

[Customs Appellate Tribunal Bench-I, Karachi]

*Before Adnan Ahmed Member (Judicial-II) and
Ghulam Ahmed Member (Technical-II)*

Messrs SHAHID IMPEX, KARACHI

versus

DIRECTOR GENERAL, KARACHI

Customs Appeal No.K-695 of 2013, decided on 2nd December, 2013.

Nadeem Ahmed Mirza for Appellant.

Afaq Ahmed for Respondent.

Date of hearing: 23rd October, 2013.

ORDER

GHULAM AHMED, MEMBER (TECHNICAL-II).---By this order, we dispose of Customs Appeal No. K-695/2013 filed by the appellant against Order-in-Review No. 327 dated 29-5-2013 passed by respondent, wherein he rejected the review and maintained Valuation Ruling No. 520/2012 dated 28-12-2012.

2. The Director, Directorate General of Valuation issued Valuation Ruling No. 520/2012 dated 28-12-2012 under the provision of section 25A(1) of the Customs Act, 1969, fixing value of Menthol Crystal of China, India and other origin were fixed for US\$. 30.38, 25 and 31.78 respectively under section 25(5) and (6) *ibid*. The appellant being aggrieved by the said Valuation Ruling filed review application bearing No. DG(V)/Val.Rev/953/2013 dated 28-1-2013 under section 25D of the Customs Act, 1969 before the respondent, through which the determination of value of Menthol Crystal of China origin was disputed and the respondent was prayed to declare the said ruling as contrary to the provision of section 25(5) and (6) of the Customs Act, 1969, Notification No. 659(I)/2007 dated 30-6-2007, Section 46(d)(g) of the Sales Tax Act, 1990 and section 148(6)&(9) of the Income Tax Ordinance, 2001. The respondent disagreed with the contention of the appellant and passed order in Review dated 29-5-2013, through which review application was rejected on the basis of formed opinion in paras 3 and 4 reading as:--

I have gone through record of the case and heard learned

Counsel of the applicant. The applicant was asked vide office letter of even number dated 20-2-2013 to furnish import related documents enabling this office to ascertain truth and accuracy of transaction value of the applicant goods in the light of section 25(1) of the Customs Act, 1969. The applicant namely Messrs Shahid Impex furnished some documents with his review application which mostly pertain to another importer namely Zain Enterprises, Karachi and are thus not legally relevant to establish truth and accuracy of transaction value of the applicant. The transaction value has been defined under section 25(1) *ibid* as the price actually paid or payable for the goods when sold for export to Pakistan. In this case the aggrieved person is Messrs Shahid Impex, so it is his responsibility to substantiate his own transaction value rather than presenting documents of one another importer to substantiate his claim. The applicant was also asked by this office to furnish relevant correspondence with exporter, proforma, invoice copy of L/C, copy of sale contract with supplies etc. with the aim to properly scrutinize those documents and investigate correctness of transaction value of the applicant. An invoice No. FC-120903 dated October 22, 2012 in the name of Messrs Shaid Impex, has been presented as the only evidence of import transaction. Scrutiny of the said invoice reveals multiple improprieties like (a) the address of the supplier is not given (b) it does not bear serial number (c) it has been signed for and on behalf of supplier without giving name and designation of the signing authority (d) mode of packing and payment has not been indicated being vague and evasive and not supported by relevant import documents, this invoice cannot be treated as a valid and legally maintainable piece of evidence.

As mentioned above, the transaction value has been defined under section 25(1) of the Customs Act, 1969, as the price actually paid or payable for the goods when sold for export to Pakistan. As per Article 17 of the WTO Valuation Agreement read with section 25 of the Customs Act, 1969, the customs administration has got a right to satisfy themselves as to the truth or accuracy of any statement, documents or declaration presented for customs valuation purpose. Thus the act of non furnishing of import documents on the part of applicant is a failure to discharge onus under the law. In the absence of import related evidence like invoice, proforma invoice, copy of contract, L.C, the bona fide of the applicant cannot be ascertained. Likewise the truth and accuracy of transaction value claimed by the applicant cannot be verified in a vacuum. Non submission of requisite import documents also manifestly prove

that the applicant has not come to this forum with clean hands. The Director Customs Valuation had determined customs value in the impugned Valuation Ruling on the basis of C&F value of identical/similar goods in the import database which enabled him to determine customs value under section 25(5)(6) *ibid.* the clearance data further reveals that after issuance of impugned Valuation Ruling other importer have accepted the customs value so determined as fair and just and have paid dutv/taxes accordingly.

