

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Adnan-ul-Karim Memon

1.	Spl. Cus. Ref. A. 1355/2023	The Collector of Customs VS M/s JW SEZ (PVT.) LTD. Lahore
2.	Spl. Cus. Ref. A. 1356/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
3.	Spl. Cus. Ref. A. 1357/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
4.	Spl. Cus. Ref. A. 1358/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
5.	Spl. Cus. Ref. A. 1359/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
6.	Spl. Cus. Ref. A. 1360/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
7.	Spl. Cus. Ref. A. 1361/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
8.	Spl. Cus. Ref. A. 1362/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
9.	Spl. Cus. Ref. A. 1363/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
10.	Spl. Cus. Ref. A. 1364/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
11.	Spl. Cus. Ref. A. 1365/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
12.	Spl. Cus. Ref. A. 1366/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
13.	Spl. Cus. Ref. A. 1367/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
14.	Spl. Cus. Ref. A. 1368/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
15.	Spl. Cus. Ref. A. 1369/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
16.	Spl. Cus. Ref. A. 1370/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
17.	Spl. Cus. Ref. A. 1371/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
18.	Spl. Cus. Ref. A. 1372/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
19.	Spl. Cus. Ref. A. 1373/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
20.	Spl. Cus. Ref. A. 1374/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
21.	Spl. Cus. Ref. A. 1375/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
22.	Spl. Cus. Ref. A. 1376/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
23.	Spl. Cus. Ref. A. 1377/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
24.	Spl. Cus. Ref. A. 1378/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
25.	Spl. Cus. Ref. A. 1379/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore

26.	Spl. Cus. Ref. A. 1380/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
27.	Spl. Cus. Ref. A. 1381/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
28.	Spl. Cus. Ref. A. 1382/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
29.	Spl. Cus. Ref. A. 1383/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
30.	Spl. Cus. Ref. A. 1384/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
31.	Spl. Cus. Ref. A. 1385/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
32.	Spl. Cus. Ref. A. 1386/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
33.	Spl. Cus. Ref. A. 1387/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
34.	Spl. Cus. Ref. A. 1388/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
35.	Spl. Cus. Ref. A. 1389/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
36.	Spl. Cus. Ref. A. 1390/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
37.	Spl. Cus. Ref. A. 1391/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
38.	Spl. Cus. Ref. A. 1392/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
39.	Spl. Cus. Ref. A. 1393/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
40.	Spl. Cus. Ref. A. 1394/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
41.	Spl. Cus. Ref. A. 1395/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
42.	Spl. Cus. Ref. A. 1396/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
43.	Spl. Cus. Ref. A. 1397/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
44.	Spl. Cus. Ref. A. 1398/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
45.	Spl. Cus. Ref. A. 1399/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
46.	Spl. Cus. Ref. A. 1400/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
47.	Spl. Cus. Ref. A. 1401/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
48.	Spl. Cus. Ref. A. 1402/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
49.	Spl. Cus. Ref. A. 1403/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
50.	Spl. Cus. Ref. A. 1404/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
51.	Spl. Cus. Ref. A. 1405/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore

52.	Spl. Cus. Ref. A. 1406/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
53.	Spl. Cus. Ref. A. 1407/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
54.	Spl. Cus. Ref. A. 1408/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
55.	Spl. Cus. Ref. A. 1409/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
56.	Spl. Cus. Ref. A. 1410/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
57.	Spl. Cus. Ref. A. 1411/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
58.	Spl. Cus. Ref. A. 1412/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
59.	Spl. Cus. Ref. A. 1413/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
60.	Spl. Cus. Ref. A. 1414/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
61.	Spl. Cus. Ref. A. 1415/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
62.	Spl. Cus. Ref. A. 1416/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
63.	Spl. Cus. Ref. A. 1417/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
64.	Spl. Cus. Ref. A. 1418/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
65.	Spl. Cus. Ref. A. 1419/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
66.	Spl. Cus. Ref. A. 1420/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
67.	Spl. Cus. Ref. A. 1421/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
68.	Spl. Cus. Ref. A. 1422/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
69.	Spl. Cus. Ref. A. 1423/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
70.	Spl. Cus. Ref. A. 1424/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
71.	Spl. Cus. Ref. A. 1425/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
72.	Spl. Cus. Ref. A. 1426/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
73.	Spl. Cus. Ref. A. 1427/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
74.	Spl. Cus. Ref. A. 1428/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
75.	Spl. Cus. Ref. A. 1429/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
76.	Spl. Cus. Ref. A. 1430/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
77.	Spl. Cus. Ref. A. 1431/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore

