

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/704/2016

Dated: 16 Sep 2016

**Order in Revision No. 241/2016 under section 25-D of the Customs Act, 1969  
against Valuation Ruling No.859/2016 dated 25-05-2016**

- 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 Mariam Enterprises  
M/s Noor Traders

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi..... RESPONDENT

Date(s) of hearing 18-07-2016

For the Petitioners None

For the Respondent Mr. Safdar Abbas, Principal Appraiser

These revision petitions were filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.859/2016 dated 25-05-2016 issued under section 25-A of the Customs Act, 1969. They challenged the value of shoes fixed inter alia, on the following same facts and grounds:

2. That the applicant is a sole proprietor of M/s Mariam Enterprises and is engaged in the business of import of merchandize of varied nature and their onward marketing in the local market for the past several years. The applicant is an income tax payee and enjoys credibility in the commercial circle in general and in the circle of importers in particular.
3. That the applicant being active importer has been importing shoes, slippers etc without any hindrance and or any allegation of under invoicing and mis-declaration.
4. That the, Director Valuation has issued valuation ruling No. 859/2016 dated 25.05.2016, superseding valuation ruling No. 421/2012, ostensibly under section 25A of the Customs Act, 1969,



illegally and in violation of section 25A and superior courts judgments pronounced in a number of cases.

5. That the impugned valuation ruling has fixed the customs value of shoes slippers etc unilaterally and illegally at the instance of local manufacturer. To the dismay of the Applicant, the impugned Valuation Ruling has enhanced the customs values more than 100 percent without hearing the applicant and other stakeholders. And the method adopted in determining the impugned VR is in utter violation of under Sections 25 and 25A of the Customs Act, 1969, and as interpreted in Sadia Jabar case as well as in Goodwill Traders case reported in 2014 PTD 176.

6. That it is evident from a bare perusal of the impugned valuation ruling that the Director has fixed the value of the shoes, slippers etc without determining the same in terms of section 25 of the Customs Act, 1969. That after the issuance of impugned valuation ruling, there is likelihood of a considerable decline in the import of shoes, slippers etc. This would result in rampant increase in smuggling of the item into Pakistan from various routes.

7. If we perused the impugned valuation ruling, it will be transpired that the order is stereotype order and almost the same wording is used in every valuation ruling. It appears that the Director has issued impugned VR ostensibly under 25(9) of the Customs Act, which is a fall back method, but he has completely failed to appreciate that how the preceded method given under section 25 of the 1969 Act were not applicable. The impugned valuation ruling appears to have been issued on the basis of international prices gathered from internet sources, which is in utter violation of under Sections 25 and 25A of the Customs Act, 1969 and Customs Rules, 2001 and superior Courts Judgments pronounced in a number of cases.

8. According to section 25A of the Customs Act, 1969, the concerned officer may issue a valuation Ruling but he is required to determine the customs value and not to fix the value. The determination is a multi-step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the Ruling should contain sufficient details to show that section 25A has been properly applied. And without visible exercise reflected on record, a valuation ruling cannot be said to have issued legally as provided in section 25A and interpreted by higher judiciary.

9. In this regard some of the judgments of the Higher Judiciary are quoted herein below for ready reference:

*Sadia Jabar case at para 17 page 13 Therefore, on its proper interpretation, the change made to subsec. (10) has only a limited ambit. It is only on rare occasions, and in exceptional circumstances and/or for compelling reasons that the appropriate customs officer may deviate from the principle of sequential application. Otherwise, the invariable practice must be to adhere to the said principle in the strict sence described in para 12 supra. Secondly, and perhaps more importantly, even if the customs officer is now to be regarded as having some discretion in the matter, it is difficult to see h. u) he would be able to exercise it. The reason is that, as noted above, etch of subsection (5), (6), (7), (8) and (9)-expressly opens with words that make it applicable only if "the customs value of the imported goods cannot be determined under" the preceding applicable subsection. These words lock-in the principle of sequential application into the very structure- of section 25..... In our view, therefore, the changes made to subsection (10) have made no substantive change, and the principle of sequential application continues, as before, to apply to section 25 in full rigour."*