In view of aforesaid legal infirmities and factual discrepancies, the review application merits no consideration and is accordingly rejected."

5. The appellant has now challenged the above order by way of this appeal. Mr. Nadeem Ahmed Mirza Consultant, appeared on behalf of the appellant who reiterated the arguments incorporated in the memo. of appeal and he emphasis on the grounds of appeal and stated *inter alia*:-

- (i) To proceed with it is imperative for the appellant to first argue in regards to para 3 of the Ruling, which states that all the stake holders were called for meeting, this submission is totally misconceived, instead no body was called and the said fact stood verified from the fact that applicant being the main importer was not called upon and no notice whatsoever was served on him within the expression of section 215 of the Customs Act, 1969. Resultant, the Valuation ruling so issued has no legal standing as it has been issued while condemning the appellant unheard as against the well known maxim "**audi alterm partem**" and the law laid down by the Superior Court of Pakistan in umpteenth reported judgment e.g. 2005 PTD 152 Ch. Muhammad Hussain and others v. Commissioner of Income Tax.
- (ii) That since no duty is levied on import of the appellant goods under Serial No. 920 of Notification No. S.R.O. 659(I)/2007 dated 30-6-2007. No determination of value is desired under the provision of section 25A(1) of the Customs Act, 1969, hence determination of value of the appellant product is of no legal effect and so the valuation ruling issued by the Director, Directorate General of Valuation.
- (a) That the Director, Directorate General of Valuation is not designated as "officer of Inland Revenue under the provision of Sales Tax, 1990 or Income Tax Ordinance, 2001, resultant, he is not empowered to determine the value for levy of Sales Tax and Income Tax at import stage under the provision of section 25A(1) of the Customs Act, 1969. The competent authority to determine

the value for the levy of Sales Tax and Income Tax is the officer of Inland Revenue under clause (d) of section 46 of the Sales Tax Act, 1990, which specifically state that for levy of sales tax the value has to be determined under section 25 of the Customs Act, 1969 under the provision of section 148 of the Income Tax Ordinance, 2001. By laying hand on the domain of the officer of Inland Revenue the Director, Directorate General of Valuation usurp the power not vested with him, rendering the Valuation Ruling 520/2012 dated 28-12-2012 without power/jurisdiction, rendering it ab initio, void, hence coram non iudice as held in reported judgments Major Syed Walayat Shah v. Muzaffar Khan and 2 others (PLD 1971 SC 184), Omer & Company v. Controller of Customs, (Valuation): (1992 ALD 449 (1) Karachi AAA Steel Mills Ltd. v. Collector of Sales Tax and Central Excise Collectorate of Sales Tax (2004 PTD 624), PLD 2004 Supreme Court 600 All Pakistan Newspaper Society and others v. FOP, PLD 2005 Supreme Court 842 Khyber Tractor (Pvt.) Ltd. v. FOP, PLD 1976 Supreme Court 514 Ali Muhammad v. Hussain Buksh and others and PLD 2001 Supreme Court 514 Land Acquisition Collector, Noshehra and others v. Sarfraz Khan and others, 2006 PTD 2237, Pak Suzuki Motors Company Ltd., Karachi v. Collector of Customs, Karachi, 2009 PTD (Trib.) 1996 and 2010 PTD (Trib.) 832.

- (iii) That irrespective of the referred gross illegalities, the appellant take the privilege to state in regards to the observation of the respondent that the appellant has submitted import related documents like proforma invoice, L/C, commercial invoice, bill of lading etc. of Messrs Zain Enterprises, Karachi, those were annexed inadvertently by the appellant due to the fact that the said company is also their sister concern and under the said name he also imports the products in question. Notwithstanding, the said objection was not even communicated by the respondent office as evident from letter dated 20-2-2013. Even not at the time of hearing conducted on 28-2-2013 by the respondent himself, enabling the appellant to submit the relevant documents. Resultant, rejection of review application on the basis of said opinion is without any substance and of no legal effect. The appellant annex the respective documents of his import for the perusal of the Hon'ble Tribunal.
- (iv) It is appropriate to state that when the appellant in the column of (financial information) of the GD transmitted clearly that the import is against firm contract, its number and date and during the course of examination invoices were found as per Rule 389 of the Customs Rules, 2001 of the same amount, for which

