

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/489/2016

Dated: 18th October 2016

**Order in Revision No. 256/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.818/2016 dated 03-03-2016**

- i. *This copy is granted free of charge for the private use of the person to whom it is issued.*
- ii. *An appeal against this Order-in-Revision lies to the Appellate Tribunal, Customs having jurisdiction, under section 194-A of the Customs Act, 1969, within stipulated period as prescribed under the law. An appeal should bear a court fee stamp of Rs.1000/- (Rupees one thousand) only as prescribed under schedule-II item 22 of the Court Fee Act, 1870 and must be accompanied by a copy of this Order.*
- iii. *An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.*
- iv. *If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.*



M/s Pepsi Cola International

PETITIONER

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date of Hearing

16-06-2016 & 27-06-2016

For the Petitioners

Mr. Akhter Ali Naeem, Advocate

For the Respondent

Mr. Safdar Abbas Principal Appraiser

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.818/2016 dated 03-03-2016 issued under section 25-A of the Customs Act, 1969 inter alia, on the following grounds:

2. That this revision application is being filed against Valuation Ruling No.818/2016 dated 03.03.2016 issued by Director of Customs Valuation in terms of section 25A of the Customs Act, 1969.
3. That this revision application is specifically directed against the valuation determined against S.No.11 of the valuation ruling relating to cereal foods (other brand).
4. That facts of the case in brief are that the applicant imported a consignment of 'Quacker' brand Oatmeal cereal from M/s Altratec SD. BHD, Malaysia vide commercial invoice No. 24219 dated 12.03.2016 against Import Collection Notice (DA) and filed goods declaration vide GD

No. KAPW-HC-185629 dated 01.04.2016 on payment of leviable duty and taxes to the tune of Rs.1,922,711/-. However, the assessment was completed after applying the impugned valuation ruling dated 03.03.2016 and duty and taxes were assessed to the tune of Rs. 2,592,591/-. The applicant immediately obtained copy of the impugned ruling.

5. That perusal of the valuation ruling dated 18.03.2016 revealed that consequent upon judgment of the Honorable Sindh High Court in C. P. No.5317/2015 dated 12.01.2015, an exercise was carried out to re-determine the valuation of cereal foods. However, essentially the re-determination was with regard to valuation of 'Weetabix' brand whole wheat cereal which was previously determined in the category 'Other Brands' of cereals made from corn, cocoa etc. and was not aimed at determination of value of cereal foods under a non-specific heading 'other brands' for all other brands not specified in the ruling, regardless of their composition, ingredients etc. The impugned valuation ruling also states that section 25(1) relating to transactional value method has not been applied as the required information under the law was not available.

6. That applicant was however, not associated during this exercise and valuation of 'Quacker' brand 'quick cooking oatmeal' was not specifically determined vide the impugned valuation ruling.

7. That this revision petition is being filed by the applicant being an importer of the above referred 'Quaker' brand Oatmeal cereal.

8. That as information with regard to 'transaction value' in terms of section 25(1) of the Customs Act, 1969 is available, the goods imported by the applicant were required to be assessed accordingly. Furthermore, under reference cereal consist of Oat and therefore, value of the cereals determined vide ruling dated 03.03.2016 cannot be applied. In the facts and circumstances of the case judgment of the Honourable Sindh High Court dated 12.01.2015 is applicable on its all fours.

9. That, however, unfortunately, neither the importer nor any other importer of Oatmeal cereal were associated with this exercise.

10. That due to this factor alone a wrong, incorrect and illegal valuation has been determined.

11. That valuation ruling to the extent of S.No.11 i.e. valuation of Cereal Foods (Other Brand) is without due process of law, illegal, void ab initio, exparte and needs to be reviewed immediately in view of the following:-

GROUND

12. That the value declared by the importer in the subject case were the correct transactional prices.

13. That since the applicants were not associated with the so called exercise for valuation of 'Cereal Foods', the Valuation Ruling is against and in violation of Article 10A of the Constitution

of Islamic Republic of Pakistan, 1973. The applicants are entitled to the due process which has not been undertaken in the subject case. The valuation arrived at is, therefore, patently illegal, void ab initio and against the fundamental rights and rules of fairness, justice and equity.

14. That facts and circumstances of the importer are akin to the facts before the Honorable Sindh High Court in C. P. No. 5317/2015; therefore, applicant is entitled for similar treatment. Attention in this regard is invited to the judgment of Apex court in the case of *Hameed Akhtar Niazi Vs. Secretary Establishment* reported as 1996 SCMR 1185. The apex court held in the following terms;

"The principle of good governance is that where a Tribunal/Court decides a particular question, another person who is similarly placed has to be accorded the benefit of that order/judgment and should not be made to approach the Court/Tribunal to get similar relief"

15. That serial No. 11 of the Table to valuation Ruling dated 03.03 .2016 is nonspecific and is otherwise contrary to preamble of the Table as contained in para 6 which reads as follows:

"6. Customs Values for Cereal Foods: Cereal Foods hereinafter specified shall be assessed to duty/taxes at the Customs Values given in the following table."



