

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/516/2016

19666

20/10/2016

Order in Revision No. 259/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.827/2016 dated 06-04-2016

- 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 Trade International

PETITIONER

VERSUS

Date(s) of hearing

31-05-2016

For the Petitioners

Rana Zahid Hussain Advocate

For the Respondent

Mr. Abdul Majeed, Assistant Director
Mr. Nasir Mahmood VO

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation ruling No.827/2016 dated 06-04-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following facts and grounds:

2. FACTS

1. That the petitioner is a regular indenter/importer of paper & paper board from various worldwide sources. The petitioner mainly imports a sizeable quantity of un-coated offset paper for writing, printing and photo copying from Japan against valid proforma invoices, commercial invoices and letters of credit. The petitioner possesses excellent track record of tax compliance without a single blemish.



2. That during the past few years the petitioner has imported hundreds of tons of said paper from Japan on actual transaction value, the price actually paid for the goods when sold for export to Pakistan. All the consignments were, however, cleared by the customs authorities in terms of valuation ruling No. 577/2013 dated 06.09.2013 now superseded by the impugned ruling.
3. That the learned Director has issued impugned valuation ruling under section 25(9) of the Customs Act, 1969 without properly appreciating the current evidences produced before him. The petitioner is aggrieved by the value of Japan origin un-coated offset paper for writing, printing, and photo copying which has been fixed @ US\$ 110/PMT as against actual transaction value of US\$ 700-715/PMT (about US\$ 70/PMT is higher than actual value) and is also highly aggrieved by the value.
4. Hence, the impugned valuation ruling is assailed on the following grounds, namely :-

3. GROUND S

- A. That the impugned valuation ruling, purportedly issued in terms of section 25 (9) of the Customs Act 1969, is since appealable before the Director General Valuation under section 25-D of the Act, therefore, the valuation ruling in this backdrop has attained the status of an order, decision and direction, as such, in legal sense the respondent Director Valuation was under legal obligation to pass a speaking and judicious order for determination of the value for each type of paper, after giving reasons as to why the transaction value is not acceptable and as to why the same is being determined at the value given against each country separately. However, after a plain reading of the impugned valuation ruling, it demonstrates that hopelessly it completely lacks of judicious application of mind in a transparent manner and does not depicts unfair application of relevant law empowering the respondent Director to determine value of imported items. Therefore, the impugned ruling is highly defective, discriminatory, illegal and ultra vires of section 25(1) (5), (6), (7), (8) and (9) of the Customs Act, 1969.
- B. That in view of above position the impugned valuation ruling has been passed in violation of section 24-A of the General Clauses Act which binds every authority, office or person in the following manner:-

"Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

- (2) The authority, office or person making any order or issuing any direction under the power conferred by or under any enactment shall,



C. That the respondent Director has incorrectly suggested in the ruling that transaction value cannot be accepted because "it is generally known to all that majority of the ~~value of the goods is manipulated/fabricated~~ . Learned Director here in the case of appellant failed to appreciate that appellant imports said paper through banking channel and as such all commercial documents are sent/received through bank only. The concept of transaction value was adopted by the Pakistan to protect the transaction value, the price actually paid for the goods when exported to a country. Hopelessly, the respondent Director in complete defiance of section 25 (1) of the Customs Act 1969 has fixed artificial and arbitrary value of both types of paper at relatively higher value without examining the commercial invoices and bank transaction.

That on a bare perusal of above para it reveals that the respondent Director has claimed that valuation methods stipulated in sub-section (5) & (6) of section 25

two sub-sections were also skipped on lame excuse by uttering Un-specified and vague statement of facts. Actually the declared values of said two items, assailed by the petitioner, were showing current trend of value in the country of export. Since the respondent was bent upon to fix higher value than the prevailing he skipped both sub-sections. On a minute perusal of these two sections it will be seen that these two sub-sections lay down a very fair method of valuation which is not followed by the respondent Director. In order to understand the scheme of valuation provided in sub-section (5) & (6) it is imperative to reproduce these sub-sections, hence, these are reproduced as under:

Sub-section (5) Transaction Value of Identical Goods.

identical goods sold for export to Pakistan and exported at or about the same time as the goods being valued.

