

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/601/2016 / 2128

Dated: 02/08/2016

**Order in Revision No. 217/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.863/2016 dated 02-06-2016**

- 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. Marium Enterprises & Others PETITIONER

VERSUS

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

Date(s) of hearings: 22-06-2016 & 20-07-2016

For the Petitioners:

Mr. Muhammad Aslam
Mr. Anil Kumar
Mr.A. Abdullah Zaki
Mr. Ali Zia
Mr. Ashraf
Mr. M. Zubair
Mr. Farooq
Mr. M. Ali
Mr. M. Arsal
Mr. Sohail Rizvi
Mr. Noman Alam
Mr. Imran Afzal



For the Respondent:

Mr. Abdul Majeed, Assistant Director
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.863/2016 dated 02-06-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the applicant is a sole proprietor of M/s Marium 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 Toilet Soap i.e. Savannah from Malaysia without any hindrance and or any allegation of under invoicing and mis-declaration.
4. That the Director Valuation has issued valuation ruling 863/2016 dated 02-06-2016, superseding valuation ruling 737/2016, 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 Savannah toilet soap unilaterally and illegally despite the fact that the survey conducted both by the Director and Association the customs values of the Savannah Toilet Soap imported by the Applicant was in the range of US\$ 500 per Ton (US\$ 0.50 per Kg). However, the Applicant imported the same at Customs Values of US\$ 400 per Ton (US\$ 0.40 per Kg). To the dismay of the Applicant, the impugned valuation ruling has fixed the Customs Values at US\$ 660 per Ton (US\$ 0.66 per Kg). And the method adopted in determining the impugned V.R is the utter violation of under Section 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 Savannahs 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 Savannah toilet soap. This would result in rampant increase in smuggling of the item into Pakistan from various routes. It needs to be appreciated that the Applicant is ready to accept the customs value {at US\$ 500 per Ton (US\$ 0.50 per Kg)} arrived at after a survey conducted both by the Director and Association, despite the fact that the Applicant imported the same at Customs Values of US\$ 400 per Ton (US\$ 0.40 per Kg). The reason behind the acceptance is that it will bring an end to the ongoing issues and which will also help in bringing an end to the ongoing threat of rampant increase in smuggling of the item into Pakistan through 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 Section 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 subsection. (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 particular method are also required to be give, 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 (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 higher 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 24."

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 declared value.

ORDER

12. The record of the case has been examined and the arguments forwarded by the applicant as well as departmental representative during the course of hearing have been considered. The petitioner contended that:



- a) That the Respondent has fixed the value of toilet soaps without determining the same in terms of section 25 of the Customs act, 1969. Admittedly, the Respondent has fixed the customs values of toilet soap according to their brands and has very conveniently ignored the most crucial fact that the variance in country of origin makes a market difference in the actual cost of an item i.e. Toilet soaps. Therefore the impugned valuation ruling is invalid & vague.
- b) That the impugned Valuation Ruling has adopted / retained the same format / structure that was part of earlier Valuation Rulings 737/15, and 702/14 i.e. brands of different origin have been clubbed together from Serial No.(1) to serial No.(8).
- c) That both the Valuation Rulings lacked the warrant of law and failed to adhere to the statutory requirements as laid down in section 25 of the Customs Act, 1969. That recognized brands of different products require to be equated with the country of origin. Therefore, the Valuation Ruling No.702/14 and 737/15 were both declared as void.
- d) That the declared and actually transaction value of toilet soaps imported by the Petitioner and other importers is between the values of \$ 350/MT and \$ 450/MT and not as incorrectly determined by the Respondent earlier vide Valuation Ruling No.702/14 and 737/15. The petitioner had, inter alia, point out that prices of commodities such as oil have decreased by almost 40-50% over the last one year or so and, resultantly, the costs of raw materials (such as palm oil, etc.) of soap have also dramatically decreased.
- e) That the Respondent has purportedly applied sub section (9) without making due consideration required under the law and in ignorance of Rule 110 and 121.

13. This Directorate General fixed a meeting date / time for 22-06-2016 at 11.30 am, all the petitioners, importers and manufacturers of Toilet Soap participated and submitted their point of views separately. Consequently, all the participants were directed to come up on next date with their concrete opinion. Next date was fixed for 20-07-2016 at 11.30 a.m. All the manufacturers of Toilet Soap participated the commercial importer were represented by defence Counsel of M/s G. A. Jahangir. He was present on behalf of the petitioners / importers of toilet soap. He requested after consulting with their clients that the matter may be decided keeping in view of the written submissions made by the counsel already on behalf of the importers.