78.	Spl. Cus. Ref. A. 1432/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
79.	Spl. Cus. Ref. A. 1433/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
80.	Spl. Cus. Ref. A. 1434/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
81.	Spl. Cus. Ref. A. 1435/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
82.	Spl. Cus. Ref. A. 1436/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
83.	Spl. Cus. Ref. A. 1437/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
84.	Spl. Cus. Ref. A. 1438/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
85.	Spl. Cus. Ref. A. 1439/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
86.	Spl. Cus. Ref. A. 1440/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
87.	Spl. Cus. Ref. A. 1441/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
88.	Spl. Cus. Ref. A. 1442/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
89.	Spl. Cus. Ref. A. 1443/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
90.	Spl. Cus. Ref. A. 1444/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
91.	Spl. Cus. Ref. A. 1445/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
92.	Spl. Cus. Ref. A. 1446/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
93.	Spl. Cus. Ref. A. 1447/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
94.	Spl. Cus. Ref. A. 1448/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
95.	Spl. Cus. Ref. A. 1449/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
96.	Spl. Cus. Ref. A. 1450/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
97.	Spl. Cus. Ref. A. 1451/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
98.	Spl. Cus. Ref. A. 1452/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
99.	Spl. Cus. Ref. A. 1453/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
100.	Spl. Cus. Ref. A. 1454/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
101.	Spl. Cus. Ref. A. 1455/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
102.	Spl. Cus. Ref. A. 1456/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
103.	Spl. Cus. Ref. A. 1457/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore

104.	Spl. Cus. Ref. A. 1458/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
105.	Spl. Cus. Ref. A. 1459/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
106.	Spl. Cus. Ref. A. 1460/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
107.	Spl. Cus. Ref. A. 1461/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
108.	Spl. Cus. Ref. A. 1462/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
109.	Spl. Cus. Ref. A. 1463/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
110.	Spl. Cus. Ref. A. 1464/2023	The Collector of Customs, Karachi VS M/s. MG JW Automobile Pakistan (Pvt) Ltd., Lahore
111.	Spl. Cus. Ref. A. 1465/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
112.	Spl. Cus. Ref. A. 1466/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
113.	Spl. Cus. Ref. A. 1467/2023	The Collector of Customs, Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
114.	Spl. Cus. Ref. A. 1546/2023	The Collector of Customs, Appr-(West) Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
115.	Spl. Cus. Ref. A. 1547/2023	The Collector of Customs, Appr.(West) Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
116.	Spl. Cus. Ref. A. 1548/2023	The Collector of Customs, Appr (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
117.	Spl. Cus. Ref. A. 1549/2023	The Collector of Customs, Appr (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
118.	Spl. Cus. Ref. A. 1550/2023	The Collector of Customs, Appr (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
119.	Spl. Cus. Ref. A. 1551/2023	The Collector of Customs, Appr (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
120.	Spl. Cus. Ref. A. 1552/2023	The Collector of Customs, Appr (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
121.	Spl. Cus. Ref. A. 1553/2023	The Collector of Customs, Appr. (West) Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
122.	Spl. Cus. Ref. A. 1554/2023	The Collector of Customs, Appr. (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
123.	Spl. Cus. Ref. A. 1555/2023	The Collector of Customs, Appr. (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
124.	Spl. Cus. Ref. A. 1556/2023	The Collector of Customs, Appr. (West) Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore
125.	Spl. Cus. Ref. A. 1557/2023	The Collector of Customs, Appr. (West), Karachi VS M/s. JW SEZ (Pvt) Ltd., Lahore

For the Applicant(s):

Mr. Faheem Raza,
Advocate.

