

## THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Jawad Akbar Sarwana

1.	Spl. Cus. Ref. A. 1926/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. A.A. Tyre , Karachi
2.	Spl. Cus. Ref. A. 1927/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. A. A, Tyre, Karachi
3.	Spl. Cus. Ref. A. 1928/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. A. A, Tyre, Karachi
4.	Spl. Cus. Ref. A. 1929/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Good Luck Corporation, Karachi
5.	Spl. Cus. Ref. A. 1930/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Good Luck Corporation, Karachi
6.	Spl. Cus. Ref. A. 1931/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Good Luck Corporation, Karachi
7.	Spl. Cus. Ref. A. 1932/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Babar Tyre Corporation, Karachi
8.	Spl. Cus. Ref. A. 1933/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Babar Tyre Corporation, Karachi
9.	Spl. Cus. Ref. A. 1934/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Babar Tyre Corporation, Karachi
10.	Spl. Cus. Ref. A. 1935/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Lucky Corporation, Karachi
11.	Spl. Cus. Ref. A. 1936/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Lucky Corporation, Karachi
12.	Spl. Cus. Ref. A. 1937/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Lucky Corporation, Karachi
13.	Spl. Cus. Ref. A. 1938/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Myco Corporation, Peshawar
14.	Spl. Cus. Ref. A. 1939/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Myco Corporation, Peshawar
15.	Spl. Cus. Ref. A. 1940/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Myco Corporation, Peshawar
16.	Spl. Cus. Ref. A. 1941/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Mian Shafiq Business INTL, Karachi
17.	Spl. Cus. Ref. A. 1942/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Mian Shafiq Business INTL, Karachi
18.	Spl. Cus. Ref. A. 1943/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Shafiq Sons, Karachi
19.	Spl. Cus. Ref. A. 1944/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Shafiq Sons, Karachi
20.	Spl. Cus. Ref. A. 1945/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Shafiq Sons, Karachi
21.	Spl. Cus. Ref. A. 1946/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Zafar Enterprises, Karachi
22.	Spl. Cus. Ref. A. 1947/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Seven Star Tyre, Karachi
23.	Spl. Cus. Ref. A. 1948/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Seven Star Tyre, Karachi
24.	Spl. Cus. Ref. A. 1949/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. A. M. Trading Corporation, Karachi
25.	Spl. Cus. Ref. A. 1950/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. A. M. Trading Corporation, Karachi
26.	Spl. Cus. Ref. A. 1951/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Tyres Sales Corporation, Karachi
27.	Spl. Cus. Ref. A. 1952/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Tyres Sales Corporation, Karachi

28.	Spl. Cus. Ref. A. 1953/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Sultan Muhammad Tyre & Co, Karachi
29.	Spl. Cus. Ref. A. 1954/2023	The D. G. Customs Valuation, Karachi & another <b>VS</b> M/s. Sultan Muhammad Tyre & Co, Karachi
30.	Spl. Cus. Ref. A. 1977/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Marium Impex, Karachi
31.	Spl. Cus. Ref. A. 1978/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Marium Impex, Karachi
32.	Spl. Cus. Ref. A. 1979/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Seven Star Tyre, Karachi
33.	Spl. Cus. Ref. A. 1980/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Seven Star Tyre, Karachi
34.	Spl. Cus. Ref. A. 1981/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. M. Trading Corporation, Karachi
35.	Spl. Cus. Ref. A. 1982/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. M. Trading Corporation, Karachi
36.	Spl. Cus. Ref. A. 1983/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Tyre Sales Corporation, Karachi
37.	Spl. Cus. Ref. A. 1984/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Tyre Sales Corporation, Karachi
38.	Spl. Cus. Ref. A. 1985/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Sultan Muhammad Tyre & Co, Karachi
39.	Spl. Cus. Ref. A. 1986/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Sultan Muhammad Tyre & Co, Karachi
40.	Spl. Cus. Ref. A. 1987/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A Tyre Corporation, Karachi
41.	Spl. Cus. Ref. A. 1988/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A Tyre Corporation, Karachi
42.	Spl. Cus. Ref. A. 1989/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A Tyre Corporation, Karachi
43.	Spl. Cus. Ref. A. 1990/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
44.	Spl. Cus. Ref. A. 1991/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
45.	Spl. Cus. Ref. A. 1992/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
46.	Spl. Cus. Ref. A. 1993/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
47.	Spl. Cus. Ref. A. 1994/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
48.	Spl. Cus. Ref. A. 1995/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
49.	Spl. Cus. Ref. A. 1996/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
50.	Spl. Cus. Ref. A. 1997/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
51.	Spl. Cus. Ref. A. 1998/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
52.	Spl. Cus. Ref. A. 1999/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
53.	Spl. Cus. Ref. A. 2000/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
54.	Spl. Cus. Ref. A. 2001/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
55.	Spl. Cus. Ref. A. 2002/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Mian Shafiq Business International, Karachi
56.	Spl. Cus. Ref. A. 2003/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Mian Shafiq Business International, Karachi
57.	Spl. Cus. Ref. A. 2004/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi
58.	Spl. Cus. Ref. A. 2005/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi

59.	Spl. Cus. Ref. A. 2006/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi
60.	Spl. Cus. Ref. A. 2007/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Zafar Enterprises, Karachi
61.	Spl. Cus. Ref. A. 2008/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A, Tyre Corporation Karachi
62.	Spl. Cus. Ref. A. 2009/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A Tyre Corporation, Karachi
63.	Spl. Cus. Ref. A. 2010/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. A Tyre Corporation, Karachi
64.	Spl. Cus. Ref. A. 2011/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
65.	Spl. Cus. Ref. A. 2012/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
66.	Spl. Cus. Ref. A. 2013/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Good Luck Corporation, Karachi
67.	Spl. Cus. Ref. A. 2014/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
68.	Spl. Cus. Ref. A. 2015/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
69.	Spl. Cus. Ref. A. 2016/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Babar Tyre Corporation, Karachi
70.	Spl. Cus. Ref. A. 2017/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
71.	Spl. Cus. Ref. A. 2018/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
72.	Spl. Cus. Ref. A. 2019/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Lucky Corporation, Karachi
73.	Spl. Cus. Ref. A. 2020/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
74.	Spl. Cus. Ref. A. 2021/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
75.	Spl. Cus. Ref. A. 2022/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Myco Corporation, Peshawar
76.	Spl. Cus. Ref. A. 2023/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Mian Shafiq Business International, Karachi
77.	Spl. Cus. Ref. A. 2024/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Mian Shafiq Business International, Karachi
78.	Spl. Cus. Ref. A. 2025/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi
79.	Spl. Cus. Ref. A. 2026/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi
80.	Spl. Cus. Ref. A. 2027/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Shafiq Sons, Karachi
81.	Spl. Cus. Ref. A. 2028/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Zafar Enterprises, Karachi
82.	Spl. Cus. Ref. A. 2042/2023	The Collector of Customs, Karachi <b>VS</b> M/s. JJS Trading Company, Karachi
83.	Spl. Cus. Ref. A. 2043/2023	The Collector of Customs, Karachi <b>VS</b> M/s. JJS Trading Company, Karachi
84.	Spl. Cus. Ref. A. 1844/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Seven Star Tyre, Karachi
85.	Spl. Cus. Ref. A. 1845/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Seven Star Tyre, Karachi
86.	Spl. Cus. Ref. A. 1846/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. M. Trading Corporation, Karachi
87.	Spl. Cus. Ref. A. 1847/2023	The Collector of Customs, Karachi <b>VS</b> M/s. A. M. Trading Corporation, Karachi
88.	Spl. Cus. Ref. A. 1848/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Tyres Sales Corporation, Karachi
89.	Spl. Cus. Ref. A. 1849/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Tyres Sales Corporation, Karachi

90.	Spl. Cus. Ref. A. 1850/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Sultan M. Tyre & Co., Karachi
91.	Spl. Cus. Ref. A. 1851/2023	The Collector of Customs, Karachi <b>VS</b> M/s. Sultan M. Tyre & Co., Karachi

