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THE CURRENT PRACTICE OF CUSTOMS VALUATION OF IMPORTED GOODS AT THE ETHIOPIAN CUSTOMS (ERCA): A CASE ORIENTED STUDY

A Thesis submitted to Addis Ababa University, School of Graduate Studies, School of Law in partial fulfillment of the requirements for the Degree of Master of Laws (LL.M) in Business Law

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LIST OF ABBREVIATIONS

ACV = Agreement on Customs Valuation

ASYCUDA++ = Automated System of Custom Data

Art. = Article

BDV = Brussels Definition of Value

CCC= Customs Cooperation Council

CIF = Cost Insurance and Freight

ECA= Ethiopian Customs Authority

ECVS= Ethiopian Valuation Systems

E.C. = Ethiopian Calendar

ERCA= Ethiopian Revenues and Customs Authority

FDRE= Federal Democratic Republic Of Ethiopia

FFIC= Federal First Instance Court

GATT = General Agreement on Tariff and Trade

HQ= Head Quarter

HS= Harmonized Commodity Description and Coding System

LC= Letter of Credit

No. =Number

PCA = Post Clearance Audit

PLC= Private Limited Company

Proc. = Proclamation

VDD= Valuation Details Declaration

Vs= Versus

WCO = World Customs Organization

WTO = World Trade Organization

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ABSTRACT

Customs valuation is all about the determination of the customs value (taxable basis) of the imports. Generally six methods (the transaction value, the identical goods value, the similar goods value, the deductive value, the computed value and the fall back methods) of determining the customs value by the Customs Valuation procedure have been enshrined internationally and in Ethiopia as well.

The main objective of this research is to assess the consistency, fairness and transparency of the valuation practice and to see whether the valuation system is adequate enough to regulate the subject matter of customs valuation.

From our discussions of the laws, literatures, cases and interviews, the findings of this research portrays that the valuation practice is very much diverted from the law and the practice itself is fashioned by the inconsistent, non-transparent and unfair valuation computations that does not reflect the real commercial practices. The valuation system (especially the customs Data-Base) and the valuation rules (there is some conflict in the rules themselves) are not adequate enough to regulate the customs valuation. The Valuation rules are rolled either to the hands of the Customs (to raise undue customs revenue) or to the hands of the importer (to get undervaluation) unfairly.

From this finding the thesis recommends to the reformulation and development of the legal, institutional (especially the Customs Data-Base) frameworks and infrastructures. The recommendation also goes to the installation of transparent valuation system coupled by selective risk analysis management system to tackle possible undervaluation

Key Words: - Customs, Customs valuation, Customs value, Customs Data-Base, Imported goods, Agreement on Customs Valuation, Customs Proclamation.

CHAPTER ONE

INTRODUCTION

1.1 Background

When goods are imported or declared to enter the customs[1] territory of a certain country, they are subject to customs formalities and procedures. In almost all cases the goods are required to be declared to the customs and are subject to detention and examination[2] by the customs to ensure compliance with all laws and regulations of the customs. The purpose of the this undertaking is to collect government revenue, to check the obedience of the rules and regulations of other institutions in the process of importation of some selected goods like medical equipments, to protect domestic industries and to protect national security. From the general customs formalities and procedures, the customs valuation, which is the core function of the customs, is the main subject matter of this research.

Following declaration, classification of the imports based on the customs tariff system in order to determine the customs duties and taxes will be undertaken. The customs tariff system or sometimes referred as Customs Tariff Book comprises the customs tariff nomenclature of goods and the customs duty rates.

Then it come the activity of determining the customs value of the goods based on the information given by the importer. Here, customs valuation is a customs procedure applied in order to determine the customs value of imported goods and it is important when the rate of duty in the Customs Tariff Book is based on an ad valorem duty basis because the customs value becomes the essential basis to determine the customs duty and tax on the import. Beyond this purpose, customs valuation may also be used for purposes of trade statistics, for applying some quantitative restrictions and for collecting domestic taxes.

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[1] The word or expression "customs" according to the Revised Kyoto Convention (WCO, July, 2000), is defined as "the government service which is responsible for the administration of customs law and the collection of duties and taxes and which also has the responsibility for the application of other laws and regulations relating to the importation, exportation, movement or storage of goods, see WCO, Guidelines to Specific Annex C, Chapter 2 of the Convention, found at unstats.un.org/.../Kyoto% convention, accessed on June 21, 2015

[2] Glossary of International Customs Terms, found at www.mcmullinpublisher.com/..../..., accessed on June 21, 2015. According to the Glossary published by the WCO, "Examination of Goods" means the "physical inspection of goods by the customs to satisfy themselves that the nature, origin, condition, quality and value of the goods are in accordance with the particulars furnished in the Goods Declaration."See also the General Annex, Chapter 2 of the Revised Kyoto Convention, found at unstats.un.org/.../Kyoto% convention, accessed on June 21, 2015

In short, the most important information that is needed by the customs when goods are imported from abroad is "what the goods are, how much they are worth and where they originate." This in other words mean information pertaining to "classification, valuation, and origin" is needed by the customs on every import.[3] The major areas of dispute between the customs and importers occur on these matters.

Starting from the classification up to the giving of the value, it's the responsibility of the importer by him-self or by his customs clearing agent as the case may be. The importer or the customs clearing agent, of the importer, here, is required to provide all the necessary information that is necessary for the customs to determine the customs value of the import.

While determining the customs values of goods, the customs officers may rely on different methods of customs value appraisal which are stretched in hierarchy by the laws (both international [4](ACV) as well as national[5] customs valuation rules). These methods of valuation are the transaction value, the identical or similar goods value, the deductive value, the competed value and the fall back methods. The primary basis for calculating the customs value should be the transaction value method i.e. the price actually paid or payable for the import. Of course, some legally permitted additions, deductions or discount adjustment costs are to be included to this transaction value. When the customs value of the import cannot be determined by the help of the transaction value method there will be consultation between the customs and the importer in order to determine the customs value on the basis of the other valuation methods in their sequential order[6].

There is one exception to the sequential list of the valuation methods according to Art.7 of the ACV. This situation is when the importer requests the customs to apply computed value method instead of the deductive value method, for reasons of availability of exporting country's production cost information. Here, the customs may ignore the option by the importer for computed method over the deductive method.

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[3] Stefano Inama and Edwin Vermulst, Customs and Trade Laws of the European Community,(1999),Kluwer Law International, European Business Law and Practice Series), P. 136

[4] See Art.1-8 of The WTO Agreement On the Implementation of Art. VII of the GATT 1994, found at http:// www. Wto.org/.../docs/...20.val.pdf, accessed on April 9, 2015

[5] Infra, at note 75 below, Customs Proclamation

[6] Infra, at note 118 below, WTO Valuation Agreement Text, see the General Introductory Commentary paragraph 2

The customs valuation system which is established by the ACV has firm stand that customs value appraisal shall be fair, uniform and neutral and must reflect the commercial realities of the contracting parties[7]. It is clear that the negotiating states of the ACV are obliged to abide by these rules. However, when it comes to the Ethiopian case, though it is not a signatory to this agreement, the law maker proclaims the application and interpretation of the Customs Proclamation to be in line with the ACV rules.[8]

When it comes to the Ethiopian experience of customs valuation, the laws clearly provide the internationally accepted methods used while determining the customs value on the import. However, ERCA is yet used to apply the old CD-Price Based Customs Valuation System by ignoring the transaction value of the goods given by the importers. The CD-Price Based valuation system falls under the last method (fallback) from the chronologically laid down customs valuation methods by the Customs Proclamation. The Authority is unwilling to implement the valuation methods according to their sequential order as authorized by the law maker. Especially, the primary basis of valuation method i.e. the transaction value is being applied by the Authority as an exception rather than as a rule. This leads the importers to declare under-invoiced value, since there is no mutual understanding and consultations between the customs and the importers. On top of this, the importer could not be certain about the profit margin when selling the goods in the domestic market if the customs reject the transaction value even if the importer takes a reasonable care at bringing the right invoice value document.

The Authority is using the CD-Price Based[9] Customs Valuation for the last twelve years. Currently the Authority declared new Customs Valuation Directives and a new system of valuation which is called the Ethiopian Customs Valuation System Data-Base (ECVS). The Directives clearly states its ambition for customs valuation to be done by the transaction value and the authority also cheeks the accuracy of this value from its Customs Data-Base i.e. the ASYCUDA++ and the VDD/Valuation Details Declaration/. However, for our dismay the Directives allow the continuance of the old CD- Price Based Customs Valuation.

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[7] Supra, at note 4 above, WTO Agreement, the preamble of the agreement clearly stipulates these principles

[8] See at note 75 below, Customs Proclamation, see its preamble and its Art.5

[9] Infra, at note 307 below, Directive No. 10/1996 E.C.

1.2 Statement of the Problem

In the Ethiopian customs today, we have laws that regulate the customs valuation system. Especially the Customs Proclamation No. 859/2014 by a plain and clear language accommodates almost in verbatim the customs valuation principles/methods prescribed by the ACV. The ACV on customs valuation advises countries to adopt a customs valuation system which is "fair, uniform and neutral" to "prevent the use of arbitrary or fictitious values"[10].

Besides, it is pretty much clear that the National Bank of Ethiopia due to the scarcity of hard currency, it gives lesser amount of dollar to the importers while opening the LC. Since this dollar is not enough to buy a good amount of goods from abroad (mainly from China) the importer necessarily adds dollar from the black market. However, the importer, in order to pass the gate of the custom he/she has to make his Performa invoice and his commercial invoice compatible with the LC. Here the National Bank of Ethiopia in effect allows under-invoicing. Or in the legally accepted process of importing parlance, despite the fact that the importer declares this process without any mistake to the Ethiopian Customs, the latter will say I will not accept this commercial invoice/transaction value because it is under-valuated and it will go by its own power to make a higher customs value by ignoring the correct commercial value import. So, the main research problem that will be addressed in the paper will be: there are uncertainties, inconsistencies, and non-transparent customs valuation system in the Ethiopian Customs that need to be researched and solved.

1.3 Research Questions

The basic research question in this study is whether the customs value appraisal at ERCA is conditioned by fair, uniform, neutral and transparent customs valuation system. On top of this grand research question, the research will also address the following specific research questions:

1. Does ERCA currently apply the customs valuation rules of the Customs Proclamation as is authorized by the law maker?

2. Does effective institutional and regulatory organizations in relation to customs valuation installed in place?

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10 Supra, at note 4 above, see its preamble

3. Is the legal and institutional set up neutral and adequate to lodge grievances of the aggrieved party on the customs valuation decision?

4. Whether the customs valuation provisions of the Customs Proclamation are adequate enough to regulate the customs valuation undertaking by the Customs?

5. Whether the Directives declared by ERCA are consistent with the Customs Proclamation or not?

6. Whether the importers respect the dictates of the law pertaining to customs valuation?

1.4 Objectives of the research

The general Objective of the research is to study and investigate the international and domestic laws on customs valuation. It will see also how the Customs Valuation System of Ethiopia currently implemented on the ground both at ERCA as well as at the organs that have the adjudication power over the matter. The specific Objectives of the research are:

1. To study the existing legal and practical issues pertaining to the customs valuation.

2. To examine the compatibility of the existing laws on the subject with the internationally accepted rules.

3. To study, investigate and analyze the practical challenges in the practice and implementation of customs valuation.

4. To propose an appropriate mechanism of valuation implementation and indicate the respective rights and duties of the customs and the importers.

5. To enable customs officers, importers, customs clearing agents and other related bodies to be aware of the various methods of customs valuation methods that are adopted internationally and at the domestic level.

6. To elaborate how to apply the various methods of customs valuation in a sequential manner.

7. It aims to show the gap between the law and the practice.

1.5 Significance of the Study

Since the subject matter is not researched well, it will help to inform the principles and theories as well as the practices of the customs valuation systems adopted internationally and at national

level. It will also be useful to the customs officers, importers, customs clearing agents, practitioners including the judiciary and the quasi judicial institutions that come across with customs valuation cases. It will also indicate the gaps in the implementation stage of the law. It will also serve as a background for further study in the area. It will attract and invite responsible bodies to think over the subject. It will be used as input for further customs law and policy reform, too.

1.6 Scope of the Study

The main focus of the study is on the customs valuation of importing goods to the country. Therefore, the study will not deal with the customs valuation of export goods from the country. The issue on over-invoicing/valuation by the importers themselves will not be treated because it typically raises different questions and it may unnecessarily broaden the scope of the research. The research tries to incorporate the practices of customs valuation by consulting cases decided before the administrative tribunal wing and before the regular courts. The research will briefly address customs functions like customs tariff nomenclature and customs tariff classification, rules of origin, declaration of goods and customs invoice and customs duties and taxes.

1.7 Research Methodology

The research is done by the help of literature review, review of the different international and domestic laws. It also uses interviews and discussions with relevant persons and the interviewees are selected based on purposive sampling technique in order to gather relevant and accurate information. The research also uses case analysis from the cases brought before the Custom Appeal Committees, the Federal Tax Appeal Commission and the regular courts. The data collected through the above methods are analyzed qualitatively.

1.8 Limitation of the study

Lack of a well established experience in customs valuation methods at the Ethiopian Customs and lack of research works on the subject matter are the main limitations. More importantly, lack of decided cases on customs valuation issues especially at the regular courts including the Federal Cassation Court do count for the limitation of the study.

1.9 Organization of the paper

The contents of the thesis are organized in such a way that under chapter two a review of some important customs functions like customs tariff nomenclature and customs tariff classification, rules of origin, goods declaration, concepts of customs invoice and customs duties and taxes which are highly related to customs valuation are dealt out. In chapter three an endeavor has been made to examine both the international and national laws that regulate the customs valuation principles. Chapter four will deal with the current customs valuation systems and practices at the Ethiopian Customs (ERCA) in a detailed manner. Finally, chapter five will wind up by making a conclusion and will forward possible recommendations.

CHAPTER TWO

SOME BASIC CONCEPTS IN RELATION TO CUSTOMS VALUATION

2.1 Introduction

Customs authorities impose customs duties and taxes based up on a given dutiable value. In order to calculate the customs duties and taxes on the customs value of the importing goods the customs tariff law (hereinafter HS Code or Customs Tariff Book or Schedule) which comprises "the goods nomenclature and a list of the tariff rates[11] will be applied.

The Customs Tariff Book also identifies the goods that are subject to preferential rules of origin from these subjected to non-preferential rules of origin that will be dealt in the forthcoming pages. The Customs Tariff Book is used to identify goods that are subject to prohibition[12] from entering to the customs territories or other restriction like quotas, restraints and embargoes.[13] Moreover, importing goods that are permitted to enjoy a reduction or free of any duties and taxes are in most cases listed in the Customs Tariff Book.

2.2 The Concept of Goods Nomenclature and Customs Tariff Classification

The concepts and expressions under this section are used in different literatures in different ways of naming. For instance, the Glossary of International Customs Terms uses three definitions on the goods nomenclature and customs tariff classification. First, "Tariff Classification of goods" means the "determination of the tariff subheading in a tariff nomenclature under which particular goods should be classified."[14] Second, the expression "Tariff Description" is used to signify the" description of an article or product in accordance with the terminology used in the tariff nomenclature." [15] Third, the expression "Tariff Nomenclature" is used to mean" any

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[11]The Customs Tariff and the Harmonized System, Interpretation of Tariff Headings (May,2007),foundathttp://www.imf.org/external/np/leg/+law/2007/eng/ith/-pdf , accessed on June 20, 2015

[12] The Federal Democratic Republic of Ethiopia, Ethiopian Revenues and Customs Authority, Customs Tariff, (Based on the 2007 Version of HS), Volume II, January 2008, Addis Ababa, for instance chapter 71, Based metals, Silver or Gold, clad with Platinum, not further worked than semi manufactured are restricted, see also, Custom Tariff volume II, chapter 63, heading 63.09, p. 373, according to this heading used closes and other used articles are totally prohibited to import.

[13] U.S. Customs and Border Protection, What Every Member of the Trade Community Should Know About: Tariff Classification (May 2004), U.S. Department of Homeland Security, an informed compliance publication, P. 8, Found at www.cbp.gov/sities/.../icpoor2pdf.accessed June 20, 2015.

[14] Supra at note 2 above, Glossary of International Customs Terms, p. 26

[15] Ibid.

classification and coding system introduced by national administration or customs economic union to designate commodities or groups of related commodities for customs tariff purposes.[16]

In short, "nomenclature" means "a systematic naming, or enumerating of all goods found in international trade along with international rules and interpretations" where as "customs tariff" means "a systematic classification of goods entering the international trade for national interests together with rates of duties."[17]

When it comes to the Ethiopian Customs Tariff Book or Schedule it used the expression "a combined Tariff/Statistical Nomenclature" that comprises the systematic arrangement and description of the goods together with their respective customs duty rate.[18]

The International Convention on HS Code, starts by defining the HS as "the nomenclature comprising the heading, and subheadings and with their related numerical codes, the section, chapter and subheading notes and the general rules for the interpretation of the Harmonized System."[19] The Convention defines "customs tariff nomenclature" to mean "the nomenclature established under the legislation of contracting party for the purposes of levying customs duties on imported goods."[20] The Convention defines "combined tariff/statistical nomenclature" to mean "a nomenclature, integrating customs tariff and statistical nomenclatures, legally required by a contracting party for the declaration of goods at importation."[21] The Ethiopian Customs Tariff Book uses the last HS Code's definition to name the Customs Tariff Book.[22]

But, what is the need to make the systematic arrangement, naming, and coding of the importing goods in the Customs Tariff Book? This is due to the fact that plenty of goods (both in their natural state and in their sophisticated processed stage) are interchanged in the international

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[16] Ibid.

[17] Development of International Goods Nomenclature, HS, Customs Tariff, Nomenclature, Classification, p.4, found at pdf.Usaid.gov/pdf. docs/ PNADLO92.Pdf., accessed on June 20, 2015

[18] The Federal Democratic Republic of Ethiopia, Ethiopian Revenues and Customs Authority, Customs Tariff, (Based on the 2007 Version of HS), Volume I, p. II. Other countries, for instance, Ghana, uses the designation "Republic of Ghana, The Harmonized System and Customs Tariff Schedule-2012, Zimbabwe uses, Integrated Customs Tariff, found at www.gra.gov.gh/--/customs Ghana and at www.zimra.co. 2w/ index.php. ,respectively, accessed on June 21, 2015

[19] International Convention on the Harmonized Commodity Description and Coding System (Hs Code) (1983), (Art.1), found at www.Wcoomding/-/Hs conve2,pdf1.ash, accessed on June 24, 2015

[20] Id., Art. 1 (b)

[21] Id., Art. 1 (d)

[22] Supra, at note 12 above, Customs Tariff, volume II, p ii and p.1, i.e. see the introductory part of the Book and the part of the Book dealing with the General Rules of Interpretation of the HS Code.

Harmonized System.[33] In the same way, although chapters 98 and 99 are reserved for national use by the HS Code Convention, Ethiopia has not yet utilized them since the chapter of the second Tariff Book ends up in chapter 97.[34] Thus, it can be safely concluded that the Ethiopian Customs Tariff Book content and structure is consistent with the HS Code Convention.

The other important components of the HS Code are the headings and sub-headings. The headings are identified by a four-digit code and the sub-headings are identified by a-six-digit code.[35] The contracting states to the HS Code are not in any way permitted to modify or change descriptions and coding system of the heading and the sub heading that are identified by the four-digit level and the six-digit level.[36] The only ground that the contracting parties to the convention have discretion is when they add a coding system beyond the six digit level which usually is the eight-digit level or the "national level" in order to entertain detailed subdivisions of goods beyond the HS Code.[37] At the same time, coding and naming of goods nomenclature and customs tariff beyond the six digit level is allowed for grounds of "commercial confidentiality and national security purposes.[38] These strict rules make the HS Code a harmonized one.[39]

We can elaborate the above statements taking the Ethiopia Customs Tariff Book. Section I, chapter I of the Customs Tariff Book begins by naming and coding for Live Animals. The heading No. is identified by 01. 01 i.e. the four digit-level coding system, the first 01 represents chapter 1. The second 01 represents the heading No. The HS Code is identified by the decimal 0101.10 which is the six-digit-level coding system.[40] This coding and naming system of the Customs Tariff Code of Ethiopia is in harmony with the HS Convention. The eight-digit level coding and naming system is also reflected in the Ethiopian Customs Tariff Book as it is permitted by the HS Convention. And it is designated by the expression "Tariff Item No". For

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[33] Supra, at note 12 above, Customs Tariff, volume II, p.462

[34] Id., p. 628.

[35] Supra, at note 13 above, U.S Customs and Borders Protection, p.10

[36] Supra, at note 19 above, the HS Code 1983, Art.3 (1) (a), according to the wording of this sub-provision contracting parties are obliged to adopt customs tariff and statistical nomenclatures in conformity with the HS Code.

[37] Id., Art. 3(3), but these sub division coding systems should be beyond the six-digit level and the additions should be coded in the same fashion to the HS Code.

[38] Id., see Art. 1(1)(b)

[39] Republic of the Philippines Tariff Commission, Seminar on Classification, GIRs and Import Duty Determination, (20 November 2013), p.1, Found at. www.philexport.ph/c/--/get-file accessed on June 21, 2015

[40] Supra, at note 18 above, Customs Tariff, volume I, p.3, see also the Annex to the HS Code Convention, cited at note 17 above

The preferential rules of origin determine whether a given product is entitled to the payments of lower or free of duties and taxes.[58] Preferential rules of origin emerge out of free trade agreements, either of bilateral, regional, unilateral trade agreements. For instance, Ethiopia has made bilateral agreements with Sudan,[59] regional agreement like the Common Market for Eastern and Southern African Countries (COMESA)[60], unilateral trade agreement under the African Growth Opportunity Act (AGOA) [61] to benefit from lower customs duty rates or to get free duty at all.

Ethiopia also made a preferential rules of arrangements for its export commodities with China (under a Special Preferential Tariff Treatment, SPTT), with India (under Duty Free Tariff Preference, DFTP), with South Korea (under South Korean Duty Free Preference for LDC (Least Developed Country).[62]

Preferential rules of origin use to discriminate products of non-preference from these eligible to receive some kind of preferences.[63] This rule is also designed to control trade "deflection" activities by large companies. This situation happen when companies falsely arrange minimum and less costly processing and assembling techniques in the preference receiving country merely to take unfair advantage.[64]

The non-preferential rules of origin as opposed to the preferential rules of origin are applied to determine the economic nationality of the importing goods.[65] The worry in non-preferential rules of origin is the usage of origin rules indiscriminately while applying trade policy measures.[66]

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[58] Ethiopian Revenues and Customs Authority (ERCA), Guide to Understand Preferential Rules of Origin, p.6, found at www.ethiopianreview.com/--/, accessed on April 4, 2015

[59] Addis Ababa Chamber of Commerce and Sectorial Association, Ethiopia and Sudan Preferential Free Trade Agreement (PTA), Entered into force Feb.6, 2003, by this bilateral agreement all industrial and agricultural products originating from either country are zero rated, found at www.addischanber.com/index.php?/, accessed on July 04, 2015

[60] Supra, at note 18 above, Customs Tariff, Volume I, p. 664, according to the Ethiopian Customs Tariff Book goods imported from COMESA member countries enjoy a lower customs duty rate ranging from 4.5%, 9%, 18%, 27%, and 31.5% instead of the regular customs duty rate of 5%, 10%, 20%, 30% and 35% respectively, see also the COMESA Establishing Agreement, found at....www.comesa.int/---/accessed on June 29, 2015

[61] Supra, at note 58 Above, Guide to Understand Preferential Rules of Origin, p.8, according to the AGOA Agreement some Ethiopian commodities enjoy free duty preferences when they entered the U.S. market

[62] Ibid.

[63] Ibid.

[64] Supra, at note 52 above, Autra, p. 179 and 180

[65] Ibid.

[66] Id., p. 179

The trade policy measures may extend from applying market entry restrictions up to applying quantitative restrictions and quotas, anti-dumping and countervailing measures, safeguard measures and non-discriminatory measures.[67]

The non-preferential rules of origin together with the MFN (Most Favored Nation) principle enshrined under Art.1 of the WTO Agreement uses to avoid fraudulent activities in origin certificates to internationally traded goods.[68] This is because under the non-preferential rules of origin, customs tariff rates imposed on every import may be similar so that importers will not involve in the fraudulent activities of origin marks. Finally, the non-preferential rules of origin results balance of trade equilibrium.[69]

2.5 Rules of Origin Determining Criteria

2.5.1 Wholly Obtained or Produced Criterion

When a product is wholly obtained or produced in a given country, this country will be regarded as the originating country of the product.[70] The phrase "wholly obtained" is used to refer when products are found, extracted, or produced using raw materials found in the producing country.[71] Wholly obtained or produced in the originating country is all about when the product is born, grown, extracted and harvested in that country alone.[72] However, a care should be taken in applying this criterion. It does not exclude totally, for instance the importing of seeds to grow plants.[73]

In a nut shell, the criterion wholly obtained or produced can be summarized as follows:

" a. Mineral produced extracted from its soil, from its territorial waters or from its sea bed;
b. Vegetable products harvested or gathered in that country;
c. Live animals born and raised in that country;
d. Products obtained from live animals in that country;
e. Products obtained from hunting or fishing conducted in that country;

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[67] Supra, at note 55 above, the Text of the GATT, see Arts, I, II, III, VI, IX XI, XIII, XIX of the relevant WTO Agreement
[68] Supra, at note 58 above, Guide to Understand Preferential Rules of Origin, p. 7
[69] Ibid.
[70] Supra, at note 3 above, Stefano and Edwin, p. 95
[71] Supra, at note 53 above, A User's Hand Book to the Rules of Preferential Origin, p. 26
[72] Ibid.
[73] Ibid.

f. Products obtained by maritime fishing and other products taken from the sea by a vessel of that country;
g. Products obtained abroad a factory ship of that country solely from products of the kind covered by paragraph (f) above;
h. Products extracted from marine soil outside that country's territorial waters, provided that country has sole rights to work that soil or sub soil;
i. Scrap and waste from manufacturing and processing operations, and used articles, collected in that country and fit only for recovery of raw materials;
j. Goods produced in that country solely from the products referred in paragraphs (a) to (i)".[74]

The Ethiopian Customs Proclamation did not regulate the wholly obtained or produced criterion for unknown reason.[75] Surprisingly, the role of the Proclamation in relation to this origin criterion is taken up by the directive on determination of country of origin issued by ERCA.[76] What is odd about this Directive is that the wholly obtained or produced criterion listed down thereof would be applicable solely to goods originating from countries where Ethiopia has not made trade agreements. [77] According to this criterion for goods originating from Ethiopia or from countries where Ethiopia has made trade agreements is regulated by these agreements.[78]

That means the discrimination of goods based on the rules of origin (preference receiving goods or non-preferential goods) in Ethiopia starts from the criterion used to determine country of origin of goods.

2.5.2 The Substantial Transformation Criterion

This criterion is also known by another similar name-"sufficiently working or processing" criterion. The substantial transformation criterion confers the rules of origin from among the countries participated in the manufacturing, processing or assembly operation, to the country where a new and different product which is substantially or completely different in character or use from the original product is undergone.[79] Whether a new and different product is created

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[74] The Revised Kyoto Convention (1999) WTO, a Specific Annex K, Chapter 1, Rules of Origin, p. 74, found at, unstats. Un.org/---/ Kyoto% convention, accessed on June 21, 2015, see also the Directive on Determination of Origin, cited at note 76 bellow Art. 4 (2) which directly copied the above criteria verbatim

[75] Customs Proclamation, 2014, Proc. No. 859, Neg. Gaz., 20th Year No. 82, Art. 104

[76] Directive on Determination of Rules of Origin, Directive no. 32/2009, Ethiopian Revenues and Customs Authority, Nihassie 2009, in Amharic, Addis Ababa, Art. 4

[77] Id., Art. 4 and 5

[78] Id., Art. 5

[79] Supra, at note 52 above, Autra, p. 182

under the substantial transformation criteria, the product will be tested against its change from "producer good into a consumer good" or by taking into account the "highest value contribution" in the processing. [80]

The other yardsticks used to identity whether substantial transformation test is complied with or not could be the value addition threshold, the complexity and sophistication of the processing operation and the change in tariff heading tests.[81]

The Customs Proclamation has adopted the substantial transformation criterion. Accordingly, country of origin is conferred from the participating countries in the manufacturing of a given product to the country that made a last substantial transformation over the product.[82] At the same time, the yardsticks mentioned above i.e. the value addition test (though its threshold is not identified), the tariff classification change, and the manufacturing and processing operations are adopted by the provision.[83]

2.6 Customs Declaration and Commercial Invoice

Importing goods to the customs unless expressly exempted by law should be represented by the customs declaration document which in most cases comprises the commercial invoice as a supporting document.

According to the Glossary of International Customs Terms, customs declaration is defined as "any statement or action, in any form prescribed or accepted by the Customs, giving information or particulars required by the Customs."[84] The action of declaration may be made through an electronic means or by passing through a green or red colour symbol designed for this purpose in cases of international passengers.[85]

Customs declaration is a statement made by the concerned declarant (person who made the declaration) to the Custom for the purpose of determining the customs duties and taxes on the importing good.[86] Customs declaration is also needed by the Customs to appraise customs value of the good, to apply any regulatory and restrictive measures on the good, to apply preferential or

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[80] Ibid.
[81] Ibid.
[82] Supra, at note 75 above, Customs Proclamation, Art. 104 (1) (2)
[83] Ibid.
[84] Supra, at note 2 above, Glossary of International Customs Terms, p.7
[85] Ibid.
[86] Ibid.

non-preferential rules of origin on the good, and to identify whether the good is prohibited from entering the Customs territory at all or not.[87]The Revised Kyoto Convention equates the expression of customs declaration with the expression of "Goods Declaration" to mean "production of goods to the Customs".[88]

The customs declaration should consist of all the necessary supporting documents (including their validity), the identity of the importer or the exporter, the customs value, custom tariff classification, rules of origin, description, quality of the goods as well as all other licensing and documentation requirements.[89] On top of this, the Customs are also required to examine the imports against their commercial invoice before their release for free circulation. [90]

This being the general theory on customs declaration per se, the importation to the Ethiopian customs demonstrates similar procedures and rules. Anyone who intends to import goods in to Ethiopia need to record them on the customs declaration document and should submit the document to the Customs.[91] The importer is expected to pay advance payment representing the customs duties and taxes.[92] After securing a dispatch order the importer can start moving the goods from the Customs entry port for further customs and procedures.[93] The concept of "customs declaration" is used in the Ethiopian customs interchangeably with "Goods declaration".[94]

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[87] Irish Tax and Customs, A Guide to Customs Import Procedure (July 2013), p.10, found at www.revenue.ie/---/customs/--/ import--- accessed on July 5, 2015

[88] Supra, at note 74 above the Revised Kyoto Convention (1999), WCO, Specific Annex A, Arrival of Goods in a Customs Territory, Chapter 1, Formalities Prior to the Lodgment, chapter 2 Definitions, p 4,9 and 16

[89] Id., See also Revised Kyoto Convention, General Annex Guidelines Chapter 6, Customs Control (March 2008), WCO, p. 20

[90] Importing into the United States, A Guide for Commercial Importers (last Revision 2006), p.20, found at http://www.cbp.gov /xp/cgov/too/ box/prarts/., accessed on June, 21, 2015

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[92] Ibid.

[93] Ibid.

[94] Supra, at note 75 above, Customs Proclamation, Art.2 (20), 8 and the following, see also the previous Customs Proclamation, cited at note below 323 whereas, the latter Proclamation used the phrase (expression) "Customs Declaration" under Art.2(16), 12 and the following, the former uses "Goods Declarations." The working Directive on the Presentment of Customs Declaration uses the expression "Customs Declaration" as is often used to be, see Directive on the Presentment of Customs Declaration, Directive NO.33/2001, Nehassie 2001, ERCA, in Amharic, Addis Ababa. Apart from this, "customs declaration" is more than "Goods declaration" in which the latter is sub-set of the former. Goods alone cannot be declared same. Services or even a person can be subject of customs declaration. The customs declaration form and the supporting document thereof used by ERCA are named after customs declaration. From this we can say that the expression of "goods declaration" neither represents the practical usage on the ground nor

One final point on this issue is with respect to simplified customs declaration that is applied on selected and registered persons by ERCA.[95] The criteria's used for the selection of persons eligible for the simplified customs declaration are regulated by a Directive issued by ERCA.[96] Accordingly, credible and reliable importers upon which their level of compliance with customs laws and procedures, with high import capacity as well as with well developed internal management system are laid down as a pre-request before providing the simplified customs declaration procedure.[97] Possession of a certificate named by Bronze, Silver or Gold that will be issued by ERCA ends up the pre-condition fulfillment.[98] This privilege may extend from allowing a single consolidated customs declaration for many consignments up to release of the imported goods upon provision of only minimum information about the imports by an incomplete customs declaration.[99]

When crossing to the other limb of this section i.e. the commercial invoice, or simply "invoice" is evidence that shows the transaction made between the buyer and the seller in international trade.[100] The terms of the sale contract, the country of origin and indication about free duty privileges which are important elements to determine the customs value of the imports should necessarily included in the commercial invoice.[101]

If there are inconsistencies between the contractual documents and the invoice issued by the manufacturer or the seller the Customs will not accept the commercial invoice in assessing customs value or the imports may be prohibited to enter the country of destination at all.[102]

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supported by lawmaking process. So that it is better if the expression "customs declaration" is adopted and used either by the law maker or by the Ethiopian Customs.

[95] Id., Art. 84 and the following, this procedure mainly applies to exporters and manufactures upon request and approval by ERCA. It is at the same time accompanied by post audit controls to check whether the goods passed through the simplified procedure where as per the declaration or not.

[96] Directive Providing for Simplified Customs Procedures Applicable to Authorized Economic Operators, No. 65/ 2011, ERCA, Art.5 and 7, however, the scope of application regulated by the Directive is inconsistent with the Proclamation because setting aside the exporters and manufactures it only deals about importing companies.

[97] Id., Art. 5

[98] Id., Art. 7

[99] Supra, at note 75 above, Customs Proclamation,Art. 85, if done balancing the facility with strong post audit control no doubt it cuts off customs procedure delay, increase customs revenue and decrease transactional costs.

[100] UPS International Customer Service Center International Shipping Reference Guide, found at https://www. , ups.com/.../intl-shipping accessed on June 29, 2015

[101] Commercial Invoice or Canada Customs Invoice (CCI): Your Declaration, found at http:www/canadapost.ca/--- /PG customs-accessed on July 1, 2015, see also Arts. 2(26), 10 91) (b) , 89 and the following of the Customs Proclamation cited at note 72 above

[102] U.S Customs, and Border Protection (CBP), Customs Valuation Encyclopedia (1980-2010),An Informed Compliance Publication (December 2010), p. 208-211

2.7 Customs Duties and Taxes

Customs duties and taxes are charges imposed on imports.[103] Imports will be released for free circulation after assessment and payment of customs duties and taxes on the basis of the appropriate customs value is made.[104]

When goods are subject to customs duties and taxes, the assessment technique may be on "ad valorem, specific" or compound rates"[105] of duty on the customs value. The ad valorem duty rate computation is made by multiplying the customs value against the customs duty rate of import regulated by the Custom Tariff Schedule. The specific duty rate computation is done by giving a specific customs duty rate over a unit of weight or other measurement. [106]The third technique is applied by combining the first two techniques.[107]

Customs duty rate on imports may range from 0% up to 35% in the Ethiopian case.[108] Customs duties and taxes assessment which determines the amount of customs revenue are levied based on the HS Code, rules of origin and the customs values.[109] Customs duties and taxes decided by the Customs should be paid at the time when customs declaration is lodged or accepted or at least before the imports are released out of the customs control.[110] (Emphasis mine)

Ethiopia levies five kinds of taxes on every import save exemptions by law. These taxes are the Custom Duty, Excise Tax, VAT (value added tax), Sure Tax and Withholding tax respectively. The basis to customs duty is the customs value accepted or decided by the Ethiopian customs where as the basis to impose the taxes is the existing working domestic tax laws in the respective

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[103] Dominik Lasok, Q, C., The Trade and Customs Law of the European Union (3rd ed, 1998), Kluwer Law International, London, the Hague, Boston., P. 53

[104] Id., p. 276

[105] Supra, at note 90 above, Importing into the United States, p.40

[106] Ibid.

[107] Ibid.

[108] Id., p. 40-44, see also notes 12 and 18 above, Customs Tariff Books Volume I and II. When seen thoroughly these Books customs duty rate becomes law or zero on goods of agricultural inputs and raw materials for industries or for goods came from COMESA members whereas customs duty reaches its peak i.e. 35% when the imports related to "luxury" or consumption imports which are demand inelastic or again their importing at large amount needs restriction.

[109] Supra, at note 1 above, Revised Kyoto Convention, General Annex, Chapter 4, General Guidelines on Duties and Taxes (July, 2000), WCO, p.4.

[110] Id., p.7

goals, national customs are expected to cooperate one another through an exchange of information pertaining to customs valuation.[124]

An effective and efficient customs valuation system has a direct influence on transaction cost of businesses and on the overall competitiveness of a given country.[125] Customs valuation system also affects customs revenue and trade facilitation.[126] Likewise, customs valuation system may affect both foreign and domestic investments.[127]

Customs valuation has also important role in the preparation of international and national trade statistics, quota and licensing arrangements, on the imposition of customs duties and taxes on imports and on the application of preferential rules of origin.[128]

In this research, customs valuation aspect is used in relation to the imposition of customs duties and taxes on imports and the procedures and/or methods thereof.

3.2 Definitions

The GATT 1947 under the caption of Art.VII puts the expression "valuation for customs purposes" but when it goes to the main body of the provision, the expression "customs value" is being utilized.[129] The Agreement on Implementation of Art.VII of the GATT 1994 is also structured in the same fashion.[130]

Customs valuation can be referred as "the process and method(s)"used by the customs to appraise the dutiable customs value of imported goods.[131] Customs valuation is all about a generally accepted rule and system used for the determination of dutiable value of imports.[132]The rationale to determine the amount of the customs value by using the procedure or process of

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[124] Ibid.
[125] Sandeep Raj Jain, Customs Valuation Challenges for the South East Asian Countries and Way Ahead with Special Reference to India (March 2010), Working Paper DG of Valuation, p. 3
[126] Id., p.4
[127] Id., p.6
[128] Pushap Raj Rajkarmika, Implementation of the WTO Customs Valuation Agreement in Nepel: An Ex-ante Impact Assessment (August, 2006), Asia-pacific Research and Training Network on Trade Working Paper Series No. 18, p.7
[129] Supra, at note 55 above, The Text of the GATT, see Art. VII
[130] Supra, at note 118 above, WTO Valuation Agreement Text, see part I of the Agreement and see Art. 1 and the following
[131] Yann Duval, Trade Facilitation Beyond the DOHA Round of Negotiations (2008), In a study by the Asia Pacific Research and Trading Network on Trade (ARTNE) United Nation, p.9
[132] Supra, at note 128 above, Pushap, p. 7

customs valuation is to appraise upon it the customs tariff rate to get the exact customs duties and taxes on the import(s).[133]

As noted in the preceding chapter, customs valuation becomes important in calculating the customs duties and taxes when the customs tariff rate is based on an ad valorem duty rate.[134] And the computation will be done by a simple arithmetical multiplication of the customs value by the ad valorem customs duty rate.[135] Thus, rules on customs valuation will not be helpful when the customs duty rate is based on a specific duty rate.[136]

To assess the customs duties and taxes on imports the process of customs valuation should be done.[137] By the customs valuation process the taxable amount of the imported goods is established. The taxable amount being the customs value of the imported good upon which customs duties and taxes will be assessed.[138]

According to the GATT 1947 Art.VII (2), "customs value" is defined as the "value for customs purposes of imported merchandize based on the actual value of the imported merchandise or like merchandise"[139] And the value of the import should not be based on national origin goods or based on arbitrary or fictitious values.[140]

Likewise, the Agreement on Implementation of Art.VII of the GATT 1994 defines "customs value of imported goods" as "the value of goods for the purpose of levying ad valorem duties of customs on imported goods."[141] The customs value by this agreement is the transaction value of the import that can be represented by commercial invoice which shows the "price actually paid or payable" (PAPP).[142] Whenever, customs value cannot be determined by the transaction value

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[133] Ibid.
[134] WTO, WTO, News Letter, Seventh Issue (April - June, 2004), Karnataka Council for Technological Up gradation, Bangalore, p.2, found at http://kctu.kar.nic.in/n17-paf.,accessed on June 19/2015.
[135] Ibid.
[136] Ibid.
[137] Tim Hesselink, EU Customs Valuation: Wake up Call for MNE, (2012), Global Trade and Customs Journal, volume 7, Issue 3, Kluwer Law International BV, the Nether lands, p. 2
[138] Ibid.
[139] Supra, at not 55 above, the Text of the GATT, Art VII (2)(a)
[140] Ibid.
[141] Supra, at note 118 above, WTO Valuation Agreement Text, Art 15 (1) (a)
[142] Ibid.

or invoice value of the import customs may resort to other methods of calculating the customs value of the import.[143]

The Ethiopian Customs Proclamation uses the expression "determination of dutiable value" for customs valuation and "dutiable value" for customs value.[144] However, the customs valuation Directive issued by ERCA uses the terms "customs duty and tax value price tariff" (for customs valuation) and customs value.[145]

While customs tariff rates are fixed by the Customs Tariff Book, customs value of imports may vary from transaction to transition. For this reason, importers may under-value or over-value the customs value to get a reduction in their customs duty and tax liability or to get an unfair refund or profits.[146] On the other hand, government may unfairly over-value the customs value in order to get undue customs revenue or to apply unwarranted protective measures.[147] The under-valuated or over-valuated customs value may cause for "capital flight" in its worst scenario.[148]

3.3 Evolution of Customs Valuation (System) at the International Arena

3.3.1 Introduction

Customs valuation system until the mid of 20th century was characterized by inconsistent, unstable and arbitrarily done by respective countries within their sphere. [149]

The first "single and general principles" of ACV was reached in the United Nations Conference on Trade and Employment held at Geneva in 1947 under the name of GATT.[150] It was followed

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[143] Id, Art. 2,3,5,6 and 7 of the Agreement, accordingly, when customs value could not be determined under the primary method of Customs valuation i.e. the transaction value method, the customs value will be done using the value of identical or similar goods, deductive value method, by computed value method or by the fall back method as the case may be.