For the Respondents:

Mr. Khalid Jawed Khan along with
M/s. Irfan Ali & Uzair Shoro,
Advocates.

Date of hearing: 22.02.2024

Date of Order: 22.02.2024

ORDER

Muhammad Junaid Ghaffar, J: These Reference Applications have been filed under Section 196 of the Customs Act, 1969, (“Act”) by two different Collectorates i.e. Collector of Customs (East) and Collector of Customs (West) impugning a common judgment dated 07.06.2023 passed by the Customs Appellate Tribunal. Karachi, in Customs Appeal Nos. K-2011 of 2022 to K-2072 of 2022; K-2163 of 2022 to K-2218 of 2022; K-2138 of 2022 to K-2143 of 2022. On 22.02.2024, after hearing both the learned Counsel all these Reference Applications were dismissed through a short order in the following terms.

These Reference Applications have been filed by two different Collectorates i.e. Collector of Customs (East) and Collector of Customs (West) impugning a common judgment dated 07.06.2023 passed by the Customs Appellate Tribunal. Karachi, in Customs Appeal Nos. K-2011 of 2022 to K-2072 of 2022; K-2163 of 2022 to K-2218 of 2022; K-2138 of 2022 to K-2143 of 2022. Both the Applicants have proposed numerous questions of law; however, we regret to state that neither the questions of law are properly drafted; nor this Court is required to answer as many as 12 Questions in Reference jurisdiction. The Applicant department ought to have been careful in drafting these Reference Applications as this not only burdens the Court; but also reflects badly as to the competency of the department. In future, if such questions of law are placed before this Court, then not only costs may be imposed; but such Reference Applications may also be dismissed for want of proper prosecution. After going through the record including the impugned order, in our considered view, the following questions of law are arising out of the order of the Tribunal in terms of Section 196 of the Customs Act, 1969.

- i. Whether in the facts and circumstances of the case, the Customs Tribunal was justified in holding that the assessment of the vehicles in question under Section 25(5) of the Customs Act, 1969 read with Rule 107(a) of the Customs Rules 2001 was not in accordance with in law?
- ii. Whether in the facts and circumstances of the case the Tribunal was justified in holding that the respondents have produced sufficient evidence in terms of Section 25(3) of the Customs Act, 1969 to demonstrate that their Transactional values were not influenced by any relationship with the Shipper / seller; hence, the Transactional Values were to be accepted in terms of Section 25(1) ibid?

- iii. Whether in the facts and circumstances of the case the Tribunal was justified in holding that its earlier order dated 30.08.2022 passed in Customs Appeal No. K-713/2022 was distinguishable on facts and law; hence, not applicable?

Arguments heard. For reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, the above rephrased Questions are answered in the *affirmative*; against the Applicant Department and in favor of the Respondents. All listed Reference Applications stand **dismissed**. Office shall place copy of this order in all connected files.

2. Learned Counsel appearing for the Applicant department has contended that the Tribunal was required to follow the earlier judgment of the same strength of members in Customs Appeal No. K-713/2022; whereby, the issue was decided in favour of the Applicant department. He has further contended that the assessment made under Section 25(5) of the Act was fully justified as it was done on the basis of Goods Declaration filed by the same Respondent in respect of identical goods; hence the Tribunal has erred in law and facts by holding otherwise. As to accepting the transactional value under Section 25(1) of the Act, he has argued that no such exercise was carried out by the department nor the Respondent herein were able to substantiate correctness of their transactional values as the Respondents are agents and representatives of their sellers; hence there is a relationship, which has an influence on the declared values, and therefore, the transactional values of the Respondents cannot be accepted as correct. He has prayed for setting aside the impugned judgment.

