of imported goods as claimed by the petitioner. Further, customs value have been determined after all the information so gathered was evaluated and analyzed in flexible manner applying the provisions of Section 25(9) of the Customs Act, 1969. Contrary to above, the petitioner has even not disclosed the



import data or local selling prices of imported goods neither submitted any import documents supporting their contention. 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 all previous Valuation Rulings and arguments put forward by the Appellants and Respondents were 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 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.

Para-(31 to 33) Not Agreed. It is respectfully submitted that said Valuation ruling has correctly been issued in terms of Section 25A of the Customs Act, 1969 and is based on ground realities of the case. It is further submitted that the said Valuation Ruling No.1696/2022 dated 24-11-2022 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.1696/2022, dated 24-11-2022 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. However, concept of fixation of value no more exists in the Customs Tariff rather presently the customs values are determined in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the Customs Stations of the country.

Para-(34 to 37) 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 *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 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-(38) In the light of above submissions the respondent prefers following reply on grounds of the petition.



GROUNDS

Para-(A&B) Denied. It is submitted that it is not correct that the impugned Valuation Ruling is illegal, arbitrary, unjust, *ex parte* and without lawful authority rather the same is based on factual position and ground realities of the case as the same has been issued after properly following, exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Moreover, the Respondent (Director) has been empowered by the Board to issue valuation rulings in terms of Section 25A of the Customs Act, 1969, in exercise of powers conferred to him under the law. As such the said valuation ruling is legal, justified and has been issued under

Para-(C to E)

the lawful authority and may be allowed to hold field for assessment purposes. Not Agreed. It is submitted that identical & similar goods valuation methods in terms of sub-Section (5) & (6) were also examined for applicability to determine customs values of subject goods but data provided some references; however, it was found that the same cannot be solely relied upon due to variation in quality and non-declaration of the grade/technical number on the Goods Declarations (GDs). As such the same were determined in terms of Section 25(9) of the Customs Act, 1969, after analyzing and evaluating whole the information so gathered for uniform assessment all over the country. Moreover, date of issuance of valuation ruling is visible on the impugned ruling i.e. 24-11-2022. Further, Respondent craves leave to present further grounds at the time of hearing before the competent authority.

PRAYER

a. *It is respectfully submitted that the customs values of the subject goods were determined as per valuation methods laid down in Section 25 of the Customs Act, 1969 vide Valuation Ruling No.1696 / 2022 dated 24-06-2022. The Respondent have acted lawfully and the Valuation Ruling No.1696/2022, dated 24-11-2022 has correctly and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. On the other side the petitioner failed to furnish the requisite documents particularly copies of Sales Tax Paid Invoices issued showing the values of suppliers (excluding duty & taxes) to substantiate their contentions which are essentially required for the process of determination of customs values of any imported goods.*

b. *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 and under reference petition being not maintainable is liable to be dismissed and rejected accordingly."*

ORDER

3. Hearings in this case were conducted on 02-02-2023 and 09-02-2023 on which dates both the petitioners and the respondent department were heard in detail. The main contention of the counsel of the petitioners that the prices of impugned Cutting Blades are remained at or about US\$ 1.00 to US\$ 1.50/Kg. 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 the determined values vide impugned Valuation Ruling (VR). It was further argued that under the Act, 1969, and the Customs Rules, 2001, the Respondent department 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, they needed to state lawful grounds for rejecting any particular method of valuation as being not applicable as given under the Act, 1969.


On the other hand, the representatives of M/s Pakistan Stone Company and M/s Ahmed Diamond Tools stated that the respondent department arbitrarily determined the customs values of Metalized tips/Segments and Cutting blades with metalized tips/segments (both of which are technically called diamond tips) are categorically different in nature and uses. According to them, by combining the both, the department has arbitrarily mixed them. They also submitted that the respondent department issued impugned valuation Ruling No.1696/2022 dated 24-11-2022 whereby Customs values have been unjustifiably enhanced.

