

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V) Val.Rev/531/2016

Dated: 11 August, 2016

**Order in Revision No. 230/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.842/2016 dated 03-05-2016**

- 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 Global Trading, Lahore

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

14-06-2016 & 21-06-2016

For the Petitioners

Rana Zahid Hussain Adv.
Mr. Rizwan Ahsan

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.842/2016 dated 03-05-2016 issued under section 25-A of the Customs Act, 1969.



2. Through this revision petition the petitioner above named intends to assail Valuation Ruling No.842/2016 dated 02.05.2016 whereby the respondent Director Valuation has determined C&F Customs value of potato frozen french fries of USA, European Union, India and all other origins by superseding previous Valuation Ruling No.542/2013 dated 07.03.2013. The petitioner is aggrieved by the value of European Union origin fixed at the rate of US \$ 0.80/kg.

3. Salient points to challenge the legality and validity of C&F Customs values so determined in the impugned Valuation Ruling are highlighted in the following facts and grounds.

4. That the petitioner regularly imports potato frozen french fries, Lambweston brand, directly from the manufacturer Lamb Weston/Meijerv of Netherlands. During the past six months (prior to issuance of the impugned Valuation Ruling), the petitioner has imported about two hundred metric tons of the french fries from Netherlands at the rate of US\$ 0.55/kg, the true

transaction value. However, the assessment was finalized at the rate of US\$ 0.85/kg as per superseded Valuation Ruling No.542/2013 dated 07.03.2013. This is a direct evidence of transaction value (US\$ 0.55/kg) of Netherlands origin potato frozen french fries.

5. That despite having direct evidence in hand at the rate of US \$ 0.55/kg, the impugned valuation ruling No.842/2016 dated 02.05.2016 has been issued by the respondent Director under sub-section (9) of Section 25 of the Customs Act, 1969 whereby the C&F customs value of Netherlands origin frozen french fries is fixed at the rate of US\$ 0.80/kg. The customs value of other origins as well as Netherlands has been determined as under:

TABLE
Customs Value for Frozen Potato French Fries

S.No.	Description of Goods	PCT Code	Proposed PCT for WEOC	Origin	Customs value (C & F) US\$/ kg
1.	Potato Frozen French Fries Lambweston JR, Simplot, Aviko	2004.1000	2004.1000.10000	U.S.A	0.90
		2004.1000	2004.1000.1100	European Union	0.80
2.	Potato Frozen French Fries Mc Cain Brand	2004.1000	2004.1000.1200	India	0.70
3.	Potato Frozen French Fries Other Brand	2004.1000	2004.1000.1300	All other origin	0.70

6. That the petitioner is aggrieved by the customs value of European Union origin Frozen French Fries which covers Netherlands also. The customs value of this origin has been fixed at the rate of US\$ 0.80/kg as against actual transaction value i.e. US\$ 0.55/kg. The learned Director failed to fix a fair, normal and correct customs value, within the parameters stipulated in Section 25 of the Customs Act 1969, totally discrediting actual transaction value (US\$ 0.55/kg), hence, the same is assailed on the following grounds namely :-

Grounds:

7. That the petitioner during the last six months has imported about 200 metric tons of potato frozen french fries directly from the manufacturer Lambweston Netherlands at the rate of US\$ 0.55/kg which is the fair and correct transaction value i.e the price actually paid for the said goods when sold for export to Pakistan. The petitioner, during the process of determination of impugned customs value, produced all related evidences, GDs, sales tax invoices and details of expenditures involved in the storage of frozen french fries after clearance from the seaport. However, the learned Director failed to appreciate and consider these vital evidences and fixed the C&F Customs value of potato frozen french fries at the rate of US\$ 0.80/kg. By doing so, the petitioner has been discriminated and is compelled to pay additional duties on the differential value of US \$ 0.25/kg. The Lambweston brand USA origin french fries has been fixed at the rate of US \$ 0.90/kg. During the meeting, it was agreed by the importers of french fries of USA origin and the learned Director that Netherlands origin is 25% cheaper than that of USA. By applying this formula, the value of french fries of Netherlands origin had to be at or about US\$ 0.65/kg. However, the learned Director in deviation of agreed formula fixed Netherlands origin french fries (Lambweston) at the rate of US\$ 0.80/kg along with other European origins. Hence,



the impugned Valuation Ruling No.842/2016 dated 02.05.2016 to the extent of petitioner's goods, is totally against the provisions of 25(1) of the Customs Act, 1969 and rules.