3. On the other hand, learned Counsel for the Respondent submits that it was demonstrated before the Tribunal and a finding of fact has been recorded that the relationship between the Respondents as well as their shipper / seller was not influenced; and the declared values were rightly accepted by the Tribunal as transactional values under Section 25(1) of the Act. Learned Counsel has further contended that the

assessment made under Section 25(5) of the Act on the basis of an earlier Goods Declaration was illegal inasmuch as the said Goods Declaration was dated 18.5.2020; whereas the imports in question were made much later in between February, 2021 to March, 2022, and in terms of Rule 107(a) of the Customs Rules, 2001, no assessment can be made on the basis of identical goods beyond the period of 90 days. As to the earlier judgment of the Tribunal in Appeal No.K-713 of 2022, he submits that facts of that case are different and the Tribunal in the impugned order has correctly held that the said order is distinguishable. In support he has relied upon the cases of ***International Petrochemicals (Pvt.) Ltd¹ and Collector of Customs Vs. Faisal Enterprises²***

4. We have heard both learned Counsel and perused the record. From the available facts on record it reflects that earlier the Respondent had imported 03 units of MG HS SUV, MG ZS and MG ZSEV Vehicles in Completely Built Up (CBU) condition with a declared value of USD 14,000/, USD 9,000/- and USD 22,000/- per unit respectively. These Vehicles were released vide GD No.KAPW-HC-130493 dated 18.5.2020, by accepting the values as transactional values under section 25(1) of the Act. Subsequently, Joint Venture and Multiple Sales Contracts were entered into by the Respondent with its counterpart in China and the import price was significantly reduced for these 3 models of the Vehicle. The imported Vehicles were then released by accepting the declared values as transactional values; however, subsequently, FBR for somehow, referred 9 GD's to the department of Post Clearance Audit, who made out a contravention report and determined the values on a higher side, which matter is now pending before this Court in Special Custom Reference No.530 of 2022. Insofar as the present set

¹ *International Petrochemicals (Pvt.) Ltd. Vs. Deputy Collector of Customs* (2017 PTD 370)

² *Collector of Customs Vs. Messrs Faisal Enterprises* (2019 PTD 1776)

of Vehicles is concerned, they were release provisionally under Section 81 of the Customs Act, 1969, and the matter was referred by FBR vide its letter dated 30.09.2021 to a 3-member Committee of field Collectors to examine and determine the fair value of these Vehicles. The Committee only determined the value of MG HS Vehicle at USD 12,308/- as against the declared value of USD 11,632/- for bulk imports. Based on the said report of the Committee as well as the values determined by the Post Clearance Audit Department (“PCA”), the provisional assessments were finalized by the Applicant Department in the following manner:

Sr. No.	Variant	Declared /Assessed value (DV/AV) (Single unit imports) (USD)	Declared/ Assessed value (DV/AV) (Bulk imports) (USD)	Values determined by the DPCA (USD)	Values determined by the Committee (USD)
1	MG HS	DV 14,000/- AV 14,793/-	11632/-	16581/-	12,308/-
2	MG ZS	DV 9,000/- AV 9,510/-	9,245/-	12,735/-	Not determined by the Committee
3	MS ZSEV	DV 22,000/- AV 23,246/-	23,232/-	22,992/-	Not determined by the Committee

Sr. No.	Variant	Declared Values/unit (USD)	Assessed Values/unit (USD)
	MG HS	11632/-	12,308/-
	MG ZS	9,245/-	10,022.25/-
	MS ZSEV	23,232/-	24,393/-

The respondent being aggrieved of such (62) assessment order(s) impugned the same before Collector of Customs (Appeals), who after hearing both the parties while setting aside the assessment orders remanded the matters to the concerned Collectors for determining the values afresh in accordance with law. The Applicant and the Respondent both being aggrieved approached the Tribunal by impugning the order of the

Collector of Customs (Appeals). The Applicant's case was that the matter could not have been remanded to them as the Collector of Customs (Appeals) has no such powers under Section 193 of the Act. The Respondent's case was that once a conclusion was drawn that the assessment orders cannot be sustained, then the matter ought not to have been remanded. The learned Tribunal after hearing both the parties as well as on perusal of the record has decided the case in favour of the Respondent vide impugned order, whereby, the Appeal of the Applicants stands dismissed, and that of the Respondent stands allowed. The relevant finding of the Tribunal reads as under: -

