IN THE HIGH COURT OF SINDH, KARACHI

Present

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan

Special Customs Reference Application No.340 of 2018
alongwith
Special Customs Reference Application Nos. 341, 376 & 377 of 2018, 112 & 113 of 2019
&
C.P Nos.D-8381/2019, 973, 1343, 1683, 2688, 3689, 3940, 4077, 4078, 4280, 4612 and 4651 of 2020

Date of hearing: 02.11.2020

Mr. Khalid Mehmood Rajpar, Advocate for Applicants in SCRA Nos.340 and 341 of 2018

Mr. Muhammad Khalil Dogar, Advocate for Applicants in SCRA Nos.376 & 377 of 2018 and 112 and 113 of 2019

Mr. Zain A. Jatoi, Advocate for Respondents in SCRA Nos.340 and 376 of 2018

Mr. Abdul Moiz Jaferi, Advocate for Respondents in SCRA Nos.112 & 113 of 2019 and for Petitioners in C.P Nos.D-973, 1343, 1683, 2688, 3689, 4280, 4612 of 2020 alongwith Mr. Faiz Khalil, Advocate

Mr. Ghulam Nabi Shar, Advocate for Respondent in SCRA No.377/2018

Mr. Muhammad Adeel Awan, Advocate for Petitioner in C.P No.D-4651/2020 and for Respondent No.25 in SCRA No.113/2019

Mr. Aqeel Ahmed Khan, Advocate for Petitioners in C.P Nos.D-3940. 4077 and 4078 of 2020

Mr. Muhabbat Hussain Awan, Advocate for Respondents in some of the petitions

Mr. Mateen Ahmed, Advocate holds brief for Mr. Muhammad Bilal Bhatti, Advocate for Respondents in some of the petitions

Mrs. Masooda Siraj, Advocate for Respondents in some of the petitions

Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General

JUDGMENT

Zulfiqar Ahmad Khan, J:- Case of the applicants is that while exercising his powers under Section 25A(1) of the Customs Act, 1969 it issued Valuation Ruling 717/2015 dated 11.02.2015

calculating customs values for the import of Secondary Quality (Hot Rolled Coil, Cold Rolled Coil, Galvanized Plates etc. goods falling under Chapter 72 of Pakistan Customs Tariff) on the basis of a formula whereby international prices of Prime Quality goods borrowed from the London Metal Bulletin ("LMB") were given a discount of 15% to deduce values of Secondary Quality goods and thereafter adding freight charges of US$40/Metric Ton thereto. This valuation ruling was later replaced by valuation ruling No.1213/2017 dated 27.09.2017, however only with the change of ruling number and date of its issuance. Being aggrieved, the importers preferred revision of the said ruling under section 25-D before the applicant and in the meanwhile made a recourse to this Court for provisional release of their consignments following the dictum laid down in Danish Jehangir case (2016 PTD 702). Grounds taken by the importers were that the impugned valuation ruling was contrary to the principles laid down in the cases of Danish Jehangir (supra) and Goodwill Traders (2014 PTD 176) in so far as the values purportedly arrived at therein where the results of "fixation" and not "determination". The importers further challenged the impugned valuation ruling on the basis that, the depicted values have been derived from the London Metal Bulletin (LMB), albeit applying thereto a discount quotient, which was arbitrary at best, in spite of the fact that the LMB publication came with the Disclaimer, whereby it was, amongst others duly admitted that the values stated in the LMB were mere approximations not verified independently, not actual transaction prices and that reliance upon such information would be at the user's sole risk as these were not intended to be used for making any decisions.

2. However, the applicant rejected the revisional applications made by the importers through an Order-in-Revision No.10/2018 dated 27.04.2018 with the following observations:

"3. Hearing with the petitions was held in subject case. The viewpoint of petitioners including iron and steel importers/ merchants associations was heard in detail on a number of occasions. Departmental Representatives (DRs) also presented their defense and explained in detail the methodology adopted by them while notifying the impugned Valuation Ruling during the hearings and also submitted comments on the arguments/ grievances of the petitioners.