declaration were made, he discharged the burden laid upon him under section 25(1) of the Customs Act, 1969 and under Rule 109 of the Customs Rules, 2001. That for disputing the said value for application of Valuation Ruling, it was mandated upon the respondent to transmit view messages under Sub-Rule (1) of Rule 109 of Chapter IX and 437 of Sub-Chapter III of Chapter XXI of Customs Rules, 2001 to the appellant for transmitting/scanning additional documents. On the contrary no such exercise was under taken either by the respondent or by the Officers of the respective Collectorate. No notice in this regard is available with the respondent, as evident from the exhibits, which includes remittance of the import value through proper banking channel.

- (v) That despite, shifting burden of proof on the respondent. No decision was also communicated with grounds as enunciated in sub-rule (3) of Rule 109 of Customs Rule, 2001 by the respondent prior to determining value of the goods in question for levy of duty and taxes under section 25-A(1) of the Customs Act, 1969. Confirming that no cause or reason was available with the respondent for disputing the declared value and the said fact further stood proved from the fact that no evidential invoice as directed by FBR in para 78 of CGO 12/2002 of the period expressed in Rule 107(a) was supplied to the appellant. The respondent has stated erroneously that transaction value method provided in section 25(1) was found in applicable because sufficient information with respect to adjustment to be made to the transaction value in terms of section 25(2) was not available, this is totally absurd opinion as the same is not supported by any tangible evidence or the provision of law. Resultant, he miserably failed to discharge the onus of establishing that the price declared by the applicant of his imported goods are not the transaction value within the meaning of section 25(1) of the Customs Act, 1969 instead his consignment should be assessed with the application of determined value through the Valuation Ruling because this is not the correct approach instead based on inapt interpretation of section 25 of the Customs Act, 1969. The same view has been taken by the Honb'le Supreme Court of Pakistan and High Courts and Tribunal in judgments reported Customs Appeal No. K-249/2000/13372, Customs Appeal No. K-35//2002, Customs Appeal No. K-1670/2001, 2005 PTD (Trib.) 617, 1668/LB and 1669/LB of 2002, Customs Appeal No. K-1281/05, 1986 MLD 790 Karachi, PLD 1996 Karachi 68, 2006 PTD 909, 2002 PTD 2957, 2007 SCMR 1357 = 2007 PTD 1858, 2008 SCMR 438, 1992 SCMR 1083, 2008 PTD 1250 and 2008 SCMR 438".

- (vi) That in support of his stance, it is appropriate for the appellant to add further that the provision of section 25 of the Customs Act, 1969 are to be followed in sequential manner barring certain exceptional cases where massive group under invoices is rampant. However, resort to subsequent method is not permissible without exhausting the sequence indicated in section 25 as it would annihilate and terminate the spirit and essence of the transaction value which in the first instance has to be established as colorable and tainted. Section 25(13)(a) does not give unbridled and un fettered authority to customs administrations to play havoc with the provision of section 25 *ibid.*, thereby making them in-effective and redundant. Discretion has to be exercised within limits based on reason, rationale and fair play. It is specifically provided by the legislature in subsection (10) of section 25 that subsections (1) (5)(6)(7)(8)(9) define how the customs value of the imported goods is to be determined by the customs. The method of custom valuation are normally required to be applied in a sequential order except reversal of the order of subsections (7) (8) at the importers, request, if so agreed by the Collector of Customs as held in judgments 2008 PTD 1494 *Messrs Toyo International Motorcycle v. Federation of Pakistan and 3 others*, C.P. No. 2673 of 2009 of *Sadia Traders v. FOP* the Hon'ble High Court of Sindh, W.P. No. 756/2010 *Messrs Facu Trading and 45 others v. Member Customs, FBR etc.*
- (vii) Notwithstanding, the Director, Directorate General of Valuation has determined the prices of "menthol crystals" under subsection (6) of section 25 of the Customs Act, 1969 i.e. "similar goods transaction value". But while doing so he lost sight of Rules 117 and 118 of Customs Rules, 2001. The subsection (6) of section 25 of the Customs Act, 1969 has to be read in conjunction of section 25(5) and Rule 117 *ibid.* The clause (d) of the said section states that if two or more transaction value of the identical goods are available in the data of import of 90 days maintained by the PRAL in terms of Rule 110 of the period expressed in Rule 107(a) of the Customs Rules, 2001. The lowest value has to be applied for determining the value of the identical/similar goods under dispute. Instead the determined value through the instant ruling is not based on the proposition of law i.e. "lowest import value", which is US\$. 20.00/kg instead "highest assessed value as against import value" which is not permissible, rendering the Valuation Ruling and order-in-review nullity to the provision of section 25(6) of the Customs Act, 1969, instead "arbitrary or