**For the Applicants:** M/s. Sardar Zafar Hussain & Faheem Raza Khuhro, Advocates.

**For the Respondents:** M/s. Rana Sakhawat Ali, Muhammad Adnan Moton, Amir Ali Shaikh & Amjad Hayat, Advocates.

**Date of hearing:** 30.04.2024

**Date of Judgment:** 04.07.2024

## JUDGMENT

**Muhammad Junaid Ghaffar, J:** Through these Special Customs Reference Applications (“**SCRA**”) filed under Section 196 of the Customs Act, 1969, (“**Act**”), the Applicant Department has impugned judgment dated 10.08.2023 passed by the Customs Appellate Tribunal in Customs Appeal No. K-676/2023 and other connected matters, proposing the following questions of law in SCRA No. 1926/2023 arising out of Customs Appeal No.K-676/2023:-

- i. Whether in the facts and circumstances of the case the learned Appellate Tribunal was justified in holding that the values of the goods in question were determined directly under Section 25(7) & (9) of the Customs Act, 1969 (Market inquiry and Fall Back Method) through impugned Valuation Ruling No. 1700/2022 dated 07.12.2022 without following the sequential methods as provided under Section 25 of the Customs Act, 1969?
- ii. Whether the learned Appellate Tribunal, while exercising Appellate jurisdiction under Section 194-B(1) of the Customs Act, 1969 was within jurisdiction to pass a direction that to accept as customs value the imported consignment of the respondent importer under Section 25(1) of the Customs Act, 1969?
- iii. Whether on the facts and circumstances of the case, the learned Appellate Tribunal misread the relevant Section 25-A(1) of the Customs Act, 1969 read with all Rules and Notification issued for the determination of Customs value for the purpose of assessment of the imported goods?

2. Heard learned Counsel for the parties and perused the record. It appears that three different Valuation Rulings were issued by the Director Valuation bearing Nos. 1700, 1701 and 1702 of 2022 all dated 07.12.2022; whereby, prices of various types of tyres and tubes were notified in terms of Section 25A of the Act. These values were determined under Section 25(7) [Deductive Value Method or commonly known as Market Inquiry] read with Section 25(9) [Fall Back Method]. These Valuation Rulings were impugned by Respondents through various Revision Applications separately filed under Section 25-D of the Act before the Director General (Valuation) and through three separate Orders in Revision Nos. 17, 18 & 19 of 2023 all dated 30.03.2023 all such Applications were dismissed. The Respondents being aggrieved preferred their individual Appeals under Section 194-A (f) of the Act before the Customs Appellate Tribunal, and by way of the impugned orders, all the Appeals have been allowed in the following terms: -

“5. We have heard the arguments and perused the entire case record and given careful consideration to the facts and law points involved therein.

6. A critical perusal of the case record shows that the Appellant had provided substantial import data including proof of payment to establish that their transaction values were absolutely correct. However, in Para 5 of the Ruling, it has been mentioned that: -

*"The Transaction value method as provided in sub-section (1) of Section 25 of the Customs Act, 1969, was found inapplicable due to wide variation of values in import data. Moreover, the requested information was not available to arrive at correct/transaction value"*

7. The above reasoning given by Respondent No.2 for discarding the transaction value method is ill-founded as regards the record of the case and pricing mechanism is concerned. Indeed, the data provided by the Appellant, which is annexed to the subject appeal, shows a complete trail of the transaction effected between the importer and supplier including the proof of payment. Under the concept of the transaction value as contained under Section 25(1) of the Customs Act, 1969, the price paid or payable for goods sold for export to Pakistan is the transaction value. What else should the Appellant provide to prove their transaction values has not been elaborated by Respondent No.2. This crucial aspect has also not been taken into consideration by Respondent No. 1 while passing the impugned Order.