[144] Supra, at note 75 above, Customs Proclamation, part four, chapter one and Art. 89 (2), "calculation of customs value" and "customs value" for customs valuation and for customs value respectively was the wording of the previous Customs Proclamation, see at note 326 below chapter three and Art. 32.

[145] Directive on Customs Duty and Tax Value Price Tariff, Directive No. 111/2008 E.C., Hidar 30, 2008 E.C, in Amharic, ERCA, (herein after Customs Valuation Directive), according to Art. 2(4) of this Directive "customs value "is defined as the dutiable value to apply the customs duty and taxes of the imported goods and this customs value will be the total cost of the imported good up to the first entry point of the customs territory of the country.

[146] Adrien Goorman and Luc De Wulf, Customs Valuation in Developing Countries and the World Trade Organization Valuation Rules (2005), in Customs Modernization Hand Book (Eds. Luc De Wulf and Jose B. Sokol.) (2005), The World Bank, Washington D.C., p. 156

[147] Ibid.

[148] Ibid.

[149] JICA Project on Capacity Building for the Customs Administrations of Eastern African Region (Phase 2), Customs Valuation (CV) Handbook for Customs Administrations in the Eastern African Region (2012), Japan International Cooperation Agency 2012, p. 2-3

of "a like" product.[159] The provision also prescribes that the customs value of imported goods should not be based on "arbitrary or fictitious" valuation system or again based on values of national origin goods.[160]

But what do we mean by the expression "actual value"? According to the Interpretative Note Ad Art.VII from Annex I. paragraph 2 of the agreement, "actual value" is referred to as "the invoice price; plus any non-included charges for legitimate costs which are proper elements of "actual value" and plus any abnormal discounts or other reductions from the ordinary competitive price."[161] The price basis of the customs value need to be established in a sale contract made between the seller and the buyer under a free and fully competitive market and in the ordinary course of trade.[162]

The meaning of the phrases "in the ordinary course of trade" and "under of fully competitive conditions" signify a transaction made between unrelated seller and buyer with an arm's length price and the non-existence of special discounts to selective buyers by the seller respectively.[163]

3.3.3 The Brussels Definition of Value (BDV)

In order to harmonize and develop the definition of the customs value (which was unfinished by the GATT 1947), the BDV was signed on December 15, 1950 at Brussels.[164] Under the BDV customs value is the "normal price" of the import that could be sold in an "open" and objective market transaction made between the seller and the buyer.[165]

The assumptions for the "normal price" of the imported goods were the goods need to be transported and reached to the port of importation at the expense of the seller whereas the buyer on his turn needs to bear all importing country's duties and taxes.[166] The seller and the buyer

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[159] Id., Art. VII (2) (a)
[160] Ibid.
[161] Id., Annex I, Notes and Supplementary Provisions, Ad, Art.VII, paragraph 2, p. 66
[162] Supra, at note 146 above, Adrien and Luc, p. 157, See also the Text of the GATT cited at note 49 above, Art VII (2) (b)
[163] Supra, at note 55 above, the Text of the GATT, Annex 1, Notes Supplementary Provisions, Ad Art.VII, Paragraph 2, (2) (3), p.66
[164] Convention on the Valuation of Goods for Customs Purposes, University of Oslo Faculty of Law, December15 1950, Brussels, see its preamble, found at www.jus.vio.no/--/goods for customs.xm, accessed on July 15, 2015.
[165] Id, Annex I, definition of Value, Art I, the definition also takes in to account a time factor when the customs duty become payable, beyond the price of the good that could be fetched in the open market on a sale contract between the seller and the buyer.
[166] Id., Art. I(2) (a) (b) of the Annex I, the "actual value" Definition of value" the expenses of the seller with respect to the import could be "carriage and freight, insurance, commission, brokerage, consular fees, documentation costs,

should not be related parties so as to influence the normal price and "subsequent re-sale, use or disposal" of the import should not benefit the seller or third person who has a business relation with him.[167]

The signatories to the Convention were determined to see a "highest degree of harmony and uniformity" in customs valuation system that should be put in place by establishing the CCC or the present WCO organ, entrusted to study, examine technical aspects, prepare, recommend and cooperate with other organs on customs valuation matters.[168]

Under BDV the definition of customs value is based on a "notional concept" of value.[169] Under the "notional concept" "there is a single, theoretical, standard of value" i.e. the normal price of the import assessed based on the sale contract between the seller and the buyer in the open market place.[170] Under the BDV even the "bona fide sale" between the buyer and seller can be the basis of the "normal price."[171] This "notional concept of value" adopted by BDV is different from the GATT 1947 "actual value" concept and from the GATT 1994 "positive value concept". We will see later on the meaning of "positive value concept" in detail.

BDV highly depends on the sale contract between the seller and the buyer and on the invoice price. A deviation from this is allowed when the seller and the buyer are related parties or the invoice price is not at an arm's length.[172] BDV also gives room to contracting parties to assess customs value based on "minimum or reference prices" available at their disposal whenever the normal price or invoice price is not acceptable per se.[173]

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cost of containers and loading charges" see Annex II, Interpretative Notes to the definition of value, Note 2, of the Convention.

[167] Id., Art. II

[168] Convection Establishing a Customs Cooperation Council, December, 15, 1950 Brussels, found at http://www.fd.uc.pt./cl/CEE/ol/wco/convention, accessed on July 15, 2015, see its preamble and Art. I-III, see also the Convention on the Valuation of Goods for Customs Purposes cited above at note 164, Art. I, Art. V and Art.VI

[169] Valuation Directorate, The Brussels, Definition of Value and the GATT Valuation Agreement A Comparison, (26 February, 1985), Brussels, p. 2, See also Annex I definition of value, Art I, in the Convention of the Valuation of Goods for the Customs Purpose, cited at note 164 above

[170] Ibid.

[171] Ibid, see also Convention on the Valuation of Goods for Customs Purposes, cited at note 164 above, Annex II, Interpretative Notes to the definition of value, Addendum to Art I, Note 5, second paragraph, "accordingly "bona fide sale" so for as it implies the "current price of the import during the customs valuation will be taken as a normal price so that it will be taken as the customs value of the import.

[172] Supra, at note 146 above, Adrien and Luc, p.157

[173] Ibid.

BDV has got reliance and acceptance by many countries for some time. After wards, it was criticized especially by the traders since different countries had applied BDV inconsistently and arbitrarily.[174] Its non-acceptance by countries like U.S. (because U.S. at that time was using "positive concept of value"), and by the International Chamber of Commerce (ICC), representative of the business community, the GATT contracting parties forced to re-examine the existing customs valuation system.[175]

Generally, under the BDV, countries apply different standards of customs valuation system that can be summarized as follows.

1) The price at which goods comparable with the export goods are sold in the internal markets of the exporting country ("current domestic value");
2) The price which the imported goods are sold from the exporting country to the importing country ("current domestic value");
3) The price at which goods comparable with the imported goods are sold in the markets of the importing country ("import market value")[176]

3.3.4 The Tokyo Round Customs Valuation Negotiation Agreement

Since 1954 and 1955, countries lodged different proposals targeting at the need to amend Art.VII of the GATT 1947. The prominent of these proposals was a proposal made by the Scandinavian countries looking for standardization of the "customs value" definition as well as the methods and procedures that should be used to determine the customs value.[177]

After that customs valuation issue came to the table of multilateral negotiation in the Kennedy Round of 1964-1967 were the non-tariff barriers to international trade including customs valuation were negotiated.[178]

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[174] Ibid.

[175] Sheri Rosenow and Brian J. O'Shea, A Handbook on the WTO Customs Valuation Agreement (2010), WTO, Cambridge University Press, U.K, P.6-8

[176] Id., p. 8. This diverse customs valuation systems were identified by a study sponsored by GATT contracting parties see, foot note 18 of the same citation

[177] Id., p.9

[178] Id., p. 9-10, in the Kennedy Round trade negotiation, the "American Selling Price" (ASP) valuation system was highly criticized by the European countries, because "Asp" was designed customs valuation system of imports like "benzenoid, chemical products, rubber footwear, canned clams and knitted woolen globes" to the U.S. market to be determined based on U.S. origin similar products prices at the U.S. domestic market. And this was criticized as it was a clear" protectionist" Customs Valuation System.

At the end of the Kennedy Round negotiation i.e. 1967, the contracting pastries to the GATT sat for reviewing the 21 years old of the GATT and set a road map to further foster the international trading system.[179] For this purpose, the GATT contracting parties direct the GATT secretariat to prepare an "inventory" of non-tariff barriers tackling the international trade. [180]

Among the prominent findings of the "inventory" that identified as bottlenecks to the Custom Valuation System enshrined in the GATT 1947 and in the BDV were:

1. Use of domestic prices in the country of export as a basis for valuation;
2. Use of arbitrary values determined at the discretion of customs authorities;
3. Valuation based on prices for similar domestic origin goods in the country of import;
4. Use of "official" or "minimum" values;
5. Use of customs valuation to combat dumping;
6. Lack of transparency in valuation methods and procedures;
7. Inadequate facility for appeal against decisions by customs authorities."[181]

Founded on these findings and problems, the Tokyo Round Customs Valuation Negotiation launched (from 1973-1979) to create an internationally accepted Customs Valuation System premised by "a uniform, fair, and neutral system" by setting aside the then existed "arbitrary or fictitious" Custom Valuation System.[182] Unlike the other multilateral trade negotiations the Tokyo Round Negotiation was open to members and non-members of the GATT to participate in the negotiation.[183]

During this round of negotiation European Countries and the developing countries wish to install and develop the BDV as an international Customs Valuation System where as the U.S. go for "positive value concept" to be the international Customs Valuation System.[184] Out of the struggle, the Customs Valuation System proposed by the U.S. side i.e. the "positive value concept" get the final approval and a new international valuation agreement named after "the

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[179] Ibid.
[180] Ibid.
[181] Id., p.11-13
[182] Supra, at note 146 above, Adrien and Luc, p. 157, see also the preamble of the Agreement on Implementation of Art.VII of the GATT 1994, cited at note 4 above
[183] Springer, World Trade Regulation, International Trade under the WTO Mechanism,(2012), P. 3, found at http:www.springer.com/cda/ content/document/cda-download document/79836423 11420-pl.pdf%3FSG, accessed on July 27, 2015
[184] Supra, at note 128 above, Pushpa, p.7

Agreement on Implementation of Art.VII of the GATT Valuation Code" came to existence.[185] This agreement is also named by Agreement on Customs Valuation (ACV) which is based on a "positive concept of value" by setting aside the "notional concept of value" which was developed under the BDV.[186]

But what is "positive concept of value" under this new agreement? The "positive concept of value" envisaged by this agreement was that customs value appraisal for the imports should be on the basis of the "actual price paid or payable" for the goods, instead of be on the basis of "abstract or notional prices" that might be paid or payable to the import.[187] The "positive concept of value" or the "actual price paid or payable" is also on the premises of what the actual value of the import "is" not on what "should" be the actual value. [188]

Thus, according to this agreement the "positive concept of value" for the purpose of customs valuation determination is the prices actually paid or payable which is calculated on the basis of the "transaction value" that will be represented by the commercial invoice.[189]

Unlike the BDV "notional concept of value" which is founded on a "single, theoretical standard of value" the "positive concept of value", even though, it primarily considers the transactional value of the import, when the customs value cannot be determined under this condition there are secondary methods to establish the customs value of the import.[190](Emphasis supplied)

"Positive concept of value" based on the "actual value" of the import also precludes customs officers from using "indicative, normal or official" minimum or reference prices in determining the customs value.[191]

The secondary methods of determining customs value (that should be applied only and only if the primary basis of the customs valuation is not helpful), are the "transaction value of identical

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[185] Supra, at note 149 above, JICA, p.4
[186] Ibid.
[187] Supra, at note 175 above, Sheri and Brian, p.6
[188] Id., p.
[189] Supra, at note 118 above, WTO Valuation Agreement Text, see its General Introductory Commentary No. 1 and part I, Art 1 (1) which automatically become Annex III to the GATT 1994 see also at note 125 above, Sandeep, p. 7.
[190] Supra, at note 169 above, Valuation Directorate, p.2, see also the WTO Valuation Agreement Text cited at note 118 above, Art 2-7 and its General Introductory Commentary No. 2
[191] Art.VII Valuation for Customs Purposes, p.260, in Analytical Index of the GATT, found at http://www.org/english/res/e--booksp-e/gatt-ai-e/art7-e.pdf, accessed on July 19, 2015

goods, the transaction value of similar goods, the deductive value method, the computed value method or the reasonable or fall back method" as the case may be.[192]

By doing so, the contracting parties to the Tokyo Round recognized and agreed that customs valuation need to be on the basis of "a fair, uniform and neutral" valuation system, conforming and "consistent" with commercial realities.[193] By that agreement participants have also agreed to avoid the "use of arbitrary and fictitious" valuation system[194] that will impede to the harmony and development of international trade.

Despite, for its beautiful and modern rules on customs valuation, developing countries were at hotchpotch state with the draft of this ACV for if customs are obliged to accept the "transaction value" represented by the "invoice price" or simply by the commercial invoice, importers would be indulge in an under-invoicing activities thereby the amount of customs revenue will be endangered.[195]

The other fear on the side of the developing countries was companies emerged from the developed countries have branches or agents in the developing countries sphere and they can hardly control their transaction employing the transaction value method.[196]

In addition the right of the importer to opt the computed value method against the deductive value method was so opposed by the developing countries.[197] Their reason being they lack capacity to verify the honesty of the computed value of the import at the exporting country. [198]

Generally, the developing countries opposed the ACV because their customs administration lack the required re-sources and all rounded infrastructures to properly implement the rules enshrined by the agreement.[199] For these rationales the developing countries insist on to stay on the BDV

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[192] Supra, at note 118 above, WTO Valuation Agreement Text, Art 2,3,5,6 and 9, According to Annex I, Interpretative Notes, General Note of this Text, all the six methods of customs valuation methods shall be applicable in a strict hierarchical order. The only exception to this hierarchical order is that the deductive method and computed method of valuation can be reversed upon the request of the importer. Otherwise, no permission to preclude the sequential order of their application

[193] Supra, at note 118 above, WTO Valuation Agreement Text, see its preamble

[194] Ibid.

[195] Supra, at note 125 above, Sandeep, p.7

[196] Supra, at note 175 above, Sheri and Brian, at note 210, p.15

[197] Ibid.

[198] Ibid.

[199] Supra, at note 125 above, Sandeep, p.7, most of the reactions by the developing Countries were proposed by India and it was succeeded by inserting a new provision in the Agreement i.e. Art 17 which shifts the burden of proof to the importer (SBP).

The "Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value" was also adopted at the Uruguay Round.[207] The decision was also known by its golden expression "Shifting the Burden of Proof" (SBP) which was proposed during the Tokyo Round negotiation by India on behalf of the developing countries.[208] According to the "shifting the burden of proof" criteria, whenever the customs have a reasonable doubt on the accuracy or honesty of the commercial invoice declared by the importer, the burden of proving whether the declaration is right or not falls upon the importer.[209] In this process the importer will prove to the customs that the price indicated by the commercial invoice represents the price actually paid or payable for the import and it is true as well.[210]

When the customs have a reasonable doubt on the accuracy of the declared value, there will be a forum of consultation with the importer.[211] If the decision of the customs is against the trust worthiness of the commercial invoice brought by the importer, the secondary methods of customs valuation will be employed in their sequential order to determine the accurate customs value.[212]

The other important feature and addition to the Uruguay Round negotiation (which is of course proposed during the Tokyo Round) is the agreement on the "special and Differential Treatment" (SDT) accorded to the developing countries.[213] Based on this privilege, developing countries may delay the application of the ACV for a period of five years from the entry in to force of the

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[207] Supra, at note 175 above, Sheri and Brain, see Appendices 2, WTO Uruguay Round Ministerial Decision, WTO, /VaL/1, 27 April, 1985, Committee on Customs Valuation, Marrakesh Ministerial Decisions and Texts Relating to ustoms Valuation p. 205, it is also known as "Decision 6.1 based on Art.17 the WTO Agreement on Customs aluation

[208] Id., see the Decision No. 1

[209] Supra, at note 118 above, WTO valuation Agreement Text, see Art.17, see also note 164 above, Adrien and Luc 158

[210] Ibid., the rational for this decision by the WTO Uruguay Round ministerial decision was that the Tokyo Round Negotiation proposal was highly objected by the developing countries, especially on the acceptance of the transaction value and it is a means to rectifying the confrontation and to entertain the concern of the developing countries.

[211] Supra, at note 146 above, Adrien and Luc, p.158, see also the General Introductory Commentary of the WTO Valuations Agreement Text cited at note 118, Commentary No. 2, clarifies the process of consultation and the way out thereof.

[212] Ibid., see also Annex III to the WTO Valuation Agreement Text cited above at note 118, the customs have the right to inquire the truth or accuracy of the statements, documents and declarations made by the importer.

[213] Supra, at note 118 above WTO Valuation Agreement Text, Art. 20 is devoted for the "SDT"

agreement i.e. from January 1, 1995.[214] Developing countries have also got another additional privilege during the Uruguay Round that allowed them to delay the reversal application of computed value method against the deductive method enshrined under Art.5 and 6 of the ACV.[215] And finally, developing countries succeeded in getting the continuation of application of officially established minimum reference prices to appraise customs value.[216] The Uruguay Round, beyond its creations of the WTO ACV more or less inculcated on securing further benefits for the developing countries as is clearly reflected in the preamble of the ACV.[217]

The ACV bound solely on the customs valuation of imported goods and it cannot be used to determine the customs value of exports, quotas and ant-dumping administration or the determination of domestic taxes and foreign exchange control.[218] Therefore, members to the ACV did not have obligation on these economic and policy matters and are at liberty to purse on their own.

3.4 The Methods of Customs Valuation and their Hierarchical Application: In Brief

The ACV not only stipulates the six methods of customs valuation but also authorizes the strict application of the methods in a strictly sequential order.[219]

3.4.1 The Transaction Value Method

The ACV has authorized customs value to be as far as possible the "transaction value" i.e. "the price actually paid or payable" of the imported good.[220] The phrase "price actually paid or payable" by the agreement means "the total payment made or to be made by the buyer to or for the benefit of the seller for the imported goods."[221] As the ACV is premised by the "positive

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[214] Ibid., see also Annex III

[215] Id., Art. 20 (2), see also Annex III No. 3 and 4 paragraph 3-7 to the WTO Valuation Agreement Text cited at note 115 above

[216] Id., Annex III, No. 2, paragraph 2

[217] Id., see the first paragraph of its preamble

[218] Ahmet Suayb Gundogdu, Determination of OIC Countries' Customs Revenue Vis-à-Vis Implementation of WTO Customs Valuation Agreement. (2011), Journal of Economic Cooperation and Development, 32, 3 (2011), 39-64, p. 6, found at www.sesric.org/---/At10-009001-2-pdf, Rege,V, (2002), customs valuation and customs reform in B: Hoe man, A, Mattoo, Philip (eds), accessed on July 15, 2015.

[219] Supra, at note 118 above, WTO Valuation Agreement Text, see Art. 1 up to 7, the General Introductory Commentary and Annex I, Interpretative Notes, General Note, stipulate the same.

[220] Id., Art. 1 (1)

[221] Id., Annex I, Interpretative Notes, Note to Art. 1, paragraph one

concept of value" as opposed to the "notional concept of value" what "is" the value of the good instead of what "would" be the value of the good is taken as a basis to the customs value.[222] The price actually paid or payable is represented by the invoice price as declared by the importer. [223]

Thus, the transaction value is to be taken by the customs even if the seller and the buyer are related parties so far as the invoice value is at an arm's length and the fact of their relation did not affect the price.[224]

The ACV stipulates the transaction value to be adjusted against costs like transport, insurance, commissions and brokerage (but not buying commissions paid to the agent of the importer abroad), container and packing costs as far as they are not included in the transaction value and are also incurred by the buyer.[225] Costs related to "materials, components, parts, tools, dies, moulds, materials consumed in the production of the import, engineering, development, artwork, design work, and plans, sketches done at the exporting country, royalties and license fees" need to be added in the transaction value.[226]

The adjustments to the transaction value may include also discounts from the transaction value. Discounts to the transaction value may be indicated in the contract of sale between the seller and the buyer and should be indicated in the invoice price before the customs start to make assessment of the customs value.[227] Discounts to the transaction value may be either quantity discount (where less price is offered on the basis of the amount bought by the buyer) or discounts for past payments made by the buyer to the seller.[228] However, discount adjustments to be accounted for the customs value, the price of the import has to be made during the payment time indicated by the sales contract, less discount may be disregarded at all.[229]

Moreover, costs incurred by the importer in relation to "construction, erection, assembly, maintenance or technical assistance undertaken after importation, costs of transportation after

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[222] Supra, at note 175 above, Sheri and Brain, p.22
[223] Ibid.
[224] European Economic Community, Customs Manual on Valuation (October 2014), found at www.revenue.ie/.../customs valuation, accessed on April 9, 2015 p. 7-10, see also the WTO Valuation Agreement Text cited above at note 118, Art. 1 (2)
[225] Id., p. 10, see also WTO Valuation Agreement Text cited at note 136, Art.1 and 8
[226] Id., p 10-11, see also Art.1 and 8 of WTO Valuation Agreement Text
[227] European commission, Directorate General Taxation and Customs Union, Customs Policy, Customs Legislation, Compendium of Customs Valuation Texts of the Customs Code Committee, Customs Valuation section (September 2005), Brussels, p.46
[228] Ibid.
[229]. Ibid.

importation and customs duties and taxes imposed by the importing country cannot be subjects of customs value.[230] In case the truth of the transaction value shade doubt to the customs and the importer failed to clear the doubt under the consultation process the customs can pass to the next valuation method.[231]

3.4.2 The Transaction Value of Identical or Similar Goods Value Method

The customs valuation appraisal method after the transaction value is the identical goods value method followed by the similar goods value method.[232] We like to treat both methods under the same section since they share similar characteristic feature.

The ACV defines the term "identical goods" as "goods which are the same in all respects, including physical characteristics, quality and reputations."[233] The agreement defines the term "similar goods" as "goods although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable."[234] Imports cannot be compared against identical or similar goods value if some modification is made after importation.[235]The identical or the similar goods comparable against the import have to be produced in the same country and by the same producer.[236]

The identical or similar goods comparable against the import should be imported "at or about the same time", both transactions should take place at the "same commercial level and at substantially the same quantity".[237]

Likewise, the adjustments for the different commercial level and quantity of the identical or similar goods need to take into account market fluctuations, transportation costs or other similar

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[230] Supra, at note 118 above, WTO Valuation Agreement Text, Annex I, Interpretative Notes, Note to Art 1, Number 3. Paragraph 3

[231] Id., Art. 1(b-d), transaction value influenced by the relationship of the buyer and the seller(according to Art. 15(4) of the Agreement the seller and the buyer can be considered related parties if they are officers or directors of one another's business, are partners, they have employment relationship, either of them directly or indirectly controls one another, are members of one family, or the resale, disposal or use of the import by the buyer will directly or indirectly benefit the seller.

[232] Id., see Art. 2 and 3

[233] Id., Art. 15(2), However, very minor differences are tolerated in justifying the identical goods criterion

[234] Id., Art. 15(2)(b), a given good to be considered as similar to another good, the customs should consider similarity in reputation, trade mark and quality between the goods.

[235] Id., Art. 15(2)(c)

[236] Id., Art. 15 (2) (d-e), however, when the same producer cannot be found different producers but from one country could be taken in the comparison.

[237] Supra, at note 175 above, Sheri and Brian, p.100-102, see also Art 2 and 3 as well as the Interpretative Notes to Art. 2 and 3 of the WTO Valuation Agreement Text cited above at note 118, whenever these criteria do not satisfied different time, commercial level or quantity may be taken up on necessary adjustments have been made.

charges to the customs value.[238] At any rate, in calculating either the transaction value of the identical or similar goods, when more than one comparable value is found thereof, the lowest value of such goods should be taken by the customs.[239].

When the customs value could not be found by applying the transaction value of identical good or the similar in their hierarchical order the customs are authorized to go to the next method customs valuation i.e. the deductive value method.

3.4.3 The Deductive Value Method

Under the deductive value, customs valuation is done on the basis of the "resale price" of the goods under valuation or its identical or the similar import as the case may be.[240] This in other words means that the imported good or the identical or the similar goods have to be sold in the importing country in an "aggregate and greatest quantity at or about the time" of the importation to unrelated persons.[241] The resale price of the imported or the identical or the similar good is taken as the "unit price" at which these goods are sold in the "greatest aggregate quantity up to the maximum of 90 days from the import took place.[242] The unit price of comparable goods are also subject to deductions with respect to general profits and expenses reflected according to the generally accepted accounting principles, deduction with respect to commissions cost, cost of transport and insurance and other related adjustments should be deducted to arrive at the customs value.[243] Here, the imported or the identical or the similar goods may be imported from the same exporting country or from different countries as far as there is an evidence of their importation at the specified time.[244]

The general profit or expense of imports under this method should be taken as a whole aggregative not based on general profit or expense of part proceeds.[245] The general expenses of the comparable import include all the direct and indirect costs with respect to not only producing

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[238] Id., p.102
[239] Supra, at note 118 above, WTO Valuation Agreement Text, Art. 2(3), 3(3)
[240] Supra, at note 52 above, Autra, p. 163
[241] Supra, at note 103 above, Dominik, p. 284
[242] Supra, at note 118 above, WTO Valuation Agreement Text, Art. 5, Annex I, Interpretative Notes, Note to Art. 5
[243] Id., Art. 5 (1) and Annex I, Interpretative Notes, General Note
[244] Supra, at note 52 above, Autra, p. 163, see also the WTO valuation Agreement Text cited above at note 118, Annex I, Interpretative Notes, Note to Art 5, No. 9
[245] Ibid.,

but also marketing same.[246] Domestic taxes paid to the comparable imported or identical or similar goods are also subject to deductions to establish the customs value.[247]

In case, the customs or the importer failed to get the imported or identical or similar goods sold in the importing country during the 90 days, the importer may ask the customs to determine the customs value of the import in question after reprocessing but the reprocessing should not change its character against the comparable import or identical or similar import.[248] Besides, the reprocessed good should be sold at a "greatest aggregate quantity" to unrelated parties in the importing country and adjustments to additions and deduction based on an objective data and information should be done.[249]

Undertakings like simple "packing or repacking, evaporation, shrinking, normal weathering" would not preclude the import in question from being compared against the imported or the identical or the similar good.[250] However, further processing or manufacturing or assembly that can bring a change in the identity or characteristics of the imported good in question would preclude it from being comparable to the imported or the identical or the similar import.[251]

In short, sales price of the import at the importing country minus general profits and expenses as well as costs of transport, commission, insurance, domestic taxes adjusted against the necessary additions, deductions and discounts is taken as a basis of customs value appraisal.[252]

The other important requirement under this method is that, the resale price need to be the "first commercial sale" made immediately after the importation.[253] If the customs value cannot be established under this method, the customs can go to the next fifth valuation method i.e. the computed value method. But, the importer has the right to ask the customs the computed value method to be applied at first before the deductive value. The reason to the reverse application of the computed method against the deductive is that either comparable imported or identical or

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[246] Supra, at note 118 above, WTO Valuations Agreement Text, Annex I, Interpretative Notes, Note to Art. 5, No. 7
[247] Id, Annex I, Interpretative Notes, Note to Art 5, No 8
[248] Id, Art. 5(2), Annex I, Interpretative Notes, Note to Art. 5, No. 12
[249] Ibid.
[250]. Supra, at note 149 above, JICA, p.78
[251]. Ibid.
[252].Supra, at note 175 above, Sheri and Brian, p.109
[253] Id., p. 11, the second time and the third time and so on sales took place after the first "commercial sale" or transaction cannot be taken as a basis of customs valuation.

similar goods could not be found in the importing country or the importer has information as regards to the costs of the import in question from the exporting country.[254]

3.4.4 The Computed Value Method

The computed value method is determined by the addition of costs related to the production of the imported good. [255]Besides, the costs of production, profits and general expenses, costs such as transportation, insurance, loading and handling, costs of containers and packing need to be furnished to the customs.[256] Under this method, not only the information of the cost or value of the import is to be furnished by the producer, the exporter should be the actual producer and all necessary information related to the production of the import should be at its disposal.[257]

In principle, all the necessary information to determine the customs value under the secondary valuation methods needs to be generated from the importing country.[258] Under this method the information is provided by the exporting country. This is because it is done by the request of the importer who has a relationship with the exporter and the exporter is ready to furnish the information.[259]

The importing country has the right to verify the information provided by the seller (the producer) but at its own cost.[260] Here, the cost of verification may include documentation cost, internet cost, or costs to experts of the customs offices when they travel to the exporting country for this purpose.[261] The importing country when verifying the information need to secure prior consent and need to give due notice to the producer.[262]The information may also be gathered from another third country when the exporting country or the producer fails to do so.[263]

If the determination of production costs, amount of profits and expense, cost of transport, insurance etc. of the import in question becomes difficult, imports which are identical or similar

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[254] Supra, at note 118 above, WTO Valuation Agreement Text, Art.4 and Annex I, Interpretative Notes, Note to Art. 6 No. 1
[255] Id., Art. 6
[256] Supra, at note 224 above, Customs Manual on Valuation, p .9
[257] Ibid, see also WTO Valuation Agreement Text cited above at note 118 Art. 6
[258] Supra, at note 118 above, WTO Valuation Agreement Text, Annex I, Interpretative Notes, Note to Art 6, No. 1
[259] Ibid.
[260] Supra at note 102 above, Customs Valuation Encyclopedia, p.99
[261] Ibid.
[262] Ibid.
[263] Ibid.

or imports of the "same class or kind" can be used.[264] However, the comparable identical or similar or the "same class or kind" of imports should be from the same country where the goods being valued are brought.[265] The "same class or kind" in computed value method is to be interpreted to include imports of identical or similar in nature and non-identical or non-similar imports that can fall in the same category "produced by a particular industry or industry sector."[266]

Although, not included in the information provided by the seller (producer), cost related to "rent, electric, water, heat and other utilities, legal fees, office salaries, office equipment, marketing expenses, telephone and telegraph, employment benefits" etc should be included to the customs value under this method.[267] Under the computed value method, costs for "engineering, development, art work, art work, design work, and plans and sketches" undertaken in the importing country and are charged to the producer will be added to the customs value.[268] Costs pertaining to patent, trade mark, research and development also have to be added to the customs value determination process in this method.[269]

Computed value methods is rarely used since verifying and assessing of foreign country's data and information entertains different language, different method of accounting and record that invites further costs to do so.[270] On top of this the producer or the exporting country may refuse to provide the necessary information.[271] The other challenge for the application of this method is that members to the ACV are precluded from forcing or requesting (authorizing) non-resident to offer the information for computing the customs value.[272]

3.4.5 The Fallback Method

The fall back method is the last option left for the customs to apply when transaction value is not accepted. The method is also known as the "reasonable means"[273] or "residual"[274] method.

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[264] Ibid., see also, WTO Valuation Agreement Text, Annex I, Interpretative Notes, Note to Art. 6 No. 8
[265] Supra, at note 118 above, WTO Valuation Agreement Text, Annex I, Interpretative Notes, Note to Art 6 No. 8, last statement
[266] Supra, at note 102 above, Customs Valuation Encyclopedia, p.99
[267] Supra, at note 149 above, JICA Project, p. 84
[268] Id., p. 85
[269] See Customs Valuation Encyclopedia, citied at note 102 above, p 104
[270] Supra, at note 175 above, Sheri and Brian, p. 117
[271] Ibid.
[272] Supra, at note 118 above, WTO Valuation Agreement Text, Art. 6(2)
[273] Id., Art. 7(1)

The method need to be utilized as a last resort approach or in exceptional situations when the customs fail to appraise the customs value under any of the preceding methods.[275] Under this method, the customs need to re-apply the six valuations methods in their sequential order.[276]

In applying all the above methods under the fall back method, the general rule enshrined under Art.VII of the ACV should be taken in to account i.e., the customs value determination should be fair, uniform and neutral reflecting the commercial reality and practice.[277] The situations that can invite the application of the fall back method may be like valuation of damaged goods, used vehicles or repaired goods.[278] The method tries to limit the discretion of the customs from the possible "arbitrary and "fictitious" valuation appraisal when it fail to appraise the customs value using the normal methods.[279]

Thus, the customs are obliged to apply the already identified methods in a reasonable and consistent manner with the general principles established by the ACV.[280] The customs have to apply the normal valuation methods flexibly, cooperatively and in a transparent manner in order to arrive at the appropriate customs value.[281]

The fall back method uses data and information that are available in the importing country. This data and information is nothing but previously determined customs values on previously imported goods.[282] As the ACV is based on the "positive" value concept that is on the assumption of what the value of the import "is" not on what the value of the import "should be," so that the customs value reached using the fall back method should reflect the nearest transaction value.[283] Hence, this method is devoid of a specific and detail valuation technique of itself. The techniques in the rest methods are utilized in a "reasonable means" in accordance to the general principles adopted by the ACV.[284]

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[274] Supra, at note 224 above, Customs Manual on Valuation, p.17
[275] Ibid.
[276] Ibid.
[277] Supra, at note 118 above, WTO valuations Agreement Text, Art. 7(1)
[278] Supra, at note 175 above, Sheri and Brian, p. 123
[279] Id., p. 124
[280] Ibid.
[281] Id., p. 125
[282] Teuta Balliu, Fall Back Methods as a Basis of Customs Valuation on Imported Goods: Reality Facing Rules and Law (2014), University "A Ixhuvani", Elbbasan, Albania, Mediterranean Journal of Social Sciences MCSER Publishing, Rome-Italy, Volume 5, Nov., March 2014, P 176
[283] Ibid.
[284] Supra, at note 149 above, JICA, p.86

From this the fall back method can be judged as a procedure rather than a purely distinct another valuation method.[285] The method is added for comprehensiveness in case the other standard methods are not helpful in determining the customs value of certain imports.[286] Under the fall back method the customs are obliged to use the normal valuation methods laid down in the ACV but in a flexible and reasonable way.[287] For instance, if the customs used previously imported identical or similar goods value for the normal identical or similar goods value method the comparable good should be produced from the same country but under the fall back method, however, the goods may be produced by different countries.[288] The degree of flexibility may encompass the use of further processed goods, to expand the identity of the identical or similar goods to same class or kind of goods and to allow related party transactions.[289]

Finally, under the fall back method the use of the following means of determining the customs value is prohibited:

a) The selling price in the country of importation of goods produced in such country;
b) A system which provides for the acceptance for customs proposes of the higher of two alternative values;
c) The price of goods on the domestic market of the country of exportation;
d) The cost of production other than computed value which have been determined for identical or similar goods in accordance with provisions of Article 6;
e) The price of the goods for export to a country other than the country of importation;
f) Minimum costs value; or
g) Arbitrary or fictions values."[290]

Generally, the prohibitions are in line with the basic principles of the WTO ACV. The prohibitions laid down reflect the principle of neutrality when it prohibits "a higher of two alternative values" and a "minimum customs values (see under the list (b) and (f). The list under line (a) and (c) also reflect such neutrality. By doing so, the system tries to favour neither the

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[285] Ibid.
[286] Ibid.
[287] Supra, at note 224 above, Customs Manual on Valuation, p. 17
[288] Supra, at note 118 above, WTO Valuation Agreement Text, Annex I, Interpretive Notes, Note to Art 7, No. 3
[289] Supra, at note 149 above, JICA, p. 88
[290] Supra, at Note 118 above, WTO Valuation Agreement Text, Art.7 (2)

importer nor the customs at the expense of flexible application of the normal customs valuation methods under the fall back method.

3.5 The Regulation of Customs Valuation in Ethiopian Historical Background

The discussions under this section only aimed to pin point major changes in the customs valuation practices developed in the Ethiopian customs especially from the time where by laws of the country started to publish in the "Negarit Gazeta".[291]

At first we find a Proclamation issued in 1955 which mandated to consolidate and amend the law relating to customs.[292] When it comes to customs valuation issue on this Proclamation, starting from part VII with its caption "the payment and computation of duties generally" it laid down different rules under different provisions for this purpose.[293] As discussed previously, customs duties and taxes could be imposed either on an ad valorem duty rate or on specific duty rate and customs value becomes important when the computation is on the basis of an ad valorem duty rate. This Proclamation entertained both methods in different provisions.[294] Based on this Proclamation, the specific duty rate was imposed according to weight or other measurement of the import, whereas the ad valorem duty rat was imposed on the basis of the "price the importer would give for the article" adding costs of transport, insurance on it.

There is also another peculiarity in the Proclamation that when duty free goods are being sold in the domestic market, the seller of these goods in the domestic market is expected to pay customs duties on the basis of the sale price at the time when the goods have been sold.[295]

For this proclamation, the customs value need to be corroborated by an appropriate invoices brought by the importer. Whenever, the invoices were not trustworthy and not accepted by the customs and the importer did not furnish their accuracy the customs were authorized to

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[291] Tadesse Lencho, Towards Legislative History of Modern Taxes in Ethiopia (1941-2008), Journal of Ethiopia Law, Vol. XXY, No. 2, September, 2012, p. 104, for the writer of this Journal Article, the modern tax system is associated with publication of Tax Laws in the Negarit Gazeta since 1942 and modern tax system did not attached with the modern History of Ethiopia.

[292] A Proclamation to Consolidate and Amend the Law Relating to the Customs, 1955, Proc. No. 145, Neg. Gaz., 14th year, No. 7

[293] Id., see Arts. 81-116., all these provisions are devoted for the determination of customs value and customs duties and taxes.

[294] Id., Art. 88, 92,

[295] Id., Art. 83

determine the would be customs value.[296] This last option for the customs at the then time is similar with the fall back method of today. The rest other method of the customs valuation were not anticipated and foreseen by the Proclamation. This Proclamation generally adopted the "normal price" of the BDV.

This law was in place for about 42 until it was repealed by Proclamation 60/1997.[297] This Proclamation was issued by the Federal Parliament since the Federal Government is bestowed to impose and collect customs duties and taxes and formulate and enact laws pertaining to customs.[298] Chapter eight of this Proclamation was devoted to customs valuation and the term "customs value" is defined as "duty paying value" which shall be the "actual total costs" of the import.[299] The "duty paying value" or the customs value of the import is the summation of "transaction value, freight cost and insurance premium that is paid to deliver the goods up to a prescribed customs port."[300] The "transaction value" together with transport, insurance and other permitted and related costs supplied by the importer should be considered as accurate unless affected by the relationship of the seller and the buyer.[301] This Proclamation adopted the "positive concept of value" of the ACV since it takes transaction value as a basis of valuation.

Unlike its predecessor, this Customs Proclamation regulate for the first time customs valuation method other than the transaction value, the transaction value of identical and/or similar goods method.[302] On top of this, this Proclamation prescribes the adjustments either of additions or deductions to the "transaction value" in order to arrive at the "actual or accurate total cost of the import or the "accurate customs value" of the import.[303]

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[296] Id., Art. 93 to 98

[297] The Re-Establishment and Modernization of Customs Authority Proclamation, 1997, Proc., No. 60, Neg. Gaz., 3rd year, No. 18., Art 85 (1) (b)

[298] The Constitution of the Federal Democratic Republic of Ethiopia, 1995, Proc. No. 1, Neg. Gaz., 1st year, No. 1, Art. 51 (10), 96(1)

[299] Supra, at note 297 above, the Re-Establishment and Modernization of Customs Authority Proclamation, Art. 47, the caption of chapter eight of the Proclamation is designated as "Valuation, Tariff Classification and Calculation of Duties and Taxes", the term "tariff classification" seems, included here as a procedural task of the customs officers when doing the customs value determination and customs duties and taxes assessment but its detail is found in the HS Code not in this Proclamation.

[300] Id., Art. 48 (1)

[301] Id., Art. 48 (2)

[302] Id., Art. 48 (7-9)

[303] Id., Art. 48(5) and Art. 49, the additions to the "transaction value" identified are "commissions and brokerage, cost of container and packing, royalties and license fees, loading, unloading and handling" of the import up to the

The then ECA was given the discretion to determine the customs value of the import using the transaction value of identical or similar goods whenever the importer fails to present the necessary commercial invoice or the commercial invoice is not accepted by the customs but the identical or similar goods comparable need to be from the same country and bought at the same commercial level and quantity.[304]

According to this Proclamation the then "Federal Revenue Board" [305] or the latter "Ministry of Revenue"[306] was entrusted to come up with detailed Directives on customs valuation. The Ministry of Revenue has come up with a Directive on customs valuation in 1996 E.C.[307] However, an implementing Directive to this Directive issued by ECA came up with new methods of customs valuation which were not regulated or even foreseen by the Proclamation.[308] Proclamation No. 60/1997 did not mention the new customs valuation methods that are regulated by the Directive. The framers of this Directive may argue that Proclamation No. 368/2003 (the amendment) gave the authority to do so.[309].