4. The major thrust of the arguments put forth by the petitioners is that Valuation Department did not follow the proper valuation methods in sequence and were not justified in use of alternative methods; that secondary steel products carry higher tariffs (12.5% RD alongside 20% Custom Duty) hence higher discount in value should have been given while applying prices published in London Metal Bulletin (LMB) in respect of products of listed countries. Further, the criteria as applied by clearance Collectorates in assessment of imports from the countries not listed in LMB, by relying on prices of available zones, is refuted by the petitioners

5. The verbal as well as written submissions made by the petitioners and the departmental representatives have been carefully examined. The DRs have underscored that it is a long standing practice in Customs to take recourse to internationally accredited publications in respect of prices of commodities for assessments which is also accepted by trade. It was observed during the course of hearing that importers of the subject commodity have also accepted this practice deriving values published in London Metal Bulletin. Valuation Ruling No. 717/2015 dated 11.02.2015 was the first Ruling which linked the LBM published prices with assessable Customs value of the subject commodities, Even before this Ruling, LMB published prices were taken into consideration for determination of Customs values. This VR 717/2015 was the first one where formula based parameters were enumerated instead of absolute values. For the assessment of Secondary Quality HRC / CRC / GP Sheets / Coils the Ruling allowed a discount of 15% from the price of Prime Quality products as published in London Metal Bulletin. The importers accepted this VR and did not file any revision petition against the said ruling. They cleared their consignments regularly in accordance with the VR.

6. The petitioners are now insisting on increasing the percentage of discount of 15% from Prime Quality for Secondary Quality HRC / CRC / GP sheets/coils, initially given in the VR No. 717/15 dated 11.02.2015, and maintained in the impugned VR No. 1213/2017 dated 29.09.2017. The petitioners have requested to increase this discount on the plea that prices, otherwise, have appreciated in the international market on the one hand and on the other, after levy of regulatory duty, they are not able to sell their goods in the market. However, no valid reasons have been submitted to substantiate their plea, either at the time of issuance of the impugned Valuation Ruling No. 1213/2017 dated 27.09.2017 or during the course of hearing proceedings. The DRs have contended that Secondary Quality does not mean poor or substandard quality; it is a technical term used for such sheets which do not qualify all the specifications of the Prime Quality and manufacturers supply such products on marginally discounted prices, The DRs further contended that 15% discount allowed in the impugned ruling, from Prime Quality, is already on the higher side.

7. As far as applying LMB published prices on the countries not listed in the Bulletin is concerned, the perusal of record indicates that clearance Collectorates have applied their own criteria for assessment of imports of iron and steel products from origins not available in the LMB. The representatives from the clearance Collectorate asserted that they are following a long

standing practice of taking average of listed countries values and that they have not deviated from this practice. It is, therefore, Collectorates administratively handled issue.

8. In view of the above, I conclude that Valuation Ruling No. 1213/2017 dated 27.09.2017 was issued after due process of law. The revision petitions, being devoid of substance are, therefore, rejected accordingly."

3. Being aggrieved with the said outcome, importers/respondents challenged the said Order-in-Revision before the Customs Appellate Tribunal, Karachi by filing Customs Appeals, and the Customs Appellate Tribunal vide order dated 18.07.2018 (the impugned order) set-aside the said Order-in-Revision as well as the Valuation Ruling No. 1213/2017 dated 27.09.2017 with the direction to the respondents to release the importers pending consignments at the declared transaction values in terms of Section 25(1) of the Customs Act, 1969, and also to return the securities furnished by the importers as the differential of duty/taxes between the declared values and those assessed under the impugned Valuation Ruling No.1213/2017 dated 27.09.2017. The operative part of the order is reproduced below for ease of reference:

"08. In our view the controversy at hand revolves around the determination of the Customs value of the imported Secondary Quality Iron and Steel products based upon values of the Prime Quality products as depicted in the LMB. Notwithstanding the fact that a level of reasonableness has been endeavored to be achieved in the matter by the Customs Valuation Department through an offer of discount on the Prime Quality goods to arrive at the values of the Secondary Quality goods, what needs to be examined and assessed is as to whether such an exercise falls within the purview of any of the permissible valuation methods as stipulated under Section 25 of the Customs Act, 1969. Nevertheless, we, in the first instance, will deal with the issue of the local manufacturers being given a say in the matter of determination of the value of the imported goods. This, in our opinion, is necessitated by the judgment dated 19.03.2018, passed in SCRA No. 744/2016 (DG Customs Valuation & another vs, M/s. Al-Amin Cera), in paragraph no. 13 whereof the Honourable Sindh High Court was pleased to hold as follows:

> *"The local manufacturers cannot be allowed to circumvent and evade the requirements of the ADD Act by asking for a customs values under s. 25A or any enhancement therein or being involved in the determination of the same. The position is likewise in relation to s. 25D. Any ruling or order determining or enhancing a customs value under sections or such basis or with such involvement must be regarded*

as fatally and irremediably tainted with illegality and cannot be allowed to stand."

09. The ratio of the Honourable Sindh High Court's judgment in Al-Amin Cera case passed on 19.03.2018, in relation to the issue at hand, being that the inclusion / involvement of a local manufacturer in the matter of, among others, issuance of a Valuation Ruling under Section 25A(1) would render the same fatally tainted with illegality and thus liable to be struck-down. That the impugned Order-in-Revision dated 27.04.2018, having been passed 39 days after the judgment in Al-Amin Cera case, we find it local manufacturers participating in the proceedings for issuance of the impugned Valuation Ruling was not dealt with in the impugned Order-in-Revision, especially so when the appellants in Appeal No. K585/2018 had specifically agitated the same in paragraph No. 6 of the Revision Petition filed on 02.10.2017. The Director General Customs Valuation being party to the Al-Amin Cera case cannot express ignorance with the dictum and ratio laid therein based upon which alone the impugned Valuation Ruling No, 1213/2017, on account of well documented participation therein of the local manufacturers ought to have been held unwarranted and unsustainable. Accordingly, following the Honourable High Court's referred judgment, we have no difficulty in holding that the impugned Valuation Ruling No. 1213/2017, on such count alone, is outright illegal and a nullity in the eyes of the law. We now turn to deal with the issue of the reliance by the Customs Valuation Department on the London Metal Bulletin for determination of the values of the Secondary Quality Iron and Steel products. Having gone through the Valuation methods under Section 25 of the Customs Act, 1969, but excluding the "Transaction Value" method in terms of Section 25(1) , we find that reliance on a publication, in such regards, is not envisaged and/or stipulated in any of the five subsequent methods. To such an extent, the Honourable Sindh High Court in the case of Sadia Jabbar vs. Federation of Pakistan, reported as PTCL 2014 CL 537, was pleased, in paragraph No. 24 thereof, to strike down the Valuation Ruling bearing C.No.Misc/32/2007-IVA dated 13.06.2010 on the basis, among others, that it purported to apply' a method -taking the average of prices reported in the London Metal bulletin, which was not one of the prescribed methods. Even otherwise, we do not see as to how could the values of Secondary Quality goods imported from a particular and a specific country be determined reasonably and justifiably on the basis of reported indicative prices of Prime Quality goods exported from a generalized region and not from a specific and a particular country. The DR could not come up with a. satisfactory answer as to why was the offered discount fixed at 15% and not at 25% or for that purpose, at 5% other than contending that the discount had been so fixed in consultation with the stakeholders, including the importers as well as the local manufacturers as per the long standing past practice pursuant whereto the appellants, among other importers, had not resorted to departmental hierarchy in relation to the Valuation Ruling No. 717/2015. Again, we note that the Honourable Sindh High Court, in Paragraph 23 of Sadia Jabbar. case, had criticized the issuance of a Valuation Ruling. As a result of an "understanding" arrived at between the Customs Collectorate and the importers Association as being impermissible under the prescribed Valuation methods.