8. That the respondent Director in Para 3 of the ruling has incorrectly suggested that transaction value cannot be accepted because "it is generally known to all that majority of the invoices produced at import stage are manipulated/fabricated". Learned Director here in the case of appellant failed to appreciate that appellant imports frozen french fries from the manufacturer directly. All the invoices are issued by the manufacturer himself which is direct evidence of transaction value. Learned Director cannot reject the commercial invoices on the basis of suppositions or conjectures and by applying a general perception. He has to examine invoices in each case and thereafter record discrepancies he observed.

9. That kind attention of this honorable authority is invited towards remaining portion of Para 3 of the impugned ruling which is highly self contradictory and exposes many inherent legal deficiencies contained therein. On a bare perusal of para 3, it reveals that the respondent Director has observed that valuation methods stipulated in sub-section (5) & (6) of section 25 of the Act were also examined during the process. However, these two sub-sections were also skipped by him on lame excuse by uttering un-specified and vague statement of facts. Actually the value declared in all the Goods Declarations cleared in the last six months, is US\$ 0.55/kg i.e. the actual transaction value in the country of export, Netherlands. This value is also reflected in the electronic data of the customs. The commercial levels and descriptions along with all other import details are still appearing in the customs record. And if the learned Director had any cogent reason to reject the transaction value then he was duty bound to follow methods stipulated in sub-section (5) & (6) of section 25 of the Customs Act, 1969. Since the respondent was bent upon to fix higher value than the prevailing one, he skipped both sub-sections, (5) & (6) of section 25 of the Customs Act, 1969, on the basis of unjust and un-reasonable grounds.

10. That on a minute perusal of these two sub-sections, it will be seen that both sub-sections lay down a very fair method of valuation for application of transaction value of identical and similar goods. 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;

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

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

Sub-section (6): Transaction Value of Similar Goods.

- a) 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 values, and the provisions of clauses (a) , (b), (c) and (d) of sub-section (5) shall, mutatis mutandis, also apply in respect of similar goods.



Sub-Section (9):- Fall Back Method.-

a) If the customs value of the imported goods cannot be determined under sub-sections (1),(5),(6),(7) and (8), it shall, subject to the rules, be determined 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 to the extent necessary to arrive at a customs value.

b) That when learned Director has declared 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. Moreover, while applying methods enshrined in section 25 of the learned Director was also bound to apply corresponding rules to every sub-section. However, neither the methods prescribed in section 25 has been applied nor the rules were followed. Therefore, the impugned Ruling has been issued in complete defiance of Section 25 of the Customs Act, 1969 and rules framed there-under and needs to be rescinded forthwith.

(2) The authority, office or person making any order or issuing any direction under the power conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially."

However the impugned Ruling itself speaks loudly that the respondent Director has not acted fairly, reasonably, justly and for the advancement of the enactment stipulated in sub-sections (1), (5), (6), (7), (8) and (9) of section 25 of the Act.

c) That the petitioner craves leave of this authority to urge further grounds at the time of hearing of review application.

Prayer

13. In view of above submissions it is respectfully prayed that the impugned Valuation Ruling No.842/2016 dated 02.05.2016 to the extent of Netherlands (Lambweston) may graciously be quashed and transaction value (US\$ 0.55/kg) of the potato frozen french fries in question may be restored to protect the legitimate and bona fide business and trade of the petitioner. Any other relief this honorable authority deem fit under the circumstances of this case.