The Directive on customs valuation of "used goods" was also issued under this Proclamation.[310] This Directive did not add any new customs valuation method on the "used goods" including "used vehicles", the Directive uses the latter and it addresses same on the body though its title includes "used goods". [311]

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port of entry and the costs thereof should be incurred by the buyer. By the same token, the deductions from the "transaction value" in determining the actual customs value may be cost in relation to damages occurred during the journey or at customs ware house.

[304] Id., Art. 48 (7-10)

[305] Id., Art. 2 (30), 48 (6), (11)

[306] Re-Establishment and Modernization of Customs Authority (Amendment) Proclamation, 2003, Proc. No. 368, Neg. Gaz., 9th year, No. 93. See Art 2(3), which replaces the "Board" to the "Ministry of Federal Revenue" thereafter, the power to enact the Directive directly bequeath by the Ministry of Revenue.

[307] Directive on Customs Price Data-Base Preparation, Distribution and Utilization, Directive No. 10/1996 E.C., in Amharic, Ministry of Revenue, Addis Ababa

[308] ECA, Implementing Directive to Implement the Directive on Customs Price-Data Base Preparation, Distribution and Utilization, No. 2/1996 E.C., in Amharic, Addis Ababa, the Directive in addition to the customs valuation methods regulated by the Proclamation (the transaction value method, the transaction value of identical or similar goods method), adds another new customs valuation methods (the " countries with similar level of development" to compare identical or similar imports, the "goods emanated from high risk countries" and the "fall back" method) which were not found in the Proclamation.

[309] Supra, at note 306 above, Re-Establishment and Modernization of Customs Authority (Amendment) Proclamation, Art. 2(13), which prescribes the Ministry of Revenue, would come up with a Directive on procedures and application of the already listed customs valuations methods as well as other alternatives and on "used goods."

[310] Used Vehicles and Goods Customs Duties and Taxes Assessment and customs Valuation Directive, No. 6/1996 E.C., in Amharic, Ministry of Revenue, Addis Ababa, the transaction value method and the similar goods value method up on adjustments against depreciation and currency rate changes were used.

[311] Id., see, Art 6-11

The other law in the history of customs valuation in Ethiopia that can be mentioned here is the law establishing the "Pre-Shipment Inspection Scheme".[312] To achieve the purpose mentioned in the preamble of this Proclamation the then Ministry of Revenue had signed a contract which lasts from 2000-2004 with SGS (Societe General De Surveillance) pre-inspector company based in Switzerland under different phases of agreements.[313] Save for clear exceptions, all goods imported to the country were subjected to the pre-inspection scheme thereby customs valuation, tariff classification and examination, quality, quantity, packing and exchange rate-starting from the exporting country up to the entry port were undertaken by this company.[314] The pre-inspection contract was cancelled after wards due to the customs revenue for the government had shown reduction compared to the service fee paid to the company.[315]

The WTO and the WCO also used to advice customs authorities to depend on strong Customs Data-Base for the purpose of customs valuation rather than to continue with pre-shipment inspections scheme on imports.[316]

At the end of the contract SGS (Societe General De Surveillance) company had prepared and hand over "Customs Valuation Data-Base" to the Ministry of Revenue.[317] The then Ministry of Revenue has declared a Directive on the Customs Valuation Data-Base prepared by company and the customs valuation under this system was done based on CD-Price Based Customs Valuation System.[318] This CD-Price Based Customs Valuation System was done based on a "minimum price/record price" value for a high risk imports and a "reference price" value for low risk imports.[319]

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[312] Pre-Shipment Inspection Scheme Establishment Proclamation, 1999, Proc. No. 173, Neg. Gaz., 5th year, No.56, according to the preamble of the proclamation the scheme was aimed at securing the type, quality, standard and quantity imports purchased by the country's hard currency and tackling the under invoicing activities and prevent the customs revenue loss for the government.

[313] Valuation and Tariff Classification Directorate, ERCA, Ethiopia Customs Valuation System: Overview of Its History and Direction for the Future, unpublished, in Amharic, Sene 2006, p.8-14

[314] Supra, at note 312 above, Pre-Shipment Inspection Proclamation, Art. 2-14

[315] Supra, at note 313 above Valuation and Tariff Classification Directorate, p.16.

[316] Supra, at note 146 above, Andrien and Luc, p. 170

[317] Supra, at note 313 above, Valuation and Tariff Classification Directorate, p.13, beyond this the company was also duty bound to give the necessary capacity building to the ECA staff before the termination of the contract.

[318] Supra, at note 307 above, Directive No. 10/1996 E.C., Art.14

[319] Id., Art. 6 and Art.11, under the high risk of imported goods category we found textile and garments, shoe, electronic goods, spare parts, all the rest goods fall under the reference prices category.

From July 2008 the Ethiopian Customs Authority subsumed with the Federal Inland Revenue Authority and the Ethiopian Revenues and Customs Authority created.[320] There are arguments pro and against the mixture or distinction of the organizational structure of the tax authority and the customs authority.[321] However, this subject of assessing the merit or demerit of the amalgamation of these government entities is beyond our scope in this research.

Currently ERCA is mandated to make customs valuation activities on import so as to impose the customs duties and taxes.[322] The most recent and detailed Customs Valuation System in Ethiopia is declared by the recently repealed Customs Proclamation No. 622/09 and by the current Customs Proclamation No. 859/2014.[323]

Accordingly, to calculate customs value primarily the actual total cost of the import up to the customs territory is taken.[324] The primary basis of customs value is the transactional value[325] of the import adding some accessory costs incurred by the importer until the goods reach the Ethiopian territory.[326] If the customs cannot determine the customs value of the import under the transaction value method, the secondary valuation methods will be applied.[327]

To our dismay, though, the authority introduces a web-based Customs Valuation Data-Base System which is called Ethiopian Customs Valuation System (ECVS)[328] by the mid of 2014, but it failed to be the basis of valuation system. ECVS was issued in line with the Directive[329] issued by ERCA on customs valuation that ambition to make the customs valuation system of Ethiopia consistent with the WTO and with valuation methods indicated by the Customs Proclamation (herein after Proclamation).[330]

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[320] Ethiopian Revenues and Customs Authority Establishing Proclamation, 2008, proc. No. 587, Neg.Gaz., 14th year, No. 44

[321] Justin Zake, Customs Administration Reform and Modernization in Anglophone Africa Early 1990s to Mid 2010 (August 2011), International Monetary Fund, IMF Working paper, p.15

[322] Supra, note 320 above, ERCA Establishing Proclamation, Art. 6(4)

[323] Customs Proclamation, 2009, Proc. No. 622, Neg. Gaz., 15th year No. 27, Art.4, Art. 32- 44, see also Customs Proclamation cited at note 75, Art. 89 and the following, both laws adopt all the six customs valuation methods regulated by the ACV

[324] Supra, at note 75 above, Customs Proclamation, Art. 89(2)

[325] Id, Art. 90

[326] Id, Art. 90,96-98

[327] Id, Art.91-95

[328] See for example the Locally Circulated Addis Fortune (Addis Ababa), January 27, 2013

[329] Directive on Imported Goods Customs Duty and Tax Value Price Tariff, No. 94/2006 E.C., Tir, 2006 E.C., in Amharic, ERCA, Art. 20

[330] Supra, at note 328 above, Addis Fortune

Though, the authority vows to implement the valuation methods laid down in the Proclamation and committed to make its valuation undertaking and its domestic laws in line with the WTO rules to facilitate the Country's accession to WTO, the new Directives makes clear from the outset that the old CD-Price Based Customs Valuation System will continue to be applied by ERCA.[331] This will provoke for the importers and other stakeholders as the authority simply declared the Directive for nothing so to say.

[331] Supra, at note 145 above, Customs Valuation Directive, Art.44, see also Art. 45 of Directive No. 94/2006 cited at note 329

CHAPTER FOUR

THE CURRENT PRACTICE OF CUSTOMS VALUATION OF IMPORTED GOODS: THE CASE OF ETHIOPIAN CUSTOMS

4.1 Introduction

The working environment and practice of current customs valuation system in Ethiopia is guided by the composite application of Proclamation,[332] Directive,[333] guidelines and the Customs Data-Base.[334]

In the previous sessions we try to formulate the customs valuation aspect of the customs function to be appraised based on objective, properly documented and on the basis of properly quantifiable data. Besides, customs valuation system and practice need to be premised by a uniform, fair and neutral valuation process that reflects the commercial reality and it must be consistent with current business transactions.

Generally, the ACV and the customs valuation system of states entitled importers to be entertained by their commercial invoices or by the secondary valuation methods on the basis of available Customs Data-Base under the procedure known as "consultation" between the customs and the importers. The ACV also entitled the Customs to be satisfied with the reliability and accuracy of the transaction value of the import.

4.2 Assessment of the Current Practice of Valuation at ERCA

4.2.1 The Current Legal ad Institutional Regulation

Any country in order to implement the ACV primarily needs to possess the "legislative and regulatory framework, organizational structure, administrative procedures and judiciary review machineries."[335] On the legislative framework, Ethiopia has already adopted the Customs Proclamation for this purpose.[336] Accordingly, the Proclamation endeavors the Customs

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[332] Supra, at note 75 above, Customs Proclamation, Art 89 up to 102, are devoted to regulate customs valuation

[333] Supra, at note 145 above, Customs Valuation Directive

[334] Supra, at note 329, Directive No. 94/06, see chapter four, Art.20 the Establishment of the Ethiopian Customs Valuation System (ECVS) was declared formally by this Directive.

[335] Supra, at note 146, Adrien and Luc, p. 160

[336] Supra, at note 75 above, Customs Proclamation, see its preamble, Art. 5 and Art. 89 to 102

operation principles to be compatible with the WTO rules. According to Tilahun Esmael, who wrote on the subject, the other important reason for the endeavor may be due to Ethiopia's interest in acceding the WTO organ thereby it needs to make its laws including its Customs laws and customs valuation compatible with the ACV.[337] For him, despite of this endeavor, both the Customs Proclamation and the Directives issued to implement it are inconsistent with the WTO ACV.[338]

The stand of argument is also supported by other authors on the subject matter.[339] According to these authors, the Directives on customs valuation are inconsistent with one another and with the Customs Proclamation of the then time. Particularly, the Directive comes up with new concepts "Countries with similar level of development" and "highest value" to compare identical or similar imports that are not foreseen by the lawmaker and are inconsistent with ACV.[340]

The above contentions made seem unacceptable by some commentators on the subject. The latter contentions start favoring the Customs Proclamation as it is fully compatible and consistent with the ACV since any WTO ACV compliant Country is assessed by the adoption of the six valuation methods in its laws and this is done by the Customs Proclamation.[341] The Customs Proclamation and the Directive issued for its implementation adopt all the ACV rules and ERCA tries to implement the valuation rules by establishing institutional infrastructures and systems like the ECVS and PCA.[342]

The Customs Proclamation tries its best to adopt the terms of the AVC since its draft was referred to the WTO contracting party observers, in the sense that Ethiopia is in the process of acceding to the WTO. The observers like Australia and Canada commented on every word or

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[337] Tilahun Esmael Kassahun, Trade Facilitation in Ethiopia: The Role of WTO Accession in Domestic Reform; Mizan Law Review, Vol. 8, No.1, September, 2014, p. 157

[338] Id., p 157-160, the author argues the Customs Proclamation forecasts for other valuation methods out of the already regulated six methods to be issued by a Directive, the Directives 2/96, 10/96, 6/96 and 94/2006 all are inconsistent with the ACV because they provide for a reference and minimum price values application and the permission of goods produced in different countries to compare the "identical or similar goods".

[339] Evgeny Polyakov and Wondewessen Shewarega, WTO Customs Valuation Agreement Impact Assessment Study for Ethiopia, September, 15, 2005, Addis Ababa , unpublished, p. 23-26

[340] Ibid., see also Directive No. 2/1996 E.C., 2 (2) (4), 6 (2) (3), 5 (3), 6 (3), 7 (2), cited at note 308 above

[341] An Interview made with Ato Ahemed Yasin, Deputy Director at Valuation and Tariff Classicization Procedures and Program Development Directorate of ERCA, on August 19, 2015.

[342] Ibid., ERCA currently also decentralizes the valuation services to all customs branches and all are connected automatically to the central ECVS system.

provision of the draft of the Proclamation.[343] The only rule on valuation that was part of the draft but not welcomed by the Ethiopian Parliament was the issue of "discount". The rationale for the Parliament was the customs could not identify and ascertain real discounts from unreal discounts. And, it may pave a way every importer to request unreliable discounts and it will be a challenge to the customs to verify. The process may also lead to slow customs procedure and this may affect trade-facilitation.[344]

The ACV Art.1 does not make the issue of discount in an explicit manner and it is provided by Annex III of the Agreement and it is not an obligation to the Customs Proclamation to do so.[345] It may be included by a Directive or guidelines as the case may be.[346]

A legislative framework of ACV compliant country needs to comprehensively include all the provisions of the ACV including its interpretative notes and its Annexes.[347] However, this may be slightly different according to the law making practices of countries (Civil Law Vs Common Law) and Ethiopia's law making practice reveals that higher laws like the Proclamation are construed in general terms and are to be deduced to specific and detailed functions and terms by subsidiary laws like the Regulations and Directives or even guidelines.[348]

It may be pre-mature to assess the adequacy and consistency of the Customs Proclamation against the ACV as Ethiopia is not yet accessed to the WTO. And as a developing country it has privileges with respect to extension of time before fully and obligatory applying the ACV.[349]

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[343] A Discussion with Ato Gebreyesus G/hiwot, Team leader at Valuation and Tariff Classification Procedures and Program Development Directorate of ERCA, on April 28, 2015

[344] Ibid.,

[345] Supra, at note 118 above, WTO Valuation Agreement Text, Annex III, No.5

[346] Supra at note 341 above, An Interview made with Ato Ahemed Yasin, importers do practically bring to the customs discount issues but they lack the burden of proof whether the same discount is given to all other buyers. Discount need to be prevailed to all other buyers in order to be counted by customs as real discount.

[347] Supra, at note 146, Adrien and Luc, p. 160, see also Art. 11 and 12 of the WTO Valuation Agreement Text cited at note 118 above

[348] Supra, at note 341, An Interview with Ato Ahemed Yasin, thus, to include all the interpretative Notes and Annexes of the ACV in the Customs Proclamation could not be feasible given the law making practice of Ethiopia. But, all the ACV rules are reflected in the Proclamation and the Directives when seen holistically.

[349] Ibid, see also, Art. 20 and Annex III of the WTO Valuation Agreement text cited at note 118 above. But, this should not be taken as an excuse to disobey the law because the law as a law should be respected and applied in a legalistic manner.

But, as per its commitment and wish to adopt the ACV in its laws and the privilege to extend the application of the ACV is dependent on the approval by the contracting parties, it is relevant to assess the sufficiency of the law at this stage. Here, not only the sufficiency of the law but also the practice and the working environment will be assessed not necessarily in line to ACV but against the Customs Proclamations and the valuations system. This is because a mere consistency of the Proclamation with ACV or its adequacy in itself may not guarantee the effectiveness of the Customs Valuation System and in the interest of addressing our research questions.

In principle the Proclamation lists all the valuation methods of the ACV.[350] Accordingly, the customs value to apply an ad valorem duty rate is the "actual total cost of the goods up to the first entry point of the customs territory of Ethiopia."[351] This provision is being applied consistently by ERCA whether the Customs Port becomes at Djibouti or at any one of the currently established Dry Ports.[352] For instance, the transport cost for imports via Djibouti-Galaffi-Mojo Dry Port (calculated as 25.96% share of the whole transport cost) is being included to the customs value thereby is subject to customs duties and taxes.[353] Thus, customs value practically becomes lower simply because the shipment is delivered on the bases of a multimodal transport contract.[354] This again will create unfair competition among the importers who use unimodal transport. At any rate, customs value appraisal under Art. 89(2) cannot be fair and uniform to all imports given the current Dry Ports destination for import. The case will be worsening when the Dry Port's location is far from the Sea ports currently used by Ethiopia.

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[350] Supra, at note 75 above, Customs Proclamation, Art 89-95, provide for transaction value, identical Goods value, similar Goods value, deductive value, computed value and the fall back method in the same fashion to the ACV.

[351] Id., Art. 89(2)

[352] Dry Port Administration Enterprise Establishment Council of Ministers Regulation, 2007, Reg. No.136, Neg.Gaz., 13th year, No. 37, Mojo, Gelan, Mekelle, Semera Dry Ports are in operation currently.

[353] A Discussion with Ato Yitay Atseku, a Private Customs Clearing Agent, on August 26, 2015, see also Circular No. 3.1.0/856, Yekatit 20, 2006 E.C., in Amharic, issued by ERCA to Explain how to apply Directive No. 94/2006, cited at note 329, see also Capital (Addis Ababa), March 11, 2014, p. 1

[354] Multimodal Transport of Goods Proclamation, 2007, Proc. No. 548, Neg.Gaz., 13th year, No. 59

The other fearful rule on the Proclamation is the permission given to ERCA to issue other valuation methods beyond the already listed six methods.[355] These cases that would invite further new valuation methods are in situations when the six methods are not helpful to appraise customs value and in cases of second hand goods. The ACV did not differentiate the methods whether the imports are new or second hand. But, according to some literatures fall back method is enough to appraise customs value of second hand goods.[356]

ERCA also come up with other peculiar idea in the Directive. Under the expense of the fall back method when valuation could not be established based on the identical or similar imports from the same exporting country, it can be done based on imports from "countries with similar level of development."[357] Here, even possible adjustment for costs of transport and cost of production when the same exporting country is changed to another country with the same level of development is not foreseen.[358] The issue does not stop here ERCA came up with an exception to an exception provision in the Directive that says valuation can be done by another "reasonable formula".[359] On top of this, the Directive gives other unlimited power to the customs officers to "up lift" the customs value of certain "high risk" imports whenever it believes their value is undervalued.[360]

Let's corroborate the last outrageous rule by a practical case happened in one of the customs branch office. An importer declares 50 items, 10 items out of this have a price list in the ECVS data. From the 10 items some are declared at a price of 50$ while the parallel ECVS shows 100$ price, some are declared at 30$ while the parallel ECVS shows 45$ price, some are declared at

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[355]Supra,at note 75 above, Customs Proclamation, Art. 89(4), the other methods foreseen to be regulated by a Directive has already started regulation by the Directive on Customs Valuation cited at note 145 above. Accordingly, the Directive at the expense of the fall back method under Art.12 and Art.17-19 has started to introduced new valuation methods.

[356] Supra, at note 175 above, Sheri and Brain, p. 123, see also our discussions on fall back method in the previous chapter.

[357] Supra, at note 145 above, Customs Valuation Directive, Art 12(1) (b)

[358] Supra, at note 339, Evgeny and Wondewessen, p.24

[359] Supra, at note 145 above, Customs Valuation Directive, Art 12 (2) (b) (c), see also Directive No. 94/2006 cited at note 329 above, the same provision say the same.

[360] Id., Art. 12 (3) Imports of textile and garments, shoe, electronic goods, see also directive 10/96 cited at note 307 above

20$ that is equal with the ECVS. In its totality the difference between the declared value and the ECVS value is 65$. Now, the Customs decided 65% under-invoiced and the 40 items which their price could not get from the ECVS will be uplifted each by 65% to get the customs value. Here, the under-invoiced item may be very small comparing to the item whose price value is got in the ECVS.[361]

This provision together with the practice derived from it will no doubt create unfairness to the import value appraisal and it necessarily paves a way to non-uniform valuation appraisals by the mere change in the method of valuation. The case might be worsened since the current imports are being made under diverse consignments.

The transaction value concept regulated by the Proclamation is compatible with the ACV.[362] However, the adjustments either of the dutiable factors or the non-dutiable factors are not properly regulated by the Proclamation.[363] More importantly, the adjustment costs regulated by the Proclamation needs to be put as mandatory additions to the transaction value and costs that can be adjusted furnishing commercial invoice. The cost of buying commissions need to be totally out of the cost adjustment scheme because it is a cost paid to the buyer's agent abroad who help him in purchasing the goods.[364] The Proclamation contradicts itself when it makes buying commission out of the mandatory adjustment by Art. 96 (1) (a) (1) but it adds in Art.97 (1) (d) if not shown separately from the price actually paid or payable.

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[361] Supra, at note 353, A Discussion with Ato Yitay Atseku, the import was declared through Addis Ababa Airport customs branch by Declaration No. C-36271

[362] Supra, at note 75 above, Customs Proclamation, Art.90, the "transaction value" is the total cost that is "actually paid or payable" to the import

[363] Id., Arts. 90(1), the reference is made only to the non dutiable factors under Art.97 that need to be added to the transaction value when shown separately in the commercial invoice. These may be materials, components, parts and items incorporated in the import, tools, dies, moulds, materials consumed in the production of the imports costs of engineering, development, design, plans took place in the importing country, cost related to royalties and license fees. However, the dutiable factors under Art. 96 should have been mentioned under Art 90 (1) as an adjustment costs, these include, commissions and brokerage fees, costs of containers and packing, insurance and transport costs, and costs in relation to loading and unloading. See also, the WTO Valuation Agreement Text cited at note 118, Art. 1 and 8

[364] Juan Martin Iovanovich, Customs Valuation and Transfer Pricing, Is It Possible to Harmonize Customs and Tax Laws (2002), Series of International-Volume 28, Kluwer Law International, UK, p.95

imported "KONKA DVD player for 17.8 US Dollar (herein after $ per pc, the customs assessor gave 40$ for the same import, this price was lowered to 20.37$ by the Customs Compliant Review Sections (herein after Committee) found at the customs branch office and at the HQ of ERCA by conducting market research. The Federal Tax Appeal Commission (herein after Commission) also confirmed the stand of the Committees stating that the price was given by market research. ERCA has rejected the transaction value asserting the importer and the seller are related parties (the importer is an exclusive Agent and Distributer of KONKA Group CO.LTD in Ethiopia) and the invoice is not complete and did not consist the basic requirement that would have been found in the invoice.[370] It also argued the commercial invoice indicates only the price and whether this price is for the import or not is clear. More importantly, the relationship between the seller and the buyer does influence the price of the import. The appellant argued, the Committee of the branch office gave the price of the import after it makes a market research for about 1 year and 3 months and the value did not take into account market fluctuations in this time span and the value should not be acceptable.[371] Though, the relationship between the parties in this transaction may influence the transaction value of the import the sequential order of application of the valuation methods was not respected. The importer did not even given the opportunity of "consultation" and the burden to prove the reality of the transaction value.[372] Besides, neither the Committees of ERCA nor the Commission consider the market fluctuations that could have happened during (the process of) the appeal process to the

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[370] Ibid., the transaction value was rejected according to Proclamation 622/09 Art. 33(2) cited at note 323 above which is in line with the working Proclamation, see note 75 above, Art. 90 (2)

[371] Supra, at note 75 above, Customs Proclamation, Arts.152 and 153, ERCA shall establish Customs Compliant Review Sections at the ERCA's HQ and at the Branch offices level to review decision of customs officers on Origin, Valuation and tariff classification of goods.

[372] Id., Art. 90 (3) (4) (5), 99, ERCA should require the importer to produce further "information and evidence" whenever it has reasonable doubt on the declaration. ERCA should have been gone to the transaction value of identical or similar imports before it directly go to the deductive value method which is done by the market research. See also the WTO valuation Agreement Text cited at note 118 above Art.1 (2) (b) and Art.17 as well as its General Introductory Commentary. Accordingly, the mere relationship between the seller and the buyer is not a ban to transaction value and whenever the transaction value did not accepted by the customs the procedure of "consultation" between the customs and the importer should be created. Whenever the consultation process did not solve the reasonable doubt of the customs the customs need to apply the next valuation methods in their sequential order.

Committees and to the Commission. All the appeal review organs in this case neglected the request of the appellant its transaction value is the manufacturer price (because the importer is an Exclusive Agent and Distributor in Ethiopia) and the price given by the market research is based on retail value. ERCA's assertion the contents of the commercial invoice is not complete should have not been raised at the valuation stage. It has to be cleared during the presentment of the customs declaration (or before the departure of the goods) as we discussed in the second chapter above. At any rate, the decision of ERCA, the Committee and the Commission are not in line with the law and luck fairness.

In ERCA Vs Fantuna Betesebu Trade and Industry PLC,[373] the importer succeeded in reversing the decision of ERCA to reject the transaction value against reference price of identical good in its Customs Data-Base. The Imported item in this case was "pasta" and the "invoice" was brought from Italy based manufacturer who is also the seller. ERCA's reason to reject the transaction value was the letter provided by the seller seated in Italy which says the price given to the buyer (the respondent) is a "fair" price that will enable him to compete in the market. ERCA out rightly reject the "invoice" or the transaction value simply it is lowered by 5% from "identical import" found in the Customs Data-Base i.e. the CD. However, the Court oppose with the decision of ERCA for the reason there is no relationship that can influence the price between the seller and the buyer. The Court stressed that ERCA has the power to use the Customs Data-Base for reference prices purposes of identical goods in case the transaction value is rejected according to the reasons stated in the law.[374]

The history of this case takes us back to the Federal High Court where by appeal by ERCA has been preferred.[375] We like to touch this because, though, the effect of the case is not reversed by the Supreme Court it adopts slightly different interpretation and reasoning rule. The High Court reasons out that Customs Data-Base cannot be used as a reference or comparison to ascertain the

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[373] ERCA Vs Fantuna Betesebu Trade and Industry PLC, Appeal file No. 99361, Federal Supreme Court, Hamle 28, 2006 E.C. in Amharic, unpublished

[374] Ibid., see also Customs Proclamation cited at note 75 above, Art. 90 (1) (a-d) and (2)

[375] ERCA Vs Fantuna Betesebu Trade and Industry PLC, Federal High Court, File No. 126536, Yekatit 27, 2006 E.C. in Amharic, unpublished

accuracy of the transaction value.[376] (Emphasis mine) The Court also reasoned out the Directives issued to implement the repealed Proclamation cannot be served for the implementation of the new Proclamation.[377] However, old Directives may continue in force as far as they are consistent with the new Proclamation.

The decision part of the High Court which says Customs Data-Base reference prices cannot be used to compare transaction value is in line with the argument given by the Commission in the same case.[378] The arguments made by both the High Court and the Commission in this case are in line with the Customs Valuation Directive.[379]

The case analysis goes on to a case in point whereby an importer request valuation to be done by identical or similar goods valuation method. In Mustefa Kedir Mehammod Vs ERCA,[380] the appellant had declared items viz. Blade, Shaver and Water Color Pen/Marker but these items found to be Makita B13A.85656, Supper Hair Clipper and Art line 90 Marker respectively by physical examination by ERCA. For instance, the price difference between Blade (used for hair cut) and Makita (used for machine cut) is about 10 $ /pc and the price difference between water color pen/Marker and Art line 90 Marker is about 3.38$ /pc based on the price found in the Data-Base. The decision by the Commission in this case is given conforming the finding and decisions of ERCA and the Committees established under it. The Commission stressed that the high prices

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[376] Ibid, the provision which deals with transaction value is clear i.e. ERCA should accept the transaction value unless it has doubt on its accuracy. When transaction value is rejected there is no way to compare it with previously imported identical or similar goods. Comparison of imports with previously imported identical or similar goods is done when the valuation method passes to the next valuation methods after the transaction value.

[377] Ibid.,

[378] Fantuna Betesebu Trade and Industry PLC Vs ERCA, Federal Tax Appeal Commission, Appeal file No.KF 726, Sene 20, 2004 E.C., in Amharic, unpublished, the Commission reversed ERCA's rejection of transaction value by the mere deviation of the transaction value from the previously imported identical imports found in the Customs Data-Base.

[379] Supra, at note 145 above, Customs Valuation Directive, Art. 5 (3) (D) and 8-12, accordingly, the reference prices in the Customs Data-Base are utilized when the importer failed to disprove the shade of doubt by ERCA on the transaction value and the next step is an automatic pass to the other valuation methods which are normally done using the Customs Data-Base price lists or references.

[380] Musetefa Kedir Mehammod Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KM 904, Tir 19, 2007 E.C, in Amharic, unpublished

given by ERCA is correct as the declared items are completely different from the physically examined real imports.

Here, the importer request the identical or similar goods valuation method because the Data-Base reference price for his declaration is very low compared to the real items imported. Since the items declared in this case are totally different from the items found by the physical examination, the identical or similar goods valuation methods could not be applicable in such situations. In such cases, ERCA should not only go for adjusting the prices of the import from its Customs Data-Base and to apply the administrative penalty[381] but should also enforce by the criminal sanctions provided by law. However, the argument part by ERCA the transaction value of the items declared by the appellant is known and it is not possible to value them based on identical or similar goods value is fallacious. This is because; the valuation for the physically examined real imports was done by the reference prices found in the Customs Data-Base not by the transaction value.[382]

Let's consider again another case where an importer moves for similar goods value method when ERCA insist on transaction value. In Jemila Sultan Mussa Vs ERCA,[383]where the appellant has declared an item called Brief Card with a size of 610x860m price (used for making of business cards or wedding cards), which is low in quality as opposed to the real import i.e. Hard Cover with a size of 210m x 279. ERCA argued the transaction value of the import is known and valuation need not be appraised by the similar goods value method when it is possible to do under the transaction value method. ERCA prefer transaction value for the real import since its price is found in its Data-Base.[384] However, ERCA's argument the import is entertained by transaction value did not hold water because the transaction value declared is for the item Brief Card not for Hard Cover. Even the value for the Hard Cover is appraised by the identical goods value method from its Data-Base not by the transaction value method. It is misleading allegation

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[381] Directive on Administrative Settlement of Customs Crimes, No. 46/2002 E.C., in Amharic, ERCA, Addis Ababa

[382] Supra, at note 380 above, Mustefa Kedir Mehammod Vs ERCA, see the final decree part of the Commission.

[383] Jemila Sultan Mussa Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KJ 847, Tahsas 07, 2007 E.C., in Amharic, unpublished

[384] Ibid., the declared item is identified as "Hard Cover" instead of "Brief card" by a physical examination. Therefore, the nature of the item totally changed to another new one and ERCA gone to its data base to check whether the new item identified is being captured in the data base from previously declared items.

to ERCA to confuse the identical good value method against the transaction value method. In this particular case ERCA gave the price under the identical goods value method because it is pretty much enough to levy the needful duties and taxes.

Based on the case analysis above, the customs valuation practice at ERCA currently is characterized by non-uniform and unfair computations. Both ERCA and the importers try to take the valuation rules in to their advantage missing the dictates of the law.

The law maker itself unfairly bestowed a maximum discretion to ERCA to come up with other valuation methods beyond these regulated by the Customs Proclamation. Even though the Customs Proclamation adopts the customs valuation methods it leaves much grey areas on the adjustments to transactional value (additions, deductions, discounts). The Directive on Customs Valuation [385] as is told by the Customs Proclamation has came up with rules that allow uplifting of customs value that would create a fertile ground to the unfair and non-uniform customs value appraisals.

4.2.2 Institutional Infrastructure to Valuation

ERCA is bestowed by law to undertake the valuation activities on imports and to establish the necessary organizational structure on the subject matter.[386] Besides, it is authorized to conduct research on the improvement of customs laws, organize a training center to scale up the capacity of its employees, to make contracts and international agreements with respect to customs administration and to establish HQ, Branch offices, directorate, and customs control stations.

Accordingly, ERCA has established a Valuation and Tariff Classification Procedures and Program Development Directorate at the HQ level and Work Processes and Team Processes on valuation at the customs branch offices.[387]

The organizational arrangement looks sound and the Valuation Directorate's responsibilities seem to rely on policy developments, developing the Customs Data-Base, support and follow up

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[385] Supra, at note 145 above, Customs Valuation Directive, see Arts. 10, 12 (1) (2) (3), where ERCA clearly regulated for the possibility of "uplifting" of the customs value with respect to some selected imports.

[386] Supra, at note 320 above, ERCA Establishing Proclamation, see Art. 4 Art 6 (4) (5) (7) (16) Art.7

[387] Supra, at note 145 above, Customs Valuation Directive, see Art.2 (12) (13), Art 34-41, the branches and their staff on their turn are required to discharge valuation activities in accordance with the laws, directives, circulars, manuals and the Customs Data-Base in a consistent and appropriate manner.

the proper implementation of the valuation rules at the branches in a uniform and appropriate manner. In addition, it is mandated with the preparation of manuals on valuation, the availing of training forum to the staffs.[388]

The organizational structure is premised by a will to install a system that can deliver fair, appropriate and speedy service to the importers. The history was like this; the import is situated in one of the customs branches but valuation was done at the HQ. The staff at the HQ requires the branch to send him the documents and even the goods for sampling. Thus, it was devastating to the importers and to the trade facilitation when the staffs at the HQ and at the branches routinely exchange documents and information on a single import.[389]

When the valuation activities are taken away from the HQ, the importers will save time and cost. At the same time compliance cost against valuation process will be cut off.[390] The HQ will get time to dwell on policy and administrative matters.

There are reasonable and serious fears by observers to the decentralization of the valuation services. The customs branches exhibit non-uniform application of the valuation system for identical imports.[391] The situation can be aggravated when there is high turnout of staffs leaving the branch office.[392]

Practically, identical items declared into two customs branch offices at the same time are valued even up to 50% value difference. The customs officers at the same time did not considered real market fluctuations of known products in the international trade. The designation of items by

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[388] Supra, at note 146 above, Andrien and Luc, p. 160

[389] Supra, at note 341 above, An Interview with Ato Ahemed Yasin, all valuation problems cannot be solved simply by decentralizing the responsibility to the branches, but it is natural a fair and appropriate decision to be expected at the place where the staff has a direct or nearest proximity with the imported goods.

[390] Supra, at note 366 above, An Interview with Ato Aregawi Berhe

[391] A Discussion with Ato Melese Wolde, Attorney and Consultant at Law, previously was the secretary of the Customs Compliant Committee of ERCA, August 18, 2015. For identical import within the same span of time declared to the different customs branches of ERCA will result in different customs value appraisals and they do not even want to hear the importer when he raised the other branch gave like value.

[392] Supra, at note 353 above, A Discussion with Ato Yitay Atseku, since there are high turnouts of staffs in the branches at one time, the new comer staff normally have the mission to raise high revenue for the government and they do not carefully considered the appropriateness of the value.

more than one name gives rise to non-uniform valuation system and valuation appraisals.[393] These non-uniform valuation practices by the customs branch offices confessedly appreciated by ERCA and timely corrective measures are being taken.[394]

The other institutions established to discharge on valuation are the Compliant Review Sections (Committees) that are organized both at the HQ and at the branch offices.[395] Any importer who has grievance on the valuation decision of the custom officers has the right to lodge an appeal to the Committee instituted at the branch office first and can also take an appeal to the same Committee established at the HQ. Again if his grievances not settled by these Committees he can prefer an appeal to the Commission and to the regular courts.[396] We will deal these procedures in the next session.

The other relevant institutional organization valuation is the PCA.[397] PCA as a customs control measure is created to balance the trade facilitation privilege at the customs gate against possible frauds.[398] Through, PCA Customs will check whether the declaration was trustworthy or not. Under PCA all the importer's books and accounts, commercial data (both import and domestic

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[393] Ibid., the customs officers when they are told the value given to an identical item in another branch, they response as that other branches decision is not their business and they act irresponsibly same.

[394] Supra, at note 366, An Interview with Ato Aregawi Berhe, the symptom did happen practically and we try to correct even by telephone when the discrepancy is grave. On top of that the directorate gives feed back by a written letter to correct the non-uniform valuation practices. Support and follow up is also given by field audits and in the regular meetings.

[395] Directive to Decide on the Working Procedure of Customs Matters Compliant Section, Directive No. 107/2007 E.C., in Amharic, ERCA, Miazia, 2007 E.C., Addis Ababa, see also Customs Proclamation cited above at note 75, Art. 152 and 153

[396] Supra, at note 75 above, Customs Proclamation, Art.155

[397] Id., Art. 121, normally PCA will be applicable to imports which are cleared under the transaction value method. See also Customs Valuation Directive cited at note 145 above, Art 43

[398] Supra, at note 128 above, Pushpa, p.21, here when the customs allow for speedy customs clearance process without physical examination, customs have also interest on possible revenue loss at the expense of the facility. Therefore, by the PCA tool the transaction value is checked its accuracy. The valuation method applied at the PCA stage is also similar to the normal valuation system.

trade) and the overall trading system will be investigated and audited.[399] The practical application of PCA at ERCA on valuation will be dealt in detail in next session.

The other independent body but authorized by and worked under the auspice of ERCA is the Customs Clearing Agent(s).[400] The customs clearing profession is not yet developed and the professionals are not equipped with technicalities of valuation and even have not adequate training and background.[401] Save for the lack of capacity, the agents did not question the information and evidence provided by the importer on the imports and the importers have no tendency to be directed by the Agents.[402] More importantly the Customs Data-Base also has impact for the retarded advancement of the Customs Clearing Agency professionalism.[403]

ERCA also confirmed that the clearing agents sometimes unnecessarily uplift the customs value for two reasons. The first is lack of knowledge about the international prices of goods and to avoid its non acceptability by the Customs.[404] The agents do not diligently and confidently bargain and persuade the Customs about the accuracy of the import so as to effectively respect the right of the importer.[405]

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[399] Ibid.

[400] Customs Clearing Agents Council of Ministers Regulation, 2004, Reg., No. 108, Neg.Gaz., 10th year, No. 65, see also Directive on Customs Valuation cited at note 145 above, Art 40, Customs Clearing Agent (s) is a professional with a professional qualification and with a certificate a of competence given by ERCA after an effective training. Any Customs Cleaning Agent needs to provide ERCA truthful and accurate information of the declaration so that the latter would decide appropriate customs value and customs duties and taxes. At the same customs clearing agent is expected to diligently advice the importer (his client) to appropriately declare and assess the accurate customs value.

[401] A Discussion with Ato Hailay Girmay, A Private Customs Clearing Agent, April 03, 2015

[402] Ibid.

[403] Ibid., the reason being the customs officers do rely on the price lists/reference of the Customs Data-Base and the transaction values of declarations most of the time are arbitrary rejected. In such situations the professionalism of the agents lacks value and the agents may also be forced by the system to be negligent rather than diligent.

[404] Supra, at note 341 above, An Interview with Ato Ahemed Yasin

[405] Ibid., the agents try to pass the gate of the customs either by fraudulent acts or by giving side payments (bribes) to the customs officers.

The other point that is worth to mention is neither the Customs Proclamation nor the Customs Clearing Agents Regulation is enough to deter the unethical conducts of the agents.[406] The sanction for any commission or omission by the agents is an administrative liability of only 5000 Birr up to 20,000 Birr. This is very insignificant comparing to their responsibility (most of the time the agents deal with transactions of millions and even Billions).The other institutional infrastructure established by ERCA to deal with customs valuation is the Customs Data-Base which will be treated herein below.

4.2.3 The Customs Data-Base: ECVS

The transition of valuation systems to the transaction value method raises the question of accuracy of the invoice values. Beyond this, the transaction value method aggravates the under-invoicing practices by the importers since the customs are duty bound to accept the invoice value without further ascertaining its accuracy.[407]

As the right to have a reasonable doubt on the truth or accuracy of the transactional value to the customs is enshrined in the ACV, establishment of Customs Data-Base by national customs, too, is enshrined by the WTO.[408] The guideline on the Data-Base dictates customs to use it as a risk assessment or management tool about the accuracy of the transaction values but it cannot be used as further method to valuation.[409]

Based on this assumption and as part of its mandate ERCA has introduced the Ethiopian Customs Valuation System (ECVS) based on an agreement entered between ERCA and Center

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[406] Supra, at note 75 above, Customs Proclamation, Art. 162

[407] Ramon L. Clarete, Custom Valuation Reform in the Philippines (July 16, 2004), Background Paper Prepared for the World Development Report 2005, University of the Philippines School of Economics

[408] Supra, at note 175 above, Sheri and Brain, see Appendices 4; p. 214-219, WTO Valuation Data Base Guidelines, WTO, G/VAL/54/ suppl.1, 13 October 2004, Technical committee on customs valuation, Brussels, Accordingly the development and use of National valuation Data Base is allowed as a risk management tool to detect whenever there are untrustworthy transaction values.

[409] Ibid, the Customs cannot reject transaction value merely it is different from the reference price of the data base but they can ascertain its accuracy based on risk factors. The difference of the price of the transaction value and the price in the Data-Base could be due to real market factors or other factors.

The ambition and wish of ERCA to install a uniform and fair Valuation System (which was a point of criticism under the CD-Price Data-Base System) is currently ineffective due to different factors.