As serial No. 11 does not specify any brand, the same is therefore not applicable on imports of the applicant.

16. That there is no justification or rational for assessing cereals of Oatmeal under serial No. 11 cereal foods (other brands). Valuation under serial No. 11 specifying 'Origin' as 'Other Origin' makes the valuation further non-specific.

17. That application of provisions of section 25(1) to the extent of transactional values only to the extent of values higher than the valuation ruling in terms of para 7 of the ruling is arbitrary and discriminatory. Provisions of section 25(1) needs to be made applicable across the board wherever applicable.

18. That an incorrect and non-specific decision was arrived at due to the fact that an ex-parte decision has been made by the Director Valuation.

19. That an ex-parte decision which is against the principle of *audi alteram partem* cannot be legally allowed to sustain. The decision must be made after associating all the relevant stakeholders.

PRAYER

20. In view of the foregoing, it is prayed:-

- i) that the impugned valuation ruling may kindly be held to be illegal, ex-parte, void, ab initio and may be immediately suspended to the extent of S.No.11 of the ruling relating to Cereal Foods (Other Brand);

- ii) that declared / transaction values must be acknowledged across the board without any discrimination;
- iii) that a fresh determination of valuation may kindly be made in consultation with the applicant and all other stake-holders;
- iv) that meanwhile the pending consignments may kindly be ordered to be released on the basis of statutory provisions as contained in section 25 of the Act; and
- v) that any other relief deemed appropriate in the facts and circumstances of the case may also be considered and allowed.

21. The respondent department was asked to furnish comments to the arguments submitted by the petitioner in the case. Parawise comments on the petition are given as under:

22. The customs values of Cereal Foods were determined under Section 25-A of the Customs Act, 1969 vide valuation ruling No. 511/2012 dated 21-12-2012 and valuation ruling No. 522/2012 dated 28-12-2012. M/s Global Marketing Corporation, an importer of Cereal Foods, filed a Constitution Petition No. 5317/2015 in the Honorable High Court Sindh, Karachi, against the determination of customs value of Cereal Foods which was determined vide Valuation Ruling No.511/2012 dated 21-12-2012. The Honorable High Court of Sindh, Karachi vide orders No. CP- D-5317/ 2015 dated January 12, 2015 directed to re-determine values after hearing the petitioner's point of view. Consequently, an exercise for determination of customs values of Cereal Foods was initiated afresh under section 25-A of the Customs Act, 1969. Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods. The appellant's i.e. M/s Global Marketing Corporation appear for meetings and stated that they import Cereal Brand "Weetabix", a whole wheat cereal for which the customs values was previously determined on the base of price is set similar to that of cereal made from Corn, Cocoa, etc. they also stated that Wheetabix is the only brand in the world which produced cereal from whole wheat and therefore a separate customs valuation to determined for cereal made from whole wheat. In the meetings the representatives of FPCC&I, KCC&I including representatives of MCC, Appraisalment, (West) & (East) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value. Valuation methods given in Section 25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. Transaction Value Method under sub-section (1) of Section 25 of the Customs Act, 1969 was found inapplicable because required information under the law was not available. Identical and similar goods valuation methods provided in sub-sections (5) and (6) of Section 25 of the Customs Act, 1969 provided some reference values but due to wide variations the same could not be relied upon. In the sequential order this office conducted a market inquiry in terms of sub-section (7) of Section 25 of the Customs Act, 1969. Stakeholders meeting were also conducted for their input and feedback. On-line values were also checked. Consequently customs values of Cereal Foods are determined under sub-section (7) of Section 25 of the Customs Act, 1969.



Reply Objections / Comments

23. In reply to the contents of the above referred review petition the, parawise comments on behalf of the Respondents are submitted as under:-

Para (1&2) Need no comments.

Para (3) Valuation Rulings are issued under section 25A of the Customs Act, 1969 by the Director Valuation who has the authority to determine the value of under above said section 25A. As per prevailing valuation ruling issued by the competent authority and is applicable under section 25-A(4) of Customs Act, 1969. The subject consignment is liable to assessed as per determined customs values.

Para (4) The Honorable High Court of Sindh, Karachi vide orders No.CP-D-5317/2015 dated January12, 2015 directed to re-determine values after hearing the petitioner's point of view. Consequently an exercise for determination of customs values of Cereal Foods was initiated afresh under section 25-A of the Customs Act, 1969. Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods.

Para (5) Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods. In the meetings the representatives of FPCC&I, KCC&I, including representatives of MCC, Appraisalment, (West) & (East) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value and Valuation ruling issued.

Para (6) Need no comments.