10. In relation to the DR's contention as to the manner of the so-called determination of the Secondary Quality Iron and Steel products being the result of a long standing practice in which the importers duly acquiesced, we do not find any force therein relying upon the judgment in the case M/s. P & G International vs. Assistant Collector of Customs, reported at 2010 PTD 870, wherein the Honourable Sindh High Court held that a practice is being carried out in contravention of a law, the same has to be stopped forthwith. Accordingly, it being a settled proposition of the

law in view of the plethora and multitude of the Honourable superior courts judgments that the Valuation methods, as under Section 25, are to be observed and adhered to mandatorily, we do not see any scope or space therein for determining the values through a consultative process, albeit with the acquiescence of the importers and in the garb of a practice, the same would still amount to a deviation from the methods and methodology of Section 25 of the Customs Act, 1969, thus rendering any Valuation Ruling such as the one impugned in the present appeals, as being unsustainable and without the warrant of the law. We now revert to the authenticity aspect of the London Metal Bulletin in the light of its Disclaimer, as regards which the DR could offer us no assistance, however, we have perused the same at length and more particularly the second paragraph thereof, wherein it is clearly stated that evaluation or calculation of prices in the LMB are based upon certain market assumptions and evaluation methodologies and may not conform to prices available from third parties and that there may be errors or defects in such assumptions or methodologies which may render the resultant evaluation to be inappropriate for use and reliance on such prices may be at user's sole risk. It is thus not understandable as to how could the Customs Valuation Department rely on this publication not only in view of what is stated in the foregoing but also on account of the fact that the publisher clearly states that no representation and warranties be deemed to be expressed or implied as to the accuracy or reliability, among others of any information published in the LMB Coupled with the fact that it is specified in the last paragraph of the Disclaimer that the information in the LMB is for general purposes only and is not intended to be used in making or refraining from making any specific decision. It is, therefore, rendered both incomprelicnsible as well as inexplicable that a legal instrument such as a Valuation Ruling could be deemed to have been legally issued pursuant to information in such a publication, affecting a trade which affects a large number of importers. We, accordingly, hold that the prices of the Prime Quality Iron and Steel products as depicted in the London Metal Bulletin cannot and must not be relied upon in determining the Customs values of the imported, or to be imported, Secondary Quality Iron and Steel products.

11. Prior to parting with this judgment, we would like to state that in arriving at the conclusions stated above we have remained mindful of the fact that the Secondary Quality Iron and Steel products are not of the nature which are specifically manufactured as such insofar as these are merely goods which were manufactured as Prime Quality goods but for one reason or another (being defective, damaged, of poor quality or not upto specifications) fail to meet the requisite standards of the buyers upon whose orders these were made. We were assisted by the appellants representatives, who informed us that Secondary Quality goods are materially different from the Prime Quality goods not only in terms of their quality and usability these are also stored and packaged differently by exporters mainly on account of lower values that these Secondary Quality goods fetch internationally. Accordingly, it is expected that whenever an occasion may arise where determination of the values of the Secondary Quality Iron and Steel product is deemed imperative and necessary such quintessential nature of these goods will be given due consideration.

12. For the foregoing reasons, the Order-in-Revision No. 10 of 2018 dated 27.04.2018 and the Valuation Ruling No. 1213 2017 dated 27,09.2017 are hereby set-aside with the direction to the respondents to release the appellants pending consignments at the declared transaction values in terms of Section 25(1) of the Customs Act, 1969, and also to return the securities furnished by the appellants as the differential of duty/taxes between the

declared values and those assessed under the impugned Valuation Ruling No. 1213/2017 dated 27.09.2017."

4. The learned counsel representing the applicant (in SCRAs and for the respondents in the Constitutional Petitions) submitted that the impugned order is bad in law, wrong on facts and lacks judicial application of mind; that the Honorable Appellate Tribunal failed to appreciate that the Valuation Directorate followed the valuation method provided in Section 25 sequentially and reasons were provided in the ruling as to why the value was determined under Section 25(9); that the Appellate Tribunal by its order against the valuation ruling has indeed transgressed its legal authority and has set a very bad precedence. By setting aside a valuation ruling based on reasonable/legal grounds, the importers have been granted virtual license to monopolized the market and get undue monitory benefits of millions of rupees; that the Appellate Tribunal failed to appreciate that London Metal Bulletin is a specialist international publisher and information provider for the global steel, non-ferrous and scrap metals markets and their values are UpToDate, accurate and have been accepted globally; that only difference between the parties is with regard to the discount percentage which is given in the ruling; that the importers were getting the steel sheets cleared on same formula since issuance of previous valuation ruling of 2015; that the Appellate Tribunal ought to have appreciated that the prices given in London Metal Bulletin are indicative of prevailing market prices and are regarded appropriate by all types of stake holders; that the order has been passed without going through the ruling and the ruling has been set aside on mere assumptions and presumptions; that the Appellate Tribunal failed to appreciate that the judgment relied upon by the Appellate Tribunal passed in case of Al-Amin Cera is not applicable on the ruling bearing No.1213/2017 and the reliance has been placed wrongly while passing the judgment; that there was no evidence before the Appellate Tribunal to come to the conclusion that the value declared by the respondent/importer was true transactional value. The respondent did not place any material to establish its declared value