14. The manufacturer's contention is that Soap Noodles (intermediary raw material of soap) prices in international market are around US\$ 800/MT (80/20 quality). They added that minimum prices of any low brand Toilet Soap are at Rs.30-35/piece in the local market. No category of Toilet Soap is less than the value of US\$ 1000/MT, therefore, the values of last two categories of valuation ruling which is fixed at \$ 660/MT and \$ 750/MT are disputed categories mentioned at S No.07 & 08 may be merged in one category and may be valued above US\$ 1100/MT. They further submitted that six brands i.e. Harmony, Jolie, Lark, Mis Paris, Savanna and silk may be shifted from S No.08 to Serial No.07 and two brands i.e. Cinthol and Royal Leather may be shifted from S No.07 to Serial No.05. 'Fa' brand may be shifted from S No. 07 to S No.04 likewise, Dove brand mentioned at S No.06 may be shifted to S No.03 at column No.02,



15. In view of the above facts market inquiry was conducted. The inquiry revealed that the higher brand are very expensive ('Natural Body Soap', is around Rs.270 – 300 per 100 gram bar means Rs.2700 – 3000 per kg or around \$ 27/kg selling price)]. These category soaps ('Clinique' etc.), works back above \$ 9/kg as against previous ruling of \$ 5.70. Similarly in next category the value of 'Stillmans' is around Rs.165 – 175 per 100 gm bar. The major dispute is in category 7 & 8. In this category the importers accepted that no toilet soap is less than Rs.32 – 35/bar in the market. This works out to at \$ 820/MT. The fatty contents of these soaps are minimum 70%. Foreign soaps has 70% - 79% fatty contents. The prices of raw material in the market also ranges between \$ 600 – 800/MT.

16. In view of the prices of raw materials and market inquiry the values of soap are fixed as under:

S#	Brand Names	PCT Heading	Proposed PCT for WeBOC	Customs Value (C&F) US\$/kg
1	2	3	4	5
1	Aspen, Aveeno, Canus, Cetaphil, Clinique, Defense Soap, Dermazinc zinc, G Sensr Excel, Goat's Milk Soap, Neutrogena, "ONE" Natural Body Soap, Prada, Sweet Honey	3401.1100 3401.1900	3401.1100.1100 3401.1900.1100	9.50
2	Body Shop Soap, Cerave, Cuticura, JF, Kirk' Castile, Lilie De Vallee, Oilum, Palmers, Qrshi Demaghi, SheaMoiture, Stillman's, Sun Feather, Tom's, Tone, Yes To.	3401.1100 3401.1900	3401.1100.1200 3401.1900.1200	4.50
3	Burt's Bees, Caress, velvet blis, Dettol, Dermacide, Derma Care, Dial, Doctor Woods, Dove, (Creamy Men's cure), Enrgizr Max, Hi Tone, Mysore, Oilatum, Olay, Olivee, Olivia, Skin Doctor, Yardley, South of France, Yong Chin/YC (wooden packing)	3401.1100 3401.1900	3401.1100.1300 3401.1900.1300	3.50
4	Avon, Benzacide, Brut, Calendox, Camay, Coast, Dalan, Enchanteur, Froton, Fruity, Glysolid GlyserineD, Hydrolatum, Irish Spring, Johnsons & Johnsons, Lava, Lever 2000, Lux, Nivea, Old Spice, Palmolive, Pears, Pure Natural, Romano Classic, Safe Guard, Shea, Shield, Spring, Zest Scented, Fa	3401.1100 3401.1900	3401.1100.1400 3401.1900.1400	1.90
5	Bee and Flower, Classic White, Cleopatra, Himalaya, Ivory, Vaseline, Cinthol, Royal Leather, Imperial Lather (Cussons)	3401.1100 3401.1900	3401.1100.1500 3401.1900.1500	1.50
6	Diana, Dura Lady, S Nat & Soft, Lace Bath, Pamela, Yong Chin/YC, Dr.James, Yoko	3401.1100 3401.1900	3401.1100.1600 3401.1900.1600	1.25
7	Arqus, Asepso, Ava, Blitz, Charm, Crown Leather, Delux Palm, Fruit Scented, Hotel, IRIS, JO, Lervia, Lilly Gold, Miss London, Paradise, Parisa, Piva, Sanify, Silken,	3401.1100 3401.1900	3401.1100.1700 3401.1900.1700	0.92