8. In the absence of any logical basis and grounds, the impugned Order is declared to be deficient in evidence as well as non-speaking. Likewise, the impugned Valuation Ruling is a vague Ruling which does not conform to the necessary parameters as prescribed by the Hon'ble Sindh High Court in Sadia Jabbar (PTCL 2014 CL 537) case. It further does not give any conclusive basis for discarding the transaction values as mandated by the Hon'ble Supreme Court of Pakistan in the case of Zymotic Diagnostic International (2007 PTD 2623).

9. The DR did not submit any market survey report which could disclose how and where these prices were obtained. No origin wise market survey was available on record. There was also no price list or cash memos/bills available to justify this abrupt /arbitrary variation. On the other hand appellant has provided evidence of sale of imported goods in local market which is on lower value; in proportion to the actual transaction value.

10. In view of the above deliberations, we are of the considered view that impugned Valuation Rulings, as well as the impugned Order-in-Revisions, are inconsistent with the explicit provisions of Section-25 and 25A of the Customs Act. 1969. Therefore, we hereby order that the transaction value(s) for the goods imported by the appellant are accepted as customs value under section 25(1) of the Customs Act, 1969 as the Directorate General has not provided any credible evidence that the import value(s) declared by the appellant did not represent transaction value. The Valuation Ruling Nos.1700/2022, 1701/2022 and STER 1702/2022 dated 07-12-2022 and Order-in-Revision Nos. 17/2023, 18/2023 and 19/2023 all dated 30.3.2023 are hereby set aside being unlawful without any substance to the extent of present appellants.”

3. Before proceeding further on the merits of the case, we may observe that though there are three different Valuation Rulings as well as Orders-in-Revisions under consideration against which numerous individual Respondents had preferred Appeals, whereas, the Tribunal has decided all of them through common orders, therefore, ordinarily on this ground alone the matters ought to have been remanded to the Tribunal given the dicta laid down in the case of Pakistan Telephone Cables<sup>1</sup>. However, on perusal of the Valuation Rulings as well as Orders-in-Revision, it transpires that they are verbatim the same; hence, in the present facts and circumstances, we are not inclined to remand the matters and have instead examined the impugned orders on merits.

4. From the perusal of the above findings of the Tribunal and the material available on record, the first and foremost question

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<sup>1</sup> Pakistan Telephone Cables Limited v Federation of Pakistan (2011 PTD 2849)

(which is also Question No.1 as above) which needs to be addressed is that whether Director Valuation had followed and exhausted the sequential method(s) of assessment under Section 25 of the Act, while determining values of the goods in question under Section 25(7) read with Section 25(9) of the Act. This is necessary as the Tribunal in the impugned orders has laid much emphasis on this legal proposition and has come to the conclusion that the sequential methods were not followed. Insofar as the determination of values after exhausting the primary method(s), as provided under Section 25(1), (5) & (6) *ibid* is concerned, it appears that reasonable justification was provided while the determining the values under Section 25(7) read with Section 25(9) of the Act as the values could not be determined under Section 25(1), (5) & (6) of the Act. Para 5 of Valuation Ruling No.1700 of 2022, which is identical in the remaining Rulings, deals with it and reads as under;

**“5. Method(s) adopted to determine Customs Value:** Valuation methods specified in Section 25 of the Customs Act, 1969, were duly applied in sequential order to arrive at the Customs values of subject goods. The transaction value method as provided in sub-Section (1) of Section 25 of the Customs Act, 1969, was found inapplicable due to wide variation of values in import data. Moreover, the requisite information under law was not available to arrive at correct/transaction value. Therefore, identical/similar goods value methods provided in Section 25(5)(6) *ibid* were examined for applicability to determine Customs values of subject goods. The data provided some references, however, it was found that the same could not be solely relied upon due to absence of absolute demonstrable evidence of quantities and qualities, variation in declaration and specifications. Information available was, hence, found incomplete. In line with statutory sequential order of Section 25 of the Customs Act, 1969. This Directorate conducted market survey under sub-Section (7), read with Section 25(9), of Section 25 of the Customs Act, 1969. Various Wholesale and Retail Markets were visited to observe the actual prices of Tyres and Tubes. On the basis of available data / information collected and exercise conducted the values of Tyres and Tubes have been determined under sub-Section (7), read with Section 25(9), of Section 25 of the Customs Act, 1969.”

