

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

File No. DG (V)Val.Rev/65/III/2022 /341

Dated 30th March, 2023

**Order in Revision No. 17 /2023 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1700/2022 Dated 07-12-2022**

- 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. A.M. Trading Corporation & Others

.....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

20-02-2023

For the Petitioners

Mr. Sh. Farukh Saleem Consultant
Mr. Ghulam Yasin Consultant
Mr. Affan
Mr. Sajid
Mr. Saad Shafique Siddiqui
Mr. Said Muhammad Burki



For the Respondent

Mr. Abdul Jabbar Ch., Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1700/2022 dated 07.12.2022 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"2. That the applicants are leading importer of 'Casumina' Brand Tyres of Vietnam origin in Pakistan and have unblemished tax compliance record with the Customs House and enjoy business esteem amongst the business circles in Pakistan.

3. That Director Customs Valuation, Directorate General of Customs Valuation, Custom House, Karachi issued Valuation Ruling No. 1700/2022 dated 07.12.2022 for Customs value of Tyres and Tubes (Passenger Cars).

4. That impugned Valuation Ruling neither complies the basic parameters for issuance of Customs Valuation Rulings as set by the superior courts nor does it comply with the provisions of section 25A read with Customs Valuation Rules.

5. That the learned Director, unfortunately did not consider the Valuation facts, figures about international prices of different origin tyres for export to Pakistan. That instead of relying on the factual import data the learned Director relied upon China origin for determination prices of all the other origin including Vietnam.

6. That the customs values depicted in the impugned Valuation Ruling No. 1700/2022 dated 07.12.2022 are arbitrary, fictions and presumptive without any supportive data, therefore these values are legally not sustainable under customs valuation rule 110 as these values are based on prohibitive Customs Valuation method not supported by data as required under section 107 for the imports on or around 90 days time span.

7. That as the impugned valuation ruling is legally defective therefore the Applicant's files an Application u/s 25D of the Customs Act, 1969 for review of it on the following grounds;

GROUND

A. That basic principle underlying the customs valuation is the concept of transaction value the price agreed between independent buyer and seller and paid or payable by the buyer for goods exported to Pakistan.

B. That the concept of transaction value as envisaged in Article-VII to Agreement of Implementation of GATT (WTO Customs Valuation Agreement) is not bound by any influence of "fair" or "normal value" consideration by Respondent. Further Section 25 and 25A of the Customs Act, 1969, both is replica of WTO Customs Valuation Agreement. Therefore, the basic spirit of Section 25 of the Customs Act, 1969, has been ordered to be followed while implementation of Section 25 of the Customs Act, 1969.

C. That scheme of arriving at customs valuation through Section 25A of the Customs Act, 1969, is not based on any concept of "fixation of value" for imported goods through a customs valuation, rather it is a scheme of well throughout plan for "determination of customs value" following the principle of transaction value incorporated in Section 25 of the Customs Act, 1969, coupled with Customs Valuation Rules and dictates of superior courts in shape case laws.

D. That Honorable Sindh High Court in case of Sadia Jabbar v/s Federation of Pakistan [PTCL 2014 CL 537] reflect the following parameters to be kept in view while issuing any ruling under Section 25A of the Customs Act, 1969:-

On arbitrary fixation of customs values the Honorable Court order that:

"The exercise carried out under Section 25A is a "determination" and not a mere "fixation" (as was the case, e.g., under section 25B, or sub-Section (14) of Section 25, both omitted from the act in 2004 and 2005 respectively) The "determination" is a multi-step exercise, at each stage of which there has to be a proper application of mind by the concerned officer. It is therefore appropriate that the ruling should contain sufficient details to show that Section 25A has been properly applied. Furthermore, the fact that the determination is subject to revision by the Director General Valuation under Section 25D and the latter's decision is now appealable to the Appellate Tribunal (see Section 194A(1)(c), also make it necessary that the valuation ruling should be a speaking order".

E. In fact the impugned Ruling is defective for its contents and mode of formulation as neither it takes into consideration the relevant data of export prices of the subject Tyres to Pakistan from Vietnam and nor it abides by the parameters for issuance of customs valuation ruling deliberated and issued by superior courts in various case laws.