- a) In applying the provisions of this sub-section, the transaction value of the identical goods in a sale at the same commercial level and substantially the same quantity as the goods being valued shall be used to determine the customs value of imported goods.
- b) Where no sale referred to in clause (a) is found, the transaction value of identical goods sold at a different commercial level and / or in different quantities, adjusted to take account of differences attributable to commercial level and / or to quantity shall be used, provided that such adjustments can be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustment, whether the adjustment leads to an increase or decrease in the value.
- c) Where the costs and charges referred to in clause (a) of sub-section (2) are included in the transaction value of identical goods, an adjustment shall be made to take account of significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and modes of transport.
- d) If, in applying the provisions of this sub-section, there are two or more transaction values of identical goods that meet all the requirements of this sub-section and clauses (b), (d), (e) and (f) of sub-section (13), the customs value of the imported goods shall be the lowest such transaction value, adjusted as necessary in accordance with clauses (b) and (c).

Sub-section (6):- TRANSACTION VALUE OF SIMILAR GOODS.

If the customs value of the imported goods cannot be determined under the provisions of sub-section (5), it shall, subject to clauses (C), (d) (e) and (f) of sub-section (13) and rules, be the transaction value of similar goods sold for export to Pakistan and exported at or about the same time as the goods being valued, and the provisions of clauses (a) , (b), (c) and (d) of sub-section (5) shall, mutatis mutandis, also apply in respect of similar goods.

- E. That kind attention of this Honorable authority is also invited forwards an-other vital point i.e. the manner in which sub-section (7), deductive value method, after conducting market inquiry has been un-lawfully discarded, dropped and not followed. In fact as a result of market inquiry the transaction value declared by the petitioner was found absolutely fair, correct and just. Similarly sub-section (8) has also been dropped and the impugned ruling has been issued in terms of sub-section (9) of section 25. However, while applying sub-section (9) of the learned Director has completely failed to keep in mind that sub-section (9) does not provide an independent mechanism like



previous methods but sub-section (9), in fact, directs the authority to re-visit all previous methods (sub-sections) and determine the value on the basis of a value derived from among the methods of valuation set out in sub-sections (1), (5), (6), (7) and (8), that, when applied in a flexible manner.

- F. That when the learned Director has pronounced all sub-sections non applicable on various grounds then under which method the value has been determined in the impugned valuation ruling, it not clear anywhere. This simply means that the value has been fixed by applying executive authority based on whims and suppositions.
- G. That in a judgment, passed in CP NO. 2673 of 2009 and other connected petitions, the Honorable Sindh High Court while granting upon section 25 and 25A has laid down, in para 22, a golden principal as under;

"The principal method of determining customs value is, and must remain, section 25. Section 25 A is not intended to be the substitute for section 25, nor can it be resorted to in such manner and with such frequency that it marginalizes the latter provision. It is merely an adjunct to section 25, to be resorted to in appropriate circumstances and for an appropriate period. In our view, in enacting section 25A, the legislative intent was not, nor could be for the reasons stated above, to create a statutory bypass to the valuation agreement. While the issuance of valuation rulings under section 25A cannot be regarded as limited only to those cases where the department concludes that there is group under invoicing, the section also cannot be used for the wholesale determination of customs values. Such an approach would, in effect, transform the determination permissible under section 25A to an impermissible fixation of value. This is an important point which must be kept in mind, and may be relevant in appropriate cases when considering the vires of a valuation ruling."

- H. That the guidelines laid down by the Honorable court are binding on each subordinate authority. In view of above stated authority of the Honorable Sindh High Court respondent Director is not authorized to use Section 25A for the wholesale determination of customs value of paper imported from worldwide sources without following the mandate of section 25 of the Act. It is evident from the values fixed in the impugned ruling, it has clearly emerged that the judgment of the Honorable Court has been grossly violated.
- I. That the Director General Valuation while deciding a review application No. 115/2008 dated 16.02.2009 on the somewhat identical issue has laid down a golden principal based on the true spirit of GATT Code of valuation in the following words:

- "5. Rival parties have been heard and the case record examined.
While provisionally assessing the value of the goods, the concerning Collectorate (s) have ignored the direction of the Honorable Supreme Court



of Pakistan in the case of M/s Zymotic Diagnostic International CP No 434-K/2005, wherein it has clearly been held that invoice price of an importer should not be rejected as a matter of routine. The operative para of ruling of Supreme Court is as under:-