It has been stated in the Valuation Ruling(s) that the valuation methods were duly applied in a sequential order and as to why the methods of Valuation provided in sub-section (1), (5) & (6) could not be applied. The finding of the Tribunal in this regard is flawed and based on no appreciable material on record, nor it gives any reasoning as to why such observation and reasoning is to be discarded. Therefore, the question to this effect is answered accordingly.

5. The second and more important issue arising out of the proceedings in hand is that though the method of Valuation applied is Section 25(7) of the Act [Deductive Value or Work Back Method]; however, at the same time, it has been applied as read with Section 25(9) *ibid* [Fall Back Method]. This does not appear to be lawful as both the assessment methods are independent and cannot be invoked simultaneously. Sub-section (7) of Section 25 deals with Deductive Value Method and provides that if the value of the imported goods cannot be determined under the preceding sub-sections [(1), (5) & (6)], then it shall, subject to Rules be determined based on the method and process provided thereunder, which is primarily dependent on the selling price of the same imported goods. The details and as to how such values are to be determined are not a question in dispute; hence, no further deliberations are required. Similarly, sub-section (9) of Section 25 *ibid* deals with Fall Back Method and this method provides that the values of the imported goods shall, subject to the Rules, be determined using reasonable means based on a value derived from among the methods of valuation set out in sub-section (1), (5), (6), (7) and (8), in that, when applied in a flexible manner to the extent necessary to arrive at a customs value. Therefore, while determining values under Sub-Section (9) of Section 25 of the Act [Fall Back Method], the values determined under Sub-Section (7) [Deductive Value] can be applied and looked into as provided under the Act and the Rules; however, this is impermissible



vice-versa as has been done in the impugned Ruling(s), whereby, the Values are stated to have been determined under Sub-Section (7) read with Sub-Section (9) of Section 25 of the Act. Applicability of Sub-Section (7) is provided as an independent method and as to how the value will be arrived at using the Deductive Value Method. It does not require, or for that matter mandates, that any other valuation method be included or taken assistance from, while determining the values under this method. This approach is completely alien to the method of Valuation provided in Section 25 of the Act; hence, it cannot be sustained. Therefore, the mode and manner by way of which the values have been determined by the Director Valuation, being contrary to law cannot be approved.

6. Insofar as the very determination of values under Section 25(7) of the Act, and its validity is concerned, the Tribunal has given a finding of fact that despite being confronted, the departmental representative could not submit any market survey or report, which could disclose as to how and from where prices were obtained for determination of values under the Deductive Value Method. It has been further observed that neither any price list of the local seller, nor cash memos or bills were made available to substantiate such determination of values. Lastly, the Tribunal has observed that instead, the respondents have provided sufficient evidence of local sales of the imported goods, which are on the lower side. In fact, even in this Reference Application, no such document has been annexed; nor is any supportive document otherwise available on record from the Applicants' side. It is further noted that in the impugned Valuation Rulings as well as Orders-in-Revision, no details of whatsoever nature as to the conduct of market enquiry and determination of values under the Deductive Value Method have been disclosed. A finding of fact has been recorded by the Tribunal, which in our Reference Jurisdiction cannot be interfered with ordinarily, and no exception has been

made out for any such interference; hence, to that effect that no substantiating material was brought on record to justify the determination of values under the Deductive Value Method; no case is made out to upset such finding. If there had been any substantial material on record, only then could we have examined the issue as to whether the conclusion drawn in the determination of such values was correct or not.

7. Having said that, at the same time, the finding of the Tribunal that the values declared by the Respondents cannot be discarded as they have provided complete data; hence same are directed to be accepted under Section 25(1) of the Act is concerned, we do not see any reason to sustain this as it is not supported by any material on record, nor is otherwise permissible in law. The jurisdiction being exercised by the Tribunal in hearing the Appeals in question emanates from Section 194-A(f) of the Act read with Section 194-B *ibid*. The same reads as under:

**[194A. Appeals to the Appellate Tribunal. - (1)** Any person [or an officer of Customs] aggrieved by any of the following orders may appeal to the Appellate Tribunal against such orders:-

[(a) Omitted.]