F. As submitted in the earlier paras of this petition the principal method of valuation is Section 25, which the learned customs authorities, abandoned without any legally sustainable reason by rejecting the verifiable data of imports and accepting the true values. The Honorable Court has given its verdict vide

para (g) of their order in *Sadia Jabbar v/s Federation of Pakistan* [PTCL 2014 CL 537] to elaborate that Section 25A is not a substitute of Section 25 as follows:-

"Before concluding Section 25A, one general observation must also be made, Section 25A is only an enabling Section. It permits, but does not mandatorily require, a predetermination of customs value in terms as explained above. The principle method of determining customs value is, and must remain, Section 25. Section 25A is not intended to be a substitute for Section 25, nor can it be resorted to in such manner and with such frequency that it marginalizes the later provisions. It is merely an adjunct to Section 25, to be resorted to in appropriate circumstances and for an appropriated period".

G. That instead of depending on the factual customs values of transaction based upon the market dynamics, the learned Director has based the impugned customs valuation on hypothetical data and irrelevant values. The learned Respondent also ignored the fact that customs value of the subject tyres are contingent upon the value of the product as exported from the relevant export country to Pakistan.

H. However, while issuing the impugned ruling this basic fact has not been kept in view and price has been "fixed" on basis of a hypothetical data of tyres prices which do not exist anywhere in the world. Therefore, prices "fixed" by the Respondent are not the "price determined" as per parameters laid down by the Honorable Sindh High Court in *Sadia Jabbar v/s Federation of Pakistan* [PTCL 2014 CL 537] case. It goes without saying that any procedure prescribed by the superior court in connection with administering any provision of law is mandatory to be complied with in the same fashion in which it has been prescribed by the law or case law (issued by the superior courts). However, unfortunately, none of the parameters laid down by Honorable Sindh High Court in *Sadia Jabbar v/s Federation of Pakistan* [PTCL 2014 CL 537] has been adhered to while formulating and issuing Valuation Ruling No.1543/2021 dated 03.08.2021.

I. That non-adherence to dictates of superior court in *Sadia Jabbar vs. Federation of Pakistan* [PTCL 2014 CL 537] case for following a specific procedure in issuance of Valuation Ruling No. 1543/2021 dated 03.08.2021 under Section 25A of the Customs Act, 1969, also attracts violation of dictates of Honorable Supreme Court of Pakistan in case of [*Shahzad Ahmed Corporation vs. Federation of Pakistan* (2005 PTD 23)] wherein it has been ordered to do a thing in the manner prescribed by the law.

"If any procedure has been prescribed for any legal business, then that legal business will only be transacted under the prescribed procedure only. The clear and plain meaning of law will always prevail over the implied meaning".

J. That unfortunately the learned Director failed to adhere to principles laid down by Honorable Sindh High Court in *Sadia Jabbar* case thus negated its dictates. Similarly, it is also violation of Order of Honorable Supreme Court of Pakistan to dispose any legal matter only in accordance with the prescribed procedure. Honorable Supreme Court of Pakistan has settled this legal principle in the land mark judgment [*ANISA REHMAN V. P.I.A 1994 SCMR 2234*] which inter-alia states as follows:-

"It is now a well settled law, that where the initial order or notice was void, all subsequent proceedings, or superstructures build on it were also void. Where any adverse finding was given in the adjudication order on allegations or contentions or findings which are not incorporated in the show cause notice, the entire proceedings would be rendered as void for reason of breach of natural justice, which was breach of law.


K. It is pertinent to mention that in connection with release of goods under Section 81 of the Customs Act, 1969, while the issue of valuation is not settled for the time being under Section 25 of the Customs Act, 1969, the Honorable High Court of Sindh at Karachi in CP No.6918/2015 dated 04.11.2015 reflects as follows:-

"It is also pertinent to mention that the determination of valuation under Section 25A of the Act is dependent on the methods and mechanism provided for valuation under Section 25 of the Customs Act.

Therefore, of the assessment made under Section 25 can be disputed and release can be allowed in terms of Section 81 provisionally, we do not see any justifiable reason to withhold or deny such provisional release in case of assessments made under Section 25A of the Act. A learned Single Judge of the Lahore High Court in the case of Wasim Radio v/s Federation of Pakistan and others (PTCL 2014 CL 465) has expressed the same view. Notwithstanding this a valuation ruling issued by the Director Valuation, if challenged does not remains sacrosanct / final, and is subject to review by the DG Valuation under Section 25D against which an appeal lies to the Customs Tribunal, where after a Reference Application is provided under Section 196 of the Customs Act before the Court and finally the appeal before the Honorable Supreme Court.