fictitious value prohibited under sub-rule (iii) of Rule 110 *ibid*", hence void and ab initio and not enforceable on the imports made on or after the date of issuance of ruling, specifically on the consignment of the appellant.

- (viii) The order passed by the respondent shows that it is not a proper order with the application of judicial mind and provision of the Act. Instead it is non speaking order and did not conform to the mandated requirement of section 24-A of the General Clauses Act, 1897 and this stood validated from the operative part of the order, instead of giving rebuttal on the grounds taken by the appellant in review application and judgment of the Superior Judicial Fora. This shows that the order passed is not on judicious consideration instead on personal and biased opinion, rendering it illegal void and arbitrarily and a result of misused of authority vested in him. No room was available for such illegal, void and arbitrarily orders in any system of law. If any authority Court or Tribunal gave a finding of fact which was not based on material available on record was illegal arbitrarily without discussing and considering the material available on record it became perverse and a perverse finding of fact which is violative of the established principle of appreciation of evidence on record was not sustainable in law. The principle that every judicial or quasi-judicial finding should be based on reasons containing the justification for the finding in the order itself is an established principle of dispensation of justice. The order-in-review is being violation of basic principle of the goods governance and mandatory requirement of section 24A of the General Clauses Act, is not only illegal and void but also not sustainable under law. The said position is also fortified by the judgments of Superior Courts reported as 2005 YLR 1019, 2007 PTD 2500, 2004 PTD 1973, 2005 YLR 1719, 2003 PTD 777, 2003 PTD (Trib) 2369, 2002 MLD 357, 1983 CLC 2882, 2005 PTD 2519, 2005 PTD 1189, 2003 PTD 2369, PLD 1995 SC (Pak) 272, PLD 1970 SC 158, PLD 1970 SC 173, 1984 SCMR 1014 and 2012 PTD (Trib) 619.

- (ix) The appellant carves his right to add any fresh grounds at the time of hearing beside placing any valid incriminating evidence/ documents.

4. The Assistant Director of the respondent Directorate submitted comments on the memo. of appeal and Mr. Afaq Ahmed Principal Appraiser argued in accordance with those with the submission that:--

- (a) Section 25A of the Customs Act, 1969, enables to determine the

customs value (1) notwithstanding the provision contained in section 25, the Collector of customs on his own motions, or the director of customs Valuation [on his own motion or] on a reference made to him by any person [or an officer of customs] may determine the customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in section 25, whichever is applicable.

- (b) Further, subsection (2) reveals that "the customs values determined under subsection (1) shall be the applicable customs value for assessment of the relevant imported or exported goods." There is no restriction to determine the customs values of those items which have (1% rate of customs duty. As per Pakistan customs Tariff, the customs duty, sales tax, income tax or any other duties/taxes are being calculated by the customs authorities on the basis of customs values. This shows that the assessment is not only made for customs duty purposes but it is also done for the purpose of sales Tax, Income Tax etc. Moreover, the subject Valuation ruling was issued to control the under invoicing and no application was received from any one about with-drawl of valuation ruling.
- (c) That the Valuation Ruling No. 520/2012 dated 28-12-2012, was issued after associating relevant stakeholders/ importers for their valued input and fair determination of customs value.
- (d) That all valuation methods as laid down in the Customs Act, 1969, were properly examined in accordance with law and duly exhausted, during exercise of determining the customs values. Finally, the customs values were determined under sections 25(5) and 25(6) of the Customs Act, 1969, on the basis of identical/similar goods valuation method and valid evidence.
- (e) That the determined value is being applied on all relevant imports and other importers of the subject goods i.e. Menthol Crystal have been accepting release of their consignments of under reference goods as per Valuation Ruling No. 520/2012 dated 28-12-2012. Moreover, the declared values of many importers were on higher side than the customs values determined in the existing ruling.

