

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/857/2016

Dated: 26th December, 2016

**Order in Revision No. 279/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.887/2016 dated 27-07-2016**

- 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. Amir Industries & Others

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

22-09-2016

For the Petitioners

Mr. Tanveer Usman - M/s Fine Traders
Mr. Tariq - M/s Kheewa & Sons
Mr. M. Sadiq - M/s Tariq & Co.
Mr. Imran Ahmed - M/s Amir Ind.
Mr. Arshad Gulzar - M/s Waris Sharif

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.887/2016 dated 27-07-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds as reproduced below:

2. That the applicant 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 Zippers (low end brands) mainly from China/Taiwan etc without any hindrance and or any allegation of under invoicing and mis-declaration.

4. That the Director Valuation has issued valuation ruling 887/2016 dated 27.07.2016, superseding valuation ruling 479/2012, 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 enhanced the values of Zippers (low end brands) unilaterally and illegally. It is pertinent to mention here that as per the superseded valuation ruling 479/2012, the value of the Zippers (low end brands) imported by the applicant was determined after giving hearing to all the stakeholders and the same was accepted to all 'stakeholders including the local manufacturers. However, the impugned valuation ruling No. 887/2016 dated 27.07.2016 has been issued in violation of section 25A of the 1969 Act and it was issued unilaterally and without hearing the stakeholders. The Method adopted in determining the impugned VR is in 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. 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 appear that the Director has issued impugned valuation ruling 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 through so-called Online 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.

7. 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 Sec 25A and interpreted by higher judiciary.

8. In this regard some of the judgments of the higher judiciary are quoted herein below for ready reference:

Sadia Jabbar Case at Para 17 Page 13

"Therefore, on its proper interpretation, the change made to sub-section (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 sense 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 how he would be able to exercise it. The reason is that, as noted above, each 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 PTD 825) PARA 12 (FROM LINE 10)

"Presently, the valuation Officer may adopt any of the method provided in section 25 of 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) PARAL 8

"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."



9. Again at para 8 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 judgments in the case of Sadia Jabbar (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 in the valuation ruling are minimum customs values. This is flatly contrary to Rule 110(iv) and hence to subsection (9) of section 25."

10. 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.

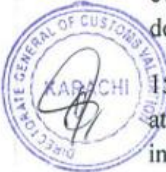
11. The respondent department was asked to furnish comments to the arguments submitted by the petitioner in the case. Para-wise comments on the petition are given as under:

12. Brief of the case is that It was brought to the notice of this Directorate General of Customs Valuation that Values of Zippers (low end brands) have considerably increase in the international market as compared to the determined customs values of Zippers (low end brands) vide Valuation Ruling No.479/2012, dated 23-10-2012. The previous Valuation Ruling required revision in line with the prevailing prices in the international market. Therefore, this Directorate General initiated an exercise for determination of customs values for Zippers.

13. Meetings with stakeholders were held on 21-06-2016 and 19-07-2016, and the importers were requested to furnish the following documents:-

- 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.

14. The meetings were attended the different importers. The importers during the meeting were of the view, that the prices of different kind of Zippers had not increased in the international market. They, however, could not submit any corroboratory evidence/documents in support of their contention. They requested that they might be allowed some time to furnish evidence and other documents in support of their contentions but to failed to submit any such documents



15. Valuation methods given in section 25 of the Customs Act, 1969 were followed to arrive at fair value of Zippers. Transaction value method provided in section 25 (1) was found inapplicable owing to wide variation in the values being declared to the customs and incomplete descriptions. 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 variation in declared values of subject goods. Thereafter, market enquiry, as envisaged under section 25(7) of the Customs Act, 1969, was conducted as the stakeholders were not forthcoming with the values of Zippers (low end brands) as being traded in the international market, therefore, different markets were surveyed repeatedly for the purpose. Online 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 of Zippers. Consequently, the customs values of Zippers (low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

16. PARAWISE COMMENTS

Para-1: Need no comments being related to the introduction of the importers.

Para-2: Need no comments being related to the importation of subject goods mainly from China/Taiwan.

Para-3: Denied. It is to be submitted that it was brought to the notice of this Directorate General of Customs Valuation that Values of Zippers (low end brands) have considerably increase in the international market as compared to the determined customs values of Zippers (low end brands) vide Valuation Ruling No.479/2012, dated 23-10-2012. The previous Valuation Ruling required revision in line with the prevailing prices in the international market. Therefore, this Directorate General initiated an exercise for determination of customs values for Zippers.

Meetings with stakeholders were held on 21-06-2016 and 19-07-2016, and the importers were requested to furnish the following documents:-

- 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.

The meetings were attended the different importers. The importers during the meeting were of the view, that the prices of different kind of Zippers had not increased in the international market. They, however, could not submit any corroboratory evidence/documents in support of their contention. They requested that they might be allowed some time to furnish evidence and other documents in support of their contentions but to failed to submit any such documents

Para-4 & 5: Denied. It is to be submitted that Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at fair value of Zippers. Transaction value method provided in Section 25 (1) was found inapplicable owing to wide variation in the values being declared to the customs and incomplete descriptions. 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



variation in declared values of subject goods. Thereafter, market enquiry, as envisaged under Section 25 (7) of the Customs Act, 1969, was conducted as the stakeholders were not forthcoming with the values of Zippers (low end brands) as being traded in the international market, therefore, different markets were surveyed repeatedly for the purpose. Online 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 of Zippers. Consequently, the customs values of Zippers (low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

Para-6 to 10: Denied. The customs values have been determined under Section 25 (9) of the Customs Act, 1969, which is one of the method for determination of customs values for which Director of Customs Valuation is empowered to determine the customs values of any imported or exported goods.