"Section 25 of the Customs Act; authorize an officer of the customs department to reject the declared value of a consignment imported in Pakistan and to assess the same. Section 25 lays down various modes in which the officials of the customs department are required to proceed in determining or assessing the value of the consignment after rejecting the declared value. However, for rejecting or refusing to accept the value declared by a consignee in respect of imported goods the concerned officer is required to give cogent, plausible and satisfactory reasons. For non-acceptance of the declared value and rejection thereof which cannot proceed on the whims or desire of the officer of the customs."

- J. That the Petitioner craves leave of this authority to urge further grounds at the time of hearing of review application.

4. PRAYER

In view of above submissions it is respectfully prayed that the impugned valuation ruling may graciously please be quashed and transaction value (US\$ 700-715) of the paper in question (Japan origin un-coated offset paper for writing, printing and copying) may be restored to protect the legitimate and bona fide business and trade of the petitioner.

5. The respondent department was asked to furnish comments to the arguments submitted by the petitioner. Para-wise comments on the petition are given as under:

6. Parawise Comments

Para-(1) : Need no comments being introduction of the petitioners.

Para-(2) : Need no comments being brief of imports.

Para-(3) : Denied. It is submitted that the said ruling was issued after properly examining all the evidential material and data on record and after exhausting all the Valuation methods as envisaged under section 25 of the Customs Act, 1969. Further, it is submitted that the value of different origins of coated art paper/card and light weight coated paper have already been decreased about 4 to 6% in valuation ruling No.827/2016, dated 06-04-2016 as compared to old valuation ruling No.577/2013, dated 06-09-2013. But the petitioner is still aggrieved with the current valuation ruling No.827/2016, dated 06-04-2016 which is almost 6% less than the value given in previous valuation ruling No.577/2013, dated 06-09-2013. Furthermore, it is pertinent to mention here that concerned Paper



Merchants Association also agreed on the said customs values during the course of meeting held in this office.

Para-(4) : The under reference petition is not maintainable on the following grounds.

7. G R O U N D S

- A. Not Agreed. It is submitted that the said valuation ruling itself is an speaking one which clearly mentions about valuation methods from sub-section (1) to sub-section (9) of section 25 of the Customs Act, 1969, separately used for the determination of Customs values in the same. The said ruling has been issued in terms of section 25(9) and reasons for rejection of previous valuation methods has also been clearly mentioned therein. It is not discriminatory rather it is based on justification as the same is almost 6% less than the value mentioned in previous valuation ruling. As such the same has lawfully and correctly been issued for uniform assessment all over the country.
- B. Not Agreed. It is submitted that the said valuation ruling itself is an speaking one which clearly mentions about valuation methods from sub-section (1) to sub-section (9) of section 25 of the Customs Act, 1969, separately used for the determination of customs values in the same. The said ruling has been issued in terms of section 25(9) and reasons for rejection of previous valuation methods has also been clearly mentioned therein. As such the same is justified and has been issued as per law
- C. Denied. It is submitted that the respondent has correctly observed that usually in most cases the import invoices presented before the custom have been found to be manipulated /fabricated. All the factors surrounding the import of under reference item were taken into consideration while determining the customs values. Moreover, the customs values have not been fixed rather notified in terms of section 25A of the Customs Act, 1969, as the concept of fixation of value no more exists in the Customs Act. As such the same ha lawfully and justifiably been issued.
- D. Not agreed. It is submitted that it is not correct that the provisions of sub-section (5) & (6) of section 25 of the Customs Act, 1969, were not exhausted. Para-3 of the valuation ruling clearly reveals that said sub-sections were properly exhausted although some reference values were found but could not be solely relied upon "due to absence of absolute demonstrable evidence of qualities, commercial levels etc. and also it was observed that importers usually provide misleading descriptions while declaring their goods, other types and varieties of similar goods to avoid the valuation ruling".
- E. Not agreed. It is submitted that the provision of sub-section (7) of section 25 of the Customs Act, 1969, was also exhausted, however, it was observed that determination of customs value cannot be based solely upon this method. As far sub-section (8) of section 25 is concerned, the same also could not be applied due to the reason that "the conversion costs from constituent materials and allied expenses, laborer charges etc. in the country of export were not available. As such the reliance was made upon next valuation method i.e. in



terms of sub-section 25(9) of the Customs Act, 1969 and after examining, evaluating and analyzing all the information gathered, the under reference valuation ruling was issued accordingly.