[(a) a decision or order passed by an officer of Customs not below the rank of Additional Collector under section 179.]

[ab) an order passed by the Collector (Appeals) under section 193;]

[(b) Omitted].

(c) an order passed under section 193, as it stood immediately before the appointed day;

(d) [an order passed under section 195 by the Board or an officer of Customs not below the rank of an Additional Collector;][\*\*\*]:

(e) [omitted]

**(f) [an order passed in revision by the Director-General Customs Valuation under section 25D, provided that such appeal shall be heard by a special bench consisting of one technical member and one judicial member.]**

[Omitted]

**194B. Orders of Appellate Tribunal. - (1)** The Appellate Tribunal may after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit **confirming, modifying or annulling** the decision or order appealed against. The Appellate Tribunal may record additional evidence

and decide the case but shall not remand the case for recording the additional evidence:

Provided that the appeal shall be decided within sixty days of filing the appeal or within such extended period as the Tribunal may, for reasons to be recorded in writing, fix:

Provided further that in cases, wherein the provisions of clause (s) of section 2 have been invoked, appeals shall be decided within a period of thirty days;]

Provided further that the Appellate Tribunal may stay recovery of the duty and Sales Tax on filing of appeal which order shall remain operative for thirty days and during which period a notice shall be issued to the respondent and after hearing the parties, order may be confirmed or varied as the Tribunal deems fit but stay order shall in no case remain operative for more than one hundred and eighty days.]

8. From a perusal of the above provision, it reflects that there are various orders passed under different provisions of the Act which can be impugned by way of an Appeal before the Tribunal, including but not limited to, orders passed under Section 179, 193 and 195 of the Act. Similarly, an order passed under Section 25D of the Act can also be appealed, as is the case in hand. At the same time, an assessment order passed under Section 80 of the Act can be impugned before the Collector of Customs (Appeals) under Section 193 of the Act, and such order of the Collector (Appeals) can be further challenged before the Tribunal under Section 194A(ab) of the Act. The order of assessment under Section 80 of the Act can be an order in respect of determination of value in terms of Section 25 of the Act; but at the same time, any order of such valuation assessment based on a Valuation Ruling issued under Section 25A *ibid* cannot be impugned before the Collector of Customs (Appeals) and even if it is impugned, the very assessment order cannot be altered or modified till such time the Valuation Ruling remains in the field. In exceptional cases, it can be impugned to a very limited extent as to the very applicability of the Valuation Ruling on the imported product. However, for an aggrieved person, it is required that the said Valuation Ruling be challenged as provided in law, and only

when such Ruling is affirmed, modified or even set-aside, the said assessment order can be altered or modified accordingly. This is because a valuation ruling is a statutory ruling that has the force of law. The Valuation Rulings issued under section 25A of the Act is a notified ruling, which is applicable and binding until revised or rescinded by the competent authority<sup>2</sup>. This is because once the Director General Valuation issues a Valuation Ruling, it has to be duly notified, as provided under the Customs General Orders, 2002. Subsection (2A) of section 25A categorically provides that where there is a conflict in the customs value, the Director General Valuation shall determine the applicable customs value<sup>3</sup>. Hence, section 25A of the Act itself provides for a dispute resolution mechanism where the Valuation Ruling for the purposes of assessed value is disputed<sup>4</sup>.

