GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/722/2016 Dated: 04th August 2016

Order in Revision No. 224 /2016 under section 25-D of the Customs Act, 1969 against Valuation Ruling No.870/2016 dated 14-06-2016

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 Z&J Hygienic Product Pvt. Ltd & Others ..... PETITIONERS

VERSUS

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

Date(s) of hearing 02-08-2016

For the Petitioners Mr. Shahid Pervez Advocate

For the Respondent Mr. Safdar Abbas, Principal Appraiser
Mr. Iqbal Hussain

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.870/2016 dated 14-06-2016 issued under 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the applicant, a limited company having its registered office located at B-2, Canal View Society, Lahore is engaged in the manufacturing of baby diapers and sanitary napkins.

3. That the applicant attended the meeting and submitted the relevant information including costing of the locally manufactured products which clearly exhibited that values of locally manufactured goods are much higher than the values at which the subject goods are being imported proving that the customs values determined by the Director Valuation, did not reflect true transactional values. On the other hand, the commercial importers failed to provide the documents including sales tax invoices issued by them during the last four months as was required by the learned Director.

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4. That the learned Director of Customs Valuation has determined the customs value of baby diapers and sanitary towels/pads through Valuation Ruling No. 870/2016 dated 14.06.2016 by adopting method prescribed under sub section (9) of section 25 of the Customs Act, 1969. In the impugned ruling the customs values of aforesaid items have been reduced as per following Table:

S. #.	Product	PCT Heading	Origin	High/Low Value Brand	Table	Dec.01.2015 Customs Values(C&F) US$/Kg	June.14.2016 Present Customs Values (C&F) US$$/Kg	Decrease Effect
1	Baby Diaper	9619.0020	Taiwan	High Value	A	3.00	3.00	0%
	Baby Diaper	9619.0020	Turkey	High Value		No Tariff for High Value Brand	No Tariff for High Value Brand	0%
	Baby Diaper	9619.0020	China	High Value		No Tariff for High Value Brand	No Tariff for High Value Brand	0%
	Baby Diaper	9619.0020	Others	High Value	A	3.00	3.00	0%
2	Baby Diaper	9619.0020	China	Low Value	B	2.25	2.05	Decreased by 12%
	Baby Diaper	9619.0020	Indonesia	Low Value	B	2.75	2.75	0%
	Baby Diaper	9619.0020	Malaysia	Low Value	B	2.75	2.75	0%
	Baby Diaper	9619.0020	Turkey	Low Value	B	2.50	2.20	Decreased by 12%
	Baby Diaper	9619.0020	U.A.E	Low Value	B	2.75	2.75	0%
	Baby Diaper	9619.0020	Vietnam	Low Value	B	2.15	1.95	Decreased by 9%
	Baby Diaper	9619.0020	Others	Low Value	B	2.75	2.75	0%
3	Sanitary Towels (Pads) and Tampons	9619.0030	Thailand	High Value	C	4.00	4.00	0%
		9619.0090	Turkey	High Value	C	4.00	4.00	0%
4	Sanitary Towels (Pads) and Tampons	9619.0030	China	Low Value	D	2.00	1.90	Decreased by 5%
		9619.0090			D			

5. That the applicant is aggrieved of the values of baby diapers and sanitary towels (pads) as have been determined by the learned Director Valuation through the impugned Ruling No. 870/2016 hence the instant revision application. The values of baby diaper and sanitary towels/napkins referred to above as determined through the impugned ruling by the learned respondent are liable to be revised inter alia on the following:

GROUNDS

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i) The learned Director Valuation is an adjudicating authority within the meaning of section 2(a) of the Act and determination of customs value under section 25A of the Customs.

ii) The learned respondent has determined the value of high valued brands of baby diapers (E.Q, Canbebe, Huggies at US$ 3.0 per kg whose products are far superior than those of the present applicant. The manufacturing cost of the applicant company is US$ 3.84 per kg excluding sales tax whereas the custom values of far superior brands have been determined at US$ 3.0 per kg which is not only unfair but tantamount to subjecting the closure of local industry leading to have a negative impact on national tax revenue but also would create unemployment and unrest in the country. The customs values of higher value brands of top tier should be determined not less than US $ 4.0 per kg.

iii) The values of low brand baby diapers of second tier of all origins are required to be revised upwards between US $ 2.75 to US $ 3.10 per kg. The value of sanitary towels/pads is also required to be revised upwards from US $ 1.90 per kg to US $ 2.30 per kg. The applicant has sufficient evidence in hand that the true transaction value of baby diapers of these origins is between US$ 2.70 to US$ 3.50 per kg whereas the true transaction value of sanitary towel/pads of Chinese origin is not less than US$ 2.50 per kg.