First and foremost, the Directive on Customs Valuation vividly allows the continuation of the CD-Price Data-Base, though; this Directive was issued to implement valuation based on ECVS.[416] The Directive contradicts itself when on the one hand it says the Directive issued to regulate the CD-Price Data-Base is repealed and it allows its continuation.[417]

Due to this double-faced approach of ERCA, an importer 'x' declared a seating chair at 50$ /pc while the correlative ECVS recorded the same item by 91$/pc and the CD-Price Data-Base recoded it by 100$. The Customs decided the valuation to be done by the price recorded in the CD- Price Data-Base because it is the "highest" of the entire prices list.[418] By the same token another importer "y" has declared an item called Copper at a value of 50$/kg, the CD- Price Data-Base indicated a value of 100$/kg but there is not a recorded price at the ECVS.[419] It is clear now for the customs to take the highest price in the CD as usual. The importer tried his best to persuade the customs the current international price for the item Copper is declined due to a decline in the price of Petroleum at the international market.[420] The customs try to reconsider the case by searching previously declared identical or similar imports by other importers and

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[416] Supra, at note 329 above, Directive NO. 94/2006, see Art. 45, which is the transitory provision that allows the continuation of CD-Price Data-Base for a limited period of time but its application is being continued for unlimited period of time under the defense of in complete application of ECVS, see also Customs Valuation Directive cited at note 145 above, Art. 44(2)

[417] Id., Art. 44

[418] Supra, at note 391 above, A Discussion with Ato Mellese Wolde, however, one of the branch offices has entertained 51$ for the same declaration and in the same time. Here for our surprise the CD-Price Data-Base is not being up-dated since 2003 E.C. because since then a preparation to apply ECVS was already started.

[419] Id., the miss to record this known item by the ECVS is a failure to ERCA and the system. The other failure is again the week access of international prices from international markets of products vehemently witnessed the current valuation system practices.

[420] Id., the reason for the international prices decline of Copper was as a consequence of decline in the price of Petroleum which is used as an input of the latter in its production process.

succeeded to find one which is valued at 750$/kg and this is taken as a basis for the valuation purpose of the case in point.[421]

In another case, an importer "Z" declared three kinds of items at 0.45$/pc, 0.10 $/pc and no recorded price for the third item. The price difference between the declaration and CD-price Data-Base for the first two items is 15%. The customs automatically uplifted the price of the third (unfounded CD-price Data-Base) item by 15% to get its value by rejecting the transaction value.[422] Such arbitrary valuation decision is realized because the lawmaker gives ERCA unlimited power to issue other valuation methods by a directive.[423]

Still in another case, an importer "O" has declared (an item) of raw material for the production of plastic product in Ethiopia at 0.70$/kg. However, there was a price reference neither in the ECVS nor in the CD-price Data.[424] The customs officer asked the importer to verify the accuracy of the price and the latter confirmed the same reasoning the price for the raw material becomes low in the international market due to a decrease in the Petroleum price. The customs officer did not want to hear the reasoning and he gave the value at 2.70$/kg at his own discretion and will. The importer strongly resisted this decision and the customs tried to go back up to six month to check the identical or similar imports in the CD-Price Data and they were able to get a value of 2.10$/kg.[425] The way out in the case in point would have been to accept the declared price and capture it for next import until ERCA up-dated its Data-Base. ERCA's failure to record the value of import unfairly harms the importer. This procedure is also accepted by the ECVS when there

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[421] Ibid.,

[422] Supra, at note 353 above, A Discussion with Ato Yitay Atseku, normally the value of the third item declared was lowers of the rest two items. The customs got this discretionary power by the Customs Valuation Directive cited above at note 145, Art. 12 (3)

[423] Supra, at note 75 above, Customs Proclamation, see Art 89(4), this rule was unwarranted to the law maker. But again this rule contradicts with the principle of the fall back method regulated under Art. 12 first paragraph of the Directive.

[424] Supra, at note 353 above, A Discussion with Ato Yitay Atseku, here the customs automatically pass to the fallback valuation method crossing the sequential application. Similarly, the tendency to give customs value at one's own self will and without any accountability is manifested practically.

[425] Ibid., one the CD-Price before the 6 month was not updated. Second, the price of Petroleum during the 6 months gap was 140$/ permille Vs 60$-70$/Permille and the value for the import cannot be fair if assessed taking the price in the un-updated CD-Price Data before 6 months.

are new prices of imports they need to be recorded as true until proven otherwise by next import values. ERCA need to update the Data-Base in parallel to international price fluctuations.

Observers are of the opinion that ECVS is another face of CD-Price Data. The reason being VDD is "garbage in" and ECVS necessarily will give "garbage out" with respect to the prices information.[426] There are times even the Customs themselves did not agree with the price information of the ECVS.

The loopholes mentioned above are well appreciated by ERCA. ERCA identified and recognized the problems after it introduced ECVS. ECVS is free from human intervention and functions automatically. Unlike CD-Price Data-Base, ECVS is secret and it avoids price adjustments by importers.[427] It seems uncontested ECVS escalates the acceptance of transaction value compared to CD-Price Data-Base. But its implementation is not yet fully started. Yet, the practice reveals usage of a mixture of CD-Price Data, ECVS and personal discretionary powers of the customs officers.

The move by ERCA to do valuation based on the CD-Price Data-Base is favored by the Committees and by the Commission.[428] However, the stand of ERCA is reversed by the Commission in Kingnam Enterprise Limited Vs ERCA,[429] where the appellant has imported at free of duty or privilege Kia Double Cap Frontier at 7,146 $/unit and Daewoo Damp Truck at 39, 739 $/unit in 2000 for construction purpose done in Ethiopia. After 3 year in 2003 forfeiting its privilege the appellant got to ERCA to pay customs duties and taxes for these cars. ERCA raised the value to 14,100$ and 54,755$ respectively comparing similar goods value from its

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[426] A Discussion with Ato Tewodros Amega and Ato Hailay Girmay, Privat Customs Clearing Agents, on April 1, 2015

[427] Supra, at note 341 above, An Interview with Ato Ahemed Yasin, CD-Price Data by itself was not problematic as a system. Its problem was late up-date and exposition to the public/importers. Because of this it was open for unfair exploitation by importers since their declaration was done and adjusted to reflect the price of the CD not the real market price. ECVS is in its infancy and the support and feedback communications between the HQ and the branch offices is being done through written letters and not automated as would be and there is no exchange of valuation information based on automated system among or between the branch offices.

[428] Supra, at note 373, 380, 383 above, ERCA Vs Fantuna Betesebu Trade and Industry PLC, Mustefa Kedir Mehammod Vs ERCA, Jemila Sultan Mussa Vs ERCA, all cases are done by CD-Price Data- Base.

[429] Kingnam Enterprise Limited Vs ERCA, Federal Tax Appeal Commission, Appeal file No. 923, Nehassie 6/2007 E.C., in Amharic, unpublished

Data-Base. The CD-Price reference data and the real declared cars exhibit distinction in place of origin, manufacturing date, model, CC (capacity), weight and price.[430] Thus, the Commission ruled out that ERCA's decision on the basis of the reference price of similar imports to imports which are totally distinctive with respect to all indicators and measurements (1 tone Vis-à-vis 4.5 tone, manufacturing date 2004 G.C vis-à-vis 1999 G.C; Nissane vis-à-vis Damp Truck, etc) is not acceptable by the Customs Proclamation valuation rules. The Commission also stressed that since at first the cars were imported duty free there would not be reason to under-value the transaction instead over-valuation could be the threat so as to benefit from depreciation value.

4.3 Issues and Challenges Associated to Valuation Implementation

4.3.1 Issues of Consistency and Certainty

The expected uniformity or consistency in valuation practices focuses on consistent application of the valuation rules on transaction by transaction basis.[431] This means international prices of goods may vary from transaction to transaction due to real market changes but the valuation rules need to be applied in a stable, uniform and consistent manner. However, the current practice in Ethiopia seems to rely on inconsistent application of the valuation rules and consistent application of transaction prices irrespective of time changes or market fluctuations occurred. This looks like the world's practice during the BDV in the 1950's and 1960's.

ERCA, most of the times directly rely on the fallback valuation method (the last possible method) crossing over the sequential application of valuation methods. When ERCA uses the fallback method it did not respect sequential application of the valuation methods as is authorized by the law.[432] In Yimer Gochel Tarekegn Vs ERCA,[433] the appellant declared

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[430] Ibid., the valuation is influenced by arbitrary and discretionary power of ERCA added up by the un-updated CD-Price Data-Base and valuation cannot be fair, uniform and consistent with commercial reality under such circumstances.

[431] Alan Bennet (Adjunct prof.), "Train the Trainer" Course on Customs Valuation A Comparative Perspective, Asian Tax forum, April 2009, p.7

[432] Supra, at note 383 above, Jemila Sultan Mussa Vs ERCA, ERCA directly rely at the fallback method without testing the other valuation methods in their sequential order.

[433] Yimer Gochel Tarekegn Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KG-855, Hamle 23, 2006 E.C., in Amharic, unpublished, the Commission has never ascertained why ERCA gave different prices for a single item and on what basis and methods the value being given.

two different prices for identical items from the same manufacturer. Moreover, the price was influenced sine the manufacturer is the sole importer and distributer (and related parties with the appellant) of the item in Ethiopia. Based up on these facts the Committee upheld the decision of ERCA saying the value is also given to other importers. However, as mentioned above the Commission remanded the case to the Committee the case either on the basis of the CD-Price Data or the transaction value but the greater value of either.

Here, the remand itself can be questioned on the possible further delay, cost to the importer and it also encourages the arbitrary discretional power of ERCA. The Committee's saying the decision of ERCA is acceptable as the value given to the appellant is fair as it is a value given to other importers is soundless.[437]

The Commission rejected the valuation process of ERCA by internet price source in Fikir International Business PLC Vs ERCA,[438] but again it remanded the case to be entertained by identical or similar goods valuation method. The import was CANON IR 2420 Photocopy Machine declared at 756 $/pc. ERCA argued the import was valued at 770$/pc before six months according to the appellant's transaction value. Even, another importer gives 800$/pc price for the same import. Leaving all these reference prices, ERCA, gave 902.67$/pc to the import searching from internet price sources.[439] Here, ERCA is comparing the price of its Data-Base before six months by the same importer. The Commission also not mentioned its reason why transaction value is not accepted. The Commission's remand the case to ERCA will not solve the case because ERCA was applying the internet source price to other imports rejecting their transaction value

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[437] Ibid, the reasoning given by the Committee is not acceptable because it should show a clear reason not to accept the transaction value.

[438] Fikir International Business Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KF 816, Tahsas 23, 2006 E.C., in Amharic, unpublished

[439] Ibid., see Circular on Internet Source price Information Use and Explanation, No. 3.1.0/740/25, Nehassie 18, 2005 E.C., in Amharic, issued by Valuation and Tariff Classification Procedures and Programme Development Directorate of ERCA, accordingly customs officers should not take internet price source for granted and need to ascertain it from genuine source and they can take the lowest, Average or highest comparing the imports origin, quantity and time of sale. The circular stressed also internet price sources should be used after all round attempt to do the valuation based on the five valuation methods (excluding fall back method) found to be not helpful. Here, the internet price source seems to be categorized under the fall back method. However, this is not so either in the WTO ACV or in the Ethiopian Customs Proclamation.

stage, the unlimited power bestowed on ERCA to come up with unlimited valuation methods and procedures.[444]

4.3.2 Issues of Transparency

The issue of transparency in customs valuation is emanated from the ACV and the GATT 1994 Agreement.[445] In principle these principles are enshrined in the Proclamation and in the Customs Valuation Directive.[446]

Practically, when transaction value is rejected by the customs there is inter-personal communication (or consultation process) with the importer. The customs officer who is assessing the value of the import gives a paper form (developed by ERCA for this purpose) to confirm the transaction value and to support with evidence in some cases.[447] After this process there is no communication and the value will be set at the discretion of the customs officer.[448] Or the customs assessor may get into hidden and unethical bargain practices because the procedure is not transparent.[449]

Thus, non-transparent valuation system will hinder the uniform, fair and neutral application of the valuation rules and will finally lead to uncertainty to the trading system and to the profit making endeavors of the importer.[450] Thus, the principle of transparency in customs valuation presupposes not only the communication and publication of laws or decisions but also their consistent and neutral application to every import and importer is at stake.[451] By doing so mutual

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[444] Supra, at note 145 above, Customs Valuation Directive, see Art. 10,12 (2) (3)

[445] Supra, Text of the GATT and WTO Valuation Agreement Text cited at note 55 and 118 respectively, Art. 20 and Art.12 and 17. Beyond the publications and communications of laws, regulations, judicial decision and administrative decision in valuation to the importer, the customs are obliged to arrange a consultation forum when the transaction value is doubtful.

[446] Supra, at note 75 above, Customs Proclamation see Arts 99, 154 and 155, see also Customs Valuation Directive cited above at note 145, Art. 5 (3)

[447] Supra, at note 353 above, A Discussion with Ato Yitay Atseku

[448] Ibid., in most cases the value will be given from the Data-Base or from the internet source price at will.

[449] Supra, at note 391 above, A Discussion with Ato Mellese Wolde, the importer who able to bribe the assessor can be successful to be entertained by the transaction value

[450] Supra, at note 131 above, Yann p. 9-10

[451] Patric Wille and Jim Redden, A Comparative Analysis of Trade Facilitation in Selected Regional and Bilateral Trade Agreements and Initiatives, (2008) In Trade Facilitation Beyond the Multilateral Trade Negotiations:

trust between the customs and the importer will be created and in the end trade facilitation sustained.[452]

Lack of transparency will cause for unreasonable rejection of transaction values since customs officers reject it without critically considering the declared values. It also will lead to appraise customs values based on identical or similar imports their value of which lapsed a head of time.[453]

As noted above, the market research procedure and process under the deductive value method are not transparent and there are no guidelines or rules yet issued by ERCA.[454] Given the current market irregularities and the rampant contraband goods in the market and the absence of transparent market research would lead to chaotic valuation system and practice. All the decisions of the Committees and Commission[455]did not contain a clause of communication that enabled the aggrieved party what to do next.

4.2.3 Issues of Under-Valuation and Revenue Loss Concerns

The issue of under-valuation practices by the importers was the challenge of countries especially the developing countries not to accept the transaction value without questioning its accuracy.[456] The basic rationale to seriously guard under-valuation is the fear and concern for revenue loss from the custom.[457] This concern exacerbated in developing countries that have feeble customs administration and infrastructure (favorable to under-invoicing) at their disposal.[458] Coupled with

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Regional Practices, Customs Valuation and other Emerging Issues, A study by Asian-Pacific Research and Training Network on Trade(ARTNET), United Nations, p. 64-72

[452] Ibid.

[453] Sachin chaturvedi, Customs Valuation in India; Identifying Trade Facilitation-Related Concerns (2008), In Trade Facilitation Beyond the Multilateral Trade Negotiations: Regional Practices, Customs Valuation and other Emerging Issues, A study by Asian-Pacific Research and Training Network on Trade(ARTNET), United Nations, P. 178

[454] Supra, at note 391 above, A Discussion with Ato Mellese Wolde

[455] See all the cases mentioned in this research, almost all did not indicate the possible right of appeal to a higher appellate body. This is a miss to all these bodies and it is against the clear words of the law and it is also against appeal right of the aggrieved party.

[456] Supra, at note 125, Sandeep, p. 12

[457] Supra, at note 118 above, WTO Valuation Agreement Text, Art 17 adopted based on the "Decision 6.1 Regarding Cases where Customs Administration Have Reasons to Doubt the Truth or Accuracy of the Declared Value" by the Committee on Customs Valuation, gives Customs the right to be satisfied by the accuracy of the transaction value. This was proposed by India at the Tokyo Round Negotiation, which also known as "Shifting the Burden of Proof" (SBP) principle.

[458] Supra, at note 146 above, Andrien and Luc p. 161

The issue will be continued like this unless the export capacity of the country improves fast.[468] Or a close negotiations and "mutual understandings" between the importers and ERCA on the gravity and dangerous consequences of under-valuation need to be created.[469]

In all the litigations in the analyzed cases in this research, ERCA's concerns and arguments were only and only of revenue loss concerns.[470] The concerns of under-valuation in other jurisdictions do not only rely on revenue loss concerns. The concern in other jurisdictions extended to domestic industries and domestic producers as well.[471] In Ethiopia, there is no open opposition experience by local producers against under-valuation. The current voices are tuned against the forced over-valuation decisions of ERCA. But ERCA believes there is no real over-valuation experience by importers and its actions to modify under-valuation is driven by corrective measures. The corrective measures of course have protecting revenue loss missions.

The other clear incentive to under-invoicing or under-valuation is high tariff rates regulated by the customs tariff book and the high tax rates by the relevant domestic tax legislations applicable to imports.[472] In ERCA Vs Abdurahiman Abreha Measho,[473] the court ruled that tax payers should build their business statement and books and accounts based on customs value decided by ERCA not by the rejected transaction value (emphasis added). The court added the undervalued customs value make the input tax minimum and enables the tax payer to request tax refund. This

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[468] Supra, at note 341 above, An Interview with Ahemed Yasin

[469] Berhanu Tamene, Issues Related to Customs Valuation Under the Current FDRE Customs Proclamation No. 622/2009: the Law and the Practice, LL.B Thesis, Soft Copy found at my disposal, p. 57

[470] See for instance cases cited at notes 373,429,380,383,438,369 and 433, ERCA Vs Fantuna Betesebu Trade and Industry PLC, Kingnam Enterprise LTD Vs ERCA, Mustefa Kedir Mohammed VS ERCA, Jemila Sultan Mussa Vs ERCA, Fikir International Business PLC Vs ERCA, Alpha Business PLC Vs ERCA, Yimer Gochel Tarekegn Vs ERCA respectively.

[471] Supra, at note 407 above, Ramon L. Clarete, p. 13, domestic industries and producers even back the Customs Data-Base prices and oppose the one to transaction value for temptation of under valuation their by the competition form may be endangered.

[472] Supra, note 12 and 16, the Customs Tariff Books Volume I and II, see also our discussions in chapter two on the customs duties and taxes session. As highlighted there customs duties ranges from 0-35% and from 0-31.5% (import is from COMESA member Counties). When the base to appraise customs value gets higher and higher the importer will be liable to high burden of import duties and taxes. To avoid this burden the importer necessarily gets into undervaluation activities. Except the withholding Tax levied at the import, the base of computation is done adding the customs duties to the customs value when computing VAT, adding of VAT and customs duties to the customs value to compute Excise Tax and the addition of all these when it is to compute Sure Tax on the import.

[473] ERCA Vs Abdurahiman Abreha Measho, FFIC, Lideta Division 9th criminal Bench, Computer File No. 203228, 23/10/2006 E.C, in Amharic, unpublished. Normally the case reached the court based on audit findings of ERCA that the accused tax payer build cost and profit of the domestic business transaction by the under-valuated customs value.

is a tax evasion crime according to the holding of the Court. The Court holds the same stand in ERCA Vs Endalew Debebe Habte,[474] building business transaction statements based on undervalued customs value amounts to tax evasion crime and it leads to a reduction to the government revenue from tax.

Thus, undervaluation has a lasting consequence up to the domestic tax collection endeavor. Therefore, when the domestic tax control and follow up becomes strong undervaluation activities may be undermined.[475]

4.3.4 Issues of Criminal Sanctions

It is already stressed that there is less compliant importing and trading system coupled with rampant undervaluation activities. So that criminal sanctions and criminal prosecution can have a better deterrent effect to under-valuation.[476] However, in the Customs Proclamation part on customs criminal offences (and principles), the activities of under-valuation pertaining to customs valuation is not sanctioned.[477] The Proclamation instead of criminal offence sanction remedy, administrative sanction is opted to undervaluation.[478] ERCA applies a Directive to implement the administrative penalties in such situations.[479]

ERCA in the litigations brought before the Commission argues grave fraudulent activity is done by the importer when the declared value is totally different from the actual value.[480] The Commission also accepts and confines the allegation of ERCA and puts in its judgment such expression "grave fraudulent activity."[481]

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[474] ERCA Vs Endalew Debebe Habte, FFIC, Lideta Division 9th Criminal Bench, Computer file No. 207160, 29/02/2007 E.C., in Amharic, unpublished

[475] Supra, at note 341 above, An Interview with Ato Ahemed Yasin, this in effect may lead to transaction value acceptance.

[476] Ibid.

[477] Supra, at note 75 above, Customs Proclamation, see Art. 166-173, valuation crime is not mentioned here.

[478] Id., see Part 7 Chapter 1, Art 157, whereby under-valuation so as to understate duties and taxes liabilities entails administrative penalty of twice the understated duties and taxes or when the deviation of the tax liability is less than 10% there will not be penalty.

[479] Directive on Administrative Settlement of Customs Offences, Directive No. 46/2002 E.C, in Amharic, ERCA, Addis Ababa, Art. 4 and 6

[480] Hamdi Mohamed Vs ERC, Federal Tax Appeal Commission, Appeal File No. KH-853, Hamle 26, 2006 E.C., In Amharic, unpublished

[481] Ibid.

National laws of countries should provide for first stage appeal on customs matters (including valuation issues) to the customs itself.[490]The right of appeal on customs valuation is enshrined both under the ACV[491] and the Ethiopian Customs Proclamation.[492] The Customs Proclamation allows ERCA to establish a two-level Committee, one instituted at each branch offices level and one at the HQ level. The Committees are mandated to review decisions pertaining to origin, valuation, description and tariff classification as well as other customs matters decisions.

Noting mentioned for the need to institute the Committees both at the branch offices level and at the HQ. One can possibly argue the necessity to institute this body at the branches offices level for accessibility purposes and to reduce the compliance costs. But, there is no reason to establish two Committees at ERCA to deal with one matter. Even, there is a third level review when the matter is sent to the Director General or to the executive manager for conformation or reversal.[493]

The organizational structure is amenable for tardy and long time hearing procedure. Not only being two-level or three-level review procedure, all the three levels instituted at ERCA itself may not create trust or confidence to the appellant (appellant always being the trader). In Legesse Debela Vs ERCA,[494] the appellant argued at the Commission as his previous appeal to the Committee of ERCA was rejected, he took his second appeal directly to the Commission stating he will not expect altered decision from the Committee. In Legese Debela Vs ERCA,[495] a case where by the same appellant submitted an appeal for another import, the Commission reversed the decision of ERCA and the Committee.[496]

At any rate the establishment of two-level Committees at ERCA level is against speedy trial to the grievances lodged by importers. Importers also question on their impartiality.

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[490] Ibid.

[491] Supra, at note 118 above, the WTO Valuation Agreement Text, Art.11

[492] Supra, at note 75 above, Customs Proclamation, Art. 153 and 152

[493] Supra, at note 395 above Directive No. 107/2007, the Committee at the HQ level should present its decision to be approved, amended or reversed by the Director General of ERCA and the Committee at the Branch level should bring its decision same to the General Manger of the Branch concerned.

[494] Legese Debela Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KL 762, Meskerem 06, 2006 E.C, in Amharic, unpublished,

[495] Legese Debela Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KL. 761, Tir 8, 2006 E.C, in Amharic, unpublished, the time gap between the two appeals by the same appellant are only six months.

[496] Directive on the Establishment and Procedure of ERCA's Customs Matters Compliant Review Committee, No 45/2002 E.C., in Amharic, ERCA, Addis Ababa, see also Art. 87 Customs Proclamation cited at 323 above. There was only one Committee established at the HQ before the coming into effect of the new Customs Proclamation.

The accessibility rationale to institute it at the branch office levels turns to be questionable since the same Committee being established at the HQ level. An appeal seen by a Committee in Jiggiga or Moyale or Mekelle can be further appealed to the Committee found in Addis Ababa (at the HQ level) then it goes to the Commission if not reversed. In Abdulsemed Musema Ebrahim Vs ERCA,[497] the case has been commenced at Kombolicha branch office Committee then appeal was taken to the HQ Committee, to the Commission and to the Federal High Court.[498] These all processes necessarily could inhibit the goal of accessibility and speedily trial.

After the HQ Committee, if an appeal is preferred it will goes through the channel of the Commission which is only instituted at the federal level.[499] When, there is an error of law (not an error of fact) an appellant may go to the Federal High Court. ERCA preferred appeal from the Commission to the regular court but there is no case whereby ERCA preferred an appeal from the Committees.[500] Thus, an appeal from the peripheries (like Moyale, Jigigiga, Metema) would come to Addis Ababa either to the Commission or the regular court. Even it is not yet practiced to lodge an appeal to the regions where Federal High Court is established by law.[501]

The other burning issue about appeal by the importer either to the Commission or to the Federal High Court is the prior payment of the disputed duties and taxes.[502] This is against the ACV[503] and the Kyoto Convention[504] that regulates appeal in customs matters for free. The prerequisite to deposit the disputed duties and taxes when an appeal is lodged to the Commission is burdensome. The basic right of appeal may be precluded because of this burden. The prerequisite

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[497] Abdulsemed Musema Ebrahim Vs ERCA, Federal Tax Appeal Commission, Appeal file No. KA 848, Sene 30, 2006 E.C., in Amharic, unpublished

[498] ERCA Vs Abdulsemed Musema Ebrahim, Federal High Court, Appeal file No. 157267, Ginbot 12, 2007 E.C., in Amharic, unpublished; unfortunately the High Court confirmed the Commission's decision less it would have been referred to the Supreme Court.

[499] Income Tax proclamation, 2002, Proc. No., 286, Neg.Gaz., 8th year, No. 34, Art. 107 and 113, see also Customs Proclamation cited at note 67 above, Art. 155 though the Commission is ordered to be established at the Federal, Regional, Zonal and Woreda levels of the country only the Federal Tax Appeal Commission is come to picture.

[500] Supra at notes 378 and 498 above, Fantuna Betesebu Trade and Industry PLC, ERCA Vs Abdulsemed Musema Ebrahim, Cases were ERCA preferred appeal either from Committee or the Commission are rare compared to the appeal by the traders.

[501] Federal High Court Establishment Proclamation, 2003, Proc. No., 322, Neg.Gaz., 9th year, No. 42, according to this law Federal High Court is established in the states of Afar, Benshangul-Gumuz, Gambella, Somali and southern Nations and Nationality and peoples. Of course, the court is functioning "ad hock" under "movable Bench". Yet, there is no experience by the tax payers to use these ad hock Benches and it has not been arranged by Federal court Administration

[502] Supra, at note 75 above, Customs Proclamation, Art. 155(2)

[503] Supra, at note 118 above, the WTO Valuation Agreement Text, Art.11

[504] Supra at note 485 above, Kyoto Convention, p. 3

in the domestic tax disputes is to deposit 50% of the disputed tax.[505] No reason is provided for this unequal treatment.

The other serious fear that can be mentioned at this juncture is the capacity and the composition of members of the Commission.[506] The composition of the members of the Commission and their selection focused on "reputation, acceptability and on general knowledge. However, customs matters and customs valuation in particular seriously requires personnel with high technical knowledge and experience on customs matters. This can be easily gathered from the judgments given by the Commission.[507] The judgment is pronounced by reproducing the written litigations made between the parties (which covers more than three/four pages) followed by the Commission's decree (half or a page) which is unreasoned and not properly articulated.

4.5 The PCA Solutions

In the traditional customs practices imports were subject to customs control, detention and examination whether their declaration is reliable or not before their release for free circulation.[508] However, given the frequent flow and large volume of traded goods in the international market customs can hardly check and examine all imports or if they tried to do so customs procedure and clearance will be slow, thus, counter-productive to trade and trade facilitation.[509]

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[505] Supra, at note 499 above, Income Tax Proclamation, Art 107 (2) (a), thus, Art.155(2) of the Customs Proclamation would have been crafted in similar fashion. Less the principle of equality, fairness or even uniformity treatment of the traders is questioned.

[506] Income Tax (Amendment) proclamation, 2009, proc. No. 608, Neg.Gaz,15th year, no. 15, one to be member of the Commission should be either representative of the business community, having good reputation, acceptability, general and professional knowledge and who do not ever committed offence pertaining to tax and tax administration. The Amharic and the English version have slight different in the last words formulation which the counterpart Amharic version said "tax and duties". The drafting error seems the influence of tax cases being entertained by the Commission for reasonably long period of time. See also Art 114 (1) of Income Tax Proclamation 286/2004 cited at note above 499.

[507] Supra, at note 380 above, Mustefa Kedir Mohammed Vs ERCA, the litigation of the parties counted for more than 6 pages but the commission's decree with its reasoning is only one page., see also note 373,375,378 above, ERCA Vs Fantana Betesebu Trade and Industry PLC

[508] WCO, Guidelines for Post Clearance Audit (PCA), volume 1, June 2012, Revenue Package, p.3., the control and examination of the imports is made for purposes of check whether the declaration is genuine or not.

[509] Ibid.,

Thus, modern customs developed PCA solution to imports released without physical examination on the basis self-declaration.[510] The rationale is to check the accuracy of the declaration or to collect the required duties and taxes whenever the declaration was inaccurate.

Here, PCA has a direct correlation with transaction value valuation methods.[511] It is impossible to entertain imports by transaction value without developing an appropriate PCA that would check the accuracy of the declaration after their release. Less, undervaluation can get an upper hand in due course and the government may sustain customs revenue loss.[512]

The PCA concept in the Ethiopian customs has started recently in 2009.[513] ERCA is given a five years period (which was ten years period in the previous Proclamation) to conduct the PCA.[514] However, ERCA did not produce work procedure and manual on PCA until 2013.[515] On its institutional make up, PCA was under the Tax Audit Procedure and Program Development Directorate till 2014 as a team process. Since 2014 PCA has been institutionalized as a Directorate at the HQ level and in different capacities at the branches offices level.[516]

Currently, ERCA conducts PCA to the authorized economic operators as well as the imports entertained based on transaction value (if there are any) based on a risk analysis level.[517] ERCA do the PCA not as a programmed audit procedure but based on a risk analysis when there is a discrepancy between the declared value and the value in the Customs Data-Base.[518] This seems due to the minimum imports entertained by the transaction value and the underdevelopment of

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[510] Id., p.6, customs apply PCA based risk management on the type and behavior of importers and on the basis of the nature of the imports.

[511] Supra, at note 125 above, Sandeep, p. 19, PCA very much helps to facilitate customs clearance and to secure customs revenue through the re-audit process

[512] Ibid.,

[513] Supra, at note 323 above, Customs Proclamation, Art 2 (43), chapter 9 Art 64 and 65, accordingly ERCA since then has given power to conduct a "surprise" (seems a direct interpretation of the Amharic counterpart meaning), PCA to ascertain the accuracy of released imports based on books and accounts, commercial documents and data relating to the import.

[514] Supra, at note 75 above, customs proclamation, Art. 121 (4)

[515] ERCA, Post Clearance Audit Manual, October, 2013, Addis Ababa, the manual tries to address the conceptual and theoretical background of PCA, legal and operational framework of PCA, planning and conducting of PCA and the code of conduct of the PCA auditors.

[516] Ibid., the PCA at the HQ level has the mandate among others to supervise and follow-up, to train the PCA staffs at the branches level. It can conduct field supervision and audit on some important and complex cases and to check whether the PCA is conducted at the branches properly.

[517] A Discussion with Ato Yitay Atsku, A Private Customs Clearing Agent, on September 1, 2015

[518] Ibid.,

PCA in ERCA. The organizational structure itself is not yet completely done and the necessary human power is not staffed.

ERCA conducted PCA after three or six months or after four years from the import took place. The alarm for PCA is when there is a discrepancy between the values of the import (the transaction value compared to the value recorded by the Data-Base.[519]

[519] Ibid, sine the customs data base is not updated regularly against international market changes, the customs officer may get a price difference between the import and the data price then PCA triggered on a given import.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

Customs valuation as a core customs function is the process and method used by the customs in determining customs value of imported goods. Customs value in turn is also the transaction value of the imports that is indicated by the price actually paid or payable in the market transaction. Determination of customs value is important when the customs duty rate is on the basis of the ad valorem duty rate. Thus, customs value uses as a taxable basis to apply the ad valorem duty rate so as to calculate the appropriate customs duties and taxes on the import.

The primary duty to declare the accurate customs value to the customs rests up on the importer concerned. Unlike the customs tariff rates which are fixed by the tariff book, the customs value declared by the importer may vary from transaction-to-transaction due to real market factors. The importer may also declare the customs value of his imports at under-valuated without real market factors. The customs on the other may unfairly raise the customs value when they believe it is under-valuated. Either action may create unfair duties or taxes burden on the importer, customs revenue loss for the government or may have the consequence of capital flight. The effect may goes further to affect the transaction cost of doing business and the overall competitiveness of the country perse. Beyond these consequences a disguised valuation system may result in arbitrary and fictitious, non-uniform and non-transparent customs value appraisals. These in turn will result in uncertainties and barriers to international as well as national trade.

From these lessons countries try to come up with internationally accepted valuation systems on the basis of fair, uniform and neutral systems under the different multilateral trade negotiations.[520] Especially since the Tokyo Round Valuation Agreement (1979) contracting parties to the Agreement have come up with the positive value concept of valuation against the notional Value Concept of valuation. The positive value concept is premised on the basis of transaction value (price actually paid or payable) valuation appraisals or on the idea of what "is" the value of the import. Therefore, the primary basis of customs value of imports is the transaction value which is represented by the commercial invoice as per the transaction

[520] See our discussions under chapter three customs valuation under the different trade negotiation rounds

concerned. According to the ACV the customs can only deviate from the transaction value when they have a reasonable doubt on the accuracy of the transaction value. If after shifting the burden of proof (SBP) to the importer and after making the consultation process still manifests doubt on the trustworthiness of the customs value, the customs can go to the other customs valuation methods.[521] The customs value appraisal process under the rest methods need to be backed by the information found at the Customs Data-Base established for this purpose or from other recognized sources for last resort.

The modern Ethiopian customs valuation system can be traced back to 1955 where a working Proclamation to consolidate and amend the law relating to the customs has been issued since then. The basis of customs valuation under this law was the normal price of the import plus costs of transport and insurance up to the Port of entry. This normal price concept in the history of Ethiopian valuation system lasted until changed by the positive value concept of transaction value in 1997.

An effective valuation system in Ethiopia that tries to coup up with the principles enshrined under the ACV has been started since 2009.[522] The system is being backed by the Customs Data Base System (ECVS)[523] whenever valuation under the primary basis of valuation i.e. the transaction value cannot be established. This is when the transaction value is not trustworthy.

Though, the Ethiopian valuation system strives for the transaction value method practically this is being applied only to imports by the government, pubic enterprises, and the authorized economic operators that count only 47% of the total import. The rest imports (count 53%) are subjected to physical examination (contrary to the ACV and the Proclamation) and can only be entertained under the transaction value method if their value equated to or becomes higher than the comparable value of previous imports found under the Customs Data Base.[524]

The other characteristic feature of Ethiopian valuation system is also the tendency to see price consistencies irrespective of price changes due to real market factors. As noted in the body of the

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[521] According to our previous discussions the customs can apply the identical or similar goods value, the deductive value, the computed value or the fall back method in their sequential order.

[522] Supra, at note 323, Customs Proclamation, accordingly all the six valuation methods adopted by the ACV have been made part of the Proclamation for the first time.

[523] Supra, at note 329 above, Directive No. 94/2006, where the ECVS has been formally declared thereof, see also Customs Proclamation cited at note 75 above, Art. 89(4) foresees for the establishment of Customs Valuation Data-Base

[524] The Customs Data Base could be the CD-Price Data or the ECVS but favorable to the ERCA

paper prices of goods traded at the international market may get ups or downs from transaction-to-transaction due to market fluctuations. The valuation principles dictate, however, the consistent application of valuation methods according to the real market and commercial practices but they do not want to see price consistencies for every transaction. The issue also becomes aggravated when it comes to Ethiopia due to late updates to the Customs Data-Base which is used as a tool to compare and "apply" as a customs value of the imports. The valuation methods are also being utilized practically in a mixed and confused manner. Their sequential application not respected by ERCA practically (when the transaction value is not accepted as basis to establish customs value, the customs directly rely on the fall back method or on the internet sources without testing the valuation methods in their sequential order). A customs value appraisal at ERCA is often done by the in-updated Customs Data-Base or from disguised market research prices. The non-sequential application valuation methods, the in-updated prices in the Data-Base, the frequent rejection of transaction values of the import and non-transparent prolonged market research prices do create uncertainties to the valuation system.

The Customs Valuation Directive has bestowed very much discretionary powers on the customs officers that lead to unfair, inconsistent, non-transparent and uncertain valuation system. The lawmaker has permitted the Directive to be in such manner. All the provisions of the Directive that regulate for a clear "uplifting" of the customs value at the discretion and will of the customs officers, the "similar level of development" of countries to compare the whereabouts of the identical or similar comparable imports create a fertile ground to the inconsistent, non-transparent, non-neutral and uncertain valuation system currently being observed on the ground. Especially, the mixed application of the ECVS and the CD-Price Data-Base (this is allowed by the Directives) creates uncertainties to the trading system.

The issues of unfair, non-uniform, non-transparent valuation system coupled with the customs mere concern of generating high customs revenue for the government has lead to undervaluation activities by the importers. This is also aggravated by the shortage and low supply of hard currency by the NBE. However, the non-compliant behavior of the importers is also an accounting factor to undervaluation. Due to the uncertain and non-transparent valuation practices coupled with the high customs duty rate that result in high duties and taxes liabilities undervaluation becomes rampant. As a result the valuation system becomes uncertain and

inconsistent with the commercial practices and market situations. The valuation system has got endangered and susceptible to inside abuse and embezzlements.

Yet, the failure and gap of the system is not being cured by the institutional set ups established thereof. The ECVS becomes unsupportive to this venture due to the confused application of CD-Price Data-Base with it. ECVS also has not been fully implemented (its test was commenced since 2003 E.C.) for unclear reason. The reference prices loaded at the ECVS are directly copied from the old prices found at CD-Price Data. The Committees established to see grievances do not yet proclaim their neutrality and their quality decisions[525] The Commission, too, lacks solid stand on the matter because its decisions reveals inconsistency and unreasoned verdicts. It lacks also technical capabilities on the matter. However, the support and the stand of the regular courts to valuation interpretations has to wait until a good number of cases start to flow through their floors. However, the symptom and the way of reasoning seems a good start based on the cases yet entertained[526]. The PCA solutions has not yet tested very much and it is not accomplished on its institutionalization.

5.2 Recommendations

The key driving issues and an attempt to answer has been done in this thesis are whether the legal and institutional frame work and the practical environment at ERCA gives an effective valuation system conditioned by fair, uniform and neutral system. Issues pertaining to consistencies, certainties, transparency and undervaluation in the working environment have been also dealt out. In line to this, the following recommendations found out to be noteworthy and at stake.

5.2.1. On the Legal Framework Aspect

1. The lawmaker has to use consistent and clear terms and definitions on the customs value and the customs valuation system. The acceptance of transaction value method as a primary basis of valuation should be clearly stated under Art.89 of the Proclamation and the sequential application of the secondary valuation methods should be clearly stated. Besides, the prohibition not to follow the sequential order should be stated in a clear manner. The

[525] Supra, at note 494 above, Legesse Debela Vs ERCA,
[526] Supra, at notes 373, 473 and 474 above, ERCA Vs Fantuna Betesebu Trade and Industry PLC, ERCA Vs Abdurahiman Abreha Measho, ERCA Vs Endalew Debebe Habte respectively

"consultation" process/stage to be conducted when the transaction value method could not be accepted by the customs for its shade of doubt need to be inserted under Art.99 of the Proclamation. The current design of this provision has lead to the non-transparent communication between the customs officers and the importer. Because of this weak design of the provision the possibility of consultation and discussion in person about the truth or otherwise of the declared value is closed in the practice. The customs only provide a "form" (prepared for this purpose) to write about the correctness of the declaration and slip it through the window of service. Thus, beyond the production of additional information and evidence the inter-personal communication and consultation need to be given priority and emphasis when the need to amend the proclamation arises.

2. The total cost of the import up to the first entry point to the customs territory under Art. 89(2) need to be re-written according to the current Dry Ports established in different parts of the Country. The definition of the customs territory when the destination of the import is at the Dry Ports need to be changed. The costs accordingly need to be adjusted in an appropriate manner.

3. The lawmaker should not give ERCA the power to issue a directive that prescribes other valuation methods under Art.89 (4) (Emphasis mine). For one thing the rest of the world has already prescribed the six valuation methods after long international multilateral trade negotiations. These methods are so regulated by the Proclamation. These valuation methods are not fully applied in the practice today (no experience of the computed value method) so that it is not appropriate to the lawmaker to permit such loopholes for the Executive. It is surprising also how ERCA can come up with "non-invented" method that is not foreseen by the lawmaker. To bestow this unlimited power on ERCA has been lead to arbitrary and fictitious valuation methods in the practice. In relation to this point, ERCA has already come up with arbitrary valuation systems that are not foreseen by the lawmaker.[527] ERCA has come up with the idea of "uplifting" customs value in a clear language. The idea of "countries with similar level of development" to compare identical or similar goods under the guise of the fallback method is being regulated under the Directive on Customs Valuation that is not foreseen by the Proclamation. One of the Deputy Directors General of ERCA is also permitted

[527] Supra, at note 145 above, Customs Valuation Directive, see Arts. 10, 12, and 17

to come up with a new "formula" of customs valuation. These all are really a sign of arbitrary valuation methods that come to picture due to the lawmaker's illegalized permission to ERCA to come up with yet "non-invented" valuation method/s.

4. The Fall back method under Art. 95 of the proclamation need to be designed in a way if the five valuation methods are not helpful to establish the customs value of the import; the customs need to apply the five methods in a flexible manner[528]. The current design seems as it stands by its own or as a new valuation method. Thus, the provision should lead and show the re-application of the rest valuation methods in flexible manner. Currently ERCA is also applying the fallback method (which is the last valuation method) before attempting the computed method (the fives method in the ladder of the hierarchical order). This is against the Proclamation and the ACV. Therefore, the practice should be legalized and the law should be obeyed in a legalized manner.