9. The jurisdiction being exercised by the Tribunal in the instant matter was in respect of Appeals against the orders passed by the Director General Customs (Valuation) under Section 25-D of the Act, which provides a Revision against a Valuation ruling issued in terms of Section 25A of the Act. The Tribunal's jurisdiction in these matters is confined to this extent only and is not in respect of any assessment orders passed by the lower forums under Section 80 of the Act. In fact, the assessments in these matters were never a subject issue as they were statutorily based on the values determined and made applicable by way of a Valuation Ruling issued under Section 25A *ibid*. The Valuation Rulings can be impugned further under Section 25D of the Act through a Revision and then a further Appeal as above. This difference in conferment of jurisdiction upon the Tribunal is pertinent and vital when dealing with Appeals under this provision of the Act. All Courts and

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<sup>2</sup> Collector of Customs v Wasim Radio Traders (2023 SCMR 1716)

<sup>3</sup> Collector of Customs v Wasim Radio Traders (2023 SCMR 1716)

<sup>4</sup> --do--

Tribunals constituted under the Constitution and the law, have only such jurisdiction that has been conferred upon them by the Constitution and the law<sup>5</sup>; and, no Court can exercise any jurisdiction in any matter before it unless such jurisdiction has been conferred to it by the Constitution or law<sup>6</sup>. Therefore, the Tribunal, while hearing Appeals under this provision of the Act, i.e. Section 194-A(f) *ibid*, cannot exercise any powers to make an assessment order accepting the declared values as transactional values under Section 25(1) of the Act. Once it is concluded that the Valuation Ruling issued under Section 25-A of the Act read with Order-in-Revision under Section 25-D of the Act cannot be sustained, it can only set-aside the Ruling; but cannot confer upon itself or assume any jurisdiction to exercise any powers under Section 25(1) of the Act and accept the declared values as transactional values. This is so because the Tribunal is not hearing an Appeal against an assessment order passed under Section 80 of the Act, but against an order passed under Section 25-D of the Act. The only course available in law for the Tribunal is to remand the matter to the concerned Collectorate for determination of values under Section 25 of the Act as at the time of assessment, the concerned Collectorate had never exercised such powers under Section 25 (*ibid*) and had instead applied the values notified by way of a Valuation Ruling under Section 25A of the Act being binding on the said Collectorate in the form of a Statutory Ruling. During the hearing, the Respondents' Counsel was confronted on this account and they candidly conceded and also placed reliance on judgment in the case of ***The Collector of Customs, Vs. A.R. Industries***<sup>7</sup>, authored by one of us (*Muhammad Junaid Ghaffar J.*) wherein, in somewhat similar facts, the Tribunal had come to the same conclusion, whereby, while setting aside the Valuation Ruling, declared

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<sup>5</sup> *Habib Bank Limited v Saqib Mahmood* [2021 PLC (CS) 1495]

<sup>6</sup> *Malik Iqbal Hassan v Defence Housing Authority* (PLD 2019 Lahore 145)

<sup>7</sup> 2023 PTD 1769

values of the importers were accepted as true transactional values under Section 25(1) (ibid). The relevant finding in that case is under: -

“8. Insofar as, the impugned order of the Tribunal is concerned, while setting aside the Valuation Ruling and the Order in Revision, the declared values of the Respondents have been accepted as Transactional Values in terms of Section 25(1) of the Act. The impugned order of the Tribunal is silent except the use of words (“*The appellants have demonstrated that Transaction Values for import of different types of Polyester Fabrics from China are correct*”). We are completely at a loss to understand, as to how and in what manner, these values of various Respondents were accepted as Transactional Values under Section 25(1) of the Act when there is no discussion about such Transactional Values and supporting documents which each individual Respondent may have placed before the forums below including the Tribunal. This finding of the Tribunal cannot be sustained in the facts and circumstances of the case in hand.

9. In view of hereinabove facts and circumstances of this case, it appears that the questions on which these References were admitted for regular hearing need to be rephrased as under;

- (i) “*whether in the facts and circumstances of the case the Tribunal was justified in holding that the values of the goods in question were determined directly under section 25(9) of the Customs Act, 1969 (Fall Back Method) through Valuation Ruling No.1449 of 2020 dated 4.06.2020 without following the sequential methods as provided under Section 25 ibid?*”
- (ii) “*whether in the facts and circumstances of the case the impugned determination of values through Valuation Ruling No. 1449 of 2020 dated 4.06.2020 was in accordance with the provisions of section 25(9) of the Customs Act, 1969 (Fall Back Method) read with Rule 120 of the Customs Rules 2001?*”

10. Question No.1 is answered in **negative**; in favour of the Applicant Department and against the Respondents, whereas, Question No.2 is also answered in **negative**; against the Applicant and in favour of the Respondents; however, to this extent the matter stands remanded to the Director of Valuation for redetermination of values of the goods in question to the extent of the present Respondents afresh in accordance with law. All these Reference Applications are partly allowed in the above terms by setting aside orders of the Tribunal to this extent along with the Valuation Ruling and the Order in Revision to the above extent.”