iv) While determining the values, the learned respondent has completely ignored the costing sheet exhibiting cost of baby diapers and sanitary towels/pads as is being locally manufactured by the applicant. Each of the ingredients of the cost has been truly declared and the attention of the learned Director General is invited towards the fixed costs being incurred by the applicant which comes to US$1.12 for high value diaper & US$ 0.96 for low value diaper per kg whereas the total cost comes to US $3.84 for high value diaper & US$ 3.07 for low value diaper per kg similarly the total cost of Sanitary Pads/towels comes to US$ 2.48 hence the applicant is subjected to a complete disadvantage. The learned Director has determined the customs values of baby diapers and sanitary towels/pads without taking into account the costing of locally goods which renders the entire exercise nullity in the eyes of law. The applicant has sufficient evidence in hand to prove that the cost sheet is based on factual and true figures exhibiting cost of the locally manufactured baby diapers and sanitary towels are higher than the value determined by the learned respondent.

v) The learned Director has failed to appreciate that on account of fixation of customs value of imported baby diapers and sanitary towels/pads at value much lower than the cost of locally manufactured goods, the applicant has been subjected to heavy disadvantage and it continue to suffer till the time the values are fairly determined keeping in view the cost of locally manufactured goods. It is very much evident from the costing sheet that the commercial importers are involved in gross under invoicing and baby diapers and sanitary towels/pads are being imported at a value much lower value than its actual value.

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vi) The federal government has also withdrawn concessionary rate of customs duty w.e.f. 01.07.2016, once the Table given below SRO 565(1)/2006 has been substituted through SRO 474(1)/2016 dated 24.06.2016 and the benefit of reduced rate of 15% customs duty has been withdrawn on import of input goods namely (1) Pre laminated tape; (2) frontal tape; (3) PE + NW laminate sheet; (4) Poly back sheet; (5) frontal tape (6) pre laminated tape; (7) Perforated poly film; (8) Waist band barrier; (9) Toilet or facial tissue sanitary towels/pads are subjected to statutory tariff duty which has substantially increased the cost of locally manufactured baby diapers and sanitary towels/pads.

vii) It is evident that the method prescribed in sub section (9) of section 25 of the Customs Act, 1969 has not been properly applied by the learned respondent in letter and spirit. The learned respondent has not only failed to account for cost sheet submitted by the applicant but has totally ignored the submissions made by the applicant during the proceedings.

viii) Notwithstanding the fact that the learned respondent has completely ignored the submissions of the applicant but has acted in a hastily manner and without giving a proper opportunity to the applicant to submit comments/reply on the market inquiry conducted by the staff of the Directorate, preferred to dispose of the proceedings just after seven days of the hearing. The market inquiry on the basis of which values of baby diapers and sanitary towels/pads have been determined, is materially incorrect, false and untrue since retail prices of baby diapers and sanitary towels/pads prevailing in the retail market are much higher than the values as have been obtained by the staff on the basis of which impugned values have been determined by the respondent.

ix) The respondent has also failed to appreciate that the applicant is incurring huge expenses on advertisements of baby diapers and sanitary towels/pads which are included in the cost sheet whereas the commercial importers do not incur any expense on advertisement and are selling the imported goods on the strength of advertisement whose expense is being borne by the applicant alone. Since the respondent has not taken into account these facts, therefore the values as are determined by him do not have sanctity of law.

PRAYER

6. In view of the submissions contained in above paragraphs, the learned Director General is very humbly requested that the values of baby diapers of higher value brands of top tier should be determined not less than US $ 4.0 per kg and values of low brand baby diapers of second tier of all origins are required to be revised upwards between US $ 2.75 to US $ 3.10 per kg as per assessed value comparison sheet attached and the value of sanitary towels/pads may be revised upwards from US$ 1.90 per kg to US$ 2.30 per kg.