PRAYER

17. It is respectfully prayed that the customs values of the subject goods determined keeping in view the valuation methods given in Section 25 of the Customs Act, 1969. Moreover, the petitioners have not disclosed/suggest their actual prices of the subject goods. Accordingly, the petition has no merit for consideration and is liable to be rejected.

ORDER

18. The record of the case has been examined in the light of written and verbal submissions put forward by the petitioner. Five importers appeared, and contended that the customs value of Zipper has been determined on higher side vide Valuation Ruling No.887 dated 27-07-2016. The difference of value of Zipper in cut to size and in Rolls is too divergent. In the Valuation Ruling 887 dated 27-07-2016, the value addition for Zipper in rolls to cut to size is not rational. In case of metallic / brass the value of cut to size is US\$ 6.30/kg and that of in rolls @ US\$ 5.80/kg, hence value addition to make cut to size Zipper from roll is US\$ 0.50/kg. on the other hand, in case of nylon / polyester/plastic the value for cut to size is determined at US\$ 4.34/kg whereas for rolls is US\$ 2.15/kg, showing that addition is US\$ 2.19/kg which is not understandable. For the above Zipper for cut to size value is determined at US\$ 3.65/kg and for rolls at US\$ 3.35/kg, hence value addition for same prices is at US\$ 0.35/kg. They contended that the customs value of Zipper in cut to size and in Rolls are required to be reviewed because there is no rational for such huge gap for same process i.e. ranging from US\$ 0.35/kg, 0.50/kg and US\$ 2.19/kg. They further stated that the determination of customs values are overall on higher side however, the petitioner did not provide any supportive documents in favour of their contention.

19. On the other hand, departmental representative stated that value of low end brands had considerably increased in the international market as compared to determined values of Zipper (low end brands) vide Valuation Ruling No.479/2012 dated 23-10-2012. Therefore, previous Valuation Ruling required revision in terms of prevailing prices in international market and this

Directorate General initiated an exercise for determination of customs values for Zippers. Consequently fresh Valuation Ruling No.887/2016 dated 27-07-2016 was issued. However, he could not explain the rationale behind the such huge gap between cut to size zipper and in Rolls of different materials. Import / export data was retrieved but factual position could not be clear because of its unit price showing in different packing (carton etc).

20. I have deliberated on the case record as well as verbal and written arguments put forth by the petitioners. The arguments of the petitioners regarding conversion cost have been considered. Plain reading of the customs values determined vide impugned Ruling Valuation reflects that in case of Brass Aluminum Zipper the consumer cost from roll to cut to size is only above 8% only whereas for Nylon/Polyester Zipper it is workout at the rate of 102%. Moreover the custom value of Nylon/Polyester in rolls is used 2.15/kg and Aluminum Zipper at as 3.35/kg, meaning these by the Aluminum Zipper is costlier than Nylon/Polyester Zipper. Whereas in case of cut to size category the polyester / nylon Zipper is at US\$ 4.34/kg and Aluminum Zipper at US\$ 3.65/kg showing that Aluminum Zipper is cheaper than Nylon / polyester Zipper significantly. Reasons for this conclusion have not been recorded in this impugned Valuation Ruling.

21. Above stated facts and figures reflects that due care was not taken while determining the customs values of Aluminum Zipper in cut to size and Nylon / Polyester zipper in Rolls. Therefore the Director Customs Valuation is directed to ~~for~~ re-determine the customs values by considering all aspects, within 30 days of issuance of this order. In the meantime the value of cut to size Aluminum Zipper (finished form) is enhanced to US\$ 5.50/kg. The petition is disposed off accordingly.

22. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (04) petitions.

S#	Petitioner' Name	File No.
1.	M/s Hasan Traders	DG(V)Val.Rev/855 /2016
2.	M/s Arshad & Company	DG(V)Val.Rev/854/2016
3.	M/s Ever Green Enterprises	DG(V)Val.Rev/856/2016
4.	M/s Jaun Enterprises	DG(V)Val.Rev/857/2016

(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s. Amir Industries
C/o M/s Gulamullah Saikh & Co, Advocates,
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Near Boat Basin, Clifton, Karachi.

M/s. Arshad & Company,
Shop No. D-24, Iqbal Centre, M.A. Jinnah Road, Karachi.

M/s. Hasan Traders,
Office No.1, Street Lane No. 3, 19-E, Phase-II, Extension,
Defence Housing Authority, Karachi.

M/s. Ever Green Enterprises,
Plot No. 13-C, Lane No.3, Bukhari Commercial,
Defence Housing Authority, Phase 6, Karachi.

M/s Jaun Enterprises.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/
(North) Islamabad/(Central) Lahore.
3. Collector, MCC Appraisalment (East)/ Appraisalment (West)/Port M. Bin Qasim/
Preventive, Karachi.
4. Collector, MCC, Appraisalment/Preventive, Lahore/Quetta/Peshawar/Faisalabad/
Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. Director, Customs Valuation, Karachi/Lahore.
6. Deputy Director (HQ), Directorate General of 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.