- F. Not agreed. It is submitted that the contention of petitioners in this para itself is contradictory to their Para-E in which petitioner himself admits that "sub-section (9) means to re-visit all previous methods (sub-sections) and determine the value on the basis of a value derived from among the methods of valuation set out in sub-section (1), (5) (6), (7) & (3), that, when applied in flexible manner". In fact that is the case with the under reference valuation ruling as the impugned ruling has been based on above formula as mentioned by the petitioner. But is astonishing and not understandable that petitioners are asking as to under which method the ruling has been issued.
- G. It is submitted that the citation of CP No.2673 of 2009 is not relevant at this stage as CPLAs have been filed against the said judgement before the Honourable Supreme Court of Pakistan and the case is prejudice before the Honourable Supreme Court of Pakistan.
- H. Not agreed. It is submitted that it is not correct that the Director (Customs Valuation) cannot issue valuation ruling because the Director has been empowered and authorized to issue the same in terms of section 25-A of the Customs Act, 1969, as such no judgement has been violated by the respondent.
- I. In this regard it is submitted that the respondent has given the reasons for rejection of transaction value in terms of section 25(1) of the Customs Act, 1969, and whole process of determining the customs values and reasons for rejection of previous valuation methods has been mentioned before adopting next valuation method as visible from reading of said valuation ruling. As such no any direction of superior courts have been ignored in this case.
- J. Relates to the time of hearing of review application.

8. PRAYER

In view of above factual position and submissions, it is respectfully prayed that the impugned valuation ruling may be maintained and allowed to hold field for uniform assessment purpose all over the country and the under reference revision petition may be dismissed and rejected accordingly.

ORDER

9. I have gone through the record of the case as well as written and verbal submissions of the petitioners and Respondent Department.
10. The petitioner has contested that the impugned Valuation Ruling has been issued under Section 25(9) of the Customs Act, 1969, without proper appreciating the current evidences produced. The value of Japan origin Uncoated Offset Paper for writing, printing & photocopying fixed at US\$ 770/MT against the actual transaction value of US\$ 700-715/MT.




11. The impugned Valuation Ruling is highly defective, discriminatory, illegal and ultra vires of Section 25(1), (5), (6), (7), (8) & (9) of the Customs Act, 1969, and violation of Section 24-A of the General Clauses Act. Customs values determined by ignoring the guidelines laid down by the Honourable High Court and are binding on each subordinate authority.

12. In the written and verbal submissions, Respondent Department stated that in the previous Valuation Ruling the value of different origins of Uncoated Offset paper for writing printing of Photocopying have already been decreased about 4% to 6% in the existing Valuation Ruling. Paper Merchants Association also agreed during the meeting held in the Department.

13. Petitioners M/s Trade International, Lahore import documents reflects that it is a related party transaction. Self import made by the petitioner being indenter and percentage of selling commission involved is a part of value which was not declared and added in the transaction made in terms of Sub-Section (2) clause (b),(i) of Section 25 of the Customs Act, 1969. The prayer of the petitioners for the acceptance of transaction value concealing the facts indicate that the petitioner has not come with clean hands.

14. In view of above, the petitioner fails on merits and is rejected accordingly.


(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Trade International
Rana Zahid Hussain Adv. ✓
M/s G. A. Jahangir & Associates
Customs, Federal Excise & Sales Tax Consultants,
Suit No.216, Clifton Centre, Block-5, Clifton, Karachi-75600.
Phone: 35875424 & 35838530 Fax: 35370657

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20.10.16

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/ (North) Islamabad/ (Central) Lahore.
3. Collector, MCC Appraisement (East)/ Appraisement (West)/Port M. Bin Qasim/ Preventive, Karachi.
4. Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/ Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. Director, Customs Valuation, Karachi/Lahore.
6. Asstt. Director (Review), Karachi.
7. All Deputy/Assistant Directors (Valuation)
8. Guard File.