7. 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:

8. Customs values of Baby Diapers and Sanitary Towels/Napkins were earlier determine through Valuation Ruling No.775/2015, dated 01-12-2015. Various importers filed representations, challenging the customs values on the ground that the values determined at much higher side. A number of importers have also sought provisional release under Section 81 of the Customs Act, 1969, of diapers on the ground that the ruling is old and needs revision keeping in view the current international prices. Therefore, an exercise was initiated to determine the customs value of Baby Diaper and Sanitary Napkins, with a view to reflect the current prices prevailing in the international market. Accordingly, meetings with stakeholders were held on 06-06-2016. The stakeholders were requested to bring following documents to make the meetings fruitful:-

a) Invoices of imports during last three months showing factual value.
b) Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
c) Copies of Contracts made / LCs opened during the last three months showing the value of item in question.
d) Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

9. The meeting was attended by a number of t importers, local manufacturers and officers from field formations. The local manufacturers, during the meeting, were of the view that the prices determined vide previous Valuation Ruling No.775/2014, dated 30-09-2013 are on lower side. The importers contested that the values have been fixed at much higher side without keeping in view ground realities. Prices in the international market have considerably gone down whereas, department has increased the prices. They also contended that prices of raw materials of the diapers including pulp, non-woven fabric, and other absorbent chemicals have considerably gone down in the international market, resulting in increase in diapers prices.

10. Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at values of Baby diapers and Sanitary Towels/ Napkins and Tampons. Transaction value method provided in Section 25 (1) was found inapplicable due wide variation in the values being declared to the customs. Identical/similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variations in declared values of subject goods. Thereafter, market enquiries as envisaged under Section 25 (7) of the Customs Act, 1969, were conducted. As there were differences in the prices obtained market surveys, therefore, market survey were conducted repeatedly, to arrive at correct customs values.. On-line prices were also obtained to corroborate the findings of the market surveys. 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 and fabrication charges 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. All the information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the

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Customs values of different types of Baby Diapers and Sanitary Towels/ Napkins have been determined under Section 25 (9) of the Customs Act, 1969.

Parawise Comments

11. Para-(1). Need no comments being related to introduction of the applicant as a manufacture of Baby Diapers and Sanitary Napkins.

12. Para-(2). This para relates to submission of requisite documents by the commercial importers as well as local manufactures.

13. Para-(3). The information including costing of the locally manufactured products are not relevant as compared to costing of the importing goods. Particularly, the cost of manufacturing of the country of exportation cannot be the same with costing of locally manufactured goods. Moreover, the applicant has not furnished their sales tax invoices. Since, the importers did not also furnished the requisite documents, so the customs values were determined in flexible manner under Section 25 (9) f the Customs Act, 1969.

14. Para-(4): The customs values determined vide impugned Valuation Ruling dated 14-06-2016 are more or less same except a decrease ranging from 5%, 9% and 12% in four types of Baby Diapers and Sanitary Napkins. These customs values have been determined after taking into account Valuation Method 25 (1), (5), (6), (7) and consequently, customs values were determined in flexible manner under Section 25 (9) of the Customs Act, 1969. It may be added here that the commercial importer had filed the representations for reduction of prices but the same could not be considered in the light of local market inquiry findings which suggest that the prices cannot be reduced.

15. Para-(5): This para relates to revision of impugned Valuation No. 870/2016, dated 14-06-2016, on the following grounds

Grounds

16. Para-(i): Denied. The Director Customs Valuation has correctly determined the customs values strictly after following the Valuation Methods laid down in Section 25 of the Customs Act, 1969, as per law. However, the applicant has not furnished the principle of adjudication laid down in the superior courts.

17. Para-(ii): Denied. The applicant has compared the customs values @US$3.00/kg with their locally manufactured goods @US$3.84/kg. In this connection, it is submitted that it not necessary that the value of the imported goods must be higher than the value of locally manufactured goods because of the several elements, particularly due to the difference in the cost manufacturing in of the country of the exportation and county of importation.

18. Para-(iii): Denied. The applicant has not furnished any corroboratory documents in support of suggested values.

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19. Para-(iv): Denied. The Director of Customs Valuation jurisdiction to determine the customs value of the imported goods and not taking into account the costing of the locally manufactured goods.

20. Para-(v): Denied. The applicant has compared the customs values @US$3.00/kg with their locally manufactured goods @US$3.84/kg. In this connection, it is submitted that it not necessary that the value of the imported goods must be higher than the value of locally manufactured goods because of the several elements, particularly due to the difference in the cost manufacturing in of the country of the exportation and county of importation.

21. Para-(vi): This para is related to rate of customs duty which does not fall within the jurisdiction of this Directorate.

22. Para-(vii): Denied. The customs values were determined after following all primary methods of Valuation i.e. 25 (1), (5), (6), (7) and (8) and finally reliance have to be made on 25 (9) of the Customs Act, 1969. As regards, the cost sheet submitted that *The applicant has compared the customs values @US$3.00/kg with their locally manufactured goods @US$3.84/kg. In this connection, it is submitted that it not necessary that the value of the imported goods must be higher than the value of locally manufactured goods because of the several elements, particularly due to the difference in the cost manufacturing in of the country of the exportation and county of importation.*

23. Para-(viii): Denied. The opportunity of meeting were afforded to the applicant vide letter number dated 13-05-20156 (F/E)-. Regarding, the market prices, the applicant have not furnished their market prices to substantiate their contention.