5. The buying commission under Art. 97(1) (d) should be totally out. Buying commission cannot be a dutiable or no-dutiable factor to customs value.

6. The rule on the establishment of Customs Date-Base under Art. 89(5) of the Proclamation should give a general clue on how and on what basis this Data-Base would be organized. Less it will pave a way the Executive to abuse its design and organization. The lawmaker when it done its oversight duty may lack the framework to do so.

7. The issue of "discounts" by the seller to the buyer to on the import needs to be allowed in the valuation provisions of the Proclamation. The fear of the lawmaker to abandon the discount issue that was part of the draft law seems soundless. Discount is part and parcel of sale contract between the seller and the buyer. It is fact of the international trade contracts and there should not be stronger reason to avoid it by law.

8. The continued application of the CD-Price Data-Base at the ECVS history of application by Customs Valuation Directives should not be allowed. ERCA needs to opt either. But in the interest of its modernity and for it is wed-based automated application ECVS needs to be opted. To use the CD-Price Data at this stage is illegal; one its update has stopped since 2003 E.C. hence the price list found there cannot at all represent the real market prices. Second, the

[528] Supra, at note 118 above, WTO Valuation Agreement Text, Art. 7

12. ERCA needs to come up with guide lines on how to utilize International price and Internet price source under Art.22 of the Directive on Customs Valuation. It need not use these price sources at raw level simply are more than the transaction value or the Data-Base price list at its disposal.

13. The lawmaker needs to come up with clear definition and scope on the idea of "customs declaration" and it need not confuse with the "goods declaration".

14. The primary rules of Origin determining criterion i.e. the "wholly obtained or wholly produced" criterion under Art.104 of the Proclamation need to be clearly inserted, less the provision could not be complete. This core principle need not be fulfilled by the directive per se.

5.2.2. On the Institutional Regulation Aspect

1. Currently imports by the government, by the public enterprise, by the authorized economic operators as well imports by the rest importers are being entertained by the same gate. The only difference is that the first categories of imports are entertained out rightly at the transaction value where as the second categories are being entertained the Data-Base Price or other source price value. However, it would have been better to establish a "special gate"[529] for the former imports since their fate is known to be entertained under the transaction value method. The special customs service dictates that these imports need to be served by the special gate. This will allow the customs to effectively manage the second category of imports and the second category of imports may get a chance of being entertained by the transaction value or they may behave in an honest state to be graded for the special valuation gate.

2. The Customs Data-Base (ECVS) need to be used as a risk management tool (to check the truth or accuracy of the declaration) instead of using it as another method of valuation to determine customs value as is currently being done. The Data-Base value to be used as a customs value (as it is) and to reject the transaction value simply it is different from the price list found at the Data-Base should be curtailed[530].

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[529] Supra, at note 453 above, Sachin, for instance in India a "Special Valuation Brach" has been established to deal with imports made under the special relationship of the seller and the buyer and imports that depicted special features, p. 170

[530] Supra, at note 125 above, Sandeep, p.13, the Data-Base Price should not substitute the transaction value and should not be taken as a minimum/ reference price of the import

3. ECVS need to be frequently updated[531] to reflect the real market prices. In addition, as much as possible the input of the Data-Base i.e. the VDD need to reflect the real market prices. Less the quality of the Data-Base will be affected and the valuation determination based on less-quality input will be arbitrary and fictitious, non-transparent, and inconsistent with the commercial realities.

4. The information and feedback exchange between the HQ Valuation Directorate and the customs branch offices or the intra-exchange between the branches need to be based on automated wed- based. The ECVS system dictates so.

5. The Customs Compliant Committees established under Art. 152 of the Proclamation should be reduced to one-level Committee only. The one Committee could be established at the HQ level or at the Branch level. But for accessibility reasons it may be better if established at the Branch level. Their neutrality ad independence needs to be respected.

6. The Commission need to be established also at the Regional, "Zonal" or "Wereda" level as is told by the Income Tax law. Especially the customs function at ERCA is stretched up to the lower administrative levels and up to the boarder tips of the Country and for accessibility and speedy justice wise its establishment up to the lower administrative level is timely and necessary. The technical capacity and the mixture of the members to it should be thoughtful. The business of the Commission need not be as a part time job as is currently done. Less, quality and timely decisions could not be expected as it is currently working.

7. The PCA concept and function need to be appropriately organized and developed. Especially, to entertain imports under the transaction value method PCA is a pre-requisite so that the current infant PCA organ should be reconsidered.

8. The Customs Clearing Agents as bridge between the customs and the importer should be given attention. The law regulating the agents needs to be redesigned so much so that their accountability before the law for the unethical conducts needs to be strong. A mere administrative sanction by itself does not suffice giving the responsibility they shoulder.

9. Finally on this point, the valuation aspect should not be developed or modernized in isolation of the other customs functions. Therefore, when dealing on the organizational development of

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[531] Supra, at note 453 above, Sachin, for instance in India Data-Base is updated weekly, p.170

valuation system it should be done in a holistic fashion vis-à-vis to the overall customs procedures.

5.3. Other General Recommendations

1. The risk areas and situations for undervaluation activities to valuation should be selected based on risk analysis management system. Undervaluation hesitations should be treated as an exception phenomenon. Thus, ERCA should stop judging every import as it is undervalued.
2. A system of self-declaration and self-compliance should be installed in place. In line to this an effective Customs Data-Base and PCA audit should be developed. ERCA should put in place transparent valuation system. The rejection of transaction value should be based on a mutual understanding with the importers. The importer also has to be given enough time to produce the required evidence and information before rejecting the transaction value. The valuation undertaking done based on the Data-Base Price list under the secondary methods should be transparent and fair as well.
3. An effective audit based control to the domestic tax administration may also exert a positive implication to the importers to declare correct transaction value. So as both the domestic tax administration and the customs administration is being run under the auspice of ERCA both functions should be administered and controlled hand-in-hand. The habit to have an effective books and accounts will be developed and this will have positive impact to PCA and transaction valuation development.
4. The free circulation of dollar/hard currency in the market (if allowed at policy level) may rectify the undervaluation tendencies by the importers. This is because one reason to undervaluation is the shortage of dollar permitted by the Banks during the LC process. Thus, ERCA and NBE should study the possibility to the free circulation of dollar in the market.
5. Reduction of the customs duties and taxes levied on the import together with the reduction of respective customs duty rates should be thought of. The high duties and taxes imposed on the importers lead them to undervaluation activities to escape the burden. This also will be the pre-requisite to Ethiopia in acceding to the WTO and to adapt with it is advisable.
6. The lawmaker has to come up with criminal sanction provisions for selective and grave criminal activities including undervaluation committed on valuation. The current tendency

seems to impose only administrative penalties that could range from double up to triple payment of the undervalued duties and taxes.

7. The business community and the local producers should oppose undervaluation as is the case in other jurisdictions. In addition, they should bargain and influence ERCA to accept the transaction value method as rule not as an exception as is done currently.

8. ERCA should come up with clear and stated guidelines on valuation determination process on the basis of market research under the deductive and fallback valuation methods. The price information need to be gathered at the wholesale and in the greatest aggregate quantity of sale not on the retail and consumer level on the basis of a sale price of a single product as is the case in the Customs Valuation Directive and in the current practice.

9. ERCA should also give in advance rulings and information on changes in the laws and procedures pertaining to valuation. For instance the introduction of ECVS and its implementation is not yet very well communicated to the importers. Because of this yet no psychological and behavioral change (on the importers) on the new system created.[532]

10. Yet, ERCA is blamed for it simply created uncertain and non-transparent valuation system for zero sum game. In most cases the transaction value is better than the Data-Base Price and both (ERCA and the importer) would have been in a win-win situation had transaction value been applied and accepted.[533]

11. The importers should effectively use the appeal procedure up to the Federal Supreme Court and the Cassation Bench. Given the current practice of valuation systems and the arguable issues on it, a good number of cases have not yet reached to the regular courts. The riddle surrounding this situation seems a matter of moot.[534] The importers opt to give abusive and side payments to the customs officers thereby want to close their case at spot. There are

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[532] Supra, at notes 341, 353, 366, A Discussions with Ato Ahemed, Ato Yitay, and Ato Aregawi, the importers still do not bargain to be entertained by the transaction value. There are importers who still made their declaration consulting the Data-Base. Of course ERCA itself is at hotchpotch state, because it arbitrarily uses the Customs Data-Base (the CD or the ECVS) that shows the highest price list.

[533] A discussion made with Ato Abdulkerim Bedru, an Importer of different products, on May 28, 2015, for him the importer is supporting the government in bringing the hard currency (dollar) from different sources since the dollar permitted by the LC is not enough to buy a good amount of imports. Thus, for such efforts made by the importers to allow them to be entertained by the transaction value is a small tip or it may encourage them to declare accurately.

[534] Supra, at note 341 and 391 above, an Interview and a Discussion with Ato Ahemed Yasin and Mellese wolde, the importers for unclear reason perceive that they would be put under a "black list" by ERCA if they do lodge appeal and strongly oppose the decision given by it.

accounting factors to this stand of the imports, one the valuation system and practice is non-transparent and dependant on the discretionary power of the customs officers. Second, the precondition to deposit the full amount of the disputed customs duties and taxes when an appeal is preferred to the Committee, to the Commission and to the regular courts may preclude the taking of a case to these organs. Third, the "tardy" judicial process, the cost and time spent as a consequence plus the would be demurrage to the imports during the litigation may account for the non-preference of appeal. Last but cannot be least reason may be the fear of market loss for the imports during the prolonged litigation. However, all these fearful obstacles may be cured to some extent by the release of the imports by depositing proportional guarantee.

12. The valuation system should be backed by modern information technology and computerization coupled with aggressive and timely training conducts to the customs staff. This is necessitated because all the valuation process and the ECVS Data run by web-based automation.

13. Mass education and awareness creation forum on the harmful consequence of undervaluation has to be put in place. Especially, the importers should be educated about the gravity of undervaluation both to the trading system and to the economy.

14. ERCA should do on how to retain a skillful and professional experts or employees on the valuation area. One challenge on valuation determination process is that the new staff did not have the necessary professionalism and technical capacity to decide the customs value of the imports. The new staff lacks the exposure about the international price of imports as well as the nature, quality and type of the imports.

15. At the end, the lawmaker should do its effective oversight and control whether the law made on this area is properly interpreted and applied on the ground.

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የሚያሳይ መሆኑን ጉባኤው ተረድቷል። ይህም በንግድ እንቅስቃሴ ሲታይ ቅናሽን ማመልከት ሳይሆን ተገቢ ወይም ተመጣጣኝ ዋጋ ስለመስጠቱ የሚያመለክት እንደሆነ ጉባኤ አምኗል። በተጨማሪም በጉምሩክ አዋጅ ቁ. 622/2001 አንቀጽ 33/2/ መሰረት ይግባኝ ባይ ድርጅት እና ሻጭ ግንኙነት አላቸው የሚያስብል ማስረጃ ያልቀረበ በመሆኑ በዚህ ነጥብ መነሻነት የግብይት ዋጋው ውድቅ መደረጉን ጉባኤው አልተቀበለውም።

ሌላው ምክንያት ሆኖ የቀረበው ከ12ኛው ሲዲ ዋጋ ጋር ሲነፃፀር የይግባኝ ባይ ዋጋ ያነሰ ሆኖ መገኘቱ እንደሆነ ተገልጿል። ለጉምሩክ ቀረጥ አስፋፊል አላማ የዋጋ መነሻ የሚሆነው የግብይት ዋጋው ሆኖ የግብይት ዋጋው በሕግ ምክንያት ውድቅ ሲደረግ የአንድ አይነት ዋጋ ወይም የተመሳሳይ ዕቃ ዋጋ ለመቀበል ሲባል በዚህ ረገድ የተያዘ የሲዲ ዋጋዎች ማጣቀሻ ሆነው ያገለግላሉ። ከዚህ በስተቀር የሲዲ ዋጋ የግብይት ዋጋን ትክክለኛነት ለማነፃፀር መጠቀም የሚቻል መሆኑ በጉምሩክ አዋጅ ውስጥ ያልተጠቀሰ ነው። በመሆኑም በዚህ መነሻነት የግብይት ዋጋን ውድቅ መደረጉ ጉባኤው አልተቀበለውም።

ስለሆነም በይግባኝ ባይ ባቀረቡት አቤቱታ መሰረት የመልስ ሰጭው የዋጋ ትመና ሒደት ተሽሮ የይግባኝ ባይ የግብይት ሰነድን መሰረት በማድረግ ቀረጡ ተሰልቶ ይግባኝ ባይ የግብር ግዴታውን እንዲወጣ እንዲደረግ ሲል ጉባኤው ወስኗል።

ይህ ውሣኔ ዛሬ ሚያዝያ 7 ቀን 2004 ዓ/ም በጉባኤ አባላቱ ተፈርሞ ለግራ ቀኙ ተከራካሪ ወገኖች ተሰጠ።

አቶ ዳዊት ተሾመ

አቶ ዳልካ ደበላ

አቶ ሙላቱ ገቢሳ

case - 2

የኮ/መ/ቁ. 126536
የካቲት 27 ቀን 2006 ዓ.ም.

ዳኛ፡- ጥዑም ገብሩ ታይሉ

ይግባኝ ባይ ፡- የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን ዐ/ሕ. ጌታሰው ተሠማ ቀረቡ

መልስ ሰጪ፡- ፋንቱና ቤተሰቡ ንግድና ኢንዱስትሪ ኃላ/የተ/የግ/ማህበር ጠ/ፍቅሩ ታደሠ ቀረቡ

መዝገቡ ለዛሬ የተቀጠረው መርምሮ ፍርድ ለመስራት ስለሆነ ተመርምሮ የሚከተለው ፍርድ ተሰጥተዋል፡፡

ፍ ር ድ

ለዚህ ይግባኝ ክርክር መነሻ የሆነው የፌደራል ግብር ይግባኝ ሰሚ ጉባኤ በአዋጅ ቁጥር 286/94 አንቀጽ 115 በተሰጠው ስልጣን መሰረት በማደረግ የአሁኑ መልስ ሰጭ ድርጅት በአሁኑ ይግባኙ ባይ የተወሰነበትን የጉምሩክ ቀረጥ ተመን በመቃወም ያቀረበውን ይግባኝ ቅሬታ በመቀበል በመዝገብ ቁጥር ከፈ-726 ግራ ቀኙን ክርክር ከሰማና ካጣራ በኋላ ሰኔ 20 ቀን 2004 ዓ.ም. በዋለው ችሎት ወስኖ ነሐሴ 11 ቀን 2004 ዓ.ም. በተፈረመ የሰጠው ውሳኔው ነው፡፡ ጉባኤው በሰጠው ውሳኔም፡፡

መልስ ሰጪ(የአሁን ይግባኝ ባይ) የቀረቡት ሰነዶች "fair" በሆነ ዋጋ የተሰጠ መሆኑን የሚያስረዱ በመሆናቸው እና በጉምሩክ አዋጅ ለጉምሩክ ቀረጥ አከፋፈል ዓላማ የዋጋ መነሻ የሚሆነው የግብይት ዋጋው ሆኖ የግብይት ዋጋው በህግ ምክንያት ውድቅ ሲደረግ የአንድ ዓይነት ዋጋ ወይም የተመሳሳይ ዕቃ ዋጋ ለመቀበል ሲባል በዚሁ ረገድ የተያዘ የሲዲ ዋጋዎች ማጣቀሻ ሆነው እንደሚያገለግሉ እንጂ የሲዲ ዋጋ የግብይት ዋጋን ትክክለኛነት ለማነፃፀር መጠቀም የሚቻል እንደሆነ ያልተገለፀ በመሆኑ መልስ ሰጭ መስሪያ ቤት ይግባኝ ባይ (የአሁኑ መልስ ሰጭ) በዲክላራሲዮን ቁጥር C-684/11 አስመዝግቦ ካስገባቸው ዕቃዎች ውስጥ ፖስታዎችን በተመለከተ ያቀረበው ኢንቮይስ "ከአምራቹ ድርጅት በተገለፀው መሰረት የዋጋ ቅናሽ የተደረገበት መሆኑ ተረጋግጧል፡፡" በማለትና "ከ12ኛው ሲዲ ዋጋ ጋር ሲነፃፀር ያነሰ ሆኖ ተገኝቷል፡፡" በማለት በይግባኝ ባይ (በአሁኑ መልስ ሰጭ) ድርጅት የቀረበው የግብይት ዋጋ

ሰነድ ውድቅ ማደረጉ ተገቢ አይደለም። በማለት የጉምሩክ ቀረጥ አተማመን ውሳኔውን በመሻር ይግባኝ ባይ (የአሁኑ መልስ ሠጭ) ባቀረበው የግብይት ዋጋ ሰነድ መሰረት በማድረግ እንዲሰላ። የሚል ነው።

ይግባኝ ባይ ይህንን ውሳኔ በመቃወም ጉባኤው የዋጋ አወሳሰኑን ውድቅ ያደረገው ከህጉና ስመመርያው ውጭ በመሆኑ በይግባኝ ሰሚው ፍርድ ቤት እንዲታረምልንና የይግባኝ ባይ መስርያ ቤት ዋጋ የተመነበት አግባብ ትክክለኛ ነው ተብሎ የአሁን መልስ ሰጭ ይግባኝ ባይ በተወሰነው የጉምሩክ ቀረጥ ስሌት መሰረት እንዲከፍል እንዲወሰንልን በማለት ጳጉሜ 02 ቀን 2004 ዓ.ም.የጠቀፈ ይግባኝ ቅሬታ አቅርቧል።

ለቅሬታው መሰረት ያደረጋቸው መከራከሪያዎችም፡- ይግባኝ ባይ መስርያ ቤት አስመጪው ያቀረበውን ዲክለራሲዮን እና ደጋፊ ሰነዶች ትክክለኛነት ማረጋገጥ እንዲችል በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 18 (3) መሰረት በተሰጠው ስልጣን መሰረት ጥር 19 ቀን 2003 ዓ.ም.ተቀባይነት ባገኘው የመልስ ሰጭ ኢንቮይስ ላይ ባደረገው ማጣራት ወደ አገር ውስጥ ላስገባቸው ፓስታዎች የተቀመጠላቸው የዋጋ መጠን በጊዜው ስራ ላይ ከነበረው 12ኛው CD ላይ ከሚገኘው የአንድ ዓይነት ዕቃ ማነፃፀርያ ዋጋ ከ5% የበለጠ አንሶ መገኘቱንና የፓስታዎቹ አምራች ድርጅት በላከው ደብዳቤ ደግሞ ፓስታ ለማምረት የሚያስችል ስንዴ የሚያመርቱ አገሮች በጎርፍ በእሳት እና በድርቅ በመጠቃታቸው ችግሮች ቢኖሩም መልስ ሰጭ በገበያ ላይ ተወዳዳሪ እንዲሆን በማሰብ "ተመጣጣኝ" /"fair" በሆነ ዋጋ ተሰጥቶታል በማለት የገለፀ በመሆኑ፣ይህ በራሱ ሌላ የመሸጫ ዋጋ መኖሩንና በመልስ ሰጭ የቀረበው ኢንቮይስ ላይ የተመለከተው ዋጋ ዝቅተኛና ትክክለኛ እንዳልሆነ የሚያረጋግጥ መሆኑ፣በተጨማሪም አቅርቦት እየቀነሰ ዋጋው ማነሱ ከኢኮኖሚክስ መርህ የሚጣረስ መሆኑን በመረዳት ይግባኝ ባይ መስርያ ቤት መልስ ሰጭ ያቀረበው ኢንቮይስ ውድቅ እንዲሆንና የዋጋ ትመናው በአለም አቀፍ ክታወቁና ተቀባይነት ካላቸው የገበያ ምንጮች ላይ ከሚገኙ የእቃዎች ዋጋ ላይ በመነሳት ይግባኝ ባይ መስርያ ቤት በሚያደራጀው የዋጋ መረጃ ሲዲ ላይ በመመስረት እንዲሰላ ያደረገውን በተመለከተ ጉባኤው አምራቹ በተመጣጣኝ ዋጋ መስጠቱን እጂ ቅናሽ ዋጋ አይመለክትም በማለት ውድቅ እንዲሆን መወሰኑ በጉምሩክ አዋጅ ቁጥር 622/2001 በአንቀፅ 33 (1) እና በአንቀፅ 52 (ሀ) ስር ከተደነገጉት ህጋዊ አሳሌዶች ውጭ ነው።

እንዲሁም የሲዲ ዋጋ የግብት ዋጋ ትክክለኛነትን ለማነፃፀር መጠቀም የሚቻል መሆኑን በአዋጁ ስላልተገለፀ በሚል የተደረገው ትመና ሙድቅ ተደርጎ ታክስና ቀረጡ በመልስ ሰጭ በቀረበ የግብይት ሰነድ መሰረት እንዲሰላለት መወሰኑ በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 32 (4) መሰረት በማድረግ በወጣው የጉምሩክ ዋጋ መረጃ ክምችት አዘገጃጀት ስርጭትና አጠቃቀም መመርያ ቁጥር 10/96 አንቀፅ 17 (ለ) ከተደነገጉት ህጋዊ ሁኔታዎች ውጭ ነው። የሚሉ ናቸው።

ይህ ፍርድ ቤትም ይግባኝ ባይ ያቀረበው ይግባኝ ቅሬታና የቃል ክርክር መነሻ በማድረግ የጉባኤው ውሳኔ ግልባጭ ከህጉ ጋር በማገናዘብ ከመረመረ በኃላ ጉባኤው በአዋጁ የሲዲ ዋጋ የግብይት ዋጋ ትክክለኛነት ለማነጻጸር መጠቀም እንደሚቻል አልተገለጸም የማለቱ አግባብነትና እንዲሁም አምራቹ በላከው ደብዳቤ "fair" በሆነ ዋጋ ተሰጥቶታል ማለቱ ሌላ የመሸጫ ዋጋ አለመኖሩን የሚያሳይ ነው አይደለም የሚለውንና በመጨረሻም ቀረጥና ታክሱ በ13ኛ ሲዲ መሰረት እንዲሰላ የመወሰኑ አግባብነት ለማጣራት ያስቀርባል በማለት መልስ ሰጭ ለቀረበው ይግባኝ ቅሬታ መልስ እንዲሰጡበትና ግራ ቀኙ የይግባኝ መከራከርያቸውን እንዲያሰሙ ትእዛዝ ሰጥተዋል።

በዚህ መሰረት መልስ ሰጭ መልሳቸውን ጥር 23 ቀን 2005 ዓ.ም ፅፈው ያቀረቡ ሲሆን በመልሳቸውም በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 33 (1) የሲዲ ዋጋ ማጣቀሻ ሆኖ ያገለግላል አይልም። ለጉምሩክ ቀረጥ አከፋፈል ሲባል የዋጋ መነሻ ሆኖ የሚያገለግለው ለእቃው የተከፈለው ዋጋ ነው።ለዕቃው የተከፈለ ዋጋ በህጋዊ ምክኒያቶች ውድቅ ሲደረግ የአንድ ዓይነት ዋጋ ወይም የተመሳሳይ እቃ ዋጋ ለመቀበል ሲባል በዚሁ ረገድ በባለ ስልጣኑ የተያዙ የሲዲ ዋጋዎች ማጣቀሻ ሆኖ ያገለግላል። ይግባኝ ባይ መስርያ ቤት ለእቃው የተከፈለው ዋጋ ውድቅ የሚያደርግበት ህጋዊ ምክኒያት በሻጭና በገዥ መካከል በአዋጁ አንቀፅ 33 (2) የተጠቀሱት ግንኙነቶች መኖራቸው ሲያረጋግጥና ለዚህም በአንቀፅ 42 እንደተጠቀሰው ተጨማሪ መግለጫና መረጃ እንዲቀርብለት ካደረገ በኃላ ብቻ ነው። ይግባኝ ባይ እንዲህ ዓይነት ግንኙነቶች ስለመኖራቸው ያቀረበው ምንም ዓይነት ማስረጃ የለም። ስለዚህ መልስ ሰጭ ባቀረበው ዲክሌራሲዮን ላይ የተገለፀው ለዕቃው የተከፈለው ዋጋ ውድቅ ለማድረግ የሚያስችለው ህጋዊ ምክኒያት ሳይኖር ውድቅ ማድረጉ ህጋዊ ባለመሆኑ ጉባኤ ማይቀበለው ቀርጿል።

እንዲሁም የሲዲ ዋጋ የግብት ዋጋ ትክክለኛነትን ለማነፃፀር መጠቀም የሚቻል መሆኑን በአዋጁ ስላልተገለፀ በሚል የተደረገው ትመና ውድቅ ተደርጎ ታክስና ቀረጡ በመልስ ሰጭ በቀረበ የግብይት ሰነድ መሰረት እንዲሰላለት መወሰኑ በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 32 (4) መሰረት በማድረግ በወጣው የጉምሩክ ዋጋ መረጃ ክምችት አዘገጃጀት ስርጭትና አጠቃቀም መመርያ ቁጥር 10/96 አንቀፅ 17 (ለ) ከተደነገጉት ህጋዊ ሁኔታዎች ውጭ ነው። የሚሉ ናቸው።

ይህ ፍርድ ቤትም ይግባኝ ባይ ያቀረበው ይግባኝ ቅሬታና የቃል ክርክር መነሻ በማድረግ የጉባኤው ውሳኔ ግልባጭ ከህጉ ጋር በማገናዘብ ከመረመረ በኃላ ጉባኤው በአዋጁ የሲዲ ዋጋ የግብይት ዋጋ ትክክለኛነት ለማነጻጸር መጠቀም እንደሚቻል አልተገለጸም የማለቱ አግባብነትና እንዲሁም አምራቹ በላከው ደብዳቤ "fair" በሆነ ዋጋ ተሰጥቶታል ማለቱ ሌላ የመሸጫ ዋጋ አለመኖሩን የሚያሳይ ነው አይደለም የሚለውንና በመጨረሻም ቀረጥና ታክሱ በ13ኛ ሲዲ መሰረት እንዲሰላ የመወሰኑ አግባብነት ለማጣራት ያስቀርባል በማለት መልስ ሰጭ ለቀረበው ይግባኝ ቅሬታ መልስ እንዲሰጡበትና ግራ ቀኙ የይግባኝ መከራከርያቸውን እንዲያሰሙ ትእዛዝ ሰጥተዋል።

በዚህ መሰረት መልስ ሰጭ መልሳቸውን ጥር 23 ቀን 2005 ዓ.ም.ፅፈው ያቀረቡ ሲሆን በመልሳቸውም በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 33 (1) የሲዲ ዋጋ ማጣቀሻ ሆኖ ያገለግላል አይልም። ለጉምሩክ ቀረጥ አስፋፊል ሲባል የዋጋ መነሻ ሆኖ የሚያገለግለው ለእቃው የተከፈለው ዋጋ ነው።ለዕቃው የተከፈለ ዋጋ በህጋዊ ምክኒያቶች ውድቅ ሲደረግ የአንድ ዓይነት ዋጋ ወይም የተመሳሳይ እቃ ዋጋ ለመቀበል ሲባል በዚሁ ረገድ በባለ ስልጣኑ የተያዙ የሲዲ ዋጋዎች ማጣቀሻ ሆኖ ያገለግላል። ይግባኝ ባይ መስርያ ቤት ለእቃው የተከፈለው ዋጋ ውድቅ የሚያደርግበት ህጋዊ ምክኒያት በሻጭና በገዥ መካከል በአዋጁ አንቀፅ 33 (2) የተጠቀሱት ግንኙነቶች መኖራቸው ሲያረጋግጥና ለዚህም በአንቀፅ 42 እንደተጠቀሰው ተጨማሪ መግለጫና መረጃ እንዲቀርብለት ካደረገ በኃላ ብቻ ነው። ይግባኝ ባይ እንዲህ ዓይነት ግንኙነቶች ስለመኖራቸው ያቀረበው ምንም ዓይነት ማስረጃ የለም። ስለዚህ መልስ ሰጭ ባቀረበው ዲክሌራሲዮን ላይ የተገለፀው ለዕቃው የተከፈለው ዋጋ ውድቅ ለማድረግ የሚያስችለው ህጋዊ ምክኒያት ሳይኖር ውድቅ ማድረጉ ህጋዊ ባለመሆኑ ጉባኤ ማይቀበለው ቀርቷል።

ይግባኝ ባይ ቅሬታ በደፈናው በመልስ ሰጭ የተረበው የግብይት ዋጋ በወቅቱ ስራ ላይ በነበረው 12ኛው CD ላይ ከሚገኘው የአንድ ዓይነት ዕቃ ማነጻጸርያ ዋጋ ከ5% የበለጠ ያነሳል ከማለት ውጭ ለዕቃው የተከፈለው ዋጋ ምን ያህል እንደሆነና በሲዲው ላይ የተያዘው ዋጋ ምን ያህል እንደነበረ በግልፅና በመስረጃ ያልተደገፈ ነው።

ይግባኝ ባይ አምራቹ በላከው ደብዳቤ "fair" በሆነ ዋጋ ተሰጥቶታል የተባለውን አስመልክቶ በጉባኤው ያቀረበው ክርክር "fair" የተባለው ዋጋ ከገበያ ዋጋ ያነሰ ነው የሚል ሲሆን ጉባኤው "fair" ዋጋ ማለት ተመጣጣኝ ዋጋ ለማለት እንጂ ከገበያ ዋጋ ያነሰ ለማለት እንደልሆነ በመቀበል መወሰኑ በአግባቡ ነው። አምራቹ መልስ ሰጭ በገበያ ላይ ተወዳዳሪ እንዲሆን በማሰብ በተመጣጣኝ ዋጋ ሰጥቸዋለሁ ማለቱ ሌላ ዋጋ መኖሩን የሚያመለክት ሳይሆን የዓለም የገበያ ዋጋን ያገናዘበ እንደሆነ የሚያስረዳ ነው።

በአጠቃላይ በተመጣጣኝ ዋጋ መግዛትና በገበያ ተወዳዳሪ መሆን በጉምሩክ ህጎች፣ ደምቦችና መመርያዎች እንዲሁም በሌሎች ህጎች ያልተከለከለና የተፈቀደ ነው ተብሎ የይግባኝ ባይ ቅሬታዎች ተቀባይነት የላቸውም ተብሎ የጉባኤው ውሳኔ እንዲፀና እና በክርክሩ ምክኒያት ለጠበቃ አበልና ለልዩ ልዩ ወጪ የተከፈለውን ወጪ ከይግባኝ ባይ እንዲከፈላቸው እንዲወሰንላቸው በመጠየቅ መልሳቸውን አቅርቧል።

እንዲሁም ይግባኙን ለመስማት በተሰጠ ቀጠሮ ግንቦት 01 ቀን 2005 ዓ.ም.በዋለ ችሎት ግራ ቀኙ ቀርበው በፍ/ስ/ስ/ሕ/ቁ 339 መሰረት በየተራ መከራከሪያ ሃሳባቸውን በቃል በዝርዝር አሰምተዋል።ይዘቱም በየበኩላቸው ያቀረቡት የፅሑፍ ይግባኝ ቅሬታና መልስ ላይ ከተገፀው የተለየ ባለመሆኑ እዚህ ላይ ድጋሚ መፃፉ ሳያስፈልግ የታሰበ ሲሆን ዝርዝሩ በመዝገቡ ተያይዟል።

ይህ ፍርድ ቤትም በጉባኤው የተሰጠው ውሳኔ አግባብ ካላቸው የአዋጁ ድንጋጌዎች ጋር በማገናዘብ የመረመረ ሲሆን በቅድሚያ የግብር ይግባኝ ጉባኤ በሚወስነው ውሳኔ ላይ ቅሬታ ያለው ማንኛውም ወገን ይግባኝ ቅሬታውን ስልጣን ላለው ፍርድ ቤት የማቅረብ መብት ያለው ቢሆንም ይግባኝ ማቅረብ የሚችለው ግን በሁሉም ጉዳዮች ላይሆን የተሠጠው ውሳኔ በህግ ረገድ ስህተት አለበት የሚለውን ብቻ እንደሆነና ይግባኝ ሰሚው ፍርድ ቤትም የቀረበውን ይግባኝ አይቶ ውሳኔ የሚሰጠው በህግ ረገድ የተነሳውን ክርክር ብቻ እንደሆነ በአዋጅ ቁጥር

ፅ22/2001 አንቀፅ 87 (9) እና (10) ከገቢ ግብር አዋጅ ቁጥር 286/94 አንቀፅ 112 (2) ጋር በማጣቀስ መረዳት የሚቻል ነው።

ከዚህ አንፃር በተያዘው ጉዳይ ይግባኝ ሰሚው ፍርድ ቤት ማየት የሚችለው በህግ ረገድ የሚነሳውን ክርክር ብቻ በመሆኑ ግራ ቀኙ እየተከራከሩበት ያሉት ጉዳይ ህጉን መሰረት በማድረግ ስንመለከተው የጉምሩክ ቀረጥ ማስከፈያ ዋጋ አተማመን በተመለከተ ከህጉ ጋር ተገናዝቦ ሲታይ ወደ አገር ውስጥ ለሚገባ እቃ የጉምሩክ ቀረጥ ማስከፈያ ዋጋ ተደርጎ የሚወሰደው ለዕቃው በትክክል የተከፈለ ወይም የሚከፈለው የግብይት ዋጋ እንደሆነ የጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 33 (1) ስር ተደንግጓል።

ይህ በመርህ ደረጃ የሚወሰድ ሲሆን ገዥና ሻጭ በአዋጁ አንቀፅ 33 (2) ከተመለከቱት የሚካተት ግንኙነት ያላቸው ከሆነና ባለስልጣን መስርያ ቤቱ ግንኙነታቸውም በድንጋጌው ንኡስ አንቀፅ 4 መሰረት በዋጋው ላይ ተፅዕኖ ማሳደሩን ለማመን የሚያስችል ምክኒያት መኖሩን ያረጋገጠ ከሆነ ግን ይህንኑ ለአስመጪው ይነግረውና አስመጪው በድንጋጌው ንኡስ አንቀፅ 5 ስር በተቀመጡ ዘዴዎች ግንኙነቱ በዋጋው ላይ ያስከተለው ተፅዕኖ የሌለ መሆኑን ማስረዳት ካልቻለ ያቀረበው የግብይት ዋጋ ውድቅ ሆኖ ወይም ተቀባይነት የለውም ተብሎ ባለስልጣን መስርያ ቤቱ በአዋጁ ከአንቀፅ 34 ጀምሮ በተከታታይ በተቀመጡት መተመኛ ዘዴዎች እንደጉዳዩ አግባብነት በመጠቀም የታክስ እና ቀረጥ መተመኛ የግብይት ዋጋውን በመወሰን አስመጪው ወደ ሀገር ውስጥ ላስገባቸው ዕቃዎች መክፈል የሚገባውን ቀረጥና ታክስ እንዲከፍል ማድረግ የሚችል መሆኑ ተመልክቷል።

በተያዘው ጉዳይ ክፍ ሲል እንደተገለፀው የአሁኑ ይግባኝ ባይ መልስ ሰጭ ከጣልያን አገር አምራች ኩባኒያ በዲክለራሲዮን ቁጥር c-684/011 መገማቢያ ወደ አገር ውስጥ ላስመጣቸው የምግብ ፓስታዎች ያረበው ኢንቮይስ ትክክለኛ አይደለም ውድቅ በማድረግ አስመጪው ያቀረበው ኢንቮይስ ተቀባይነት ባጣ ጊዜ የጉምሩክ ቀረጥና ታክስ መተመኛ የግብይት ዋጋ ለመወሰን በሚያስችለው መመርያ መሰረት በመተመን መልስ ሰጭ የተሰላውን ቀረጥና ታክስ እንዲከፍል በቁጥር 5.0/87/3 የካቲት 02 ቀን 2004 ዓ.ም. የቀረጥና ታክስ ማስታወቅያ የጠየቀው።

1ኛ/ የእቃዎቹን ዓይነት በተመለከተ በፍሬ ነገር መግለጫ እና በኢንቮይሱ ላይ የተመለከተ ስያሜ በአግባቡ የተገለፀ አይደለም።

2/ ለፓስታዎች የተቀመጠው የዋጋ መጠን በጊዜው ስራ ላይ ከነበረው 12ኛው CD ላይ ከሚገኘው የአንድ ዓይነት ዕቃ ማነፃፀርያ ዋጋ ከ5% የበለጠ አንሶ ለተገኝ:ል።በማለትና

3ኛ/ ከአምራች ድርጅት የተላከው መግለጫም በዓለም ገበያ የስንዴ ዋጋ እየጨመረ መምጣቱን የሚያመለክት ሆኖ እያለ የቀረበው የኢንቮይስ ዋጋ ግን ዝቅተኛ ነው።በማለት ሲሆን የራሱን የግብይት ዋጋ ለመወሰን የተጠቀመበት ዘዴ የጉምሩክ ባለስልጣን እንደገና ለማቋቋምና አሰራሩን ለመወሰን በወጣው አዋጅ ቁጥር 60/1989 አንቀፅ 48 (11) መሰረት ተደርጎ በወጣው በጉምሩክ ዋጋ መረጃ ክምችት አዘገጃጀት ስርጭትና አጠቃቀም የገቢዎች ሚኒስቴር መመርያ ቁጥር 10/1996 አንቀፅ 17 መሰረት አድርጎ እንደሆነ በይግባኝ ያቀረበው ክርክር ያስረዳል።

ጉባኤው የአሁኑ ይግባኝ ባይ መክራከርያና የጉምሩክ ቀረጥ አተማመን ውሳኔ ውድቅ በማድረግ የአሁኑ መልስ ሠጭ ባቀረበው የግብይት ዋጋ ሰነድ መሰረት ተደርጎ ቀረጥና ታክስ እንዲሰላ። በማለት የወሰነው ደግሞ በጉምሩክ አዋጅ ለጉምሩክ ቀረጥ አስፋፊል ዓላማ የዋጋ መነሻ የሚሆነው ለዕቃው የተከፈለ የግብይት ዋጋ ነው።

የሲዲ ዋጋዎች ማጣቀሻ ሆነው የሚያገለግሉት የቀረበው የግብይት ዋጋ በህግ ምክኒያት ውድቅ ሲደረግ እንጂ የግብይት ዋጋን ትክክለኛነት ለማነፃፀር በህጉ አልተገለፀም።በማለትና በአሁኑ መልስ ሰጭ የቀረቡ ሰነዶች (ከአምራች ድርጅት የተላከው) የፓስታዎቹ ዋጋ "fair" በሆነ ዋጋ የተሰጠ መሆኑን የሚያስረዱ እንጂ ከወቅቱ ገበያ በተቀነሰ ዋጋ መሆኑን አያሳዩም በማለት እንደሆነ ከስር ጉባኤው ውሳኔ ቅጅና የክርክራቸው ሂደት ያስረዳል።

የጉምሩክ ቀረጥ ማስከፊያ ዋጋ አተማመን ስርዓት በተመለከተ በአዋጅ ቁጥር 622/2001 በምዕራፍ ሶስት ከአንቀፅ 32 ጀምሮ ባሉት ተከታታይ ድንጋጌዎች ስር በተለይም የዋጋ መተመኛ ዘዴዎች በገዘገዘር በቅደም ተከተል አስቀምጧል።

ከነዚህ ውስጥ በቅድሚያ ከፍ ሲል እንደተገለፀው ለጉምሩክ ቀረጥ አስፋፊል ሲባል የዋጋ መነሻ ሆኖ የሚያገለግለው ለእቃው የተከፈለው ዋጋ እንደሆነ ያስረዳል፣ይህ ለዕቃው የተከፈለ ዋጋ ባለስልጣን መሰርያ ቤቱ በገዥና ሻጭ መካከላቸው በአዋጁ አንቀፅ 33 (2) መሰረት ያደረገ

ምክኒያቱም:- የሲዲ ዋጋዎች ማጣቀሻ ሆነው የሚያገለግሉት የግብይት ዋጋን ትክክለኛነት ለማነፃፀር እንደሆነ በህጉ ያልተገለፀ ብቻ ሣይሆን ይግባኝ ባይ የግብይት ዋጋ ለመተመን መሰረት ያደረገበት የገቢዎች ሚኒስቴር መመርያ ቁጥር 10/96 ወጥቶ የነበረው አዋጅ ቁጥር 60/1989 ለማስፈፀም ሲሆን ይህ አዋጅ መሉ በሙሉ በአዋጅ ቁጥር 622/2001 የተሸረ ስለሆነ እና ለክርክሩ መነሻ የሆነው እንደ ይግባኝ ባይ አገላለፅ ጥር 19 ቀን 2003 ዓ.ም ተቀባይነት ባገኘው የግብይት ዋጋ ሰነድ (ኢንቮይስ) ምክኒያት በመሆኑ በዚህ ጉዳይ ተፈፃሚነት ሊኖረው የሚገባው የህግ ክፍል አዋጅ ቁጥር 622/2001 እና ይህንን አዋጅ ለማስፈፀም የወጣ ደምብና መመርያ እንጂ የተሸረውን አዋጅ ለማስፈፀም ወጥቶ በነበረ በመመርያ ቁጥር 10/96 ባለመሆኑ ነው።

በመሆኑም ምንም እንኳን ጉባኤው በሰጠው ውሳኔ ላይ የግብይት ዋጋ ትክክለኛነት ለማነጻጸር የሲዲ ዋጋ መጠቀም እንደሚቻል በአዋጁ አልተገለጸም መባሉንና አምራቹ በላከው ደብዳቤ "fair" በሆነ ዋጋ ተሰጥቶታል ማለቱ ሌላ ዋጋ መኖሩን የሚያሳይ አይደለም መባሉንና ተያያዥ ነገሮችን ለማጣራት ያስቀርባል በማለት መልስ ሰጭን በማስቀረብና መልስ እንዲሰጥበት በማድረግ በይግባኝ ደረጃ ግራ ቀኙ እንዲከራከሩ የተደረገ ቢሆንም ከዚህ በላይ እንደተገለፀው ከህጉ ጋር በማዛመድ በገርገር ሲመረመር የፌደራል ግብር ይግባኝ ሰሚ ጉባኤ በመዝገብ ቁጥር ከፌ-726 ሰኔ 20 ቀን 2004 ዓ.ም.በዋለው ችሎት መስኖ ነሐሴ 11 ቀን 2004 ዓ.ም. እንዲፈረም አድርጎ የሰጠው ውሳኔ በአግባቡ ሆኖ ተገኝቷል።

ስለዚህ ፍርድ ቤቱ የጉባኤው ውሳኔ የሚወጥበት ህጋዊ ምክኒያት አለመኖሩን በመረዳት የሚከተለውን ወስኗል።

ው ሳ ኔ

1/ የፌደራል ግብር ይግባኝ ሰሚ ጉባኤ በመዝገብ ቁጥር ከፌ-726 ሰኔ 20 ቀን 2004 ዓ.ም.በዋለው ችሎት መስኖ ነሐሴ 11 ቀን 2004 ዓ.ም. እንዲፈረም አድርጎ የሰጠው ውሳኔ ፀንቷል።

2/ የይግባኝ ደረጀ ባደረጉት ክርክር ያወጡት ወጪና ኪሳራ በተመለከተ ግራ ቀኙ ወገኖች እንዲችሉ ተብሏል።

ትዕዛዝ

1. ውሳኔው የፀና መሆኑን እንዲያውቁት በትክክል ተገልብጦ ለግብር ይግባኝ ጉባኤው እንዲተላለፍ ታዟል።
2. መዝገቡ ዛሬ የካቲት 27 ቀን 2006 ዓ.ም. በዋለ ችሎት በውሳኔ ተዘግቷል። ስለዚህ መዝገቡ ወደ መዝገብ ቤት እንዲመለስ ታዟል።

የዳኛ ፊርማ፡- ጥዑም ገብሩ ኃይሉ

ፀ/አ
4/7/2006 ዓ.ም.