“13. We have heard the arguments of both sides and examined the case record and observe as follows:

- i. Before coming to the merits of the case, an important issue that needs to be looked into is, as to whether the issues involved in instant appeals before this Bench, have already been decided vide Tribunal's Judgment in Appeal No. K- 713/2022 dated 30.9.2022? It is observed that the issue is though the same regarding valuation of imported vehicles, but has been dealt with differently by the department as under:
 - (a). In Appeal No. K-713/2022, the department assessed the goods under section 25(9), whereas in the instant appeals the goods have been assessed under Section 25(5) of Customs Act, 1969
 - (b). In Appeal No. K-713/2022, the evidence of the imports of the same importer were not relied upon on the plea of being sole importer of subject goods and absence of absolute demonstrable evidence of qualities and quantities of commercial level to unrelated buyers. In the instant appeals an evidence of a vehicle import by the same importer was made basis of assessment and that too of a vehicle having extra features.
 - (c). In Appeal No. K-713/2022, section 25(3)(b)(1) *ibid*, was not resorted to whereas in the instant appeals, the appellant importer has pleaded his case under this Section.
 - (d). In Appeal No. K-713/2022, the calculations were not based on the prescribed sequence under the law.
 - (e). In Appeal No. K-713/2022, the appellant department relied on the values given by Post Clearance Audit, whereas in these appeals the respondent department relied on section 25(5) of the Customs Act, 1969.
- ii. In view of the pleadings by the learned consultant for the appellant importer and respondents, the Bench has observed that, the decision of this Tribunal in Appeal No. K-713/2022 had an impact on the findings of Collector (Appeals). The arguments made by the appellant regarding vires of DPCA's case and Tribunal's earlier

judgment dated 30.9.2022 thereon, it is observed that the matter is subjudice before the Honorable High Court of Sindh and is beyond the purview of this appeal, therefore, cannot be deliberated upon by this Bench.

- iii. It is also, however, interesting to note that the impugned order of Collector of Customs (Appeals), vide para 9 of his orders has observed that the Assessment Order dated 27.12.2021 is not sustainable, meaning thereby, the appeals filed by the appellant were technically allowed then their declared values stand accepted. However, it appears that the adjudicating authority made a, prima facie, reliance on Tribunal's judgment in Appeal No. K-713-2022 dated 30.08.2022, and the findings of the Three Member Committee. The Collector of Customs (Appeals) returned the case back to Collectorate for de novo determination of the values for which he did not have any legal jurisdiction under section 193 (A) (3). He should have either passed an order admitting the Appeal or rejecting it by citing his reasons in detail for doing so.
- vi. The plea that the appellant was never given an opportunity to demonstrate that the relationship between the buyer and the seller has not influenced the price as required under section 25 (3) of the Customs Act, 1969 is also correct as the record is silent on this crucial aspect. The appellant has also provided sufficient proofs in para 5 supra to the effect that relationship has not influenced the pricing of impugned imports.
- v. We have observed that the legal arguments, fact and evidences placed before this Bench and discussed in para 4, 5, 6, 7, 8 & 12 above carry weight. The appellant Importer's submissions that impugned values decided by Assessing Officers are not in line with the legal provisions of section 25 (5) are found to be correct. The entire exercise to determine customs values of impugned imports was undertaken on the basis of irrelevant evidence of a vehicle imported on 18.05.2020, whereas the impugned goods were imported between 22.02.2021 to 24.03.2022. The time lag between the two is much more than what has been prescribed under section 25 ibid and rules framed thereunder. Thus, the reference value taken into account for finalizing the assessment of impugned imports under section 25 (5) read with Rule 107 (a), Rule 110 and 117 of the Customs Rules, 2001 is completely irrelevant for not being an import made at or about the same time i.e. within 90 days prior or after the importation of the impugned goods. We have also observed that as per Article 7 (2) (b) of WTO Valuation Agreement, determination of price on the basis of a system which provides for the acceptance for Customs purposes of the higher of two alternative values is prohibited. Further, the Valuation Agreement vide its Article 7 (2) (g) also prohibits Customs from determining values arbitrarily. The Agreement also binds signatories to adhere to the Framework envisaged thereunder in order to remove inconsistencies amongst the laws and procedures for the facilitation of traders. Treatment of customs value of goods should be in complete congruence with the international framework of the governing laws. Hence, any assessment based on an irrelevant/fictitious/arbitrary valuation is not maintainable in the eye of the law.
- vi. The appellant importer's submission that the values determined by the Three Member Committee have also been wrongly calculated ignoring to adhere to the sequence of adjustments given under