L. Finally, it is also to be kept in mind that the cost of doing business is increasing day by day and specially in cases of delay at the port, the storage / demurrage charges and container rent charges accumulate in an escalating manner on daily basis, and every passing day increases the liability of importers, whereas, delay and detention certificate even if issued, have also lost their efficacy, as they are not being accepted by the Port Terminal authorities and numerous petitions in that regard are already pending before the Court. It must also be kept in mind that such refusal to allow provisional release of the consignments is resulting in unwarranted litigation, which ultimately is burdening the exchequer in the shape of payment of fee to advocates for no justifiable reasons and such petitions are being disposed of by us on the first date of hearing after notice be direction provisional release of consignments, which in our view, should be done by the department itself. In such circumstances and in view of the aforesaid discussion as well as legal position we have been compelled to record the aforesaid observations.

M. In view of hereinabove facts and circumstances we while dispose of petition direct the respondents under:-



In cases where the Valuation Ruling is more than 90 days old and importer has approached Director Valuation in terms of para 21 of the judgment in the case of Sadia Jabbar supra, fresh consignment of the importers shall be allowed provisional release in terms of Section 81 of the Customs Act, 1969, by securing the differential amount of duty and taxes in the shape of pay order/Bank Guarantee as the case may be, by the Director Valuation and or the concerned Collector without fail.

ii) In cases where a proper revision application has been filed by an importer in terms of Section 25D of the Customs Act, 1969, before the Director General, Valuation, and pending such review/revision, a fresh consignment is imported, then at the request of the importer who has filed such revision/review, the consignment in question shall be released in terms of Section 81 of the Customs Act, 1969, after securing an differential amount of duty and taxes in the shape of pay order/Bank Guarantee as the case may be, by the Director General Valuation, without fail.

iii) Needles to observe that any willful disobedience and defiance of these directions shall entail initiation of contempt of court proceedings against such delinquent officers.

iv) Let a copy of this order be sent to Chairman, Member (Customs) and Member (Legal), FBR Islamabad, Chief Collector of Customs (South) and Director General Valuation, Custom House, Karachi, for information and strict compliance thereof".

N. That in view of above the "directions" of the Honorable Sindh High court which is mandatory in nature has been defies by the Respondent, therefore, it may entail contempt proceedings against delinquent officers.

O. That office of Director Customs Valuation is creation of law and has to function according to the provisions of law, Rules and verdicts of the superior courts on the subject.

P. That unfortunately the Director issued Customs Valuation Ruling of the tyres from Vietnam without any factual check or any consultation with the stake holders.

Q. That the learned Director issued the impugned Customs Valuation Ruling arbitrarily without any in-depth study. Thus impugned Customs Valuation is based on assumption and contravenes the Rule 107 and 110 of Customs Valuation Rules. That in the light of preceding legal references it is clear that impugned Valuation Ruling issued by the learned Respondent is illegal/void and without any legal force.

R. Therefore the Applicant's requests that Customs Values of tyres of Vietnam origin should be include in Customs Valuation Ruling No. 1700/2022 dated 07.12.2022 independently. The Applicant's has submitted all the documentary evidence and data to the Director Valuation before the issuance of said ruling. We are ready to share the documentary evidence, export goods declaration of exporting country and data with your kind office for meaningful deliberations on the subject issue.

PRAYER

Keeping in view of above it is requested that:

- a. The imported Tyres of Vietnam Origin should be included in Valuation Ruling No. 1700/2022 dated 07.12.2022.
- b. To direct the Director of Directorate General of Customs Valuation to create a column for Vietnam Origin Tyres in the Annexure "A" of the Valuation Ruling No. 1700/2022 dated 07.12.2022 in consultation with stake holders.
- c. Till the finalization of revision application the concerned Collectorate are directed to release the consignments of Appellant held up or arrived or in pipeline may be allowed under Section 81 of the Customs Act, 1969, without any delay, as per Danish Jahangir case verdict."