as true transactional value therefore the order passed by the Appellate Tribunal for release of the consignment is incorrect, illegal and is liable to be set aside; that the order for the release of the consignment on declared value of the respondent has been passed on assumptions and presumptions; that the order passed by the Honorable Appellate Tribunal is not in conformity with the Customs Act, 1969 and is liable to be set aside.

5. Learned counsel for the applicant initially proposed seven questions of law, which however during the hearings were reduced to the following five questions:-

1. Whether the reliance of London Metal Bulletin was the right way to determine the valuation of the item so imported in absence of any specific value available locally?
2. Whether the interpretation of Section 25 of Customs Act, 1969 vis-à-vis reliance on the London Metal Bulletin is a sufficient compliance of Section 25 of Customs Act, 1969
3. Whether the case law cited by the Appellate Tribunal as passed in SCRA 744 of 2016 (D.G. Customs Valuation and another Vs. Al Amin Cera) has any relevance to the present case?
4. Whether the judgment as reported in PTCL 2014 CL 537 relied upon by the Appellate Tribunal has any relevance to the present case?
5. Whether the concept of method of taking the average price reported in the London Metal Bulletin in any way illegal and whether the dispute in hand in any way concerned with Primary and Secondary quality of goods?

6. Learned counsel for the respondents in the present SCRAs and for the petitioners in the constitutional petitions supported the impugned judgment vehemently.

7. Heard the learned counsel for the respective parties, the learned Assistant Attorney General (who supported the case of the applicants) and perused the material on record.

8. To start with, we would like check background of London Metal Exchange which publishes London Metal Bulletin. LME though finds its origin from the 18th century, however in the modern times, it is in existence as a "for profit" company owned by its members. In Dec-2012 the said company was sold to Hong Kong Exchanges and Clearing Limited (HKEx) for £1.4 billion[1]. The company is incorporated in England and Wales and remains an indirect subsidiary of HKEx since 2012. Articles of Association of the Company[2] show that the company operates under the UK Companies Act, 2006 where it is treated as an "Unlimited Company having a Share Capital". Profit before tax for the year 2020 of the company was $44,382,000 and after accounting for taxation, the company made a profit of $36,108,000[3]. LME is primarily a commodities exchange that deals in metals futures[4] and options[5]. One must keep in mind that futures and options are a sort of speculative (futuristic) transactions made without instantaneous delivery of goods, hence are not indicative of current transactional values of a commodity coupled with the delivery of goods at that instant. Now coming to LMB, which for the longest time has been a publication of LME, however, its rigid use for customs valuation is only novel to our jurisdiction as research has not revealed any other country where customs values are so directly entrenched with LBM rates. In the case of Sky Overseas v. The Federation of Pakistan (2019 PTD 1964), we have made a threadbare analysis of Section 25 of the Act and in paragraph 20, we have held that "*The (GATT) Implementation*

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[1] Sanderson, Henry (24 March 2017). "London Metal Exchange debates its future" - Financial Times - 8 June 2017

[2] https://www.lme.com/-/media/Files/About/Corporate-information/Committees/The-London-Metal-Exchange-Articles-Effective-13-December-2012.pdf?la=en-GB

[3] LME Clear Limited Directors' report and financial statements 31 December 2020

[4] Futures are derivative financial contracts that obligate the parties to transact an asset at a predetermined future date and price. The buyer must purchase or the seller must sell the underlying asset at the set price, regardless of the current market price at the expiration date.