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

15. The customs values of potato frozen french fries were determined under section 25-A of the Customs Act, 1969 vide Valuation Ruling No. 542/2013 dated 07-03-2013. References were received from some importers for revision of valuation ruling as they claimed that international prices of potato frozen french fries were declining. Accordingly to determine the true value of potato frozen french fries in light of current prevailing prices in the international market, an exercise to determine the customs values of subject goods was under taken by this Directorate General. Valuation methods provided in section 25 of the Customs Act, 1969 were adopted and applied sequentially to address the valuation issue at hand. Transaction value method provided in

sub-section (1) of section 25 was found inapplicable because it is generally known to all that majority of invoices produced at import stage are manipulated / fabricated and hence the requisite information required under the law was not available to arrive at the correct transactional value. Identical and similar-goods valuation methods provided in sub-sections (5) & (6) of section 25 ibid were examined sequentially for applicability to determine Customs value of subject goods, this data provided some references however, it was found that the same 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 imports, as other types and verities of similar goods to avoid the valuation ruling. Information available was hence found inappropriate. In line with the statutory sequential order of section 25, this office then conducted a market enquiry using Deductive Value Method under sub-section (7) of the Section 25 of the Customs Act, 1969 but the gathered information could not be exclusively relied upon, Computed Value Method as provided in section 25 (8) could not be applied for valuation of the aforementioned goods as the cost of raw material under clause (a) and amount of profit and general expenses under clause (b) of section 25 (8) of the Act, in the country of export, could not be ascertained. Online values were also checked. All the information was analyzed and evaluated and sub-section (9) of Section 25 of the Customs Act, 1969, was applied to arrive at the assessable Customs values of potato frozen french fries. Meeting with stakeholders including importers, and representatives of trade bodies was held on 25.04.2016 to discuss the current international prices of the subject goods. The view point of all participants was heard in detail and considered to arrive at Customs value. The view point of all participants was heard in detail and considered to arrive at fair value of potato frozen french fries: potato frozen french fries, and Valuation Ruling No. 842/2016 dated 02-05-2016 issued under section 25-A of the Customs Act, 1969.

Parawise Comments

16. Para (1) & (2): For the determination of customs value of subject goods all the information was analyzed and evaluated and sub-section (9) of section 25 of the Customs Act, 1969, was applied to arrive at the assessable customs values or potato frozen french fries. Meeting with stakeholders including importers, and representatives of trade bodies was held on 25.04.2016 to discuss the current international prices of the subject goods. The view point of all participants was heard in detail and considered to arrive at customs value. The view point of all participants was heard in detail and considered to arrive at fair value of potato frozen french fries and Valuation Ruling No. 842/2016 dated 02-05-2016 was issued under section 25 A of the Customs Act, 1969.



Para (3): Denied. In order to ensure proper assessment of goods, the values of Potato Frozen French Fries was determined in accordance with law, after taking all the stakeholders on board. An opportunity of meeting was provided to stakeholders including petitioners which also attended by the petitioners. Importer M/s. MCR Pakistan (Private) Limited has also submitted invoice of Lambweston which were higher than the previous Valuation Ruling. Valuation Ruling was issued, within the parameter stipulated in section 25 the Customs Act, 1969.

Grounds

18. Para (A) to(C): Valuation methods provided in section 25 of the Customs Act, 1969 were adopted and applied sequentially to address the valuation issue at hand. Transaction value

method provided in sub-section (1) of section 25 was found inapplicable because it is generally known to all that majority of invoices produced at import stage are manipulated/ fabricated and hence the requisite information required under the law was not available to arrive at the correct transactional value. Identical and similar-goods valuation methods provided in sub-sections (5) & (6) of section 25 ibid were examined sequentially for applicability to determine customs value of subject goods, this data provided some references however, it was found that the same 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 imports, as other types and verities of similar goods to avoid the valuation ruling. Information available was hence found inappropriate. In line with the statutory sequential order of section 25, this office then conducted a market enquiry using Deductive Value Method under sub-section (7) of the section 25 of the Customs Act, 1969 but the gathered information could not be exclusively relied on. Computed Value Method as provided in section 25(8) could not be applied for valuation of the aforementioned goods as the cost of raw material under clause (a) and amount of profit and general expenses under clause (b) of section 25 (8) of the Act, in the country of export, could not be ascertained. Online values were also checked. All the information was analyzed and evaluated and sub-section (9) of section 25 of the Customs Act, 1969, was applied to arrive at the assessable Customs values of potato frozen french fries.