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Case - 3

የይ/መ/ቁ 99361

ሐምሌ 28 ቀን 2006 ዓ.ም

ዳኞች፡- ደስታ ገብሩ

አዳነ ንጉሴ

መኮንን ገ/ህይወት

ይግባኝ ባይ ፡- የኢትዮጵያ ገቢዎችና ጉምሩክ ባለስልጣን - ዐ/ሕግ ኃይለመለኮት አበበ ቀረቡ

ጠበቃ ሰጪ፡- ፋንቱና ቤተሰቡ የንግድ ኢንዱስትሪ ኃ/የተ/የግል ማህበር -አልቀረበም

መዝገቡን መርምረን የሚከተለውን ፍርድ ሰጥተናል፡፡

ፍ ር ድ

ለዚህ ለይግባኝ ክርክር መነሻ የሆነው ጉዳይ የአሁኑ መልስ ሰጭ ለፊዴራል የግብር ይግባኝ ሰሚ ጉባኤ ባቀረበው የይግባኝ ቅሬታ መነሻ ጉባኤው የግራ ቀኙን ወገን ካከራከረ በኃላ በሰጠው ውሳኔ ያሁን ይግባኝ ባይ ያደረገው የዋጋ ትመና ተሸሮ ያሁን መልስ ሰጭ ባቀረበው የግብይት ሰነድ መሰርት ቀረጡ ተሰልቶ መልስ ሰጭው ግዴታውን ሊወጣ ይገባል በሚል የሰጠውን ውሳኔ የፊዴራል ከፍተኛ ፍርድ ቤትም የግራ ቀኙን ወገን ካከራከረ በኃላ የግብር ይግባኝ ሰሚ ጉባኤ የሰጠውን ውሳኔ ማጽናቱ ነው፡፡

የስር ይግባኝ ባይ ለግብር ይግባኝ ሰሚ ጉባኤ ያቀረበው ይግባኝ ፍሬ ቃሉ፡- ድርጅቱ ከጣሊያን ሀገር ከሚገኝ አምራች ኩባንያ ፓስታን ጨምሮ የተለያዩ ምግቦችን በማስመጣት በዲክላሪሲዮን ቁጥር ሲ-684/011 ተገቢውን ቀረጥና ታክስ ብከፍልም መልስ ሰጭ የሪኮርድ ዋጋ አለኝ በሚል በ12ኛው ሲዲ ዋጋ መረጃ መሰረት እንድከፍል በመጠየቁ ይግባኝ ባይም ዕቃውን የገዛሁት በኤል.ሲ. ከአምራች ኩባንያ መሆኑን በመግለጽ፤ እንዲሁም ምንም ዓይነት የዋጋ ቅናሽ አለመደረጉን በማረጋገጥ በድጋሚ እንዲታይልኝ ለአጣሪ ኮሚቴ ባመለክትም በሲዲው የተሰጠው ዋጋ ትክክል ስለሆነ በሰዶ ላይ ያልተገኘለትም ተስተካክሎ እንዲሰራ ብሏል፡፡ይሁን እንጂ 12ኛው ሲዲ ሲዘጋጅ [illegible] የተደረገው

15/12/2006

ንመት በፊት የነበረውን ዋጋ መሰረት አድርጎ እንጂ ወቅታዊ ዋጋን ያገናዘበ አይደለም፤ ዋጋውም የአምራች ዋጋ ሲሆን በይግባኝ ባይ የተደረገ ቅናሽ የለም፤ በተጨመረብኝ ዋጋ ምክንያት አምራች ኩባንያ ዋጋ ሊስቱ በDHL ለባልሥልጣኑ በመለስ ትክክለኛነቱ ታምኖበት 13ኛ ሲዲ ሲዘጋጅ ተቀባይነት አግንቶ ተይዟል፡፡በመሆኑም በዋጋ ላይ የተደረገ ቅናሽ ባለመኖሩ ተስተካክሎ ሊወሰን የሚገባ ነው የሚል ነው፡፡

የሥር መልስ ሰጭ (ያሁን ይግባኝ ባይ)በሰጠው መልስ፡-ይግባኝ ባይ (ያሁን መልስ ሰጭ)ባቀረበው ኢንቮይስ ፖስታና ዘይት ማስመጣቱን ቢጠቅስም በግምሩክ ስነ ስረዓት ወቅትም ያስመጡት ፖስታ፤ዘይት፤ዱቄት፤ብስኩት፤ባቄላ በጠቅላላው 56 የተለያዩ አይነት ዕቃዎች መሆናቸው ተረጋግጧል፤ሆኖም የባቄላ፤ዘይት እና የብስኩት ዋጋ በኢንቮይሱ መሰረት የተያዘለት ሲሆን የፖስታውን ዋጋ ትክክለኛነት ያረጋግጣል በሚል ከአምራች ድርጅት የተላከው የፖስታ ዋጋ ሚገልጽ ደብዳቤ ግን በአለም ገበያ የፖስታ ስንዴ በተለያዩ ምክንያቶች ዋጋው እየጨመረ የመጣ ሊሆንም ለይግባኝ ባይ የተሰጠው የኢንቮይስ ዋጋ ግን ያነስ መሆኑን የሚያሳይ ነው፡፡በአስመጪው ቀረበ የዲክላራሲዮን እና ፍሬ ነገር መግለጫ በትክክል ዕቃውንና ዋጋውን የማይገልጽ ከሆነም ኢንቮይሱ የተገጸው ዋጋ ውድቅ ተደርጎ ባለው የዋጋ መረጃ መሰረት መልስ ሰጭ መ/ቤት ለዕቃዎች ዋጋ ተመን መስጠት እንደሚችል በአዋጅ ቁጥር 622/2001 ስልጣን የተሰጠው ከመሆኑም ተጨማሪ በመመሪያ ቁጥር 10/1996 ላይ እንደተጠቀሰው በአስመጪው የቀረበው በዋጋ መረጃ ምችት ውስጥ ተመዝግቦ ከሚገኘው የአንድ ዓይነት ዕቃ ማነጻጸሪያ ዋጋ 5% የበለጠ አንሶ ሲገኝ ዚህ በፊት ወደ አገር የገቡና በባለስልጣኑ መ/ቤት ተቀባይነት ያገኙ የገቢ እቃዎች ዋጋዎችን መረጃ ምንጭነት በመጠቀም እንዲሁም በዓለም አቀፍ ደረጃ የታወቁና ተቀባይነት ካላቸው የገበያ ነጮች በመነሳት በየጊዜው በሚያዘጋጁ ሲዲዎች በሚወሰን ተመን መሰረት በየዕቃዎች ዓይነት ኒዲ የተመለከተውን ዋጋ በመስጠት ቀረጥ እንዲከፍል የማድረግ መብት መልስ ሰጭ መ/ቤት ንዳለው ተመልክቷል፡፡ይግባኝ ባይ ተመኑ ወቅታዊ አይደለም ያለውም ቢሆን ተመኑ በዚህ ኮጠቀሰው መልኩ የሚደረግ በመሆኑ በዚህ ረገድ ያቀረበው ቅሬታም ተቀባይነት የለውም፡፡ ሞሆኑም የጉምሩክ አዋጅ ቁጥር 622/2001 እንደተደነገገው የኢንቮይስ ዋጋ ውድቅ ሊደረግ ኚችለው በአምራች እና በአስመጪው መካከል የዋጋ ማሳነስ በመኖሩ ሲረጋገጥ ሲሆን በዚህ ያዘውም ጉዳይ በአምራችና በይግባኝ ባዩ መካካል የዋጋ ማሳነስ መኖሩ አምራቹ ከጻፈው ደብዳቤ ሬረጋገጡ በ12ኛው ሲዲ መሰረት ቀረጥ መወሰኑ ተገቢ ነው በሚል ተከራክሯል፡፡

ይግባኝ ሰሚው ጉባኤም በሰጠው ውሳኔ፡-ከውጭ ወደ አገር ውስጥ ለሚገቡ ዕቀዎች ቀረጥ ለመተመን በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀጽ 32 እና 33 መሰረት የግብይት ዋጋው ለዕቃው በትክክል የተከፈለውን ዋጋ እንደሆነ የተደነገገ ሲሆን ከአስመጪዎቹ የሚቀርበው የግብይት ዋጋ ለጉምሩክ ቀረጥ መተመኛ መነሻ ሆኖ ያገለግላል። ሆኖም በአስመጪው የሚቀርበው ዋጋ በአዋጁ በተደነገገው መሰረት ተቀባይነት የሚያጣ ከሆነ ብቻ በአንድ አይነት ወይም በተመሳሳይ ምዘና መሰረት የዋጋ ትመና እንደሚደረግ በአዋጁ አንቀጽ 34 እና 35 ተመልክቷል። የይግባኝ ባይ የግብይት ሰነድ በመልስ ሰጭው መ/ቤት ተቀባይነት ያጣው ከአምራች ድርጅት በተገለፀው መሰረት ቅናሽ በኢንቮይስ ዋጋ ላይ የተደረገበት መሆኑ፤ እንዲሁም በ12ኛው ዋጋ ጋር ሲታይ የኢንቮይስ ዋጋው አንስተኛ በመሆኑ ምክንያት እንደሆኑ ጉባኤው ተገንዝቧል። ከቀረቡት ሰነዶች ለማየት እንደተቻለው አምራቹ ድርጅት ፓስታውን fair በሆነ መስጠቱ ነው።ይህም በንግድ እንቅስቃሴ ሲታይ ቅናሽን ማመልከት ሳይሆን ገቢ ወይም ተመጣጣኝ ዋጋ ስለመሰጠቱ እንደሚያመለክት ጉባኤው ተገንዝቧል፤ እንዲሁም መልስ ሰጭው በአዋጁ አንቀጽ 33/2/ መሰረት ይግባኝ ባይና ሻጭ (አምራች) ግንኙነት ያላቸው ለመሆኑ ያቀረበው ማስረጃ የለም። ስለሆነም በዚሁ ነጠብ መነሻ የግብይት ዋጋውን ውድቅ ማድረጉ ተቀባይነት የለውም ብሏል።እንዲሁም በ12ኛው ሲዲ ዋጋ ጋር ሲነጻጸር የይግባኝ ባይ ዋጋ ያነሰ ሆኖ ተገኝቷል ነሚል መልስ ሰጪ ያቀረበው ክርክርም ቢሆን ከጉምሩክ ቀረጥና ታክስ አከፋፈል አንፃር የዋጋ መነሻ 'ሚሆነው የግብይት ዋጋ ሲሆን የግብይት ዋጋው በህጋዊ ምክንይት ውድቅ ሲደረግ የሲዲ ዋጋ ፯ጣቀሻ ሆኖ ክሚያገለግል ውጭ የሲዲ ዋጋ የግብይት ዋጋን ትክክለኛነት ለማነጻጸር በመጠቀም ሚቻል ስለመሆኑ በአዋጅ ቁጥር 622/2001 አልተደነገገም። በመሆኑም ይግባኝ ባይ ያቀረበው ብይት ሰነድ ተቀባይነት ሊያገኝ የሚገባ ነው ሲል በሰነዱ መሰረት የቀረጥ የመክፈል ግዴታውን ወጣ ይገባል ሲል ወስኗል።

ልስ ሰጪው መ/ቤት በግብር ይግባኝ ሰሚ ጉባኤ ውሳኔ ቅር በመሰኘት ይግባኙ ለፌዴራል ከፍተኛ ድ ቤት ያቀረበ ሲሆን ፍርድ ቤቱም የግራ ቀኙን ወገን በማከራከር በሰጠው ፍርድ፡- በመርህ ደረጃ ሀገር ውስጥ ለሚገባ ዕቃ የጉምሩክ ቀረጥ ማስከፈያ ዋጋ ተደርጉ የሚወሰደው ለእቃው በትክክል ከፈለ ወይም የሚከፈለው የግብይት ዋጋ መሆኑን በአዋጅ ቁጥር 622/2001 አንቀጽ 33(1) ደነገገው የሚያስገነዝብ ሲሆን ሻጭና ገዥ በአዋጁ አንቀጽ 33(1) ከተመለከቱት ውስጥ የሚካተት ኦነት ያላቸው ከሆነና ባለስልጣኑ መስሪያ ቤት ግንኙነቱ በንዑስ አንቀጽ 4 መሰረት በዋጋው ላይ ነኖ ማሳደሩን ለማመን የሚያስችል ምክንያት መኖሩን ያረጋገጠ ከሆነ ይህንኑ ለአስመጪው ረውና አስመጪውም በንዑስ አንቀጽ 5 መሰረት በተቀመጡ ዘዴዎች ግንኙነቱ በዋጋው ላይ

ያስከተለው ተጽእኖ የሌለ መሆኑን ማስረዳት ካልቻለ የግብይት ዋጋው ውድቅ ሆኖ ወይም ተቀባይነት አጥቶ መስሪያ ቤቱ በአዋጅ አንቀጽ 34 እና ተከታይ ድንጋጌዎች መሰረት መክፈል የሚገባውን ቀረጥ እንዲከፍል ማድረግ የሚችል ሲሆን በዚህ ጉዳዩ ግን በሻጭ እና በመልስ ሰጭው መካከል በግብይት ዋጋው ላይ ተጽዕኖ ሊያሳድር የሚችል ግንኙነት መኖሩን ለማመን የሚያስችል ግንኙነት መኖሩን በማረጋገጥ መልስ ሰጭውም ይህንኑ ለማስተባበል ባለመቻሉ መነሻ እንደልሆነ መገንዘብ ተችሏል።አምራች ድርጅት በላከው መግለጫ በዓለም ገበያ የስንዴ ዋጋ እየጨመረ በመምጣቱ fair በሆነ ዋጋ ለመልስ ሰጭው የተሰጠ ስለመሆኑ በመግለጹ ብቻ በአምራቹና በመልስ ሰጭው መካከል ያለው ግንኙነት ባልተረጋገጠበት ሁኔታ አምራች ድረጅት የጻፈው ደብዳቤ በኢንቮይሱ ከተመለከተው ዋጋ በላይ የሆነ የገበያ ዋጋ መኖሩን ያሳያል፤እንዲሁም በ12ኛው ሲዲ ላይ ከሚገኘው የአንድ ዕቃ ማነጻጸሪያ ዋጋ 5% የበለጠ አንሶ ተገንቷል በሚል መልስ ሰጭው ያቀረበው የግብይት ዋጋ ውድቅ ማድረግ በሲዲው ዋጋ መሰረት የወሰነ ቢሆንም የግብይት ዋጋውን ውድቅ ለማድረግ በቂ ምክንያት ከሌላ ደግሞ ከዚህ ውጭ የተደረገው የግብይት ዋጋ ትመና አግባብነት የለውም፤ በሌላ በኩል የሲዲ ዋጋዎች ማጣቀሻ ሆነው የሚያገለግሉት የግብይት ዋጋን ትክክለኛነት ለማነጻጸር እንደሆነ በህጉ ካለመገለጹም በላይ ይግባኝ ባይ የግብይት ዋጋውን ለመተመን መሰረት ያደረገው የገቢዎች ሚኒስቴር መመሪያ ቁጥር 10/1996 ወጥቶ የነበረው አዋጅ ቁጥር 60/1989 ለማስፈጸም ሲሆን ይህ አዋጅም ተሽሮ አዋጅ ቁጥር 622/2001 የወጣ በመሆኑ ለተሻረው ሕግ የወጣውን መመሪያ ለጉዳዩ ተፈጻሚ ማድረጉ ተቀባይነት አይኖረውም በማለት በግብር ይግባኝ ሰሚ ጉባኤ የሰጠውን ውሳኔ አጽንቷል።

ይግባኝ ባይም በግብር ይግባኝ ሰሚ ጉባኤ እና ውሳኔ እና ለፌዴራል ከፍተኛ ፍርድ ቤት ፍርድ ቅር በመሰኘት ለዚህ ችሎት ባቀረበው የይግባኝ ማመልከቻ በዋናነት የጠቀሳቸው የቅሬታ ነጥቦች ሲጠቃለሉ፡- በአዋጅ ቁጥር 622/2001 አንቀጽ 32(4) በአዋጅ ስለተዘረዘሩት የዋጋ መተመኛ ዘዴዎች ለፈጻጸም ባለስልጣኑ መመሪያ እንደሚያወጣ በተደነገገው መሰረት የጉምሩክ ዋጋ መረጃ ክምችት አዘገጃጀት፤ስርጭት እና አጠቃቀም መመሪያ የወጣ ሲሆን በዚሁ መመሪያ መሰረት የዋጋ ዳታ ቤዝ ተዘጋጅቶ ይገኛል።የዋጋ ዳታ ቤዝ ከሚሰጣቸው አገልግሎቶችም አንዱ ከውጭ አገር ለሚገቡ ዕቃዎች በአስመጪው የሚቀርበው የኢንቮይስ ዋጋ ትክክለኛነቱን ለማረጋገጥ በማጣቀሻነት የሚነጻጸሪ ዋጋን እንደሚያጠቃልል ተገልጿል።ይህ ሆኖ ሳለ ግብር ይግባኝ ሰሚ ጉዳኤ የሲዲ ዋጋ የግብይት ዋጋን ትክክለኛነት ለማነጻጸር እንደሚቻል በጉምሩክ አዋጅ አልተጠቀሰም ማለቱ፤እንዲሁም የፌዴራል ከፍተኛ ፍርድ ቤት የዋጋው መመሪያው የተሻረውን የጉምሩክ አዋጅ ቁጥር 60/1989 ለማስፈጸም የወጣ በመሆኑ ተፈጻሚነት የለውም ያለው በአዋጅ ቁጥር 622/2001 አንቀጽ 13(2) አዋጁን

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ያስከተለው ተጽእኖ የሌለ መሆኑን ማስረዳት ካልቻለ የግብይት ዋጋው ውድቅ ሆኖ ወይም ተቀባይነት አጥቶ መስሪያ ቤቱ በአዋጅ አንቀጽ 34 እና ተከታይ ድንጋጌዎች መሰረት መክፈል የሚገባውን ቀረጥ እንዲከፍል ማድረግ የሚችል ሲሆን በዚህ ጉዳዩ ግን በሻጭ እና በመልስ ሰጭው መካከል በግብይት ዋጋው ላይ ተጽዕኖ ሊያሳድር የሚችል ግንኙነት መኖሩን ለማመን የሚያስችል ግንኙነት መኖሩን በማረጋገጥ መልስ ሰጭውም ይህንኑ ለማስተባበል ባለመቻሉ መነሻ እንደልሆነ መገንዘብ ተችሏል።አምራች ድርጅት በላከው መግለጫ በዓለም ገበያ የስንዴ ዋጋ እየጨመረ በመምጣቱ fair በሆነ ዋጋ ለመልስ ሰጭው የተሰጠ ስለመሆኑ በመግለጹ ብቻ በአምራቹና በመልስ ሰጭው መካከል ያለው ግንኙነት ባልተረጋገጠበት ሁኔታ አምራች ድረጅት የጻፈው ደብዳቤ በኢንቮይሱ ከተመለከተው ዋጋ በላይ የሆነ የገበያ ዋጋ መኖሩን ያሳያል፤እንዲሁም በ12ኛው ሲዲ ላይ ከሚገኘው የአንድ ዕቃ ማነጻጸሪያ ዋጋ 5% የበለጠ አንሶ ተገንቷል በሚል መልስ ሰጭው ያቀረበው የግብይት ዋጋ ውድቅ ማድረግ በሲዲው ዋጋ መሰረት የወሰነ ቢሆንም የግብይት ዋጋውን ውድቅ ለማድረግ በቂ ምክንያት ከሌላ ደግሞ ከዚህ ውጭ የተደረገው የግብይት ዋጋ ትመና አግባብነት የለውም፤ በሌላ በኩል የሲዲ ዋጋዎች ማጣቀሻ ሆነው የሚያገለግሉት የግብይት ዋጋን ትክክለኛነት ለማነጻጸር እንደሆነ በህጉ ካለመገለጹም በላይ ይግባኝ ባይ የግብይት ዋጋውን ለመተመን መሰረት ያደረገው የገቢዎች ሚኒስቴር መመሪያ ቁጥር 10/1996 ወጥቶ የነበረው አዋጅ ቁጥር 60/1989 ለማስፈጸም ሲሆን ይህ አዋጅም ተሸሮ አዋጅ ቁጥር 622/2001 የወጣ በመሆኑ ሊተሻረው ሕግ የወጣውን መመሪያ ለጉዳዩ ተፈጻሚ ማድረጉ ተቀባይነት አይኖረውም በማለት በግብር ይግባኝ ሰሚ ጉባኤ የሰጠውን ውሳኔ አጽንቷል።

ይግባኝ ባይም በግብር ይግባኝ ሰሚ ጉባኤ እና ውሳኔ እና ለፌዴራል ከፍተኛ ፍርድ ቤት ፍርድ ቅር በመሰኘት ለዚህ ችሎት ባቀረበው የይግባኝ ማመልከቻ በዋናነት የጠቀሳቸው የቅሬታ ነጥቦች ሲጠቃለሉ፡- በአዋጅ ቁጥር 622/2001 አንቀጽ 32(4) በአዋጅ ስለተዘረዘሩት የዋጋ መተመኛ ዘዴዎች ለፈጻጸም ባለስልጣኑ መመሪያ እንደሚያወጣ በተደነገገው መሰረት የጉምሩክ ዋጋ መረጃ ክምችት አዘገጃጀት፤ስርጭት እና አጠቃቀም መመሪያ የወጣ ሲሆን በዚሁ መመሪያ መሰረት የዋጋ ዳታ ቤዝ ተዘጋጅቶ ይገኛል።የዋጋ ዳታ ቤዝ ከሚሰጣቸው አገልግሎቶችም አንዱ ከውጭ አገር ለሚገቡ ዕቃዎች በአስመጪው የሚቀርበው የኢንቮይስ ዋጋ ትክክለኛነቱን ለማረጋገጥ በማጣቀሻነት የማነጻጸሪ ዋጋን እንደሚያጠቃልል ተገልጿል።ይህ ሆኖ ሳለ ግብር ይግባኝ ሰሚ ጉዳኤ የሲዲ ዋጋ የግብይት ዋጋን ትክክለኛነት ለማነጻጸር እንደሚቻል በጉምሩክ አዋጅ አልተጠቀሰም ማለቱ፤እንዲሁም የፌዴራል ከፍተኛ ፍርድ ቤት የዋጋው መመሪያው የተሻረውን የጉምሩክ አዋጅ ቁጥር 60/1989 ለማስፈጸም የወጣ በመሆኑ ተፈጻሚነት የለውም ያለው በአዋጅ ቁጥር 622/2001 አንቀጽ 113(2) አዋጁን

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የማይቃረኑ መመሪያዎች በስራ ላይ እንደሚቀጥሉ ከተደነገገው ጋር የሚቃረን ከመሆኑም ሌላ መመሪያ ቁጥር 10/1996 በመመሪያ ቁጥር 94/2006 ጥር 15 ቀን 2006 ዓ/ም ከመሻሩ በፊት ለጉዳዩ ተፈጻሚ የነበረ ነው።በመመሪያ ቁጥር 10/1996 አንቀጽ 17(ለ) መሰረት በአስመጪው የቀረበውን ዋጋ በዋጋ ክምችት ከሚገኘው የአንድ ዓይነት ዕቃ ዋጋ ጋር ሲነጻጸር ከ5% የበለጠ አንሶ ሲገኝ ባለስልጣኑ በዋጋ ክምችት የሚገኘውን ዋጋ እንደሚጠቀም የተደነገገ ሲሆን መልስ ሰጭው ለፖስታው ያቀረበው ዋጋ በጊዜው ስራ ላይ ከነበረው 12ኛ ሲዲ ላይ ካለው የአንድ የእቃ ዋጋ ሲነፃፀር ከ5% አንሶ በመገኘት በሲዲው ዋጋ መሰረት ቀረጥና ታክስ እንዲከፍል ተወስኗል፤እንዲሁም አምራች ድርጅት የፖስታ ሰንዴ አምራች አገሮች በጎርፍ፤በድርቅ እና በእሳት ቃጠሎ ምርታቸው የተጠቃ ቢሆንም ለመልስ ሰጭው የተሰጠው ዋጋ ግን በገበያ ተወዳዳሪ እንዲሆን በማሰብ fair ዋጋ ነው ማለቱ ሌላ የተሸጠ ዋጋ መኖሩን የሚያሳይ ነው።መልስ ሰጭው ያቀረበው የኢንቮይስ ዋጋም ውድቅ ተደረገው በህጉ መሰረት ለዕቃው የሚከፈለው ትክክለኛ ዋጋ ባለመሆኑ ምክንያት ነው።መልስ ሰጭው ያቀረበው ዲክላራሲዮን ተቀባይነት ያገኘው ጥር 19 ቀን 2003 ዓ/ም ሲሆን በዚህ ወቅት በስራ ላይ የነበረው ሲዲ 12ኛው ሲዲ እና የዋጋ መመሪያ ቁጥር 10/1996 ሲሆን መልስ ሰጭው ያቀረበው ኢንቮይስ ዋጋ ደግሞ ገና ባልተደራጀ በ13ኛው ሲዲ ላይ ያለ ዋጋ በመሆኑ ባቀረበው የግብይት ሰነድ መሰረት ሂሳብ እንዲሰላለት መወሰኑ ተገቢ አይደለም የሚሉ ናቸው።

መልስ ሰጭ በበኩሉ በሰጠው መልስ፡- የተሻረውን የቀድሞ አዋጅ ቁጥር 60/1989 መሰረት በማድረግ የወጣውን መመሪያ ለአዋጅ ቁጥር 622/2001 ተፈጻሚ እንዲሆን ማድረግ የሚቻል ኣይሆንም፤ይግባኝ ባይ ለዋጋ ማነጻጸሪያ የሚውል ዳታ ቤዝ አለኝ፤በሲዲ ዋጋውን ለመወሰንም በአዋጅ ቁጥር 622/2001 አንቀጽ 33(1) መሰረት ሥልጣን አለኝ ያለውም ቢሆን ድንጋጌው የሲዲ ዋጋ ማጣቀሻ ሆኖ ሊያገለግል እንደሚችል የሚያመላክት አይደለም፤ይግባኝ ባይ የሲዲን ዋጋ መሰረት ማድረግ ቀረጥና ታክስ ሊያስከፍል የሚችለው ተጨማሪ መግለጫና መረጃ እንዲቀርብለት በማድረግ አዋጅ ቁጥር 622/2001 አንቀጽ 32(2) የተጠቀሰው ግንኙነት መኖሩን ሲያረጋግጥ ነው።ይግባኝ ባይ ነን በዚህ መልኩ አላረጋገጠም።ይግባኝ ባይ በሲዲው ዋጋ መሰረት ለመወሰን መነሻ ያደረገው ምራች (ሻጭ) ድርጅት መልስ ሰጭው በገበያው ተወዳዳሪ እንዲሁን fair በሆነ ዋጋ ሸጫለሁ በሚል ጻፈውን ደብዳቤ ነው።ይሁን እንጂ ይግባኝ ባይ በዚህ ረገድ ያጣራውም ሆነ የደረሰበት ውጤት ላመኖሩ ያቀረበው ማስረጃ የለም፤አምራች fair በሆነ ዋጋ ተሰጥቷል ማለቱ ተመጣጣኝ የሆነ ዋጋን ማመልከት ባለፈ ዝቅተኛ ዋጋ መሆኑን የሚያሳይ አይደለም፤ሌላ በኩል መልስ ሰጭ ያቀረብኩት ኽክር የዕቃው ዋጋ በዲክላራሲዮን የተቀመጠ ዋጋ በመሆኑ በዚህ መሰረት [illegible] ይገባል

13/12/[illegible]

የሚል ሆኖ በህጋዊ ምክንያት ግን ዕቃው ዋጋ ውድቅ የሚደረግበት ሁኔታ ቢኖር በ13ኛው የሲዲ ዋጋ እንዲሰላ ሲሆን በ12ኛም ሆነ በ13ኛ ሲድ ዋጋ መሰረት ቀረጥ ልክፈል የሚል ክርክር ባላቀረብኩበት ይግባኝ ባይ ከመልስ ሰጭ በኩል ከቀረበው ክርክር ውጪ ቅሬታውን ማቅረቡ ተቀባይነት የለውም፤እንዲሁም ይግባኝ ባይ ከ12ኛው የሲዲ ዋጋ ተመን መልስ ሰጭው ያቀረበው የዕቃ ዋጋ ከ5% በላይ አንሶ ተገኝቷል ይበል እንጂ ያነሰበትን አግባብ በግልፅና በዝርዝር በማስረጃ አስደግፎ አላቀረበም በሚል ተከራክሯል፡፡

ይግባኝ ባይም ለመልስ ሰጪው መልሰ የመልስ መልስ በማቅረብ ተከራክሯል፡፡

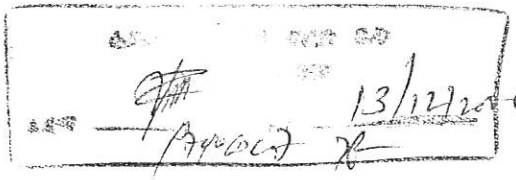
የጉዳዩ አመጣጥ ከዚህ በላይ የተመለከተው ሲሆን እኛም፤ይግባኝ ባይ መልስ ሰጭው ያቀረበውን የኢንቮይስ ዋጋ ባለመቀበል በ12ኛ የሲዲ ዋጋ መሰረት ቀረጥ እንዲከፍል የወሰነው የፌዴራል የግብር ግባኝ ሰሚ ጉባኤ በማሻር መልስ ሰጭው ባቀረበው የዕቃ ዋጋ መሰረት ቀረጥ እንዲሰላ የወሰነው እና የፌዴራል ከፍተኛ ፍርድ ቤትም ይህንኑ ያጸናው በአግባቡ ነው? ወይስ አይደለም?የሚለውን ጭብጥ ይዘን ጉዳዩን እንደሚከተለው መርምረናል፡፡

Verdict on Issue Framed.

የጉምሩክ ቀረጥና ሌሎች በገቢ ዕቃዎች ላይ የሚጠየቁ ክፍያዊችን ለማስላት እንዲሁም የውጭ ንግድን በሚመሩ ሕጎች የተዘረዘሩትን ታሪፉ ያልሆኑ እርምጃዎችን በስራ ላያ ለማዋል እንዲቻል የሚተመነው የጉምሩክ ቀረጥ ማስከፈያ ዋጋ በአዋጅ ቁጥር 622/2001 ድንጋጌዎች መሰረት እንዲወሰን በአዋጅ አንቀጽ 32(1) በመረህ ደረጃ ተመልክቷል፡፡በዚህ መሰረት የቀረጥ ትመና በሚደረግበት ጊዜም ወደ አገር ውስጥ ለሚገባ ዕቃ የጉምሩክ ቀረጥ ማስከፈያ ዋጋ ተደርጎ የሚወሰደውም በትክክል ለዕቃው የተከፈለው ወይም የሚከፈለው የግብት ዋጋ(the price actually paid or payable for the goos...)መሆኑን የአዋጅ አንቀጽ 33(1) ያስገነዝባል፡፡በዚህ በተያዘው ጻይም መልስ ሰጭ ከውጭ አገር ላስመጣቸው ፖስታዎች ዋጋ የሚገልጽ በአምራቹ ኩባንያ ተዘጋጀ የዋጋ ሰነድ (invoice) ስለማቅረቡ በግራቀኙ የታመነ ጉዳይ ነው፡፡ ይግባኝ ባዩ መልስ ሰጭ ቀረበው የዋጋ ሰነድ ያልተቀበለው አምራች ኩባንያው መልስ ሰጭው በገበያው ተወዳዳሪ እንዲሁን air በሆነ ዋጋ ተሰጥቷል በሚል የጻፉ ደብዳቤ ሌላ ዋጋ መኖሩን የሚያሳይ ነው በሚል መነሻ ው፡፡ይሁን እንጂ የዋጋ ሰነዱን ይግባኝ ባይ ውድቅ ለማድረግ በአምራች ኩባንያውና በመልስ ሰጭ መካከል በአዋጅ ቁጥር 622/2001 በአንቀጽ 33(2)(ሀ-ሸ) በተዘረዘረው ዓይነት ግንኙነት መኖሩን፤ግንኙነቱም በንዑስ አንቀጽ 4 እንደተደነገገው በዋጋ ላይ ተጽዕኖ ማሳደሩን ለማመን ሚያስችል ምክንያት መኖሩን ማረጋገጥ የሚጠቅበት ሲሆን እነዚህ ሁኔታዎች ስለመኖራቸው መልስ ሰጪው (ለአስመጪው) የመግለጽ ግዴታ እንዳለበት በዚህ ድንጋጌ በአስገዳጅ ሁኔታ

ተመልክቷል።በዚህ ጉዳይ ግን እንዚህ በህጉ የተቀመጡት ሁኔታዎች ስለመኖራቸው ባልተረጋገጠበት ሁኔታ አመራቹ ኩባንያ ለመልስ ሰጪው የተሰጠው ዋጋ በገበያ ተወዳዳሪ እንዲሆን በማሰብ fair ዋጋ ነው ማለቱ ሌላ ዋጋ መኖሩን የሚያሳ ነው ሲል የዋጋ ሰነዱ invoice ውድቅ በማድረግ በዋጋ መረጃ ክምችት በ12ኛው ሲዲ መሰረት የግብይት ዋጋውን በማስተካከል እንዲከፍል መወሰኑ በአዋጅ ቁጥር 622/1996 የማምሩክ ቀረጥ ማስከፈያ ዋጋ ሲተመን የግብይት ዋጋ ውድቅ ሊደረግ ስለሚችልበት አግባብ በአንቀጽ 33 የተደነገገውን ያላገናዘበ ነው።በሌላ በኩል ይግባኝ ባይ መ/ቤት በእርግጥ አስመጪው ድርጅት ያቀረበው የግብይት ዋጋ በዋጋ መረጃ ክምችቱ ተመዝግቦ ከሚገኘው የአንድ ዓይነት ዕቃ የማነጻጸሪያ ዋጋ 5% የበለጠ አንሶ ከተገኘ ዋጋውን በማነጻጸሪያ ዋጋ መሰረት የመወሰን መብት ያለው ስለመሆኑ የጉምሩክ ዋጋ መረጃ ክምችት፤አዘገጃጀት፤ስረጭት እና አጠቃቀም በወጠው መመሪያ ቁጥር 10/1996 ከተደነገገው መገንዘብ የሚቻል ሲሆን መመሪያውም የወጣው የጉምሩክ ባለስልጣን እንደገና ለማቋቋም እና አሰራሩን ለመወሰን የወጣውን አዋጅ ቁጥር 60/1989 መሰረተ በማድረግ ቢሆንም ይህ አዋጅ ተሸሮ በአዋጅ ቁጥር 622/2001 የተተካ ሲሆን በአዋጅ አንቀጽ 113(2) አዋጁን የሚቃረን ማንኛውም ህግ ፤ደንብ መመሪያ ወይም አሰራር ልምድ በአዋጅ የተመለከቱ ጉዳዩችን በሚመለከት ተፈጻሚነት እንደማይኖራቸው በግልጽ የተደነገገ ሲሆን ከዚህ የአዋጅ ድንጋጌ ይዘት መንዘብ የሚቻለውም አዋጅን የማይቃረን ህግ ፤ደንብ፤መመሪያ ወይም አሰራር ከአዋጅ በተመለከቱት ጉዳዩች ተፈጻሚ ሊሆኑ እንደሚችሉ ነው።በዚህ በተያዘ ጉዳይም ክየትኛውም ኩስራሪ ወገን መመሪያ ቁጥር 10/1996 ለክርክሩ መነሻ የሆነውን ጉዳይ አስመልክቶ በአዋጅ ቁጥር 22/2001 የተደነገጉትን አግባብነት ያላቸውን ድንጋጌዎች የሚቃረን ነው በሚል የቀረበ ክርክር ሳም።በመሆኑም ከፍተኛው ፍርድ ቤት መመሪያ ቁጥር 10/1996 የወጣ አዋጅ ቁጥር 60/1989 ሰረት በማድረግ ስለሆነ በአዋጅ ቁጥር 622/2001 ተፈጻሚነት የለውም ሲል በወሳኔው ያሰፈረው ገቢነት የለውም።

ከቃለል መልስ ሰጭ ያቀረበው የዋጋ ሰነድ ክርክር ያስነሳውን የፓስታ ዋጋ በተመለከተ ተቀባይንት ለው ይግባኝ ባይ በዋጋ ክምችት ባለው የሲዲ መረጃ መሰረት መልስ ሰጭው ቀረጡን እንዲከፍል ወሰኑ ተገቢ አይደለም በማለት የፌዴራል የግብር ይግባኝ ሸሚ ጉባኤና እና የፌዴራል ከፍተኛ ድ ቤት የወሰኑት የሚነቀፍበት ምክንያት ባለመግኘታችን ተከታዩን ውሳኔ ሰጥተናል።



ወ ሳ ኔ

1.የፌዴራል የግብር ይግባኝ ሰሚ ጉባኤ በመ/ቁ 726 በቀን 20/10/2004 ዓ/ም በዋለው ችሎት የሰጠውን ውሳኔ እና የፌዴራል ከፍተኛ ፍርድ ቤት በመቁ/126536 በቀን 27/06/2006 ዓ/ም በዋለው ችሎት የሰጠውን ፍርድ በመመሪያ ቁጥር 10/1996 ን በተመለከተ በፍርዱ ያስፈረውን ምክንያት ባለመቀበል ነገር ግን የደረሰበት የፍርድ መደምደሚያ ተገቢ ሆኖ በማግኘታችን በፍ/ሥ/ሥ/ህ/ቁ 348(1) መሰረት አጽንተናል።

2. መልስ ሰጭው ባቀረበው የግብይት ሰነድ መሰረት የፓስታው ዋጋ ሊሰላ ይገባል በሚል የፌዴራል የግብር ይግባኝ ሰሚ ጉባኤና የፌዴራል ከፍተኛ ፍርድ ቤት የወሰኑት በአግባቡ ነው ብለናል ::

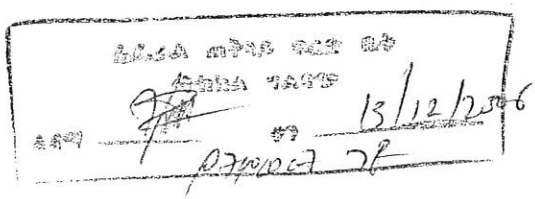
በዚህ ችሎት ለተደረገው ክርክር የወጣውን ወጪና ኪሳራ የግራ ቀኙ ወገኖ የየራሳቸውን ይቻሉ።

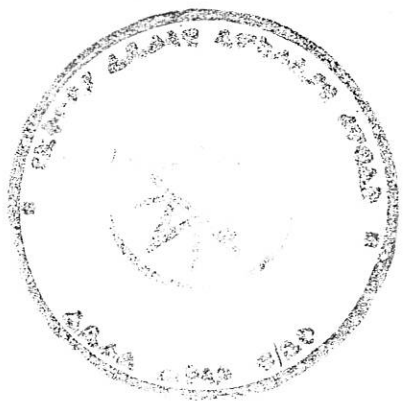
ትዕዛዝ

- መዝገቡ ውሳኔ ያገኘ ስለሆነ ተዘግቷል።ወደ መዝገብ ቤት ይመለስ።
- የፌዴራል ከፍተኛ ፍርድ ቤት መዝገብ ቁጥር 126536 የሆነው በመጣበት አኳኋን ተመላሽ ይሁን።

የማይነበብ የሦስት ዳኞች ፊርማ አለበት

ግ/ባ





Case - 4

ነሐሴ 6 | 2007

ሰኔ 8 ቀን 2007 ዓ/ም

Om Used Cars

የመዝገብ ቁጥር ከሳ - 923

1ኛ ችሎት

በገቢ ግብር አዋጅ ቁጥር 286/94 አንቀጽ 115 መሠረት ጉዳዩን በይግባኝ ለማየት የተሰየሙ ፡-

የግብር ይግባኝ ሰሚ ጉባኤ አባላት ::

1. አቶ ሙሉጌታ አያሌው ..... ሰብሳቢ
2. .. ዮሴፍ ዓለሙ ..... አባል
3. .. በለጠ አህመድ .....
4. .. ፋንታዬ ነጋሽ .....
5. ወ/ሪት ሰርክዓለም እንየው .....