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

- 1) Earlier, the Customs values of Tyres & Tubes of different types and sizes including those of Passenger Cars were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1543/2021 dated 03-08-2021. However, different stakeholders requested to re-determine Customs values afresh in line with values prevalent in the international market. Therefore, an exercise has been undertaken by this Directorate to determine the same.
- 2) All the relevant stakeholders were consulted time to time for determination of Valuation Ruling including M/s. Pakistan Tyre Importers & Dealers Association (PTIDA), M/s. General Tyre & Rubber Company of Pakistan and M/s. Service Long March Tyres (Pvt) Ltd. They submitted their proposals for consideration and the same were considered pertaining to the valuation of goods. M/s. Pakistan Tyre Importers & Dealers Association (PTIDA) informed that international market has shown a mixed trend of prices over the period of time and submitted their proposed prices accordingly. Proposals of M/s. General Tyre & Rubber Company of Pakistan Limited and others were also considered and their point of view was heard in detail to arrive at Customs values of subject goods. In this regard, ninety (90) days' data has also been retrieved and the same has been scrutinized. Subsequently, market inquiry was also been conducted and examined in the light of this Directorate's Office Order No.17/2014 dated 19-03-2014 and in terms of sub-Section (7) read with Section 25(9) of the Customs Act, 1969.
- 3) However, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, finally, reliance had to be made on sub-Section (9) of Section 25 of the Customs Act, 1969, to determine the customs value of under reference goods to arrive at the assessable customs values and notified under Section 25A of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1700/2022 dated 07-12-2022 accordingly.

PARAWISE COMMENTS

Para (1&2) Need no comments being introduction of the petitioners and imports made by them as importers of under reference goods and Respondent i.e. Director (Customs Valuation).

Para (3&4) Not Agreed. It is submitted that the 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. The customs values in impugned valuation ruling have lawfully been determined after examining the circumstances surrounding the imports. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved. It is respectfully submitted that the impugned Valuation Ruling No.1700/2022 dated 07-12-2022 has lawfully and justifiably been issued by the Respondent in terms of Section 25A of the Customs Act, 1969, under vested powers upon him. The Director (Customs Valuation) has been empowered by the Board to issue valuation rulings after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969. No deviation from laws/rules has occurred while determining the customs values of under reference goods. However, rulings are being issued lawfully by considering record of previous rulings and taking all stakeholders on board. Respondent above named had determined minimum customs values although the same are being sold in the local market at higher prices. On the other hand the petitioners did not submit any import related documents such as copies of sales tax paid invoices, proforma Invoice etc. Therefore, the determined customs values are not on higher side rather the same are based on ground realities of the case record. As such the Respondent has acted according to law and procedure.

Para (5&6) Denied. It is respectfully submitted that the said Valuation Ruling No.1700/2022 dated 07-12-2022, was issued after thorough investigation and all aspects were considered. In this regard it is submitted that this Directorate General has determined the correct customs values vide Valuation Ruling No.1700/2022, dated 07-12-2022 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 and local market surveys were analyzed and evaluated and after gathering all information so gathered, 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.1700/2022 dated 07-12-2022 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 impugned valuation ruling is not illegal, arbitrary or discriminatory as the same has been issued after thoroughly after examining the factors surrounding the import and Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969.

GROUND

Para (A&B) It is submitted that Paras-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(5) states that the said ruling has been issued in terms of Sub-Section (9) by exhausting and following all the provisions of Section 25 of the Customs Act, 1969, for the purpose of determination of Customs values. 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. As such the same is not arbitrary, unjust, mala fide or without justification rather the same has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969.

Para (C&D) 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 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. Further, the Respondent has properly followed all valuation methods sequentially by rejecting and giving reasons of rejection thereof. As such the Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969, while determining customs values in the under reference valuation ruling. However, citation of Court case does not relate to the under reference case being of different nature and circumstances surrounding the imports.

Para (E&F) 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.1700/2022, dated 07-12-2022 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 meetings with the stakeholders were held which were duly attended by the commercial importers as well as official bearers / representatives of the concerned Association. The participants as well as the Association were requested to provide the documents like copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meeting. Again during the meetings the participants were requested to submit:



Invoices of imports made during last three months showing factual value.

Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.

- Copies of contracts made/LCs opened during the last three months showing value of item in question and;
- Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was passed on to the local buyers.

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

Para (G&H) 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 sub-Sections (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. Customs values in under reference valuation ruling have been determined in terms of sub-Section (9) of Section 25 of the Customs Act, 1969, after properly conducting local market enquiries. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences. As such the impugned valuation ruling is not illegal or arbitrary rather the same is based on ground realities of the case and has lawfully been issued for assessment purpose only under reference petitioner seems to be aggrieved otherwise assessments are being made as per the same.