24. Para-(ix): Denied. Since, the customs values have been determined, keeping in view the sub-sections (1), (5) & (6), particularly sub-section (7) of Section 25 of the Customs Act, 1969, on the basis of local market prices, so the question of expenses on advertisement does not arise in these circumstance.

PRAYER

25. It is respectfully prayed that the customs values were determined strictly in accordance with the Valuation Methods laid down in Section 25 of the Customs Act, 1969, which suggests determining the customs values of imported goods. The calculation sheet submitted by the applicant showing their costing of locally manufactured goods and cannot be taken in account as the cost of manufacturing of country of exportation are different and on lower side. Accordingly, the petition have no merit for consideration and is liable to be reject.

ORDER

26. The representative of the company appeared and stated that the higher brands are sold for much higher prices. So the higher brand diapers are sold at $ 12/kg and worked back not less $ 5/kg. The lower brands are sold for $ 5/kg and should not be less than $ 5/kg. The lower values have ruined the local industry. There is no level playing field for local industry. They requested

to increase value so that local industry may survive. He stated that he has no idea as to how values of high end brands have been fixed.

27. I have gone through the record of the case. The file shows that the calculations have been made erroneously. The margin of miscellaneous charges e.g. is on sheet has been given @ 10% which comes to Rs 4,63,000 per container whereas actual charges ranges from Rs. 70,000/ per container.

28. A market inquiry was conducted to ascertain prices of high end brands and other low end brands. The values of high values brands has also been fixed on lower side. In case of lower end brand the values have been wrongly calculated. Moreover, the values for all brands of China have been kept intact as compared to December, 2015 Valuation Ruling but values of lower end brand of China has been decreased from $ 2.25/kg to $ 2.05/kg and for Turkey from $ 2.50/kg to $ 2.20/kg, for Vietnam $ 2.15 to $ 1.95/kg in 6 months. These are the diapers which are mostly traded whereas the prices of other brands have been kept intact.

29. Keeping above in view, market inquiry and work back method the values are fixed and Table A to D are replaced in the Valuation Ruling No.870/2016 dated 14-06-2016 as under:

TABLE - A

High Value Brands of Baby Diapers : E.Q, Canbebe, Huggies. Excluding Pamper brand					
S #	Description of goods	PCT	Proposed PCT for WeBOC	Origin	Customs values (C&F)US$/kg
1	2	3	4	5	6
1	Baby Diaper	9619.0020	9619.0020.1000	Taiwan	3.85
2	Baby Diaper	9619.0020	9619.0020.1100	Others	3.85

TABLE - B

Low End Brands of Baby Diapers					
S #	Description of goods	PCT	Proposed PCT for WeBOC	Origin	Customs values (C&F)US$/kg
1	2	3	4	5	6
1	Baby Diaper	9619.0020	9619.0020.1200	China	2.50
2	Baby Diaper	9619.0020	9619.0020.1300	Indonesia, Malaysia & UAE	2.90
3	Baby Diaper	9619.0020	9619.0020.1400	Turkey	2.60
4	Baby Diaper	9619.0020	9619.0020.1500	Vietnam	2.20
5	Baby Diaper	9619.0020	9619.0020.1600	Others	2.90

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TABLE - C

High Value Brands Sanitary Towels/Napkins (pads) and Tampons: Stayfree, Helen Harper excluding 'Always' brand					
S #	Description of goods	PCT	Proposed PCT for WeBOC	Origin	Customs values (C&F)US$/kg
1	2	3	4	5	6
01	Sanitary Towels (pads) and Tampons	9619.0030 9619.0090	9619.0030.1000 9619.0090.1000	Thailand	4.85
			9619.0030.1100 9619.0090.1100	Turkey	4.85

TABLE - D

Low End Brands Sanitary Towels/Napkins (pads) and Tampons					
S #	Description of goods	PCT	Proposed PCT for WeBOC	Origin	Customs values (C&F)US$/kg
1	2	3	4	5	6
01	Sanitary Towels (pads) and Tampons	9619.0030 9619.0090	9619.0030.1200 9619.0090.1200	China	2.35

30. These rates shall take effect from immediate effect.

(Syed Tanvir Ahmad)
Director General
8/16

Registered copy to:

M/s Z&J Hygienic Product (Pvt.) Ltd.
Through M/s Tax Forum, Mr. Shahid Pervez Jami
Advocate High Court, 36-FCC, Gulberg, Lahore.

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. 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.

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