[5] Options are financial instruments that are derivatives based on the value of underlying securities such as stocks. An options contract offers the buyer the opportunity to buy or sell depending on the type of contract they hold the underlying asset. Options, give the buyer of the contract the right but not the obligation to execute the transaction.

Agreement under Article 2 while determining value on the basis of identical goods requires that the customs value shall be the transactional value of identical goods for export to the same country of importation and export at or about the same time as the goods being valued, as well as, under Article 3 while determining value of similar goods, customs value is held to be the transactional value of similar goods sold for export to the country of importation and exported at or about the same time as the goods being valued. Similarly in Article 5 which uses deductive method, the customs value of the imported goods (or identical or similar imported goods being sold in the country of importation in the condition as imported) are required to be based on the unit price at which the imported goods or identical or similar greatest aggregate quantity at or about the same time of importation of the goods being valued to persons who are not related to the persons from whom they buy such goods. In Notes to Article 7, the Agreement requires that the customs values determined under fall back method (Article 7), to the greatest extent possibility, be based on provisional customs values. It also requires that the matter of valuation deployed under Article 7 should be those laid down in Article 1 through 6, but reasonable flexibility in the application of such methods must be made in conformity with the aims and provisions of Article 7. While international acceptance to the valuation base of the LMB is beyond any doubt as it provides for the base price at which metals and metal scrap are ordinarily sold, however using LMB values as transactional values, in our humble view shows total lack of application of mind since this analogy does surpasses the valuation methods given under section 25. Loading an arbitrary discount quotient to LMB, makes it even more questionable and creates venues for undue interference of the department. How the applicant chose to give 15% discount for Secondary Quality goods does not satisfy logic and such colorable exercise of power is specifically forbidden by the very intent and language of Section 25 which lists all plausible methods of determination of transactional values wherein riveting to a third party (for profit company's) or exchange's rates

is not an option. In Sadia Jabbar case (2012 PTD 898) the Hon'ble Supreme Court has held that "when Section 25 of Customs Act, 1969 exhaustively provided the modes for determination of value, resorting to Section 25A of the Act without any convincing reason was uncalled for". In the case of Collector of Customs v. Faisal Enterprises (2019 PTD 1776 SC) where the importer was able to show transaction value of each of the two imported consignments being USD 175 and USD 180 per metric ton respectively, which was duly reflected in the Letter of Credit and the Goods Declaration filed at the time of in-bonding of goods and the importer contending that the goods at the time of in-bonding upon inspection were found to be of secondary quality instead of prime quality and as similar goods of secondary quality imported from the same country of origin and shipped on the same ship were assessed at USD 157 per metric ton, the Hon'ble Supreme Court held that "when the goods without any difficulty could be assessed on the basis of the transaction value under subsection (1) of Section 25 of the Act i.e. the price actually paid or payable for the goods sold for export to Pakistan, then the question of invoking subsection (5) of Section 25 did not arise at all". The Apex court further directed that "only in circumstances when the goods could not be assessed on transaction value then they were to be assessed on the basis of the value of identical goods sold for export to Pakistan at about the same time at which the goods were being valued under subsection (5) of Section 25". In the case of Latif Brothers v. Deputy Collector Customs Lahore (1992 SCMR 1083), while dilating on the infrastructure installed by Section 25, the Hon'ble Supreme Court held that the Customs Authorities first *had to secure material to show, that declared price of goods was considerably lower than that at which identical or similar goods were freely sold by the same of other sellers in country of origin at the same time for the same quantity to any buyer in Pakistan at the same commercial level as the importer before making it a case of mis-declaration*. These views strengthen our believe that any enhancement of value based upon the comparison of the value of an imported metal, as

specified in LMB in the instant case, without first establishing the transaction value to be wrong, is not accordance with the settled law.