Para (I&J) It is submitted that the concept 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. It is submitted that the Petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. As such transaction value cannot be accepted in absence of any relevant import evidences and documents etc. All the participants of meeting including Association were requested to provide following documents:-

- Invoices of imports made during last three months showing factual value.
- Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
- Copies of contracts made/LCs opened during the last three months showing value of item in question and;
- 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.



However, no any stakeholder/importer submitted the requisite import related documents which are essentially required in the process of determination of customs values of any commodity imported into Pakistan.

Para (K&L) Denied. It is respectfully submitted that the said Valuation Ruling No.1700/2022 dated 07-12-2022, 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.1700/2022, dated 07-12-2022 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 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.1700/2022 dated 07-12-2022 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 (M&N) In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1700/2022, dated 07-12-2022 for level playing field and for uniform assessment all over the Customs Stations of the country. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the Customs values have been determined in terms of Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened meetings for the determination of under reference items and all

stakeholders were duly invited. As such the Respondent has acted according to law while issuing the said ruling. It is submitted that the Respondent had correctly and lawfully issued Valuation Ruling in terms of Section 25A and the same was based on factual grounds of the case. It is submitted that the said Valuation Ruling has lawfully been issued in terms of Section 25-A by the Respondent after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the Respondent has acted in accordance with law and under powers vested upon him under the law.

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. The Respondent have acted lawfully and the Valuation Ruling No.1700/2022, dated 07-12-2022 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 an assessment are liable to made as per said Valuation Ruling and under reference petition being not sustainable is liable to be dismissed and rejected accordingly."


ORDER

3. Hearing in this case was conducted on 20-02-2023 on which date both the petitioners, Counsel of the petitioners and the respondent department were heard in detail. Mr. Sh. Farukh Saleem, the counsel of the petitioner (M/s A.M. Trading Corporation) stated that his client is a leading importer of 'Casumina' brand Tyres for Passenger Cars of Vietnam origin. The respondent department did not consider the valuation facts and figures about international prices of different origin tyres for export to Pakistan. Instead of relying on factual import data, the respondent department relied upon China origin for the determination of prices of all the other origins including Vietnam. The customs values determined vide impugned Valuation Ruling (VR) No.1700/2022 dated 07.12.2022 are arbitrary, fictitious and presumptive, without any supportive data, therefore these values are legally not sustainable under Rule 110 of the Customs Rules, 2001, as these values are based on prohibitive Customs Valuation method, not supported by data; as required under Rule 107 of the Customs Rules, 2001 (SRO 450(I)/2001 dated 18-06-2001) for the imports on or around 90 days' time span. The department issued Customs Valuation Ruling for the tyres from Vietnam without any consultation with the stakeholders. Moreover, the respondent did not share the market survey with their client. The counsel furnished some documents and requested for re-determination of Customs values of Vietnam origin tyres. The counsel for the petitioner, M/s A.M.Trading Corporation, stated that the Customs values of Vietnam origin tyres should be mentioned separately in the VRs.

4. Mr. Ghulam Yasin, Consultant representing M/s. Goodluck Corporation, M/s. Mian Shafiq Business International, M/s. Baber Tyre Corporation, M/s. Lucky Corporation, M/s. Anis Tyre Corporation, M/s. Myco Corporation, M/s. Ateeq Tyre Traders, M/s. Lords Impex, M/s. A.A. Tyre Corporation, M/s. Shafiq Sons, M/s. Menofa Tire Distribution and M/s. Zohaib Corporation, importers of Chinese-origin tyres for passenger cars, stated that no proper market survey/inquiry was conducted before the determination of Customs values were determined

/notified vide impugned VR. The Customs values of the items listed in the impugned VR are significantly lower in the international market as well as in the local market than those that have been unlawfully determined by the respondent department which has merely increased such values up to approximately 05% to 25% of those valuations in an arbitrary manner.