ይግባኝ ባይ፣ ..... ኪንግናም ኢንተርኘራይዝ ሊ.ሚ.ት.ድ

ጠበቃ ያሲን እንድሪስ የድርጅቱ ሥራ አስኪያጅ ቺኦሊ ደን ጆንግ ቀረቡ።

መልስ ሰጭ፣ : . . . . . የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን

ዐ/ሕግ ታዬ መስፍን ቀረቡ ::

የይግባኝ ባይ የሥራ አይነት ፣ ..... አስመጪ

የግብሩ አይነት ፣ ..... የጉምሩክ ቀረጥ ታክስ

ይግባኝ ባይ ኪንግናም ኢንተርኘራይዝ ሊ.ም.ት.ድ የመስከረም 7 ቀን 2007 ዓ/ም ባቀረበው አቤቱታ በአዋሽ አርባ ገዋኔ ወረዳ 17 ቀበሌ 23 አስመጪ በሆነው የንግድ ስራ በቁጥር 5.10/55/07 በ16/12/2006 ዓ/ም በደረሰው የጉምሩክ ቀረጥ ታክስ ውሣኔ ቅር በመሰኘት ቅሬታውን እንደሚከተለው አቅርቧል።

1. <u>የይግባኝ ባይ ቅሬታ፣</u>

ይግባኝ ባይ የውጭ አገር ኩባንያ ሲሆን በኢትዮጵያ ውስጥ ለሚያካሄደው የኮንስትራክሽን ሥራ አገልግሎት እንደ አውሮፖ አቆጣጠር በ2000 በጊዜያዊነት ከውጭ አገር በዲክራሲዮን ቁጥር C-7354/13 ወደ አገር ውስጥ ያስገባቸው Kia double cap frontier እና Daewoo damp truck ቀረጥ እና ታክስ ለመክፈል ለአዲስ አበባ ቃሊቲ ጉምሩክ ቅርንጫፍ ጽ/ቤት አቀረበ።

ይግባኝ ባይ በኢንቮይስ መሠረት ያቀረበው የተሽከርካሪዎቹ ዋጋ Kia dpuble cap frontier 7146 ዶላር / Unit ሆኖ ለDaewood Dubp truck የቀረበው 39,739 ዶላር/ Unit ሲሆን ቅርንጫፍ መ/ቤት በኢንቮይስ የቀረበውን ዋጋ ወድቅ በማድረግ Kia dpuble cap 14100 ዶላር Unit ዋጋ እንዲሁም Deweoo DamP track 54755 ዶላር Unit ዋጋ በመያዝ ተጨማሪ ቀረጥ እና ታክስ እንዲከፈል ውሣኔ ሰጠ።

ቅርንጫፍ ጽ/ቤት ኢንቮይስ እና ሌሎች ከአምራች ድርጅቶች የተገኙ የግዥ ማስረጃዎችን መሠረት በማድረግ ከይግባኝ ባይ የቀረበለትን የተሽከርካሪዎችን ትክክለኛ ዋጋ ውድቅ በማድረግ ውሣኔ የሰጠው ምንጩ የማይታወቀውን ቁጥር 16 CD ሲዲ መሠረት በማድረግ የዋጋ ትመና ቡድን የላከለትን ዋጋ መሠረት ሲሆን ፦-

- <u>6X4 Dwewoo Dump Truck /15 ቶን/ በተመለከተ</u> ፣ የይግባኝ ባይ ተሽከርካሪ የስሪቱ ዘመን 2000 ሲሆን ቁጥር 16 CDን መሠረት በማድረግ የተወሰደው የ1999 ዘመን ከመሆኑም በላይ ሞዴሉ እና የጉልበቱ መጠን /C.C/ ተለይቶ የማይታወቅ በመሆኑ ትክክለኛ ዋጋ ተይዟል ሊባል የሚችል አይደለም።
- Kia double cap frontier በሚመለከት ፣ የይግባኝ ባይ ባለ 1 ቶን ሆኖ የ2000 ዘመን ምርት ሲሆን በቁጥር 16 CD ዋጋው 14,100 USA ዶላር ነው ተብሎ የተገለጸው ከይግባኝ ባይ Kia dpuble cap frontier /1 ቶን/ የተለየ Model K-2700 ነው። ይህ Model K-2700 ተብሎ በሲዲው ላይ የተገለጸው ሞዴል የምርት ዘመኑ 2000 ነዉ ተብሎ ሲሆን ይህ ሞዴል Model K-2700 የተባለው ምርት ለመጀመሪያ ጊዜ ተመርቶ ገበያ ላይ የዋለው እ.ኤ.አ በ2004 ነው። በመሆኑም ሲዲው የያዘው እውነተኛ ነገር የለም በተጨማሪም በቁጥር 16 CD ላይ ዋጋው 14100 USA ዶላር ነው ተብለው የተገለጸው

Model K-2700 truck carpo ባለ 4.5 ቶን በመሆኑ ከይግባኝ ባይ ባለ 1 ቶን ጋር ግንኙነት የሌለው ስለሆነ ለባለ 1 ቶን Dpuble cup frontier C.I.F ዋጋ ብር 14100 መያዙ ስህተት ነው። በመሆኑም ከዚህ በላይ በተገለጹት ምክንያቶች ይግባኝ ባይ የአዲስ አበባ ቃሊቲ ጉምሩክ ቅርንጫፍ ጽ/ቤት በሰጠው ውሣኔ ላይ ቅሬታውን ለጉምሩክ ጉዳዮች አቤቱታ አጣሪ ቡድን ያቀረበ ሲሆን አቤቱታ አጣሪ ቡድንም ተመሳሳይ ስህተት ደግሟል።

Kia double cap frontier በተመለከተ:- ይኸውም የዚህን ተሽከርካሪ ዋጋ ለመወሰን የተጠቀመው በቁጥር 16 CD ላይ የተመለከተው USA 14,100 ዋጋ ክብደቱ 405 ቶን ሞዴል K-2700 የሆነ Truck ዋጋ ነው። ይህ ተሽከርካሪ ለመጀመሪያ ጊዜ ለገበያ የቀረበው እ.ኤ.አ በ2004 ሲሆን የእኛ double cap Truck ባለ አንድ ቶን ክብደት ሆኖ የስሪቱ ዘመን እ.ኤ.አ በ2000 ዓ/ም በመሆኑ በቁጥር 16 CD USA 14,100 Unit ዋጋ ከተሰጠው ከባለ 4.5 ቶን ትራክ በፍጽም የተለየ ስለሆነ ዋጋው የተሳሳተ ነው የሚል የሁለቱን ዓይነት ተሽርካሪዎች ልዩነት ለማሳየት በምስላቸው ተደግፎ የቀረበ አቤቱታ ሲሆን የአቤቱታው አጣሪ ቡድን ግን ካለምንም ማጣራት በደፈናው ለKia double cap የተሰጠው ዋጋ ይጽና ብለናል በማለት የተሳሳተ ውሣኔ ሰጥቷል።

በማስረጃነት አያይዘን ካቀረብነው ማስረጃዎችና የተሽከርካሪዎች ምስል ጭምር በማየት መገንዘብ እንደሚቻለው ባለ 4.5 Truck እና ባለ አንድ ቶን double cap Truck በፍጹም አንድ ሲሆን ስለማይችል በማስረጃነት የቀረቡት ሰነዶች ታይተው የአቤቱታ አጣሪው ቡድን የሰጠው ውሣኔ ውድቅ እንዲደረግና ይግባኝ ባይ በአቀረበባቸው ማስረጃዎች መሠረት ታክስና ቀረጡ ተወስኖ መጠየቅ እንዳለበት እንዲወሰንልን።

Daewoo Dump Truck (15 ቶን) በተመለከተ፣ ይግባኝ ባይ በዚህ ላይ ያቀረበው አቤቱታ ከተሽከርካሪው አምራች የቀረቡ ተጨባጭና አስተማማኝ ማስረጃዎች ተጥለው ሞዴሉና ጉልበቱ (Capacity) ሳይታወቅ የሌላ (1999) ዘመን ምርት ተይዞ የወሰነብን ቀረጥና ታክስ የተጋነነ በመሆኑ በአቀረብኩት የአምራች ማስረጃ መሠረት ይወሰንልኝ የሚል ሲሆን አቤቱታ አጣሪው ቡድን ተመሳሳይ ስህተት በመድገም ከይግባኝ ባይ

ተሽከርካሪ ጋር ግንኙነት የሌለው የጃፖን ምርት የሆነው የNissane UD ዋጋ C.I.F 44,100 ዶላር የ1998 Model 13 ቶን ዋጋ ተይዞ ይስተናገድ የሚል ውሣኔ ሰጥቷል።

የአቤቱታ አጣሪው ውሣኔ የተሳሳተ ነው የሚባልበት ምክንያት ከይግባኝ ባይ የቀረበለትን አስተማማኝ ማስረጃዎች አለመቀበሉ ብቻ ሣይሆን በራሱ አነሳሽነት ጠይቆ ከ3ኛ ገለልተኛ ወገን ያገኘውን ማስረጃ ጭምር ውድቅ በማድረግ የተሳሳተ ግምታዊ ውሣኔ መስጠቱ ነው። ቡድኑ የይግባኝ ባይ ቅሬታ ትክክለኛ መሆኑን አምኖበት የተሽከርካሪው ትክክለኛ ዋጋ ስንት እንደሆነ ከገለልተኛ አካል ለማወቅ በመፈለግ ጉዳዩን ለይግባኝ ባይ ሳያስታውቅ ሚስጥር በሆነ መልኩ Daewoo Dump Truck ዋጋ ስንት እንደሆነ እንዲገልጽለት የDaewoo አስመጪ የሆነው Hagbes P.L.C ለአቤቱታ አጣሪው ቡድን የገለጸው የተሽከርካሪው ዋጋ 39739 ዶላር መሆኑን በኢሚል ገልጾልናል በማለት የገለጸ ሲሆን አቤቱታ አጣሪው ቡድን ይህንን Hagbes P.L.C የተገለጸለትን ዋጋ አልተቀበለውም።

በአጠቃላይ ከዚህ በላይ በየደረጃው ምክንያቶች የአቤቱታ አጣሪ ቡድን የሰጠው ውሣኔ የተሳሳተ በመሆኑ ተሽሮ ይግባኝ ባይ ባቀረበው ማስረጃዎች መሠረት ቀረጥ እና ታክሱ ተወስኖ መጠየቅ እንዳለበት እንዲወስንልን በማለት አመልክተዋል።

2. <u>የመልስ ሰጭ መ/ቤት 15/03/2007 ዓ/ም ፅፎ ያቀረበው መልስ ላይ የሚከተለው የህግና የፍሬ ነገር ክርክር አቅርቧል</u>።

ይግባኝ ባይ ኪንግናም ኢንተርፕራይዝ ሊሚትድ ቅሬታ የቀረበባቸውን መኪኖች ኮርያ ከሚገኘው ኪንግናም ኢንተርፕራዝ ሊሚትድ ለኮንስትራክሽን አገለግሎት በሚል ከቀረጥ ነፃ ወደ ኢትዮጵያ ያስገባው እ.ኤ.አ በ2000 ዓ.ም ነው። ከ3 ዓመት በኋላ ማለትም በ2013 ለመኪኖቹ ቀረጥና ታክስ ለመክፈል ባመለከተ ጊዜ የአ.አ ቃሊቲ ጉምሩክ ቅ/ጽ/ቤት የዋጋ ትመና ቡድን ይግባኝ ባይ ያቀረበውን የንግድ ደረሰኝ (Commerical Invoice) በወቅቱ ካለው የመኪኖቹ ዋጋ አንፃር እምነት የሚጣልበት ሆኖ ስላላገኘው ውድቅ በማድረግ የመኪኖቹን ዋጋ በጉምሩክ አዋጅ ቁጥር 622/2001 በተቀመጡት አማራጭ የዋጋ መተመኛ ዘዴዎች አስልቷል። በዚህም መሰረት

በመሆኑም የተያዘለት ዋጋ ከይግባኝ ባይ መኪና ያነሰ የመሸከም አቅም ያለው መኪና ዋጋ ነው ይህ አያያዝ ደግሞ ይግባኝ ባይን የሚጠቅመው እንጂ የሚጐዳው አይደለም።

ይግባኝ ባይ ለ Daewoo Dump truck ግንኙነት በሌለው Nissan UD truck ዋጋ ሊያዝልኝ አይገባም በማለት ያነሳው ቅሬታ የጉምሩክን ህግ እና መሰረታዊ የዋጋ አተማመን ዘዴ ባለመገንዘብ የቀረበ ነው።

በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀጽ 2(21) በግልጽ እንደተደነገገው ተመሳሳይ ዕቃዎች ማለት በሁሉም ባህሪያቸው ባይመሳሰሉም ተመሳሳይ ተግባር ማከናወን የሚችሉ፤ ተመሳሳይ የገበያ ተፈላጊነት ያላቸው፤ ከተመሳሳይ ማቴሪያል የተሰሩ ወ.ዘ.ተ ዕቃዎች ናቸው። በአዋጁ አንቀጽ 35 ደግሞ የተመሳሳይ ዕቃዎች የግብይት ዋጋ የአንድን ዕቃ ዋጋ ለመተመን አንዱ ዘዴ መሆኑ በግልጽ ተቀምጧል አሁን ወደ ተያዘው ጉዳይ ስንመለስ Daewoo Dump Truck 15 ቶን እና Nissan UD truck 13 ቶን ተመሳሳይ የመጫን አቅም ያላቸው (ምናልባትም Daewoo Dump Truck 15 ቶን ሰለሚጭን ዋጋው ሊጨምር ይገባል ካልተባለ በቀር)፤ በተቀራራቢ ወቅት የተመርቱ እና ወደ ኢትዮጵያ የገቡ፣ተመሳሳይ ሥራ የሚሰራባቸው ናቸው በመሆኑም ለ Daewoo Dump truck ግንኙነት በሌለው Nissan UD truck ዋጋ ሊያዝልኝ አይገባም በማለት የተነሳው የይግባኝ ባይ ቅሬታ ምክንያታዊነት የጐደለው ነው ::

ይግባኝ ባይ Kia Double Cap truckን በተመለከተ ያነሳው ቅሬታ Kia Double Cap truck ባለ አንድ ቶን ነው የተያዘበት ዋጋ ግን የባለ 4.5 ቶን Kia Double Cap ነው የሚል ነው ለዚህም ስዕላዊ መግለጫ አቅርቧል በመሰረቱ በዋጋ መረጃ ሲዲ ላይ የዕቃው ስም፣ሞዴል ፤አይነት እና የምርት ዘመን ነው የሚገለፀው ይግባኝ ባይ ያቀረበው ∀CD#16 of Customs የሚል ርዕስ ያለው ስዕላዊ መግለጫ ምንጩ ያልታወቀ እና የፈጠራ ሥራ የሚመስል በመሆኑ ተቀባይነት ሊኖረው አይገባም።

ይግባኝ ባይ መልስ ሰጭ ሐግበስ ኃላ/የተ/የግ ድርጅት he-mail አግኝቶ የላከለትን መልዕክት ውድቅ ማድረጉ ተገቢ አይደለም በማለት ቅሬታ አንስቷል በመሰረቱ ምንም እንኳ ሐግበስ he-

mail አግኝቸዋለሁ ከማለት በቀር አገኘሁት ያለውን ማስረጃ ያልላከውና ያላረጋገጠው ቢሆንም ይግባኝ ባይ በራሱ ተነሳሽነት ለሀግበስ የተላከ ነው በማለት ለጉባዔው ያቀረበው ማስረጃ ኪም ደንግ ቻንግ ከተባለ ግለሰብ በ e-mail የተላከ፣የሰነድ ማስረጃዎችን ማግኘት እንዳልተቻለ የተገለፀበት እና ለምን አላማ እንደተላከ ግልጽ ያልሆነ መልዕክት የያዘ የ e-mail መልዕክት ልውውጥ ነው። በመሰረቱ ሀግበስ የተጠየቀው በቅንነት እንዲሁም ምክንያታዊ እና አሳማኝ የሆነ የወቅቱን የ Daewoo Dump Truck ዋጋ እንጂ ከe-mail መልዕክት ልውውጥ አግቻለሁ በማለት ምንም ዓይነት ምክንያታዊ እና አሳማኝ ማስረጃ ሳያያይዝ ይልካል ተብሎ አልነበረም ሀግበስ በባለስልጣኑ በቅንነትና ምክንያታዊነት መልስ ለመስጠት ቢፈልግ ኖሮ የ Daewoo መኪኖች አስመጭ እንደመሆኑ የግብይት ደረሰኝ (Commircial Invoice) ጨምሮ አሳማኝ የሆኑ ማስረጃዎች ማቅረብ በቻለ ነገር ግን ከይግባኝ ባይ ጋር በመልሱ ዙሪያ የተነጋገሩ በሚያስመስል መልኩ ∀ከ e-mail የተላከልን ዋጋ 39,739.13 የአሜሪካ ዶላር ነው∀ በማለት ነው የመለሰው እንደዚህ ዓይነት ማስረጃ በፍትህ አካላት ፊት ቀርቶ በማንኛውም የህዝብ ውሳኔ ሰጭ አካላት ተቀባይነት ሊኖረው የሚገባ አይደለም።

ይግባኝ ባይ በማስረጃ ዝርዝሩ የገለፃቸው በተለይ በማስረጃ ዝርዝሩ ተራ.ቁጥር 2 ላይ 2ኛ፣3ኛ እና 4ኛ በሚል ቅደም ተከተል የዘረዘራቸው ማስረጃዎች ምንጩ ያልታወቀ የመኪኖች ምስል፣የ Kia Double Cap Frontier አምራች የመኪኖች ዋጋ አስመልክቶ የፃፈው ደብዳቤ (ለምን እና በምን ምክንያት እንደተፃፈ ያልታወቀ) እና ስለ መኪኖቹ ቴክኒካዊ ዝርዝር የተሰራጨ ዜና ምንጫቸው ግልፅ ካለመሆኑ በተጨማሪ አሁን ለምንከራከርበት ጉዳይ ተጨባጭና አሳማኝ ማስረጃዎችና ከጉዳዮ ጋር የሚገናኙ ስላልሆኑ ተቀባይነት ሊኖራቸው አይገባም።

እንዲሁም በጥራዝ መልክ የቀረበ 41 ገጽ ማስረጃ በማለት ተያይዞ የቀረበ ሰነድ በተለይም በማስረጃ ዝርዝር ተራ ቁጥር 3 ላይ በ 5ኛ ላይ Kia motors corporation ያወጣው የተባለ የንግድ ተሸከርካሪ የሽያጭ ዋጋ መመሪያ የአንድ ኩባንያ የውስጥ መመሪያ ለዚያውም ኩባንያው ማረጋገጫ ያልሰጠበት መመሪያ ከጉዳዮ ጋር የሚገናኝ ስላልሆነ ውድቅ ሊሆን

የሚገባው ነው በተለይ አንዳንዶቹ የሰነድ ማስረጃዎች ∀Sa In Kl Head of Business department of kia motors co.∀ ከሚል አድራሻ "To tax appeal committee,Fedral justice minitere" ለሚል አድራሻ የተፃፉ፣ግብር ይግባኝ ኮሚሽን ለምን ጠይቆ እንደተፃፉ ያልታወቁ ናቸው። እዚህ ላይ ትኩረት ሊሰጠው የሚገባው ኪያ ሞተርስ ኮርፖሬት ለግብር ይግባኝ ሰሚ ጉባዔው መግለጫ ሊሰጥ የሚችለው ጉባዔው ሲጠይቀው እና ከውጭ ወደ ኢትዮጵያ የሚገባ ደብዳቤ በሚመጣበት አኳኋን እንጂ ኮርፖሬሽኑ በe-mail ልኮልሃል ተብሎ ፍላጐቱ ባለው ሰው የቀረበለትን Print Out ሰነድ ተቀብሎ የሚያይበት አግባብ ሊኖር አይገባም።

በአጠቃላይ ይግባኝ ባይ ኮርያ ከሚገኘው ኪንግናም ኢንተርፕራይዝ ሊሚትድ የተሰጠኝ ነው በማለት ያቀረባቸው የንግድ ደረሰኝ (Commircial Invoice) እና በዚሁ የተገለፀው ይግባኝ ባይ ያስገባቸው መኪኖች ዋጋ አሁን ካለው የመኪኖቹ ዋጋ አንፃር እምነት የሚጣልበት ሆኖ ባለመገኘቱ መልስ ሰጭ በጉምሩክ ህግና አሰራር መሰረት የአንድ አይነት እና ተመሳሳይ ዕቃዎች የዋጋ አተማመን ዘዴን በመጠቀም ለመኪኖቹ ዋጋ መተመኑ ተገቢ በመሆኑ፣ይግባኝ ባይ ያቀረባቸው ምንጫቸው ያልታወቁ የሰነድ ማስረጃዎች ተቀባይነት ሊኖራቸው ስለማይገባ የይግባኝ ባይ ያቀረበው ቅሬታ ተቀባይነት ሊኖረው ስማይገባ ባለስልጣኑ የወሰነው የመጨረሻ ውሳኔ እንዲፀና እንጠይቃለን፡በማለት ተከራክረዋል።

ጉባኤው ከግራ ቀኙ ተከራካሪ ወገኖች ያቀረቡዋቸውን የቃልና የጽሁፍ ክርክር መሠረት በማድረግና አግባብ ካላቸው የሕግ ድንጋጌ ጋር አገናዝቦ የሚከተለውን ውሣኔ ሰጥቷል።

ው ሣ ኔ።

ይግባኝ ባይ ቅሬታና የግራ ቀኙ ክርክር ከላይ የተመለከተው ሲሆን የቅሬታው መነሻ የውጭ አገር ኩባንያ የሆነው ይግባኝ ባይ በጊዜያዊነት ለኘሮጀክት ማስፈፀሚያ ላስመጣቸው ኪያ ዳብል ካኘ መኪና እና ዬው ዳምኘ ትራክ ተሽከርካሪ ያቀረበውን ኢንቮይስ ውድቅ በማድረግ መልስ ሰጪ የተጋነነ ዋጋ ወስኖብኛል በማለት ይግባኝ ባይ ያቀረበው ቅሬታ ነው።

መዝገቡን እንደመረመርነው ይግባኝ ባይ ለኪያ ዳብል ካኘ ያቀረበውን የኢንቮይስ ዋጋ 7,146 USD በመጣል 14,100 USD የወሠነበት ሲሆን ለዴው ዳምኘ ትራክ ያቀረበውን የኢንቮይስ ዋጋ 39,739 USD ውድቅ በማድረግ 54,755 USD ወስኖበታል።

ሆኖም ይግባኝ ባይ ቀረጡን ለመክፈል ጥያቄ ያቀረበው ዕቃዎቹ ከገቡ ከ3 ዓመት በኋላ በመሆኑ ያቀረበው ኢንቮይስ ተሸከርካሪዎቹ ሲገቡ ለጉምሩክ የቀረበው ኢንቮይስ ነው? ወይስ ከ3 ዓመት በኋላ የተዘጋጀ ነው የሚለውን ለማጣራት ጉባኤው ቅ/ጽ/ቤቱን ማብራሪያ ጠይቆ ለጉምሩክ የቀረበው ኢንቮይስ ተሸከርካሪዎቹ ሲገቡ የቀረበው መሆኑን ያረጋገጥን ሲሆን ከዚህም በተጨማሪ አሁን የሚያከራክረው ዋጋ ሲወሰን ማነጻፀሪያ ዋጋ ባለመገኘቱ የዕቃዎቹ ሰነድ ወደ ልዩነት አጣሪ ቡድን ተልኮ ይህ ቡድንም ዋጋ ለማግኘት ባለመቻሉ ለዋጋ ትመና ቡድን ዋጋ እንዲሰጠው ጠይቆ የዋጋ ትመና ቡድኑ በ18/10/05 ዋጋ የሰጠ መሆኑን አረጋግጠናል። ለክርክሩ መነሻ የሆነው ይህ የዋጋ ትመና ቡድን የሰጠው ዋጋ ሲሆን ለተሸከርካሪዎቹ የተሰጠው ዋጋ በኢንቮይሱ ከተገለፀው ዋጋ ጋር ሲነጻፀር ወደ እጥፍ የሚጠጋ ከመሆኑም በላይ ለማነጻፀሪያነት የተወሰደው ዕቃ ይግባኝ ባይ ካስገባቸው ተሸከርካሪዎች ጋር በሞዴልም ሆነ በስሪት ዘመን የማይገናኝና በጉምሩክ አዋጅ የተደነገገውን የዋጋ ትመና ሥርዓት ያልተከተለ ሆኖ አግኝተነዋል። ከሁሉም በላይ ደግሞ ቀረጥና ታክስ ሳይከፈልባቸው በጊዜያዊነትም ሆነ በቀረጥ ነፃ የሚገቡ ዕቃዎች ወይም ተሸከርካሪዎች ቀረጥና ታክስ የማይከፈልባቸው እስከ ሆነ ድረስ ዋጋቸው ዝቅ /under invoice / የሚደረግበት አንዳች ምክንያት የለም። እነዚህ ተሸከርካሪዎች ለኘሮጀክቱ አገልግሎት ሊሰጡ የገቡ በመሆናቸው ይግባኝ ባይ በየዓመቱ የእርጅና ቅናሽ እያሰላ ተቀናሽ የሚያስደርግባቸው መሆኑም ይታወቃል። አንድ አስመጪ ቀረጥና ታክስ የማይከፍልበትን የንግድ ዕቃ /business asset / ዋጋ ዝቅ አድርጐ የሚያቀርብበት አሳማኝ ምክንያት ካለመኖሩም በላይ ዋጋውን ዝቅ በማድረጉ ሊቀነስለት የሚገባውን የእርጅና ቅናሽ ስለሚያሳንሰው ተጐጂ እንደሚሆን ይግባኝ ባይ በንግዱ ዓለም የቆየ ድርጅት እንደመሆኑ መጠን ጠንቅቆ ያውቃል።

ከዚህም በተጨማሪ መልስ ሰጪ ተሸከርካሪዎቹ በጊዜያዊነት ሲገቡ ይግባኝ ባይ የሚያስይዘውን የዋስትና መጠን ሲወስን ኢንቮይሱን ተቀብሎታል። በጉምሩክ አዋጅ መሠረት የሚወሰነው የዋስትና መጠን በዕቃው ላይ ከሚከፈለው ቀረጥና ታክስ ማነስ የለበትም በሚል የተደነገገ ስለሆነ መልስ ሰጭ የኢንቮይሱን ተቀባይነት መወሰን ያለበት ዕቃዎቹ ሲገቡና የዋስትና መጠኑ በሚወሰንበት ጊዜ ነው።

በመጨረሻም በጊዜያዊነትና ከቀረጥ ነፃ ከሚገቡ ዕቃዎች ዋጋ ጋር ተያያዞ ከእርጅና ቅናሽ ተጠቃሚ ለመሆን ዋጋ የማጋነን / over invoicing / ሥጋት እንጂ ዋጋ የማሳነስ ሥጋት ሊኖር እንደማይችል መልስ ሰጪ ሊገነዘበው ይገባል።

በመሆኑም መልስ ሰጪ ይግባኝ ባይ ያቀረበውን ዋጋ ውድቅ ያደረገበት ምክንያት ነባራዊ እውነታውን ያላገናዘበና ለማነፃፀሪያነት የተጠቀመባቸው ተሸከርካሪዎች ይግባኝ ባይ ካስገባቸው ተሸከርካሪዎች ጋር በስሪት ዘመንም ሆነ በሞዴል ወይም በክብደት ተቀራራቢ ባለመሆናቸው የአንድ አይነት ዕቃ ወይም "የተመሣሣይ ዕቃ " ዋጋን መሠረት በማድረግ የተወሰነ ነው ማለት ስለማይቻል ይግባኝ ባይ ባቀረበው ኢንቮይስ መሠረት ቀረጥና ታክሱ ተሰልቶ እንደገና እንዲወሰን በማለት የመልስ ሰጭን ውሳኔ በመሻር መዝገቡን ዘግተን ወደ መዝገብ ቤት ይመለስ ብለናል።

ይህ ውሣኔ ዛሬ 6 ነሐሴ 2007 ዓ/ም በጉባኤ አባላቱ ተፈርሞ ለግራ ቀኙ ተከራካሪ ወገኖች ተሰጠ።

አቶ ሙሉጌታ አያሌው

አቶ ዮሴፍ ዓለሙ

አቶ በለጠ አህመድ

አቶ ፋንታዬ ነጋሽ

ወ/ሪት ሰርክዓለም እነየው

ሐምሌ 15/2006

ቀጠሮ - ፭

መጋቢት 2 ቀን 2006 ዓ/ም

የመዝገብ ቁጥር ክ 883

1ኛ ችሎት

በገቢ ግብር አዋጅ ቁጥር 286/94 አንቀጽ 115 መሠረት ስለሚወሰነው ግብር ይግባኝ ለማየት የተሰየመ ፡-

የግብር ይግባኝ ሰሚ ጉባኤ አባላት ::

1. አቶ መሉጌታ አያሌው ..... ሰብሳቢ
2. .. ዮሴፍ ዓለመ ..... አባል
3. .. በለጠ አህመድ ....
4. .. ሁንልኝ ጥጋቡ ....

ይግባኝ ባይ ፣ .....ፍያሜ ጠቅላላ ንግድ ኃ/የተ/የግ/ማህበር

አልቀረቡም::

መልስ ሰጭ ፣ : . . . . . የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን

አልቀረቡም::

የይግባኝ ባይ የሥራ አይነት ፣ ..... የቤትና የቢሮ ውስጥ መገልገያ እቃዎች አስመጪ

የግብሩ አይነት ፣ .....የጉምሩክ ቀረጥና ታክስ

ይግባኝ ባይ ፍያሜ ጠቅላላ ንግድ ኃ/የተ/የግ/ማህበር ግንቦት 18 ቀን 2006 ዓ.ም ባቀረበው አቤቱታ በአዲስ አበባ ክ/ከተማ ቦሌ ወረዳ 05 የቤት ቁ-110/ሐ የቤትና የቢሮ ውስጥ መገልገያ እቃዎች አስመጪ በሆነው የንግድ ስራ በቁጥር s.1.10/1348 በ20/8/06 ዓ.ም በደረሰው የተጨማሪ እሴት ታክስ ውሳኔ ቅር በመሰኘት ቅሬታውን እንደሚከተለው አቅርቧል::

1. <u>የይግባኝ ባይ ቅሬታ፣</u>

ካስገባናቸው እቃዎች ውስጥ ለMAX MLXER CW-6004 USB የተሰጠው ዋጋ 109.99 ዶላር ነው። ይህ ዋጋ ትክክለኛ ዋጋ ያልሆነና የእቃዉን ሞዴል ባራንድ እና CHANNELS /ቻናሎች/ ያላገናዘበ ነው። ይሁን እንጂ 2 channel 4c hannel 8 channel 16 channel በሚል ሚክሰሮች እንደየጥራታቸው ዋጋቸውም ይለያያል። መልስ ሰጪ MIXER በሚል ጥቅል ስም ባቻ ለዋጋው ከፍተኛ ልዩነት የሚፈጥረውን ቻይናሎቹን ሳያጣራ የሰጠው ዋጋ አግባብነት የሌለው እና ህጋዊ ባለመሆኑ ውድቅ ሊደረግ ይገባል።

ለሶኒ የመኪና ቴፕ XS-GTF 1027 የተሰጠው ዋጋ 15.17 ዶላር ነው። በመልስ ሰጪ የተሰጠው።በዛን ግዜ ማለትም 2004 ዓ.ም የግሎሪየስ የችርቻሮ ዋጋ 450 ብር መሆኑን የሚያሳኝ ደረሰኝ ለመልስ ሰጪ አቅርበናል። ሆኖም መልስ ሰጪ በገበያ ዋጋ ጥናት መሰረት በማለት የተሰጠው ዋጋ 1000 ብር ነው። SONY Car peaker XS-GTF 1627 በግሎሪየስ የሚሸጥበት የችርቻሮ ዋጋ 750 ብር ነው። ከዚህ ለመረዳት የሚቻለው አንድም መልስ ሰጭ ስለ እቃዉ ያልተረዳ መሆኑን አልያም በቂ ጥናት ያለማድረጉ ነው። ይህ መሆኑ ደግሞ ይግባኝ ባይን አላግባብ እንዲከፍል ተደርጓል። እዚህ ላይ ሊታይ የሚገባው ትልቁ ነጥብ SOnY Car Speaker XS-GTF 1627 ማለት 16 ሴንት ሜትር አስፒከር ሲሆን SONY Car Speaker XS-GTF 1027ማለት 10 ሴንት ሜትር አስፒከር ነው ሴንት ሜትር ሲጨምር እና ሲቀንስ ዋቱም /Watt/ ይጨምራል። የዋቱ መጨመር እና መቀነስ ደግሞ ዋናው ለዋጋ መለያየት ምክንያት ነው። ይሁን እንጂ መልስ ሰጪ ይህን ባሟላ መልኩ በቂ ግንዛቤ ሳይኖረው በምንቸገረኝነት አላግባብ ዋጋ መስጠቱ ተገቢ ያልሆነ በመሆኑ እንድንከፍል አድርጓል ይህንን ገንዘብ ተመላሽ ሊያደርግ ይገባል በማለት አመልክተዋል።

2. <u>የመልስ ሰጭ መ/ቤት ሰኔ 18 2006 ዓ/ም ጽፎ ያቀረበው መልስ ላይ የሚከተሰውን የሕግና የፍሬ ነገር ክርክር አቅርቧል።</u>

ይግባኝ ባይ በይግባኝ ቅሬታው ላይ በኢንቮይሱ በተራ ቁጥር 10 ለተጠቀሰው Max MIXER CW-6004 USB የተሰጠው 109.99 ዶላር ዋጋ የእቃዉን ሞዴልና ቻናሎች

ያላገናዘበ ነው። 2 ቻናል፤4 ቻናል፤8፥ ቻናል፤16 ቻንል የሚባሉ ሚክሰሮች ስላሉ ዋጋቸውን እንደ ቻናሎቹ ይለያያል በማለት ቅሬታ አንስተዋል።

በመሰረቱ የአዲስ አበባ ቃሊቲ ጉምሩክ ቅ/ፅ/ቤት የዋጋ ትመና ቡድን ለተጠቀሰው እቃ ዋጋውን ይግባኝ ባይ ያቀረበውን ኮሜርሻል ኢንቮይስ በቀውቱ ሀገሪቱ ከምትጠቀመው የጉምሩክ ዳታ ቤዝ እና ይግባኝ ባይ ካቀረበው ከእቃዉ ካታሎግ በመነሳት ያቀረበው የእቃዉ ካታሎክ «MAX 4,6,8, 12,16, CHANNEL MIXER » የሚል ነው ማለትም 4,6,8,12,እና 16 ቻናሎች ያካተተ Max MIXER ማለት ነው።ይግባኝ ባይ ይህንን አላስተባበለም ።

ይግባኝ ባይ ያነሳው ሌላው ቅሬታ በኢንቮይሱ በተራ ቁጥር 14 እና 21 ለተጠቀሱት SOnY Car Speaker ለተባለው እቃዎች የተሰጠው ዋጋ እንደየስፋታቸው ዋጋቸውም ሊለያዩ እየተገባ ይህንን ያላገናዘበ እና ግሎሪየስ ኃ/የተ/የግ/ማህበር በወቅቱ እቃዎቹ ይሸጥበት የነበረው ዋጋ መሰረት ያላደረገ ነው የሚል ነው ።ይግባኝ ባይ በአዲስ አበባ ጉምሩክ ቅ/ፅ/ቤት ስለተጠቀሱት እቃዎች መግለጫ ሲያቀርብ የእቃዎቹን ሴንቲሜትር /ስፋት/ለይቶ ሳይሆን SOnY Car Speaker XS-GTF 1627 እና SOnY Car Speaker XS-GTF 1027 /እንደ ቀደም ተከተላቸው /በማለት ሞዴላቸው ብቻ በመጥቀስ ነው።በዚህ መሰረት የቅ/ፅ/ቤቱ የዋጋ ትመና ቡድን ይግባኝ ባይ ያቀረባቸው የእቃዎቹን መረጃ መሰረት በማድረግ በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 38/1/ መሰረት በወቅቱ ባለስልጣኑ በሚጠቀመው ዳታ ቤዝ በሪፈረንስ 85 እና 86 በተቀመጠው መሰረት ሞዴላቸው የተጠቀሱት SOnY Car Speaker እቃዎች ዋጋቸው 29.99 /ዶላር /ጥንድ በመሆኑ በዚህ ዋጋ መሰረት ዋጋቸውን ወስኗል።

ሆኖም ግን ይግባኝ ባይ ለባለስልጣኑ ለጉምሩክ ጉዳዮች አቤቱታ አጣሪ ቡድን ቅሬታ አቅርቦ ቡድኑ ምንም እንኳን የእቃዎቹ ዋጋ ይግባኝ ባይ አራሱ ባቀረባቸው መግለጫ መሰረት የተወሰነ ቢሆንም ተጨማሪ ገበያ ጥናት በማድረግ በቅ/ፅ/ቤቱ የዋጋ ትመና ቡድኑ ለስፒከሮች የተወሰነው ዋጋ መጠነኛ ማጋነን ይታይበታል በማለት በእቃዎቹ 29.99 /ዶላር/ በጥንድ ተወሰወኖ የነበረውን በተጠቀሰው 12.10 /ዶላር/ ጥንድ እና 15.17 /ዶላር/ ጥንድ ሊሆን ይገባል በማለት አሻሽሎ ወስኗል።በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 33 /1/ ላይ ወደ ሀገር ውስጥ ለሚገባ እቃ የጉምሩክ ቀረጥ ማስከፈያ ተደርጎ የሚወሰደው

እቃው በትክክል የተከፈለው ወይም የሚከፈለው የግብይት ዋጋ እንደሆነ ተደንግጓል። ይግባኝ ባይ የተጠቀሱት እቃዎች ወደ ሀገር ለማስገባት ዲክላራሲዮን ሲያቀርብም አያይዞ ያቀረበው ኮሜርሻል ኢንቮይስ ለተጠቀሰው SONY Car Speaker XS-GTF 1627 የተጠቀሰው ዋጋ 12.00 /ዶላር/ ጥንድ ነው። በተ.ቁጥር 21 SOnY Car Speaker XS-GTF 1627 ዋጋ 10.00 /ዶላር/ ጥንድ ነው። ሆኖም የባለስልጣኑ የጉ/ፋ/አ/አ/ቡድን የገበያ ጥናት በማድረግ 15.17 /ዶላር/ ጥንድ በጥንድ እንዲሆን በማለት ወስኗል። ይግባኝ ባይ ሊያዝልኝ ይገባል በማለት ግሎሪየስ ኃ/የተ/የግ/ማህበር የተባለው ድርጅት አሁን በክርክሩ ከተጠቀሱ SOnY Car Speaker ከተባሉ እቃዎች ጋር ተመሳሳይ የሆነ እቃ በወቅቱ የሸጠው ዋጋ ብሎ ያነሳው ቅሬታ ይግባኝ ባይ ድርጅት ባለአንድ ሚሊዮን አክስዮን ድርሻ ባለቤት የሆነው አቶ ዮሴፍ ፍፁም እ.ኤ.አ 11/05/2012 የገዛው SOnY Car Speaker በመጥቀስ ነው። ይህ ግዥ የተፈፀመው ለዚህ ክርክር አላማ ሲባል ስለሆነ እና የእቃው ስምና ሞዴል እንጂ ስፋትና ጉልበት በግልፅ ያልተጠቀሰበት ከመሆኑም በላይ በብዛት ያልተሸጠ ስለሆነ በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀፅ 36/1/ መሰረት ተቀባይነት ሊኖረው አይገባም በማለት ተከራክረዋል።

ጉባኤው ከግራ ቀኙ ተከራካሪ ወገኖች ያቀረቡዋቸውን የቃልና የጽሁፍ ክርክር መሠረት በማድረግና አግባብ ካላቸው የሕግ ድንጋጌ ጋር አገናዝቦ የሚከተለውን ውሣኔ ሰጥቷል።

ው ሣ ኔ፡

ይግባኝ ባይ ግንቦት 18/2006 ዓ.ም ፅፎ ባቀረበው አቤቱታ የተለያዩ የኤሌትሮኒክ እቃዎች በዲክላራሲዮን ቁጥር ሲ-12003 ወደ ሀገር ውስጥ ያስገባ ሲሆን በተራ ቁጥር 10,14እና 21 ለተጠቀሱት እቃዎች የተሰጠው ዋጋ ትክክል ባለመሆኑ ለተቋሙ ቅሬታዱን ያቀረበኩ ቢሆንም ዋጋው ያልተሻሻለ በመሆኑ ጉባኤው ዋጋው የተጋነነ ነው በማለት በተቋሙ የተሰጠው ዋጋ ውድቅ ሊደረግልኝ ይገባል ሲል አቅርቧል።

ጉባኤውም ቅሬታውን እንደመረመረው መልስ ሰጭ የዋጋ ትመናውን ያደረገው በዋጋ ጥናት ላይ እና ተቋሙ ባለው የዋጋ ትመና ዳታ ቤዝ ላይ ተመስርቶ ሲሆን ይግባኝ ባይም ለተቋሙ ባቀረበው አቤቱታ መሰረት በተራ ቁጥር 14 ለተጠቀሱት sony car speaker ለተባሉ እቃዎች ወጄ ኋላ በማስላት ዘዴ ቀረጥና ታክሱ የተሰላ መሆኑን ልንገነዘብ ችለናል። በሌላ በኩል ለእቃዎቹ የተሰጠው ተመን በጥቅል ስማቸው ላይ ተመስርቶ

በመሆኑ የተጋነነ ዋጋ ተተምኖብናል፤ እቃዎቹ እያንዳንዳቸው ተለይተው መታየት አለባቸው፤ ለምሳሌ sony car speaker የተለያዩ አይነት ናቸው፤ በሴንቲ ሜትር ይለያያሉ max Mixer የሚለውም በchannel ይለያያል። ቻናላቸውም ሴንቲ ሜትራቸውም የተለያየ ነው። ዋጋቸውም የተለያያ በመሆኑም የተሰጠው የዋጋ ተመን ተገቢ አይደለም የሚል ቅሬታ ያቀረበ ሲሆን ከቀረበው ማስረጃ መረዳት እንደቻልነው ይግባኝ ባይ እንደገለፀው እቃዎቹን በሴንቲ ሜትር እና በቻናል ለያይቶ ያላቀረበ ሲሆን መልስ ሰጪም ይግባኝ ባይ ባቀረበለት የእቃዉ አይነት መሰረት ሁሉንም ቻናሎች እና የሴንቲ ሜትር ልዩነቶች ባከተተ መልኩ የገበያ ጥናት አድርጎ ዋጋ ተምኗል። የገበያ ጥናት አድርጎ ዋጋ የመተመን ስልጣን ለመልስ ሰጭ የተሰጠው በመሆኑ በህግ አግባብ የተፈፀመ መሆኑን ተገንዝበናል። ይግባኝ ባይም በጠቅላላው ዋጋው የተጋነነ ነው የሚል ክርክር አነሳ እንጂ ክርክሩን በማስረጃ አስደግፎ አላቀረበም። በተራ ቁጥር 12 እና 21 ላይ የተጠቀሱትን አስመልክቶ ትክክለኛ ዋጋቸው በዳታ ቤዝ የተገኘ በመሆኑ ክርክር የሚነሳበት ሆኖ አላገኘነም። በመሆኑም መልስ ሰጪ ይግባኝ ባይ ለተቋሙ በቀረበው አቤቱታ መሰረት በተወሰኑ እቃዎች ላይ የዋጋ ማሻሻል ያደረገለት በመሆኑ የዋጋ ትመናው ይግባኝ ባይ ለመልስ ሰጪ ባቀረበው የዕቃ አይነት ላይ ተመስርቶ የዋጋ ጥናት በማድረግ እና ይግባኝ ባይ ለመልስ ሰጭ ባቀረበው የዕቃ መግለጫ /description/ ላይ ተመስርቶ የተወሰነና በተራ ቁጥር 14 እና 21 ላይ የተመለከቱትን በተመለከተ ደግሞ ዋጋቸው በዳታ ቤዝ ላይ የተገኘ በመሆኑ እና ክርክር የሚነሳበት ባለመሆኑ መልስ ሰጪ የሰጠው ውሳኔ ተገቢ ነው በማለት ውሳኔውን አፅንተናል።

ይህ ውሣኔ ዛሬ ሚ 5 ሰኞ 2007 ዓ.ም ..... ዓ/ም በጉባኤ አባላቱ ተፈርሞ ለግራ ቀኙ ተሰራጭ ወገኖች ተሰጠ።

አቶ መሉጌታ አያሌው

አቶ በሰጠ አህመድ

አቶ ዮሴፍ ዓለሙ

አቶ ሁንልኝ ጥጋቡ

Case - 6

ታህሣሥ 22 ቀን 2005 ዓ/ም
የመዝገብ ቁጥር ከሰ - 761
1ኛ ችሎት

በገቢ ግብር አዋጅ ቁጥር 286/94 አንቀጽ 115 መሠረት ስለሚወሰነው ግብር ይግባኝ ለማየት ለተሰየሙ :-

የግብር ይግባኝ ሰሚ ጉባኤ አባላት ::

1. አቶ ዳዊት ተሾመ ..... ሰብሳቢ
2. .. ዳልካ ደበላ ..... አባል
3. .. ዝናቡ ታደሰ ....
4. .. አክሎግ ደምሴ ....
5. .. ሙላቱ ገቢሣ ....