section 25 (5) (b) and (c) next with relevant rules is also found to be correct. As demonstrated by the learned consultant of the appellant, allowing such adjustments in correct sequential order as it would have further reduced the impugned value from USD 12308/- to USD 12,195/- which is only 4.8% higher than the declared value. The learned DRs could not offer any plausible explanation to justify this working. We are constrained to observe that difference of less than 5% is to be considered as close approximation, that makes declared values acceptable.

- vii. The department as appellant has not challenged the observations/findings of the learned Collector of Customs (Appeals) that the impugned assessment order is not sustainable. In the absence of any such prayers against the Collector of Customs (Appeals) orders, it can be construed that the respondents have in fact accepted the appellant's pleas contained in the appeals.

14. In view of the above findings, facts of the case, relevant legal provisions and written/verbal submissions made before us, we are constrained to hold that the reliance on this Tribunal's judgment vide Appeal No. K-713/2022 by the Collector of Customs (Appeals) was not required as the subject Appeal dealt with assessment under section 25 (9) of the Customs Act 1969 and the present appeals are against Assessment Orders under Section 25(5) *ibid*. The values determined by the Assessing Officers in terms of section 25 (5) and rules framed thereunder are beyond the scope of legal framework provided for thereunder. Therefore, the impugned assessments made by the Assessing Officers have been found to be devoid of any legal basis or merits and are declared to be *ab initio* void. In 2008 PTD1478, the Honorable High Court Lahore has held that;

In this regard it is pointed out that section 25(4) of the Act casts a duty on the taxing officer to demand proof or documents from an importer in respect of which corroboration or clarification is required. This duty is reinforced by provisions of Rule 109 of the Customs Rules, 2001. No such demand was raised by the respondents to the petitioner. Nor any material was confronted to the petitioner to substantiate the higher value claimed. Clearly the importer cannot be penalized for default committed by respondent-Authorities.

In the absence of material on record showing the respondent's demand for evidence from the importer and a consequential speaking order affirming the impugned version of price on the basis of evidentiary material in accordance with section 25 of the Act, an importer ought not to be saddled with an attributed value to sustain liability. If that were done, it would put a premium on imaginary claims, mechanical assessments and time wasting measures to exhaust the statutory period. Petition allowed.

Moreover, on the basis of legally untenable justifications by the department to prove that the impugned declared values are incorrect, and cannot be legally acceptable under section 25 (1) of the Customs Act, 1969, ample factual and legal evidence has been placed before this Bench, entailing, beyond reasonable doubt, that the declared values for the impugned imports did in fact qualify under section 25 (1) read with 25 (3) especially in wake of the fact that no inquiry or reservation whatsoever, in term of section 25 (4), were ever made or conveyed to the importer by the department while finalizing the impugned assessments nor any such reservations were pressed by the DRs before this Bench in writing or verbally. We are constrained to observe that the Order-in Appeal is a

totally confused and jumbled up order blowing hot and cold at the same time, referring to Tribunal's order, Committee's findings and Assessment Orders not sustainable and then remanding back the case unlawfully. The Adjudicating officer has miserably failed to get into the depth of the case to find the real issue i.e under what section and sub-section the impugned goods were liable to be assessed, which in our view is section 25(3)(b)(i) read with section 25(1) of the Customs Act, 1969,

15. In view of the above, the prayers contained in the Customs Appeal Nos. K-2011-2022 to K-2072/2022 are allowed, and all the appeals including that of the department stand disposed of.”