5. The counsel, Mr.Saad Shafiq Siddiqui, Advocate, representing M/s Capital Trading Corporation and M/s Tradematics International, stated how it is possible to determine one value for a single origin, when the same origin is providing wide quality of goods having huge differences in prices. For example, in China, different companies sell their product at different rates, such price varies on the quality, brand, quantity and standard of the goods. So, it is not possible to determine true transaction values on the basis of impugned valuation rulings, hence the same is illegal and liable to be set-a-side. It is stated that the respondent department has failed to make an actual determination of the values under the law, including but not limited to Sections 25 and 25A of the Act, 1969, and, instead, the Respondent has issued an arbitrary and highly prejudicial list of values which is causing serious loss and harm to the lawfully operated business of the Appellants. The respondent department has wrongly analyzed the PRAL Data which is supporting the Declared Values of the importers, as per Rule 123 of the Custom Rules, 2001, generally accepted accounting principles are to be applied for determining the actual customs value. The impugned market survey has been conducted in violation of the principles of natural justice and equity, as well as the Customs Act, 1969, and the Customs Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in the "greatest aggregate quantity", which has to be at least at par with the quantities of sale of the Appellants, as well as other importers, dealing on a wholesale basis. The respondent department has, however, failed to produce any evidence in support of its contention that a lawful market survey was conducted. The Respondent has erred in fixing prices for the goods as it is impossible to fix the value of the goods because prices for the same product fluctuate based on origin, quality, and supply. It defies logic and the practice of the Appraisement department itself to assess the value in static terms as they have done and points towards their unwillingness to understand the goods being imported. The instant method of assessment is outside the scope of Section 25, as the same does not provide for the assessed value of one product to be determined by applying a fixed, static discount, particularly so when the price of the commodity in question is dynamic and varies enormously depending on the quality of product.



6. On the other hand, the departmental representative (DR) explained that earlier, the Customs values of Tyres & Tubes of different types and sizes including those of Passenger Cars were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1543/2021 dated 03-08-2021. However, different stakeholders requested to re-determine the Customs values afresh in line with values prevalent in the international market. Therefore, an exercise has been undertaken by the respondent department to re-determine the same. All the relevant stakeholders were consulted time to time for the determination of Customs values including M/s. Pakistan Tyre Importers & Dealers Association (PTIDA), M/s. General Tyre & Rubber Company of Pakistan and M/s. Service Long March Tyres (Pvt) Ltd. They submitted their proposals for consideration and the same were considered pertaining to the valuation of goods. M/s. Pakistan Tyre Importers & Dealers Association (PTIDA) informed that the international market has shown a mixed trend of prices over the period of time and submitted their proposed

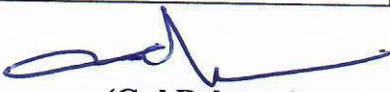
prices accordingly. Proposals of M/s. General Tyre & Rubber Company of Pakistan Limited and others were also considered and their point of view was heard in detail to arrive at Customs values of subject goods. In this regard, ninety (90) days' data has also been retrieved and the same has been scrutinized. Subsequently, the market inquiry was also conducted and examined in the light of this Directorate's Office Order No.17/2014 dated 19-03-2014 and in terms of sub-Section (7) read with Section 25(9) of the Customs Act, 1969. However, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, finally, reliance had to be made on sub-Section (9) of Section 25 of the Customs Act, 1969, to determine the Customs value of the impugned goods to arrive at the assessable Customs values and notified under Section 25A of the Customs Act, 1969, for uniform assessment across the country vide Valuation Ruling No.1700/2022 dated 07-12-2022 accordingly.

7. The DR further explained that M/s Pakistan Tyre Importers & Dealers Association (PTIDA) is a representative trade body/Association of this sector and they submitted their proposals for consideration and the same were considered pertaining to the valuation of goods.

8. After listening to the detailed discussions/ arguments of counsels, petitioners and the respondents and from the perusal of the case record, it is apparent that the department has adopted the prescribed methodology under Section 25 of the Customs Act, 1969 in the determination of Custom values and had consulted the stakeholders while issuing the impugned valuation ruling. They were given sufficient time and opportunity to provide inputs including documentary proof/ evidence to substantiate their claim that their declared import values were indeed the true transactional values. On account of the foregoing discussions, I, therefore, see no reason to interfere with the values determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1700/2022 dated 07.12.2022, and accordingly the revision petitions are rejected and valuation ruling is upheld.