19. Para (D) & (E): The customs value of imported potato frozen french fries was determined under section 25A of the Customs Act, 1969 exercise to determine the customs values of these goods, meetings with all stakeholders were held. 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 sub-section (9) of section 25 of the Customs Act, 1969, was applied to arrive at the assessable customs values of potato frozen french fries and accordingly the customs value of the imported potato frozen french fries was determined vide valuation ruling No. 842/2016 issued on 02-05-2016. As per prevailing valuation ruling issued by the competent authority and is applicable under section 25 A (4) of Customs Act 1969.

20. Para (F) & (G): Denied. It is submitted that section 25A of the Customs Act, 1969 makes it absolutely clear that the methods laid down in section 25A of the Act are to be followed but it is not essential to apply them in sequential order. The words "whichever is applicable" as used in sub-section (10) of section 25 of the Customs Act, 1969 gives discretion to the competent authority to adopt the method as suited to value determination under the Section which may or may not be applied in the sequential order.

21. Para (H): The Director valuation has to perform his duty within his jurisdiction to determine customs values on genuine ground.

22. Para (I): Valuation Rulings are issued under section 25A of the Customs Act, 1969 by the Directorate 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 25A(4) of Customs Act, 1969. The subject consignment is liable to assessed as per determined customs values.

23. Para (K): It is humbly requested to set-aside the petition being devoid of merit.

Prayer



24. The Valuation Ruling No. 842/2016 dated 02-05-2016 of imported potato frozen french fries issued under Section 25-A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform application, there exist no justifications to accept the transaction value for assessment.

25. 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 record of the case as well as written and verbal arguments put forward by the petitioner and respondents. Mr. Rizwan Ahsan, General Manager of Venis Corporation appeared and contended that why Mecain brand has been mentioned in Ruling only for India whereas three following main brands are being imported from USA.

- a) Lambweston
- b) Mecain
- c) Sinplot

27. He contended that the prices of all renowned brands may be equalized. He further stated that the contention of Lambweston is that price does not matter but level playing field should be provided to all. Online prices were checked from Zaubas. Following average prices of Lambweston, Mecain and other brands / grades were determined.

28. Since the impugned valuation ruling was issued on different freight basis from Europe and USA, therefore, freight aspect from Belgium (Europe) & USA was considered.

29. From the above, it was revealed that difference of freight from Europe and USA was found much higher than Europe and Far East. The on line prices have been retrieved which are much higher than the declared value by the importer. On the other hand importer could not provide any substantive documents in favour of his contention. The Zaubas data shows that India is importing Lambweston brand from US\$ 1.70/kg to US\$ 2.00/kg and Mecaine around US\$ 1.39/kg and onward. In view of the market inquiry and Zaubas data (import by India) and other international data, the values of Frozen French Fries are re-determined under section 25-D as under:-

S.No.	Description brands	Origin	V.R. 842/2016 Values	Determined customs values under section 25-D of the Customs Act, 1969
i.	Lambweston	USA	US\$ 0.90/kg	US\$ 1.70/kg
		Europe	US\$ 0.80/kg	US\$ 1.60/kg
ii	JR, Simplot, Aviko & Mecain	USA	US\$ 0.90/kg	US\$ 1.40/kg
		Europe	US\$ 0.80/kg	US\$ 1.30/kg
iii	Mecain	India	US\$ 0.70/kg	US\$ 1.28/kg
iv	Other brands	All origins	US\$ 0.70/kg	US\$ 1.40/kg

(Syed Zahid Ahmad)
Director General