ይግባኝ ባይ፣ .... አቶ ለገሠ ደበላ

ይግባኝ ባይ አልቀረበም::

መልስ ሰጭ፣ : ..... የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን

ዐ/ሕግ ወ/ሪት ኤልሣቤጥ ኃ/ማርያም ቀረቡ ::

የይግባኝ ባይ የሥራ አይነት ፣ ..... አስመጪ

የግብሩ አይነት ፣ ..... የጉምሩክ ቀረጥና ታክስ

ይግባኝ ባይ አቶ ለገሠ ደበላ መስከረም 24 ቀን 2005 ዓ/ም ባቀረበው አቤቱታ በአዲስ አበባ ቂርቆስ ክ/ከተማ ወረዳ 21 የቤት ቁጥር 286/24 በሆነው በአስመጪነት የንግድ ስራ በቁጥር 501.10/487/17 በ2/12/2004 ዓ/ም በደረሰው የጉምሩክ ቀረጥና ታክስ ውሣኔ ቅር በመሰኘት ቅሬታውን እንደሚከተለው አቅርቧል::

1. <u>የይግባኝ ባይ ቅሬታ፣</u>

ይግባኝ ባይ በቀጥታ ከአምራች ድርጅት ለመግዛት ኢ.ል.ሰ የከፈትኩት እ.ኤ.አ ጃንዋሪ 26/2011 ማለትም በ18/5/2003 ዓ/ም ሲሆን ፣ በዚህ ጊዜ በ12ኛ ሲዲ ዳታ ቤዝ ላይ የነበረው መቅረጫ ዋጋ 2.25 ዶላር ነው። የጉምሩክ ጉዳዮች አቤቱታ አጣሪ ቡድን በሰጠኝ ምላሽ ላይ ግዢ የፈፀምኩት 13ኛ ሲደ ሥራ ላይ በዋለበት ወቅት መሆኑን የገለፀ ቢሆንም ይህ ትክክል አይደለም። ግዢውን በፈፀምኩበት ወቅት የነበረው ሲዲ 12ኛ ሲሆን ዕቃው ጉምሩክ በደረሰበት ወቅት ግን የነበረው 13ኛ ሲዲ ነው።

ይግባኝ ባይ ኤየር ማትረሱን ልገዛ የቻልኩት በ12ኛ ሲዲ ላይ የሰፈረው መቅረጫ ዋጋ 2.25 ዶላር እንደሚያዋጣኝ በመገመት ሲሆን በዚሁ መሠረት ጥር 18 ቀን 2003 ዓ/ም አል.ሲ. የከፈትኩበትን ሶስት ገጽ የባንክ ማስረጃ ከዘሁ ጋር አያይዤ አቅርቤአለሁ። 13ኛ ሲዲ ተግባራዊ የሆነው ከጥር 23 ቀን 2003 ዓ/ም ጀምሮ በመሆኑ ይህም አል.ሲ. ከከፈትኩት በኃላ በመሆኑን ያረጋገጣል።

በመሆኑም የአዲስ አበባ ንግድ ዕቃዎች ማ/ቅ/ጽ/ቤት ያስመጣሁት ኤየር ማትረስ በ13ኛ ሲዲ መሠረት በ15 ዶላር ዶላር መቀረጥ እንደሌለበት አምኖ ዕቃውን በገዛሁበት በ5.60 ዶላር ብቻ እንዲቀረጥ በማድረግ ግንቦት 12 ቀን 2003 ዓ/ም 366,295.15 ብር አስከፍሎኝ በ02/10/2003 ዓ/ም ዕቃውን አስረክቦኛል። ይህንኑ ቀረጥ የከፈልኩበትንና ከጉምሩክ መጋዘን ወጪ ያደረኩበትን ሰነድ ከዚሁ ጋር አያይዤ አቅርቤአለሁ።

በሌላ በኩል ደግሞ ይግባኝ ባይ ያስመጣሁት ኤየር ማትረስና በ15 ዶላር ይቀረጣል ተብሎ 13ኛ ሲዲ ላይ የሰፈረው ኤየር ማትረስ ፊዕሞ የተለያየ ስፔሲፊኬሽን ያላቸው ናቸው። ማለትም ይግባኝ ባይ ያስመጣሁት ኤየር ማትረስ ጠቅላላ ክብደቱ 1.8 ኪ.ግ ሲሆን ፣ በኮርሜሻል ኢንቮይሱ ላይ እንደተመለከተው ዓይነቱ ከዚህ ቀጥሉ የሰፈረው ነው። AIR MATTRESS, SELF INFLATING UPPER 190T POLYESTER WITH PVC COATED, FREE STYLE 190X60X3.8 CM 21 KG/M^2

ከዚህ በላይ እንደተመለተው ይግባኝ ባይ ያቀረብኩት ኤየር ማትረስ አጠቃቀም በእጅ የሚነፋ ማኑዋል ሲሆን ፣ በ15 ዶላር ይቀረጣል የተባለው ግን ሰልፊ ኢንፍሌቲንግ በመሆኑ አውቶማቲክ ነው። በተጨማሪም በዕቃ ስሪትም ሆነ በክብደት ይግባኝ ባይ

ያስመጣሁት ኤየር ማትረስ በዝቅተኛ ደረጃ ላይ የሚገኝ በመሆኑ በገዛሁበት በ5.60 ዶላር ብቻ ሊቀረጥብኝ ይገባል በማለት ላቀረብኩት አቤቱታ ቢ.ሚመለከት አጣሪ ቡድኑ ምንም ዓይነት ምላሽ ላይሰጥኝ አልፎታል። በመሆኑም ይግባኝ ባይ ያስመጣሁት ኤየር ማትረስ ናሙና ቃሊቲ ጉምሩክ የሚገኝ ስለሆነ ሁለቱም አይነት ኤየር ማትረሶች ቀርበው እንዲታዩልኝ ፣

አቤቱታ አጣሪ ቡድኑ በሰጠኝ ምላሽ ላይ እንደ ማስረጃ አድርጎ ያቀረበው በኢንተርኔት የዋጋ መጃ መሠረት ለኢትዮጵያ ገበያ የቀረቡ ተመሳሳይ ዕቃዎች ዋጋ ከ23-29 ዶላር መሆኑን ገልያልኛል። ይሁን እንጂ የተባለው ማስረጃ የቀረጥና ታክስ መገመቻ ወይም መቅረጫ ዋጋ ሆኖ በጉምሩክ መመሪያ ተደግፎ ያልቀረበ ስለሆነ እንደ ማስረጃ ሊጠቀስ የሚገባው አይደለም።

የጉምሩክ ጉዳዮች አጣሪ ቡድን በ12ኛ ሲዲ ላይ የነበረው መቅረጫ ዋጋ 2.50 ዶላር እንደ ነበረ ገልጾ ፣ ይሁን እንጂ በ13ኛ ሲዲ መሠረት በ15 ዶላር መቀረጡ የተጋነነ እንዳልሆነ ተረጋግጧል በማለት የሰጠው ውሳኔ ምንም ያህል ፍትሃዊ እንዳልሆነ በግልጽ የሚያመለክት ነው። የአንድ ዕቃ መቅረጫ ዋጋ በአንድ ጊዜ ከ2.25 ወይም 2.50 ወደ 15 ዶላር ከፍ ሲልና በ666% እንዲያድግ ሲደረግ ምንም ያህል የተጋነነ ሲሆን እንደሚችል ጉባኤው ሊገነዘበው የሚችለው ነው።

በመሆኑም ይግባኝ ባይ በቀጥታ ከአምራች ድርጅት ገዝቼ ያስመጣሁት ኤየር ማትረስ በገዛሁበት ዋጋ በ5.60 ዶላር ተቀርጦ ብር 366,295.15 ከፋዬ በ03/10/2003 ዓ/ም ተረክቤ ከወጣና ዕቃውን ከሸጥኩ ከረኸርም ወራት በኋላ ቀረጡ 15 ዶላር ሆኖ እንደሚስተካከል የተገለፅልኝ ሲሆን ፣ የቀረጥ ለውጡ እኔን የሚመለከተኝ እንዳልሆነ ማስረጃዎቼን ለማ/ቅ/ጽ/ቤቱ ያቀረብኩ ቢሆንም የውጭ ምንዛሪ እንዳይፈቀድልኝ ለብሔራዊ ባንክ በተባራ ደብዳቤ ስለተገደድኩ ልዩነቱን ከፋዩ አቤቱታዬን ለማቅረብ መረጫለሁ። ማለትም የአዲስ አበባ ንግድ ዕቃዎች ማ/ቅ/ጽ/ቤት ብዛቱ 5000 ለሆነ ኤየር ማትረስ ቀደም ሲል ካስከፈለኝ ብር 366,295.15 ሌላ ብር 538,964.35 በድምሩ ብር 905,259.50 ቀረጥና ታክስ አስከፍሎኛል።

ይግባኝ ባይ ባቀረብኳቸው ማስረጃዎች መሠረት ያላአግባብ በተጨማሪ የከፈልኩት ብር 538,964.35 ቀረጥና ታክስ ተመላሽ እንዲደረግልኝ በማለት አመልክተዋል።

2. ይግባኝ ባይ መስከረም 24 ቀን 2005 ቀን 2005 ዓ/ም ጽፎ ላቀረበው የይግባኝ አቤቱታ የመልስ ሰጭ መ/ቤት በጥቅምት 19 ቀን 2005 ዓ/ም ጽፎ ያቀረበው መልስ ላይ የሚከተለውን የሕግና የፍሬ ነገር ክርክር አቅርቧል።

ይ/ባይ በመ/ሰጪ የተሰጠኝ ዋጋ አግባብ ስላልሆነ ባቀረብኩት ኢንቮይስ ዋጋ መሰረት ሊወሰንልኝ ይገባል ሲል አቤቱታ አቅርቧል። ሆኖም ይ/ባይ እቃውን ከመ/ሰጪ መ/ቤት ከመረከቡ በፊት የኢንቮይስ ዋጋ ተቀባይነት ያለማግኘቱን ተቀብሎ እቃው እንዲለቀቅለት እና በቀጣይ በመ/ሰጪ የሚሰጠውን ዋጋ ለመቀበል በቀን 30/09/03 ዓ.ም በቁጥር ለ/ደ/ኢ/040 በዋና ሥ/አስኪያጁ በተፃፈ ደብዳቤ አማካኝነት የውዴታ ግዴታ ገብቶ በዚሁ መሰረት እንዲስተናገድ ተደርጓል። በመሆኑም ይ/ባይ የኢንቮይሱ ዋጋ ውድቅ መደረጉን ተቀብሎ ለእቃው በመ/ሰጪ የሚሰጠውን ዋጋ ለመቀበል ግዴታ የገባ በመሆኑ ይህንን ስምምነት በመተው በመ/ሰጪ የተሰጠውን ዋጋ በመቃወም ባቀረብኩት ዋጋ መሰረት ልስተናገድ ይገባል ሲል አቤቱታ የሚያቀርብበት የህግ አግባብ የሌለ በመሆኑ የተከበረው ጉባኤ ውድቅ በማድረግ እንዲያሰናብተን በትህትና እናመለክታለን።

ኤል.ሲ የከፈትኩትና ግዢውን የፈፀምኩት 12ኛ ሲድ በስራ ላይ በነበረበት ወቅት በመሆኑ እና 13ኛ ሲድ ተግባራዊ የሆነው ኤል.ሲ ከከፈትኩ በሃላ ጥር 23 ቀን 2003 ዓ.ም በመሆኑ ተግባራዊ ሊሆንብኝ አይገባም ያለውን በተመለከተ፡- በመሰረቱ 13ኛ ሲዲ በስራ ላይ የዋለው ጥር 23 ቀን 2003 ዓ.ም ሲሆን፤ ይ/ባይ በማስረጃ ዝርዝር ተ.ቁ 6 ካቀረበው ኢንቮይስ ላይ በግልፅ እንደሚታየው እቃውን የገዛው 13ኛ ሲዲ በስራ ላይ ከዋለ ከኃላ ሚያዚያ 7 ቀን 2003 ዓ.ም ነው። ከዚህም በተጨማሪ በጉምሩክ ህግ መሰረት ወደ ሀገር ለሚገቡ እቃዎች የሚከፈለው ቀረጥና ታክስ የሚወሰነው የጉምሩክ ዲክላራሲዮን ተቀባይነት ባገኘበት ቀን ነው። በማስረጃ ዝርዝራችን ተ.ቁ 3 ላይ ካቀረብነው ሰነድ እንደሚታየው የይ/ባይ ዲክላራሲዮን ተቀባይነት ያገኘው ግንቦት 24 ቀን 2003 ዓ.ም ማለትም 13ኛ ሲዲ በስራ ላይ ከዋለ ከአራት ወራት በኃላ ነው። በመሆኑም

የይ/ባይ ዕቃ የተገዛው፤ ወደ ሀገር ውስጥ የገባውም ሆነ ዲክላራሲዮኑ ተቀባይነት ያገኘው 13ኛ ሲዲ በስራ ላይ ከዋለ በኃላ በሆነበት ሁኔታ ስለሆነ (ይህንንም ይ/ባይ እራሱ በአቤቱታው ተ.ቁ 1 ላይ አምኗል) ይ/ባይ እቃውን ለመግዛት ኤል.ሲ የከፈትኩት 13ኛ ሲዲ በስራ ላይ ከመዋሉ በፊት በመሆኑ በእዚሁ ሲዲ መሰረት ዋጋው ሊወሰን አይገባም የሚለው የህግ መሰረት የሌለው ክርክር በመሆኑ ውድቅ እንዲደረግልን እናመለክታለን፡፡

የኤር ማትረሱ ቀረጥና ታክስ በኢንቮይስ ላይ ባለው 5.60 ዶላር ዋጋ ሊሰላ ይገባል ያለውን በተመለከተ፡- በጉምሩክ ዋጋ ክምችት፣ አዘገጃጀት፣ ስርጭትና አጠቃቀም መመሪያ መሰረት በአስመጪው የቀረበው ዋጋ በዋጋ መረጃ ክምችቱ ውስጥ ከሚገኘው አንድ አይነት ወይም ተመሳሳይ ዕቃዎች ማነፃፀሪያ ዋጋ ከ5 በመቶ የበለጠ አንሶ ሲገኝ ዋጋው በዋጋ መረጃ ክምችቱ መሰረት እንደሚወሰን ተደንግጓል፡፡ የይ/ባይ የስጋት ደረጃ ከፍተኛ ወይም /ቀይ/ ሲሆን፤ ያስመጣው ኤር ማትረስ ዋጋ በማለት ያሳወቀው 5.60 ዶላር እቃው ተገዝቶ ወደ ሀገር በገባበት ወቅት በስራ ላይ በነበረው 13ኛ ሲዲ ላይ የነበረው ተመሳሳይ ኤር ማትረስ ዋጋ 15 ዶላር ነበር፡፡ በመሆኑም በይ/ባይ የቀረበው ዋጋ ከመረጃ ዋጋው 5 በመቶ በላይ አንሶ የቀረበ በመሆኑ፤ እንዲሁም ይ/ባይ በወቅቱ ያቀረበው ዋጋ ትክክለኛ አለመሆኑን አምኖ በቀጣይ በመ/ሰጪ የሚሰጠውን ዋጋ ለመቀበል በፅሁፍ ያመነ በመሆኑ በጉምሩክ አዋጅ ድንጋጌዎች መሰረት ያቀረበው ዋጋ ውድቅ ተደርጓል፡፡ ከዚህ በተጨማሪም ይ/ባይ አሁን ዋጋው ትክክለኛ ነው ይበል እንጂ መ/ሰጪ በአለም ገበያ ተመሳሳይ እቃዎች የተሸጡበትን ዋጋ እንዲሁም ከአንድ አይነት ሀገር በተመሳሳይ ወይም ተቀራራቢ ወቅት ወደ ሀገር የገቡ ተመሳሳይ እቃዎችን ዋጋ አንባር ይ/ባይ ዋጋውን ዝቅ አድርጎ ያቀረበ መሆኑን በተጨባጭ ያረጋገጠ በመሆኑ ባቀረብኩት ዋጋ መሰረት ሊሰላ ይገባል የሚለው ተቀባይነት የለውም፡፡

ያስመጣሁት ኤር ማትረስ በዝቅተኛ ደረጃ ላይ ያለ በመሆኑ እና ከ13ኛ ሲዲ ላይ ካለው ኤር ማትረስ ጋር የተለያየ አስፔስፍኬሽን ያለው በመሆኑ ባቀረብኩት ዋጋ መሰረት ሊወሰንልኝ ይገባል ያለውን በተመለከተ፡- በጉምሩክ ዋጋ አተማመን ስርአት መሰረት የግብይት ዋጋ ተቀባይነት ባላገኘ ጊዜ እና የእቃውን ዋጋ በአንድ አይነት እቃዎች ዋጋ

ለመወሰን ካልተቻለ፣ መ/ሰጪ በተመሳሳይ እቃዎች ዋጋ መሰረት መወሰን ይችላል። በተያዘውም ጉዳይም የይ/ባይን እቃ ዋጋ ለመወሰን ወደ ሀገር የገቡ አንድ አይነት እቃዎች ዋጋ ለማግኘት ያልተቻለ በመሆኑ በዳታ ቤዝ ላይ ባለው በተመሳሳይ ሀገር በተመረተ፣ በሚሰጠው አገልግሎትም ሆነ በባህሪው ተመሳሳይ በሆነ ኤየር ማትረስና ዋጋ መሰረት ተወስኗል። ከዚህም በተጨማሪ ይ/ባይ ያስመጣሁት ኤር ማትረስ ዝቅተኛ ነው ይበል እንጂ የይ/ባይ ኤር ማትረስ የተሰራበት ማቴሪያል በሲዲው ላይ ያለው ኤር ማትረስ ከተሰራበት ማቴሪያል የበለጠ ውድ በመሆኑ በዋጋ እረገድ የሚጨምር ነው። በመሆኑም የይ/ባይ ዋጋ የተወሰነው በህጉ አግባብ በተመሳሳይ እቃ ዋጋ፣ እንዲያውም ያነሰ ዋጋ ባለው እቃ መሰረት በመሆኑ ሊነቀፍ የሚችልበት አግባብ የለም።

በ12ኛ ሲዲ ላይ የነበረው 2.25 ዶላር ዋጋ በ13ኛ ሲዲ ወደ 15 ዶላር ከፍ ማለቱ የተጋነነ ነው ያለውን በተመለከተ፡- መ/ሰጪ መ/ቤት ከተሰጠው ስልጣን አንዱ በየጊዜው የገበያ ጥናት በማድረግ የእቃዎችን ዋጋ መወሰን ነው። በዚሁም መሰረት መ/ሰጪ ባደረገው አሰም አቀፍና አገራዊ የገበያ ሁኔታ መረጃ በመውሰድ ጭምር (እንዲሁም ሰረጅም ጊዜ ዋጋው ሳይለወጥ የቆየ በመሆኑ ለአብነት ያህል በ11ኛ ሲዲ ላይም ዋጋው 2.25 ነበር) በ12ኛ ሲዲ ላይ ያለው የኤር ማትርስ ዋጋ ከገበያ ዋጋው በእጅጉ ያነሰ መሆኑን ባገኘው መረጃ መሰረት ዋጋው ወደ 15 ዶላር እንዲሻሻል አድርጓል። በመሆኑም የገበያ ዋጋው እድገት ባሳየበት ሁኔታ ይ/ባይ 12ኛ ሲዲ ላይ ያለው ዋጋ ዝቅተኛ ነበር በሚል ብቻ ዋጋው ተጋኗል የሚለው አግባብነት የሌለው ነው።

ቅ/ዕ/ቤቱ የእቃው ዋጋ በ13ኛው ሲዲ መሰረት መቀረጥ እንደሌለበት አምኖ በኢንቮይስ ዋጋ መሰረት አስተናግዶኝ ያለውን በተመለከተ፡- በጉምሩክ ህግ መሰረት መ/ሰጪ የጉምሩክ ስነ ስርአት አጠናቀው የተለቀቁ እቃዎችን የጉምሩክ ዲ/ዮን ትክክለኛነት ለማረጋገጥ ዲ/ዮኑ ተቀባይበት ካገኘበት ቀን ጀምሮ እስከ አስር አመት ጊዜ ውስጥ መመርመር የሚችልና ሳይከፈል የቀረ ቀረጥና ታክስ መኖሩን ካረጋገጠ መጠየቅ የሚችል መሆኑን ተደንግጓል። በመሆኑም ይ/ባይ ባቀረበው ዋጋ መሰረት ተስተናግዶ እቃው መለቀቁ መ/ሰጪ መ/ቤት ዋጋው ትክክለኛ መሆኑን መቀበሉን የሚያረጋግጥም ሆነ አሳማባብ ሳይከፈል የቀረ ቀረጥና ታክስ መኖሩን ካረጋገጠ ከመጠየቅ የሚያግደው

አይደለም። ከዚህም በተጨማሪ እቃው የተሰቀቀው ይ/ባይ በተጨማሪ የሚፈለግበት ቀረጥና ታክስ ባለመኖሩ ሳይሆን የእቃው ትክክለኛ ዋጋ በመልስ ሰጪ እስኪወሰን ድረስ መጠበቅ ስላልፈለገ በማንኛውም ጊዜ የሚጠየቀው ተጨማሪ ቀረጥና ታክስ ካለ ለመክፈል የውዴታ ግዴታ በመግባቱ ነው። በዚሁ መሰረትም ለጊዜው ይግባኝ ባይ ባሳወቀው ዋጋ መሰረት ተስተናግዶ እቃው ቢለቀቅም ከላይ ባስረዳነው አግባብ በይግባኝ ባይ የቀረበው ዋጋ ትክክለኛ አለመሆኑን በይግባኝ ባይ የታመነና በህጉ መሰረትም የተረጋገጠ በመሆኑ በተደረገው የድህረ እቃ አወጣጥ ምርመራ መሰረት ለእቃው ዋጋ ተወስኖ በዚሁ በተስተካከለው ዋጋ መሰረት በልዩነት የሚፈለግበትን ቀረጥና ታክስ እንዲከፍል ውሳኔ መሰጠቱ በአግባቡ ነው።

በመሆኑም የተከበረው ጉባኤ የይ/ባይ እቃ ዋጋ በህጉ አግባብ የተሰራ በመሆኑ አቤቱታውን ውድቅ በማድረግና የመ/ሰጪን ውሳኔ በማፅናት እንዲያሰናብተን በትህትና እናመለክታለን።

ጉባኤው አግራ ቀኙ ተከራካሪ ወገኖች የቀረቡዋቸውን የቃልና የጽሁፍ ክርክር መሠረት በማድረግና አግባብ ካላቸው የሕግ ድንጋጌ ጋር አገናዝቦ የሚከተለውን ውሣኔ ሰጥቷል።

ው ሣ ኔ።

ይግባኝ ባይ ከውጭ ያስመጣሁት በአየር የሚሞላ ፍራሽ የገዛሁበት ዋጋ 5.60 USD/piece ሆኖ እያለ በ13ኛ ሲዲ ላይ የነበረው ዋጋ 15 USD/piece ነው በሚል የግብይት ሰነዱ ውድቅ መደረጉ ባግባቡ አይደለም የተሰጠው ዋጋም ካስገባሁት ዕቃ አይነት ባህሪ አንፃር ተመሳሳይ ባለመሆኑ እንዲስተካከል ሲል ባቀረበው አቤቱታ የመልስ ሰጭው ይግባኝ ባይ ያስመጣው ዕቃ የስጋት ደረጃው ከፍተኛ መሆን እና ከሲዲ ዋጋ ላይ ከተቀመጠው ሲታይ ልዩነቱ ከፍተኛ በመሆኑ ግብይቱን ውድቅ በማድረግ በሲዲ ላይ በተገኘው የተመሳሳይ ዕቃ ዋጋ መሰረት መተመኑ በአግባቡ ነው ሲል ተከራክሯል።
በቀረበው ጉዳይ የግብይት ሰነዱ ውድቅ ማድረግ እና ውድቅ ከተደረገ በኃላ በዋጋ ትመና አካሔዱን በሚመለከት ጉባኤው ተወይይቷል።

በቀረበው ጉዳይ የይግባኝ ባይ የግብይት ሰነድ ውድቅ መደረግን በሚመለከት ከመልስ ሰጭ የቀረበው ነጥብ የስጋት ደረጃ እና የዋጋ ልዩነት እንዲሆን ጉባኤው ተረድቷል።
የስጋት ደረጃን በሚመለከት የግብይት ሒደቱን በመመርመር ረገድ የሚደረግ ጥንቃቄን የሚያመለክት እንደሆነ ለማየት ተችሏል። የዋጋ ልዩነትን መሠረት በማድረግ የግብይት ሰነዱ ውድቅ ማድረግን በሚመለከት በቀረበው ጉዳይ የይግባኝ ባይ የግብይት ሰነድ ዋጋ ዝቅተኛ እና አጠራጣሪ መሆኑ በተጨማሪ መግለጫ ወይም መረጃ ሳይረጋገጥ በዋጋ ክምችት ላይ ባለው ዋጋ በማነፃፀር ውድቅ መደረጉን በሚመለከት ጉባኤው በሕጉ የተቀመጠውን መስፈርት ያልተከተለ በመሆኑ የመልስ ሰጭን የግብይት ሰነድ ውድቅ ማድረግ አልተቀበለውም።

በመሆኑም በጉምሩክ አዋጅ ቁጥር 622/2001 አንቀጽ 42 መሠረት የቀረበ ዋጋ ፣ የዕቃ ዝርዝር ወይም ደጋፊ ሰነድ ላይ ጥርጣሬ ያለ እንደሆነ በይግባኝ ባይ ወይም ወደ አገር የገባው ዕቃ ወኪል ያለ እንደሆነ ከወኪሉ ተጨማሪ መግለጫ እና መረጃ ዋጋን በሚመለከት በመሰብሰብ መወሰን እንዳለበት የተደነገገ ከመሆኑ አንፃር በማየት ጉባኤው የዋጋ ውድቅ ማድረግና ትመና ሒደቱን በሚመለከት በሕጉ በተደነገገው መሠረት የዋጋ ሁኔታ የሚያሳይ ተጨማሪ ማስረጃ ከይግባኝ ባይ በማስቀረብ መርምሮ እንዲወሰን ጉባኤው በሙሉ ድምፅ ወስኗል።

ይህ ውሣኔ ዛሬ 08 ጥር 2005 ዓ/ም በጉባኤ አባላቱ ተፈርሞ ለግራ ቀኙ ተከራካሪ ወገኖች ተሰጠ።

አቶ ዳዊት ተሾመ

አቶ ዳልካ ደበላ

አቶ ዝናቡ ጉዲሶ

አቶ አክሎግ ደምሴ

አቶ መላኩ ገዚሣ

ነሐሴ 6 ቀን 2005 ዓ/ም
የመዝገብ ቁጥር ከለ - 762
1ኛ ችሎት

ርዕይ - 7

በገቢ ግብር አዋጅ ቁጥር 286/94 አንቀጽ 115 መሠረት ስለሚወሰነው ግብር ይግባኝ ለማየት ለተሰየመ ፡-

የግብር ይግባኝ ሰሚ ጉባኤ አባላት ፡፡

1. አቶ መላቱ ገቢሣ ..... ሰብሳቢ
2. .. አክሎግ ደምሴ ..... አባል
3. .. ዝናቡ ታደሰ ....
4. .. ሁንልኝ ጥጋቡ ....

ይግባኝ ባይ ፣ ..... ለገሠ ደበላ

አቶ ለገሠ ደበላ የድርጅቱ ሥራ አስኪያጅ ቀረቡ::

መልስ ሰጭ፣ : . . . . . የኢትዮጵያ ገቢዎችና ጉምሩክ ባለሥልጣን

ዐ/ሕግ ወ/ሪት ኤልሣቤጥ ኃ/ማርያም ቀረቡ ፡፡

የይግባኝ ባይ የሥራ አይነት ፣ ..... አስመጪ

የግብሩ አይነት ፣ ..... የጉምሩክ ቀረጥ ታክስ

የመጀመሪያ ደረጃ መቃወሚያ

በመልስ ሰጪ ባቀረበው መልስ የመጀመሪያ መቃወሚያ የቀረበ ሲሆን በዚህም፡-

በጉምሩክ አዋጅ 622/01 አንቀፅ 87 በቅሬታ አቀራረብና አፈታት ስርአት ስር በተደነገገው መሰረት በእቃዎች ስሪት አገር ፣ አሰያየም ፣ ዋጋ የታሪፍ ልክ ወይም አመዳደብ ላይ ተቃውሞ ያለው አስመጪ ተቃውሞውን በማስመዝገብ ቅሬታውን በ15 ቀናት ውስጥ በባለስልጣኑ ለተቋቋመው አቤቱታ አጣሪ ቡድን ከዚያም ለግብር ይግባኝ ሰሚ ጉባኤ በመቀጠልም ለከፍተኛ ፍ/ቤት በየደረጃው ማቅረብ ይኖርበታል ። ሆኖም ይግባኝ ባይ ጉዳዩ በዋጋ ላይ አለመስማማት እንደመሆኑ የአዋጁን የቅሬታ አፈታት ስርአት በመከተል ቅሬታውን

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በመጀመሪያ በባለስልጣኑ በተቋቋመው የጉምሩክ ጉዳዮች አቤቱታ አጣሪ ቡድን ማቅረብ ሲገባው በቀጥታ ለዚህ ጉባኤ አቅርቧል ። የፌዴራል ግብር ይግባኝ ሰሚ ጉባኤ ከጉምሩክ ስነ ስርአት አፈፃፀም ጋር በተያያዘ የሚነሱ ቅሬታዎችን ማየት የሚችለው በቀጥታ ስልጣኑ ሳይሆን በአዋጁ ቁጥር 622/2001 ለማስፈፀም በወጣው የገቢዎችና ጉምሩክ ባለሥልጣን የጉምሩክ ጉዳዮች አቤቱታ አጣሪ ቡድን ማቋቋሚያና የአሰራር መመሪያ ቁጥር 45/2002 አንቀፅ 23 መሠረት በአቤቱታ አጣሪ ቡድን በታዩና ውሳኔ በተሰጠባቸው ጉዳዮች ላይ በይግባኝ ሰሚ ስልጣኑ ስለሆነ ይግባኝ ባይ በአጣሪ ቡድኑ የተሰጣቸው ውሳኔ ሳይኖር በቀጥታ ያቀረቡት ይግባኝ የአዋጁን የቅሬታ አቀራረብና አፈታት ስነ ስርአት ያልተከተለ ስለሆነ በቀጥታ ጉዳዩን የማየት ስልጣን የለኝም በማለት መዝገቡን ዘግቶ እንዲያሰናብኝ በማለት አመልክተዋል።

ጉባኤው በጽሁፍ የቀረበውን የመጀመሪያ ደረጃ መቃሚያ ክርክር መሠረት በማድረግና አግባብ ካላቸው የሕግ ድንጋጌ ጋር አገናዝቦ የሚከተለውን ብይን ሰጥቷል።

ብ ይ ን።

ግንቦት 16 ቀን 2001 ዓ.ም ይግባኝ ባይ አቶ ለገሰ ደበላ ከውጭ አገር ላስመጣሁት 5000 ኤያር ማትረስ መልስ ሰጪ አግባብነት የሌለው ቀረጥና ታክስ ወስኖብኝ ያስከፈለኝ በመሆኑ ጉባኤው ጉዳዩን ከመረመረ በላይ የግብሩን መጠን እንደገና አይቶ እንዲስተካከል በማለት ውሳኔ የሰጠና መልስ ሰጪ መ/ቤትም ይ/ባይ ያቀረበው መረጃ እርስ በእርሱ የሚጋጭ ነው በሚል ዕቃውን ፣ የተሸጠበትን ዋጋ ፣ በማየት ይህን ያህል ከተሸጠ መግዣ ዋጋው ይህን ያህል ነው በማለት ከ15.00 ዶላር ወደ 14.32 ዶላር ዝቅ በማድረግ ወስኖብኛል በማለት አቤቱታ ለጉባኤው አቅርበዋል።

የመልስ ሰጭ መ/ቤት በመጀመሪያው ደረጃ መቃወሚያው በጉምሩክ አዋጅ 622/01 አንቀፅ 87 በቅሬታ አቀራረብና አፈታት ስርአት ስር በተደነገገው መሰረት በእቃዎች ስሪት አገር ፣ አሰያየም ፣ ዋጋ የታሪፍ ልክ ወይም አመዳደብ ላይ ተቃዉሞ ያለው አስመጪ ተቃውሞውን በማስመዝገብ ቅሬታውን በ15 ቀናት ውስጥ በባለስልጣኑ መ/ቤት ለተቋቋመው አቤቱታ አጣሪ ቡድን ከዚያም እንደ ቅደም ተከተሉ ለግብር ይግባኝ ሰሚ ጉባኤ ሊያቀርብ ይገባል እንጂ

በቀጥታ ለጉባኤው ማቅረብ ስለማይገባው መዝገቡን ዘግቶ እንዲያሰናብተን በማለት ተቃውሞውን አቅርቦል።

ይግባኝ ባይም በመልስ መልሳቸው ላይ ቅሬታቸውን በቀጥታ ለጉባኤው ያቀረቡት ከዚህ በፊት ለአቤቱታ አጣሪ ቀርቦለት ከሰጠው ውሣኔ የተለየ ውሣኔ አላገኝም በማለት በዚህ ምክንያት ለአቤቱታ አጣሪ ኮሚቴ ቅሬታቸውን እንዳላቀረቡ ገልፀዋል።

ጉባኤው የግራ ቀኙን ክርክር ከመረመረ በላይ በአዋጅ ቁጥር 622/01 ዓ.ም ባወጣው የጉምሩክ ቀረጥ አንቀፅ 87 አንቀፅ ንዑስ /2/ መሠረት የቅሬታ አቀራረብና አፈታት ስርዓት ላይ በንዑስ አንቀፅ /1/ መሠረት ቀረጡን በተቃውሞ የከፈለ ሰው ክፍያ በፈፀመ በ15 ቀናት ውስጥ ቅሬታውን በባለስልጣኑ ለተቋቋመው አቤቱታ አጣሪ ቡድን ማቅረብ እንደሚችል በግልፅ በህጉ ላይ የተቀመጠ ስለሆነ እና መልስ ሰጭ መ/ቤትም ለይግባኝ ባይ አንድ ኤየር ማትርና በ14.32 ዶላር ከፍለው እንዲስተናገዱ በመወሰን ያስታወቃቸው ስለሆነ ይህ ደግሞ አዲስ ውሳኔ በመሆኑ ቢይግባኝ ሲስተናገድ የሚገባው ከላይ ከፍ ብሎ በተጠቀሰው ህግ መሰረት በባለስልጣኑ አቤቱታ አጣሪ ቡድን አቤቱታው ከቀረበ እና ውሳኔ ከተሰጠው በኃላ መሆን ሲገባው በቀጥታ አቤቱታው ለጉባኤው መቅረቡ ጉባኤው ጉዳዩን ማየት የሚያስችለው ሆኖ አልተገኘም ::

በመሆኑም መ/ሰጪ ባቀረበው ተቃውሞ መሰረት ይ/ባ አቤቱታቸው ለአቤቱታን አጣሪ ቡድኑ እንዲያቀርቡ ሲል ጉባኤው ብይን ሰጥቷል ::

ይህ ውሣኔ ዛሬ 06 መስከረም 2006 ..... ዓ/ም በጉባኤ አባላቱ ተፈርሞ ለግራ ቀኙ ወገኖች ተሰጥቷል።

አቶ ሙሳቱ ገቢሣ

አቶ አክሉግ ደምሴ

ዘናቢ ታደለ

አቶ ሀንልኝ ጥጋቡ

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