FACO Trading Case (2013 PTI 825) para 12 (from line 10)



*"Presently, the valuation Officer may adopt any of the method provided in section 25 40 f the Customs Act, 1969, however, it does not mean that valuation officer has unfettered powers to adopt any method on the basis of pick and choose. In fact the valuation officer has to keep in view the interest of the importer as well. He has discretion to follow any method provided in subsections (1), (5), (6), (7) or (8). However, the method adopted must not be to the detriment of the importers and - for that purpose for excluding the other methods, reasons must be given. Similarly, the reasons for adopting a particular method are also required to be given, so it becomes clear to the importer that the order is in the public interest and not to the detriment of the importer."*

Rehan Umar (2006 PTD 909) para 18

*For the foregoing reasons it is held that different methods of valuation provided in section 25 of the Customs Act, 1969 and the Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to subsection(5)and likewise without similar exercise under subsection (5) no resort can be made to subsection (6). In the same manner without an exercise in writing on record under subsection (6) no resort can be made to subsection (7) and similarly to subsections (8) & (9). This exercise is to be made in each case separately."*

10. Again at para 6 of the impugned Valuation Ruling an illegality has been committed which renders the same to nullity in the eyes of law. It purports to apply the invoice value (i.e. transaction value) if it is higher than the value determined in the ruling. This is impermissible under section 25A. Here again the Petitioners are fortified by the judgment in the case of Sadia Jabar (relevant paras 24, 25 26,). This aspect is also considered in M/S Goodwill Traders (2014 PTD 176) in para 13 (from line 4) in the following words:

*"We conclude that the Valuation Ruling is ultra vires section 25A. One obvious reason for this is that it states, at the end that "if the declared invoice value is hither the same shall be applied". In other words, the values determined by the Valuation Ruling are minimum Customs values. This is flatly contrary to Rule 110(iv) and hence to subsection 9 of section 25."*

11. In view of above, you are therefore, requested to revise the impugned valuation ruling keeping in view above characteristics and issue the fresh valuation ruling and release our consignment at the declare value.

12. 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:

14. Para (1) Need no comments being related to introduction of the petitioners.

15. Para (2) Need no comments being related to introduction of the petitioners.

16. Para (3) Not Agreed. It is submitted that. It is not correct that the said ruling was issued illegally or in violation of Section 25-A of the Customs Act, 1969, as the same was issued after thorough investigations and after following all valuation methods as envisaged under Section 25 of the Customs Act, 1969. As such the same has correctly and lawfully been issued for uniform assessment all over the country.

17. Para (4) Not agreed. It is submitted that it is not correct that the said ruling was issued





on the will of local manufacturer. Further, the concept of fixation of value no more exists in the Customs Act, 1969, rather customs values are being determined and notified in terms of Section 25A of the Customs Act, 1969. It is not correct that value in the said ruling has been enhanced more than 100% without hearing the applicant and with stakeholders. It is evident from Para-(3) of said Valuation Ruling that two meetings were held with stakeholders on 20-04-2016 and 27-04-2016 whereby inputs and point of view of the participants was sought. However, they were requested to provide import documents as mentioned at Para-(3) of VR but except M/s. BATA and Services Sales Corporation, no one submitted the relevant at this stage because Appeal for the same has already been filed by the Department before the Honorable Supreme Court of Pakistan and case is subjudice before the Honorable Supreme Court of Pakistan.

18. Para (5) Not agreed. It is submitted that it is not correct that the prices have been fixed in the said ruling. Further, the concept of fixation of value no more exists in the Customs Act, 1969, rather customs values are being determined and notified in terms of Section 25A of the Customs Act, 1969.