5. Insofar as the first argument of the Applicant's Counsel that the Tribunal was required to follow the earlier judgment in Customs Appeal No. 713 of 2022 is concerned, on perusal of the record and the above finding of fact, we are not inclined to agree with such submission inasmuch as the assessment in the instant matter has been made under identical goods method as provided under Section 25(5) of the Act, by placing reliance on an earlier import of the same Respondent; whereas, in Custom Appeal No.713 of 2022 (Now pending in Special Custom Reference No.530 of 2022), the assessments were made under Section 25(9) of the Act. Both the assessment methods are completely different and independent in nature; therefore, the finding arrived at by the Tribunal is fully justified that the earlier decision was not relevant; hence the matter ought not to be referred to a Larger Bench; or in the alternative follow the earlier judgment. The proposed question No.(iii) in this regard is answered accordingly.

6. Before proceeding further on merits of the case it will be advantageous to understand the mode and manner in which Section 25 of the Act is to be applied and dealt with. This provision of the Act has been aligned in line with the International Agreement commonly known as General Agreement on Trade & Tariff (GATT) envisaged in the World Trade Organization's Valuation Agreement concluded in the

year 1995. In the case of *Indus Motors*³ a Division Bench of this Court speaking through one of us *Muhammad Junaid Ghaffar, J*; has delved upon this aspect in the following manner which is also relevant for the present case. The same reads as under;

“It need not be reiterated that w.e.f. 01.01.2000 Section 25 of the Act has done away with the old concept of notional / normal value or the Brussels Definition of value (BDV)⁴ of goods and has adopted the concept of transactional value based entirely on General Agreement on Trade & Tariff (GATT) envisaged in the World Trade Organization’s Valuation Agreement concluded in the year 1995 and signed by more than 140 Countries including Pakistan. After the expiry of the grace period provided to Pakistan being a developing country pursuant to Article 20.1 of the WTO Agreement read with WTO first annual review dated 13.10.1995 for transformation to the new system, it is now effective from 01.01.2000 in Pakistan. The idea of change in the concept of Valuation of Imported Goods was an outcome of long deliberations and after successive meetings and conferences of around 124 Governments as well as the European Community participating in Uruguay Round of Multilateral Trade negotiations held in 1994, resulting in the establishment of World Trade Organization (WTO) in Geneva on 01.01.1995 and after abolition of GATT and formation of WTO for regulating International Trade, the entire GATT Code of Valuation has been incorporated as Article VII of WTO Agreement. For a better understanding, it may further be explained that Transactional Value system has in itself 6 methods of Valuation of Imported Goods which per law are to be applied in a sequential manner (except that the Importer may request that the order in which Deductive Method and Computed Method are to be applied, be Reversed-See S.25(10)). Under the Act, Section 25(1) to (4) describes and defines the Transaction Value of the Imported Goods and how it has to be determined. Sub-section (5) deals with Transaction Value of Identical Goods; Sub-section (6) deals with Transaction Value of Similar Goods; Sub-section (7) deals with Deductive Value method; Sub-section (8) provides how the Computed Value method is to be applied; and lastly Sub-section (9) explains the Fall Back or Reasonable Means Method....”

The present issue is dealt with under Article 2 (or the 2nd method of Valuation) of the Customs Valuation under the terms of the GATT Agreement 1994 and provides that if the Customs value of the imported goods cannot be determined under the provisions of Article 1, the Customs value shall be the transaction value of identical goods sold for export to the same country of importation and exported *at or about the same time* as the goods being valued. It may be noted that in the Valuation Agreement the definition of *at or about the same time* has not

³ Judgment dated 17.7.2023 in CP No.D-1372 of 2018 & other connected matter (still unreported) in the case of Indus Motor Company Limited v Federation of Pakistan.