	Switso, Vasolive, White Balance, Harmony, Joly May, Lark, Miss Paris, Savannah, Silk (Low-end brands)			
8	Admire, Alya, Amorish, Anita, Anna, Aven Liesel, Avena, Bea, BeaFruity, Blesso, Bling, Blossom, Bonita, Deep, Diva, Doll, Essentialz, Eva, Eve, Every Day, Flavia, Fruitina, Fruitis Fruity, Fruter Fruity, Giv, Glo, Godrej, Grace, Ivan, Jolie, La Bella, Lace Creamy, Lilly, Lexus, Lotus, Luv, Lykis, May, Midas, Morena, Olina, Orchid, Ozona, Plush, Royal, Safah, Sahara, Safex, Secret Garden, Sofree, Soft Pearl, Sol, Suave, Tuti Fruiti, Vea, Vuru Crown Leather, Suhannah, Crown Gold, Crown Imperial, Royal Imperial, Fena, Relax, D'Lux (Low-end brands)	3401.1100 3401.1900	3401.1100.1800 3401.1900.1800	0.82
Other Brands				
09	Europe / USA / Canada	3401.1100 3401.1900	3401.1100.1900 3401.1900.1900	7.00
10	Middle East/ Saudi Arabia/ Turkey	3401.1100 3401.1900	3401.1100.2100 3401.1900.2100	2.50
11	Other Origins (low end brands)	3401.1100 3401.1900	3401.1100.2200 3401.1900.2200	1.00
12	Facial Liquid Soaps/Wash (in tube) shall be assessed @ 25% higher value than the value determined above.			

17. The values of soap noodles was also discussed during hearing and found that it is being cleared on low value. Therefore, the value of soap noodles are linked with ICIS prices as under:

01	Soap Noodles	3401.2000	3401.2000.1000	Linked with ICIS price 80/20, 90/10 with appropriate adjustments.
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18. These values shall be applicable from the date of issuance of this order.

19. Being identical on facts and law points, this order shall also apply mutatis & mutandis to the following (18) petitions.

S#	Petitioner's Name	File No.
1.	M/s Nadeem Agencies	DG(V)Val.Rev/755/2016
2.	M/s A. B. Associates	DG(V)Val.Rev/746/2016
3.	M/s Progressive Traders	DG(V)Val.Rev/680/2016
4.	M/s FAMs Enterprises	DG(V)Val.Rev/644/2016
5.	M/s A. K. Business Link	DG(V)Val.Rev/645/2016
6.	M/s Astro Int.	DG(V)Val.Rev/646/2016
7.	M/s Trading House	DG(V)Val.Rev/647/2016
8.	M/s Ittefaq General Store	DG(V)Val.Rev/648/2016
9.	M/s M. F. Enterprises	DG(V)Val.Rev/649/2016



10.	M/s Z.I. Business Link	DG(V)Val.Rev/619/2016
11.	M/s Bin Qasim Int	DG(V)Val.Rev/617/2016
12.	M/s Ashraf Traders	DG(V)Val.Rev/606/2016
13.	M/s United World Corp	DG(V)Val.Rev/607/2016
14.	M/s Piva International	DG(V)Val.Rev/608/2016
15.	M/s Shazak Multinational	DG(V)Val.Rev/609/2016
16.	M/s ARG Enterprises	DG(V)Val.Rev/610/2016
17.	M/s Fahad Enterprises	DG(V)Val.Rev/611/2016
18.	M/s Abdullah & Co.	DG(V)Val.Rev/612/2016


(Syed Tahvir Ahmad)
Director General

Registered copy to:

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Karachi.

M/s. Z. I. Business Link,
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M/s. Ashraf Traders,
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M/s. Astro International,
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M/s. Ittefaq General Store,
C/o Mr. M. Umar Akhund, F-27/2, Block-9, K.D.A. Scheme No.5,
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M/s. Abdullah & Company,
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M/s. Shazak Muinational,
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M/s. A.R.G. Enterprises,
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M/s. M. F. Enterprises,
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M/s. United World Corporation,
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M/s. FAMS Enterprises,
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M/s. Trading House,
C/o Mr. M. Umar Akhund, F-27/2, Block-9, K.D.A. Scheme No.5, Clifton, Karachi.

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M/s. A.K. Business Link,
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Copy to:

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