5. Rival parties heard and case records perused. Prior to dilating upon the validity of the order-in-review and the valuation ruling, we take the issue of issuance of valuation ruling for the goods imported from China under the regime of FTA, in accordance which the duty is zero percent and as to whether the Director, Directorate General of Valuation is empowered to determine value of the imported goods for levy of Sales

Tax and Income Tax under the provision of section 25A(1) of the Customs Act, 1969 in the presence of clauses (d)&(g) of section 46 of Sales Tax Act, 1990 and section 148(6)&(9) of the Income Tax Ordinance, 2001.

6. The Menthol Crystal imported from China is subject to Preferential Trade Agreement (PTA's/FTA's) and the applicable Serial No.920 of Notification No. S.R.O. 659(I)/2007 dated 30-6-2007 confirms that no duty is payable w.e.f. 1-1-2012. Resultantly, the plea taken by the respondent that the Director, Directorate General of Valuation is empowered to fix the value through valuation ruling of the imported goods in exercise of the power conferred under section 25A(1) is without any substance as the same is tantamount to exercise in futility beside in derogation of the provision of sections 18, 19 and 25A(1) and the notification.

7. That as regard the fixation of value for collection of sales tax and income tax under the provision of sections 6 and 148 of the Sales Tax Act, 1990 and Income Tax Ordinance, 2001, the value of the imported goods has to be determined by the clearance Collectorate under section 25 of the Customs Act, 1969 as expressed in section 46(d) of the Sales Tax Act, 1990 and subsection (6) of section 148 of the Income Tax Ordinance, 2001 by the Authorities expressed in subsection (9) *ibid* i.e. Collector of Customs, Additional Collector of Customs, Deputy Collector of Customs, Assistant Collector of Customs, or an officer of customs appointed under section 3 *ibid*. Notwithstanding, in case, the Board is desirous of determining the value of the imported goods, for levy of Sales Tax, it issues a notification in terms of 1st proviso of subsection (g) of section 46 of the Sales Tax Act, 1990 which is reproduced for the ease of reference:--

"Provided that, where the Board deems it necessary, it may by notification in the Official Gazette fix the value of any imported goods or taxable supplies or class of supplies and for that purpose fix different values for different classes or description of such type of imported goods or supplies."

8. That in terms of above proviso, the Director, Directorate General Valuation is not empowered to fix the value of imported goods through valuation ruling in exercise of power vested under section 25A(1) of the Customs Act, 1969. It is for the Board to issue a notification, similarly, determination of value for levy/collection of Income Tax at import stage, the Director, Directorate General of Valuation is not empowered as evident from the expression of subsection (9) of section 148 of the Income Tax Ordinance, 2001, rendering the determination of value for levy of Sales Tax and Income Tax under

the provision of section 25A(1) of the Customs Act, 1969 without power/jurisdiction, resultant, the plea of the respondent stood negated as the same is being in derogation of 1st proviso of subsection (g) of section 46 of the Sales Tax Act, 1990 and subsection (9) of section 148 of the Income Tax Ordinance, 2001.

9. The assuming of jurisdiction is of great importance and power has to be exercised within the allotted sphere, acting contrary to that is incurable rather fatal for the health of the case and this has been countless time held by the Hon'ble Supreme Court of Pakistan that in case of assuming wrong jurisdiction, the structure built thereon ought to crumble down, reference is placed on the reported judgment 2001 SCMR 1822 Ali Muhammad v. Chief Settlement Commissioner, wherein the Hon'ble Chief Justice of Pakistan Mr. Iftikhar Muhammad Choudhry presiding a bench in the capacity of Judge of Supreme Court held that :-

"whenever orders are passed by an officer without caring whether jurisdiction vests in him or not, it prima facie reflects on his conduct as well as competency. It is also to be noted that whenever authority is exercise in such a manner then no other inference can be drawn except that the functionary has transgressed his jurisdiction for the consideration other than judicial one and the Courts seized with such orders may recommend any action against the said officer because neither the executive authorities nor judicial forum will pass a wrong order because the jurisdiction in both the capacities is conferred upon such authorities to discharge their function in accordance with law which has bestowed upon them to function in that capacity and if there is abuse of power by such officer then no hesitation should be felt in passing stringent stricture against officer keeping in view of norms of justice."