⁴ i.e. the notional concept of value: *that is, goods should be valued at the price at which such goods would sell in the open market independent of the buyer and the seller*

been defined. Coming to the case in hand that whether the assessment made by the department under Section 25(5) of the Act i.e. identical goods method is correct in law is concerned, there is no denial of the fact that the Goods Declaration on the basis of which the present assessment was made is of 18.05.2020; whereas, the Goods Declaration(s) in the instant matter are of the period starting from February, 2021 onwards. In terms of Section 25(5)⁵ of the Act, it is provided that if the customs value of the imported goods cannot be determined under the provisions of sub-section (1), it shall, subject to rules, be the transaction value of identical goods sold for export to Pakistan and exported at or about the same time as the goods being valued. This sub-section is based on Article 2 of the Customs Valuation Agreement and in ordinary sense would mean that at or about the same time is the time which is most recent, hypothetically, may be within a week or months' time. However, in the wisdom of the legislature, the words "at or about the same time" as defined in Rule 107(a)⁶ of the Customs Rules, 2001, means within ninety days prior to the importation or within ninety days after the importation of goods being valued. It is an admitted position that the Goods Declaration on the basis of which the impugned assessment(s) were finalized is much beyond the period of 90 days as provided in the above Rule read with Section 25(5) of the Act; therefore, was not at all relevant and applicable. There are other factors which are also required to be looked into while making an assessment under this method of valuation such as the transaction levels, the quantity and any other conditions attached to such a sale transaction; however, they will only be relevant and required to be considered when the very transaction of identical goods is *at*

⁵ (5) TRANSACTION VALUE OF IDENTICAL GOODS.- If the customs value of the imported goods cannot be determined under the provisions of sub-section (1), it shall, subject to rules, be the transaction value of identical goods sold for export to Pakistan and exported at or about the same time as the goods being valued.

⁶ 107. Definitions.- In this Chapter, unless there is anything repugnant in the subject or context,-
(a) "at or about the same time" means within ninety days prior to the importation or within ninety days after the importation of goods being valued;

or about the same time. Since in this matter, the transaction relied upon by the Applicants is not of *at or about the same time*; any other discussion of the law is not relevant. The proposed question No.(i) to this effect is also answered accordingly.

6. Lastly, the question that whether the relationship of the present Respondents is of any influence in the determination of the transactional values vis-à-vis the supplier, it may be of relevance to observe that the learned Tribunal has recorded a finding of fact on the basis of material placed before it that such relationship was not influenced and therefore, there is no impediment in accepting the transactional value under Section 25(1) of the Act. It has been held that “*ample factual and legal evidence has been placed before this Bench, entailing beyond reasonable doubt, that the declared values for the impugned imports did in fact qualify under section 25(1) read with 25(3) specially in wake of the fact that no inquiry or reservation whatsoever, in terms of section 25(4), were ever made or conveyed to the importer by the department while finalizing the impugned assessments nor any such reservations were pressed by the DR’s before this Bench in writing or verbally*”. The Tribunal has recorded a definite finding of fact which cannot be interfered by us in our Reference Jurisdiction as per settled law, the highest authority for factual determination in tax matters is the Tribunal⁷. Therefore, we are not inclined to further examine this aspect of the factual determination. Accordingly, proposed question No.(11) is also answered accordingly.

7. In view of hereinabove facts and circumstances of this case, the rephrased questions of law, as above, by means of a

⁷ Commissioner Inland Revenue v RYK Mills Lahore; (SC citation- 2023 SCP 226); Also see Commissioner Inland Revenue v. Sargodha Spinning Mills, (2022 SCMR 1082); Commissioner Inland Revenue v. MCB Bank Limited, (2021 PTD 1367); Wateen Telecom Limited v Commissioner Inland Revenue (2015 PTD 936)

short order dated 22.02.2024, were answered in the *affirmative*; against the Applicant Department and in favor of the Respondents and all listed Reference Applications were ***dismissed***. The above are the reasons thereof. Let 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 shall also place copy of this order in the connected Reference Applications.

J U D G E

J U D G E

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