Para (7) The customs value of Cereal Foods was determined under section 25A of the Customs Act, 1969. The import data of identical and similar goods in terms of Section 25(5) & (6) of the Act was examined. Local market inquiry, under Section 25(7) of the Customs Act, 1969, was resorted and accordingly the customs value of the imported Cereal Foods was determined vide Valuation Ruling No.818/2016 issued on 03-03-2016. As per prevailing Valuation Ruling issued by the competent authority and is applicable under section 25 A (4) of Customs Act, 1969.

Para (8) Denied. Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods. In the meetings the representatives of FPCC&I, KCC&I, including representatives of MCC, Appraisalment, (West) & (East) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value and Valuation ruling issued.



Para (9&10) The subjects consignments are liable to assess as per Valuation Ruling No. 818/2016 issued on 03-03-2016 is issued under Section, 25A of the Customs Act, 1969, and the value so determined therein shall be applicable custom value for the assessment purposes as per Section 25A(2) of the Customs Act, 1969. The valuation ruling in terms of Section 25A(4) ruling is applicable until rescinded or revised by the competed authority.

24. G R O U N D S

Para (i) The Valuation Ruling No.818/2016 issued on 03-03-2016 of imported Cereal Food is determined in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. The values were determined after proper investigation/enquiry on merit and therefore Ruling was issued the subject consignment is liable to assessed as per determined value.

Para (ii)to(iv) Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods. In the meetings the representatives of FPCC&I, KCC&I, including representatives of MCC, Appraisement, (West) & (East) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value and Valuation ruling issued.



Para (v) Valuation Ruling No.818/2016 issued on 03-03-2016 of imported Cereal Foods under Section 25A of the Customs Act, 1969, was issued after giving due opportunity of hearing to all the stakeholders including importers' Association and conducting meaningful exercise and Valuation Ruling No. 818/2016 dated 03-03-2016 for Cereal Foods was issued on merits.

Para (vi)to(viii) Denied. In response to the under reference para, it is submitted that the Valuation Ruling No. 818/2016 dated 03-03-2016, has correctly and lawfully been issued in terms of Section 25-A of the Customs Act, 1969. It is neither malafide nor discriminatory as assessments are being made in terms of the same throughout the country. Meetings with stakeholders including importers, and representatives of trade bodies were held on 01.02.2016 & 18-02-2016 to discuss the current international prices of Cereal Foods. In the meetings the representatives of FPCC&I, KCC&I, including representatives of MCC, Appraisement, (West) & (East) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value and Valuation ruling issued.

P R A Y E R

25. The Valuation Ruling No.818/2016 issued on 03-03-2016 of imported Cereal Food issued under Section 25A of the Customs Act, 1969 is as per law. In presence of valid valuation ruling issued by the competent authority for uniform applicable, there exists no justification to accept the transaction value for assessment. In view of the above fact & legal position the review is not maintainable and is prayed to be dismissed.

ORDER

26. I have examined the case record as well as verbal and written arguments put forth by the petitioner and the respondent department. Mr. Akhtar Ali Naeem Advocate appeared on 27-06-2016. He said that price of (Oat Meal) was determined at higher side, as the prices were determined at Serial No.11 for "Cereal Foods" (other brands) of Malaysia and Indonesia origins at US\$ 2.15/Kg. The applicant stated that whole sale price is Rs.245/kg whereas they are importing at US\$ 1.59/kg. The appellant was required to give bank contract, the defence counsel did not give contract or any other documents. He added that neither they are opening L/C nor have bank contract registered between M/s Pepsi & Foreign supplier. The defence counsel said that he is concerned only with the whole sale price which is Rs.245/kg. He was asked as to why price should not be increased to Rs.280/400 grams, but the defence counsel requested that their value may be determined separately and it may not be included in other category and he said that he does not have any sale contract.

27. The respondent department submitted that the valuation ruling was correctly and lawfully issued after giving hearing opportunity to all the stakeholders / importers. All the participants were given their input on their respective brand. Fresh market survey was conducted and customs values were worked out by work back method under Section 25(7) of the Customs Act, 1969 to know the correctness and genuinity of the transaction value.

28. Keeping in view of the above, I have inferred that customs values have been determined on reasonable and sound basis after giving due opportunity to the importers. The customs values of Quaker Cooking Oatmeal are determined as under:-

S.No.	Description of goods	Origin	Customs values US\$ /kg
1	Quaker Oatmeal 400 gram	Indonesia	1.95
2	Quaker Oatmeal 500 gram	UK	2.10

(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Pepsi Cola International (Pvt.) Limited,
Through Mr. Akhtar Ali Advocate High Court
M/s Akhtar Ali & Associates, 3rd Floor, LCCI Building,
Near China Chowk, Lahore Ph: 36282432-3

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/
(North) Islamabad/ (Central) Lahore.