10. Similarly, in the case of ***The Director Customs Valuation v Bilal Brothers***<sup>8</sup> an identical issue came up once again before this Court, and one of (*Muhammad Junaid Ghaffar J.*) was also a member of the bench, which held as under:

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<sup>8</sup> Order dated 08.03.2021 in Special Custom Reference No.223 of 2020 & others against which leave to Appeal stands refused in CP No.3018-K/2021 dated 3.3.2022

6....."It further reflects that the Tribunal after reproducing the provisions of law as well as the discussion thereof, has finally set-aside the impugned Valuation Ruling and the Order-in-Revision without either remanding the matter to the department; or in the alternative determining the values on its own. If the Ruling issued under s.25A of the Act is set-aside, then apparently the assessment of the goods has to be made under Section 25 *ibid*, as it is only these two provisions under which any imported goods can be assessed by the concerned department. The department had assessed the goods pursuant to a Valuation Ruling (issued under s.25A of the Act) in field; consequently, could not have resorted to s.25 *ibid* for assessment of the goods in question. After setting aside of the impugned Valuation Ruling such opportunity for passing an assessment order in terms of s.25 of the Act has not been provided to the Applicant department. Alternatively, after setting aside it, the Tribunal on its own could have determined the values if it was not convinced to remand the matter. In the absence of any of these two steps, it would amount to accepting the Transactional value of the Respondents in a vacuum. And even for that a proper exercise of carrying out an assessment in terms of s.25 of the Act is mandatory and it is only then, if at all, the Transactional Value of the Respondents could be accepted. There isn't any concept of an implied acceptance of the same in terms of s.25(1) of the Act as argued by the learned Counsel for Respondents. In fact, this argument is by itself contradictory in absence of a specific remand order for making assessment in terms of s.25 of the Act, after setting-aside of the impugned Valuation Ruling issued under s.25A of the Act. There cannot be a vacuum in the assessment proceedings inasmuch as on the one hand, the Valuation Ruling issued under Section 25A of the Act has been set-aside and on the other, the opportunity to make assessment in terms of Section 25 has also been denied. It cannot co-exist; as it would lead to absurdity.

11. In view of hereinabove facts and circumstances, the impugned judgment of the Tribunal cannot be sustained in its entirety and the matter has to be remanded to the concerned Collectorate for passing of appropriate assessment orders under Section 25 of the Act. The questions proposed on behalf of the Applicant Department need to be rephrased in the following manner: -

- i. ***Whether in the facts and circumstances of the case, the Tribunal was justified in holding that Director Valuation had failed to follow the sequential methods of Valuation under Section 25 of the Act while determining values of the goods in question under Section 25(7) read with Section 25(9) of the Act?***
- ii. ***Whether in the facts and circumstances of the case, the exercise carried out by the Director Valuation while determining the values under Section 25(7) read with Section 25(9) of the Act was in accordance with law?***

*iii Whether in the facts and circumstances of the case, the Tribunal was justified in accepting the declared values of the Respondents as true Transactional values under Section 25(1) of the Act?*

12. Questions Nos.1 & 3 as above are answered in **negative**; in favour of the Applicant, and against the Respondents, whereas, Question No.2 is also answered in **negative**; against the Applicant and in favor of the Respondents. All Reference Applications are **partly allowed / disposed** of to the extent of Questions Nos.1 & 3, and all matters stand remanded as above to the concerned Collectorates. Let a copy of this order be sent to the Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of the Customs Act, 1969. Office to place a copy of this order in the connected Reference Applications.

**Dated: 04.07.2024**

**JUDGE**

**JUDGE**

Ayaz P.S.