5. The departmental representative (DR) stated that information was received in respondent department that different cutting blades for Stone, Diamond and Wood cutting are being cleared at the import stage as iron & steel products. Representative samples were received from the market and, on seeing the samples, it was noticed that cutting blades are made up of different sizes and composition. The assessed values were not reflective of prevailing prices in international market; therefore, an exercise was undertaken by the department to determine the Customs values under Section 25A of the Customs Act, 1969. Meetings were convened on 09-06-2022, 21-10-2022 and 15-11-2022 which were attended by the relevant stakeholders. The issues pertaining to the valuation of the subject goods were deliberated upon in detail in the meetings. All stakeholders were requested to provide the relevant import documents but no documents were submitted by them. Finally, keeping in view all the factors and after carefully analyzing all the available information from different sources and exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, Customs values of under reference goods were determined under Section 25(5) read with Section 25(9) of the Customs Act, 1969 for uniform assessment across the country vide Valuation Ruling No.1696/ 2022 dated 24-11-2022 accordingly. The DR further stated that the petitioners were given time and opportunity to give their inputs/comments, including documentary proof/evidence to support their transaction value, but no materially viable documents were provided. 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.

6. Following the petitioners' discussion/arguments and scrutiny of the case record, it is apparent that with a view to satisfy the precept of Natural Justice, the department sought to consult the relevant stakeholders and meetings were held on 09-06-2022, 21-10-2022 and 15-11-2022 while issuing the impugned Valuation Ruling. Moreover, the explanation of DR and facts of the case elaborated, the departmental recourse to determine the Customs values in terms of Section 25 and 25A of the Customs Act, 1969 has been conducted within the legal domain of the ibid Act. I, therefore, find no reason to interfere with impugned Valuation Ruling No.1696/2022 dated 24-11-2022. The petitions being devoid of any merit and legal contents are hereby rejected accordingly.

7. Being identical on facts and law point, this order shall apply mutatis mutandis, to the following (09) revision petitions:

- 1 M/s. New Qasim Bhai Hardware Store
- 2 M/s. Pakistan Stone Company
- 3 M/s. Ahmed Diamond Tools
- 4 M/s. Rehman Tools
- 5 M/s. Imran Traders
- 6 M/s. Ayesha Impex,
- 7 M/s. Haider International,
- 8 M/s. E-Al Zaban Hardware,
- 9 M/s. Z.H. Traders


(Gul Rehman)
Director General

Registered copy to:

S.No.	Petitioners
1	M/s. Sadiq Jahan Lahoree & Company, M/s. New Qasim Bhai Hardware Store <u>C/o. G.A. Jahangir & Associates,</u> Office No. 401, 4 th Floor, Clifton Centre, Block-5, Clifton, Karachi.
2	M/s. Pakistan Stone Company, <u>C/o Expert Law Associates,</u> Office No.3, Jumbo Centre, Mezzanine Floor, Opp Custom House, Karachi.
3	M/s. Ahmed Diamond Tools, A-101, Muhammadi Plaza, Nazimabad No.4, Karachi. Cell No. 0333-2353028
4	M/s. Rehman Tools, Shop No. 3/4, 14-C, I/9 Markaz, Islamabad. Cell No. 0300-5231439
5	M/s. Ayesha Impex, Shop No.2-5/B, Shah Alam Market, Lahore.
6	M/s. Haider International, Office No.5, Ghafoor Chamber, 1 st Floor, Rehman Gali, Brandreth, Lahore. Cell: 0307-2352417
7	M/s. Imran Traders, Shop No. 43, Basement Ali Plaza, Rehman Gali No.2, Nishtar Road, Lahore. Cell No. 0321-5044932
8	M/s. E-Al Zaban Hardware, H-97, Block-12, Sector B-1, Township, Lahore. Cell No. 0331-4466160
9	M/s. Z.H. Traders, 25-Baber Street, Chowk, Dal Giran Brandreth Road, Lahore. Cell: 0300-6462544

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/SAPT/ 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) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 20) Guard File.