9. Being identical on facts and law point, this order shall apply mutatis mutandis, to the following (25) revision petitions:-

S.#	Petitioners	S. #.	Petitioners
1	M/s. Trademantics International	14	M/s. Goodluck Corporation
2	M/s. Marium Impex	15	M/s. Baber Tyre Corporation
3	M/s. Sultan Muhammad Tyre & Co	16	M/s. Lucky Corporation
4	M/s. Tyre Master	17	M/s. Anis Tyre Corporation
5	M/s. Seven Star Tyre	18	M/s. Myco Corporation
6	M/s. Seven Star Old & New Tubes & Tyres	19	M/s. Mian Shafiq Business International
7	M/s. Tyre Sales Corporation	20	M/s. Ateeq Tyre Traders
8	M/s. J.J.S. Trading Company	21	M/s. Lords Impex
9	M/s. Paramount Engineering	22	M/s. A.A. Tyre Corporation
10	M/s. Dhanani Enterprises	23	M/s. Shafiq Sons
11	M/s. Autobax	24	M/s. Menofa Tyre Distribution
12	M/s. A. M. Corporation	25	M/s. Zohaib Corporation
13	M/s. Capital Trading Corporation		


(Gul Rehman)
Director General

Registered copy to:

S.No.	Petitioners
1	M/s. A. M. Trading Corporation, <u>C/o Sheikh Farrukh Saleem (Consultant)</u> , Office No.2, Karsaz Town Houses, Plot No. FL-12, Block-5, KDA Scheme No.5, Kehkashan, Clifton, Karachi.
2	M/s. Marium Impex, House No. 177-H, Block-2, P.E.C.H.S., Karachi. Cell: 0322-8226953,
3	M/s. Sultan Muhammad Tyre & Co, Shop No.48, Crown Tyre Market, Old Truck Stand, Maripur Road, Karachi.
4	M/s. Tyre Master, Plot No. 30, General Cycle Work, Jinnahbad, Jamila Street, Karachi.
5	M/s. Seven Star Tyre, Room No. 207, Al-Hamra Center, Opp Radio Pakistan, M.A. Jinnah Road, Karachi.
6	M/s. Seven Star Old & New Tubes & Tyres, Shop No. A-12, Old Taj Mahal Cinema, Plot No. RC-4/6, M.A. Jinnah Road, Karachi.
7	M/s. Tyre Sales Corporation, 14-C, Commercial Area-A, Defense Housing Authority, Phase-2, Karachi.
8	M/s. J.J.S. Trading Company, Office No. 34-A, 7 th Floor, Arkay Square, Sharah-e-Liaquat, Karachi.
9	M/s. Paramount Engineering, Shop No.2; Plot No. 3/9, 9A, Ali Sons Chamber Jeswani Street, Nicol Road, Karachi.
10	M/s. Dhanani Enterprises, 3, Alisons Chamber, Jaswani Street, Off Nicol Road, Karachi.
11	M/s. Autobax, 132/C, Block-2, P.E.C.H.S. Karachi.
12	M/s. A.M. Corporation, Office No. 402, 4 th Floor, Sharjah Trade Center, New Chaali, Sharah-e-Liaquat, Karachi.
13	M/s. Goodluck Corporation, M/s. Mian Shafiq Business International, M/s. Baber Tyre Corporation, M/s. Lucky Corporation, M/s. Anis Tyre Corporation, M/s. Myco Corporation, M/s. Ateeq Tyre Traders, M/s. Lords Impex, M/s. A.A. Tyre Corporation, M/s. Shafiq Sons, M/s. Menofa Tire Distribution, M/s. Zohaib Corporation, <u>C/o Mr. Ghulam Yasin (Consultant)</u> , Room No. 9, 3 rd Floor, Ocean Centre, Opposite Custom House, Karachi.
14	M/s. Capital Trading Corporation & M/s Tradematics International <u>C/o Muhammad Saad Shafiq Siddiqui (Advocate)</u> , F-37,/C. Block-F, North Nazimabad, Karachi.
15	M/s. Burki Trading Co, 907, Fortune Centre, Block-06, PECHS, Shahra-e-Faisal, Karachi

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, Appraisement (South), Custom House, Karachi.
- 13) The Chief Collector of Customs, Enforcement (South), Custom House, Karachi.
- 14) The Directors, Intelligence & Investigation, Karachi / Lahore / Islamabad / Quetta / Peshawar / Faisalabad.
- 15) The Director, Directorate of Customs Valuation, Lahore.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisement - West / Appraisement - East / Appraisement - Port Muhammad Bin Qasim /SAPT/ Enforcement / JIAP), Karachi / Hyderabad / (Appraisement / Enforcement), Quetta / Gawadar / (Appraisement / Enforcement / AIIA), Lahore / Appraisement, Faisalabad / Appraisement, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan / (Appraisement / 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) The President, FPCC&I/KCC&I, Karachi.
- 20) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 21) Guard File.