19. Para (6) Not agreed. It is submitted that all the valuation methods i.e. section 25(1), 25(5) and (6) and Sub-Section (7) of section 25 of the Customs Act, 1969, were also exhausted. However, it was observed that determination of customs value cannot be based solely upon these sub-sections. 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.

20. Para (7) Not agreed. It is submitted that it is not correct that the prices have been fixed in the said ruling. Further, the concept of fixation of value no more exists in the Customs Act, 1969, rather customs values are being determined and notified in terms of Section 25A of the Customs Act, 1969. Further, the said ruling itself a speaking which clearly reveals all the process for issuance of the same. All the details and valuation methods were duly exhausted and reasons for their rejection has also mentioned in the said ruling. As such the same has correctly and lawfully been issued for uniform assessment all over the country.

21. Para (8) Moreover, citation of case of M/s.Saadia Jabbar etc. is not relevant at this stage because Appeal for t.,12e same has already been filed by the Department before the Honorable Supreme Court of Pakistan and case is subjudice before the I Honorable Supreme Court of Pakistan.

22. Para (9) Not agreed. It is submitted that as per law, in case the transaction value of any commodity is higher than the value mentioned in the ruling, assessment shall be made not relevant at this stage because Appeal for the same has already been filed by the Department before the Honorable Supreme Court of Pakistan and case is subjudice before the Honorable Supreme Court of Pakistan.

#### PRAYER

23. In view of above factual position and submissions, it is respectfully prayed that the impugned Valuation Ruling may he 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**

24. I have examined the record of case as well as written and verbal arguments put forward by the petitioner and respondents. The petitioner contended that the impugned Valuation Ruling of Shoes Slippers etc was determined unilaterally and illegally at the instance of local manufacturers and enhanced the previous determined customs values by 100% without hearing the applicant and other stakeholders. The methods adopted in determining the impugned valuation ruling are quite violation of the section 25 and 25-A of the Customs Act, 1969. The impugned valuation ruling appeared to have been issued on the basis of international prices gathered from internet sources, which is violation of section 25 and 25-A ibid.

25. Conversely, the respondent department furnished their comments and argued that it was not correct that the said ruling was issued illegally or in violation of section 25-a of the Customs Act, 1969 as the same was issued after thorough investigation and following all valuation methods. The respondent department explained that it is incorrect that the ruling was issued on the will of the local manufacturers. Further, the concept of fixation of value no more exists in the Customs Act, 1969, rather Customs Values are being determined and notified in terms of section 25A ibid. they also explained that value in the said ruling has not been enhanced 100% without hearing the applicant and other stakeholders. The department provided two opportunities of meeting with the stakeholders/importers including trade bodies i.e. FPCC&I, KCC&I and Pakistan Footwear Manufacturers Association, Lahore were called for participation and taking their input on 20-04-2016 and 27-04-2016 for determination of customs values of the subject goods. They were also requested to provide import documents as mentioned at para (3) of the Valuation Ruling, however, no one submitted the same. The department further stated that all valuation methods from sub-section (1) to (8) were properly exhausted sequentially before determining the customs values and reasons for rejection of the same have also been clearly mentioned in ruling. Consequently the impugned valuation ruling was issued under section 25(9) of the Customs Act, 1969 after examining the import data on the line prices from international websites and by analyzing all the gathered informations.

26. In view of the foregoing situation, documents available on record, written as well as verbal submissions. I am of the view that the determined customs values appear to be fair and normal and issued after exhausting all the available provisions of law, the same is, therefore, upheld and revision petition is rejected.

  
(Syed Tanvir Ahmad)  
Director General  
15/9/16

Registered copy to:



M/s. Mariam Enterprises,  
M/s Noor Traders  
Through Ghulamullah Shaikh & Co. Advocates,  
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Karachi.



M/s. Marium Enterprises  
M/s Noor Traders  
File # DG (V) Val.Rev/704 /2016

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2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/  
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3. Collector, MCC Appraisement (East/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.