10. Their lordships also held in reported judgment PLD 2004 Supreme Court 600 All Pakistan Newspaper Society and others v. FOP and others that "determination of jurisdiction by Court seized with the matters is one of the important element in administration of justice as if justice has been provided basing upon corum non judice order then same would have no legal sanction behind." And in PLD 2005 Supreme Court 842 Khyber Tractor (Pvt.) Ltd. v. Pakistan Through Ministry of Finance, Revenue and Economic Affairs that "question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum having no jurisdiction, even if it is found to be correct on merit is not sustainable. Jurisdiction of a Court lays down a foundation stone for a judicial or a quasi judicial functionary to exercise its power/authority and no sooner the

question of jurisdiction is determined in negative the whole edifice built on such defective proceeding, is bound to crumble down." In accordance with the settled ratio by the Hon'ble Supreme Court of Pakistan we hold that the determination of value for levy/collection of Sales Tax and Income Tax at import stage by the Director, Directorate General of Valuation is coram non iudice, hence ab-initio, null and void and of no legal effect.

11. The provisions of section 25 of the Customs Act, 1969 are to be followed in sequential manner barring certain exceptional cases where massive group under invoices is rampant. However, resort to subsequent method is not permissible without exhausting the sequence indicated in section 25 as it would annihilate and terminate the spirit and essence of the transaction value which in the first instance has to be established as colorable and tainted. The mere insertion of word "may" or "may not" in place of "are required to" in subsection (15) of section 25 of the Customs Act, 1969 through Finance Ordinance, 2007 does not give a free heard to customs administrations to moreover the provision of section 25 *ibid*, and thereby making them in-effective and redundant. Discretion has to be exercised judicially based on reason, rationale and fairplay. It is specifically provided by the legislature in subsection (10) of section 25 that subsections (1) (5) (6)(7)(8)(9) define how the customs value of the imported goods is to be determined by the customs. The methods of custom valuation are normally required to be applied in a sequential order except reversal of the order of subsections (7) (8) at the importer's, request, if so agreed by the Collector of Customs. This aspect has been examined countless times by the Superior Judicial Fora and held that the Provision of section 25 of the Customs Act, 1969 has to be followed in sequential manner without any exception, reference is placed to reported/unreported judgments listed below:--

- (i) 2006 PTD 909 Rehan Omer v. Collector of Customs Karachi,
- (ii) 2008 PTD 1494 Messrs Toyo International Motorcycle v. Federation of Pakistan and 3 others,
- (iii) 2008 PTD 1250 Najam Impex Lhr v. Assistant Collector of Customs, Karachi and others,
- (iv) Order in Constitutional Petition No. 2673 of 2009 Sadia Jabar v. Directorate General of Valuation, Karachi and
- (v) 2013 PTD 825 Faco Trading Company v. Members Custom, Federal Board of Revenue and others.

In the cited judgment the question under consideration was as to how the section 25 of the Customs Act, 1969 is to be applied by the Director General of Valuation for determining the value of the imported and

exported goods for issuance of ruling under section 25-A(1) of the Customs Act, 1969.