9. Reliance on sequential method embedded in section 25 is sine qua non in customs valuations. There is no escape from it. GATT evolved this mechanism to provide a fair, uniform, and neutral system for the valuation of goods for customs purposes to prohibit the use of arbitrary or fictitious values. It provides, as its basis, the use of transaction value (selling price) between buyer and seller however at the same time, it specifies alternative methods to be used in sequential order for determining value when the transaction value cannot be used. These methods are woven in various clauses of Section 25 being transaction value of identical goods method; transaction value of similar goods method; deductive method; computed method and fall-back method. In these internationally negotiated arrangements, there is no place for arbitrary or fictitious method as deployed in the case of the valuation ruling No. 1213/2017. It is also worth mentioning that legislature has specifically provided in subsection (10) of Section 25 that subsections (1), (5), (6), (7), (8) and (9) define as to how the customs value of the imported goods is to be determined and methods of customs valuation are required to be applied in a sequential order except reversal of the order of subsections (7) and (8) at the importer's, request, if so agreed by the Collector of Customs and that customs value of the imported goods shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to Pakistan. Subsections (1) to (4) of Section 25 and Rules 107 to 116 of Customs Rules, 2001 contain primary methods of valuation, and in the first instance such primary method of valuation is required to be adopted in each case. This view has been confirmed in numerous cases including Rehan Umer v. Collector of Customs (2006 PTD 909), Najam Impex Lahore v. Asst. Collector of Customs, Karachi (2008 PTD 1250), Faco Trading Co. v. Member Customs, Federal Board of Revenue (2013 PTD 825), Goodwill Traders Karachi v. Federation of Pakistan (2014 PTD 176).

10. As evident from the reproduction of operating part of the Order-in-Revision and echoed in the judgment of the Tribunal, local manufacturers were also included in the exercise that led to the issuance of the valuation ruling No. 1213/2017. The issue of involvement of local manufacturers while determining customs values under section 25 of the Act has been dealt at length in the case of D.G. Customs Valuation & another v. Al Amin Cera passed in SCRA No. 744/2016 (2019 PTD 301) where an Hon'ble bench of this court has held that "local manufacturers had no standing to ask for determination and/or enhancement of customs value of any goods under Section 25-A or Section 25-D of Customs Act, 1969 as said manufacturers for such purpose could not file an application or petition under either sections of the Customs Act, 1969 or intervene or be allowed to ask to participate in any pending proceedings or be made a party thereto whether as stakeholders or otherwise since interest of local manufacturers was to have value set at as high a level as possible on ground that transaction value or value set in valuation ruling was otherwise too low and was causing them injury which was exclusively in domain of Anti-Dumping Duties Act, 2015 thus neither Director Valuation nor Collector of Customs or Director-General had any jurisdiction in such regard as local manufacturers could not be allowed to circumvent and evade requirements of Anti-Dumping Duties Act, 2015 by asking for a customs value under Section 25-A of Customs Act, 1969 or any enhancement therein". In fact, the Agreement on the Implementation of Article VII of GATT Agreement and Explanatory Notes thereto specifically bars such initiatives.

11. With regards applicability of Sadia Jabbar v. Federation of Pakistan (PTCL 2014 CL 537), an Hon'ble bench of this court in paragraph 24 has in similar circumstances where reference was made to the London Metal Bulletin for the determination of customs values set aside valuation ruling C.No.Misc/32/2007-IVA dated 13.03.2009 issued in relation to flat rolled iron and steel products as it purported to apply a method (taking the average of prices reported in the London Metal

Bulletin) which the Hon'ble court did not consider to be one of the methods provided under Section 25. We have already dealt with this issue in the foregoing.

12. Residual effect of the above discussion is that in our humble view LMB was not the right way to determine the valuation of the goods; the interpretation of Section 25 of Customs Act, 1969 vis-à-vis reliance on the London Metal Bulletin was not compliance of Section 25 of Customs Act, 1969; the case law cited by the Appellate Tribunal as passed in SCRA 744 of 2016 (D.G. Customs Valuation and another Vs. Al Amin Cera) and PTCL 2014 CL 53 had direct relevance to the present case; the concept of method of taking the average price reported in the London Metal Bulletin was illegal; and the dispute in hand was concerning with Primary and Secondary quality of goods. Resultantly Question Nos. 1 and 2 were answered in Negative and the rest of the Questions (Nos. 3 to 5) were answered in Affirmative through our short order dated 02.11.2020 and these are our reasons of doing so.

Karachi Judge

Judge