12. The established principle of interpretation of the tax law is that the plain language of the law is to be applied. A bare perusal of section 25 shows that it is specifically provided in subsection (1) of section 25 that the customs value of the imported goods, subject to the provisions of this section and Rules shall be the transaction value i.e. the price actually paid or payable for the goods when sold for export to Pakistan. The detailed guidelines in this behalf are given in subsections (1), (2), (3), (4) and Rules 107 to 116 of Chapter IX of Customs Rules 2001. The provisions contained in sections 25(1) to (4) and Rules 107 to 116 of Chapter IX of Customs Rules, 2001 contain primary methods of valuation and in the first instance the primary method of valuation is required to be adopted in each case of the valuation of the imported consignment which is mandatory. Thus, it is very important requirement of law that before resorting to the method provided in subsection (5) the customs officials shall make an exercise in accordance with the provisions contained in subsections (1) to (4) of section 25 and if thereafter they find that the customs value of the imported goods cannot be determined under the provisions of subsection (1) they shall resort to the method provided in subsection (5) and not otherwise. It shall be an exercise duly reflecting on the record so that the appellate forums may examine whether the mandatory requirement of law has been carried out or not. We are fortified in our views in this behalf with the provisions contained in sub-rule (3) of Rule 109 which provides that **"when a final decision is made, the appropriate officer shall communicate to the importer in writing his decision and the grounds therefore."** In addition to the specific provisions contained in subsection (10) of section 25 to the effect that the methods of customs valuation are required to be applied in a sequential order, we find that it is provided in subsection (6) that, if the customs value of the imported goods cannot be determined under the provisions of subsection (5) the method provided in subsection (7) shall be resorted to and similar provisions are contained in subsections (7), (8) and (9). For the said reason, it is held that different method of valuation provided in section 25 of the Customs Act, 1969 and Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to secondary method of valuation. In this case the evidences available of like contemporaneous imports on record and also produced by the appellant have been ignored, no visible exercise brought on record or communicated to the appellant and the fixed value arrived at by ignoring the sequential manner. Further, nothing is visible from the Ruling that as to whether the exercise was carried on as per the provision of the Act/Rules prior to

issuance of impugned Valuation ruling rendering the ruling issued arbitrarily/unilaterally under prohibited method enunciated in Rule 110 of Customs Rules, 2001.

13. The identical transaction value for determining assessable value in terms of subsection (5) of section 25 and Rule 117 advocates that if the custom value of the imported goods cannot be determined under section 25(1) it shall be subject to Rules be determined on the basis of customs value of the identical goods, while relying upon unit price of the identical goods in a sale at the same commercial level and substantially the same quantity as the goods have been valued shall be used to determine the customs value of the goods. However, where no sale is found in the record, the transaction value of identical sale at a different commercial and/are in different quantities, adjusted to take account of different attributable to commercial level and/are to quantity, shall be used, provided that such adjustment can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and the accuracy of the adjustment whether the adjustment lead to an increase or decrease in the value. And if the value cannot be determined under subsection (5), the determination of value has to be made under subsection (6) it shall be subject to Rule be determined on the basis of custom value of the imported goods of similar goods relying upon unit price at which such imported goods are also sold in the aggregate quantity at or about the time of importation of goods being valued to persons who are not related to person from whom they buy such goods subject to certain specified deductions.

14. That in respect of the imported goods to be so valued one relating to the quantity and the other relating to the period during which the impugned imported goods of identical or similar are sold in the maximum aggregate quantity. When value is fixed/determined under section 25(5) or (6) and Rules 117 and 118, the lowest value available in the data maintained under Rule 110 of Customs Rules, 2001 of the period expressed in Rule 107(a) *ibid* has to be applied adjusted as necessary in accordance with clauses (b) and (c) as per the expression of clause (d). The impugned Valuation Ruling has been issued by the Director, Directorate General of Valuation simultaneously on identical goods transaction value under subsection (5) of section 25 and similar goods transaction value under section (6) *ibid* being distinctive from each other. It seems the Director of Directorate General of Valuation was himself not clear, how the goods value has to be determined, he adopted both subsection at the same time and in negation of clause (d) of subsection 25(5) applicable *mutatis mutandi* on section 25(6), therefore the respective provision of section 25 and Rules embodied in Chapter IX of Customs Rules, 2001 has been patently flouted by him and the said illegality was also ignored by respondent, renders the valuation ruling

and the order-in-review contrary to the provisions of relevant sub-sections (5) and (6) and section 25 and Rules 107, 117 and 118 *ibid*.

15. On the basis of deliberation made in paras *supra*, we set aside the order-in review dated 29-5-2013 and simultaneously Valuation Ruling No. 520/2012 dated 28-12-2012 to the extent of value determined for menthol crystal of China origin and determination of value for levy of Sales Tax and Income Tax.

16. Order passed accordingly.
