

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/885/2016

Dated: 2<sup>nd</sup> November, 2016

**Order in Revision No. 266/2016 under section 25-D of the Customs Act, 1969  
against Valuation Ruling No.891/2016 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. Colgate Palmolive (Pak) Ltd

....

PETITIONER

VERSUS

Director, Customs Valuation, Karachi

....

RESPONDENT

Date (s) of hearing 20.09.2016 & 06.10.2016

For the Petitioners

Mrs Naveen Advocate

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.891/2016 dated 27-07-2016 issued under section 25-A of the Customs Act, 1969 inter alia, on the following grounds:

2. That the applicant Colgate-Palmolive (Pakistan) Limited, is a company incorporated in Pakistan under the Companies Ordinance 1984 and engaged in the business of manufacturing and sale of consumer products and is also a regular importer of various raw materials/chemicals including "Sodium Sulphate Anhydrous" for the manufacturing of the their products.

3. That the value of Sodium Sulphate Anhydrous in the international market is US\$ 0.075/- per kg. The applicant in its routine business imports Sodium Sulphate Anhydrous from China on a regular basis on the price ranging from US\$ 0.075 to US\$ 0.078 per kg. This is the transaction value between the applicant and the suppliers from the international market. However, in order to avoid delays and confrontations with the customs department, the applicant declares the price according to the valuation ruling in the Goods Declaration.

4. That the prices of Sodium Sulphate Anhydrous were determined previously in terms of section 25A of the Customs Act, 1969 vide Valuation Ruling No.802/2016 dated 22-1 -2016 @ USD 0.115/kg on the imports of China & Taiwan which were on the very higher side in relevance to the prevailing international prices. That in this context the applicant and other importers made several representations to the valuation department and gave their valuable assistance.

5. That subsequently to re-determine the values of the said product, a meeting was called by the Director Valuation on 26.07.2016 which was attended by the representative of the applicant. The applicant submitted import documents for their recent imports of Sodium Sulphate Anhydrous i.e. commercial invoices, bill of lading and letter of credits along with several other relevant documents.

6. That however, abruptly, the very next day, i.e. on 27.07.2016, the impugned ruling was issued fixing the values for the said product i.e. Sodium Sulphate Anhydrous from China & Taiwan a US\$ 0.11/kg without adhering to the principles laid down in valuation cases decided by the superior courts as well as section 25 of the Customs Act. This has prejudiced the applicant and others who are the importers of the said product as the values determined by the respondent vide the said valuation ruling without considering, transactional value of the applicant under section 25 (1) of the Customs Act 1969, and determined the values by resorting directly to section 25(7) & 25 (9) which is unlawful, illegal and wholly without jurisdiction.

7. That while fixing the value of the subject goods under section 25-A, the respondent did not bother to consider submissions of the applicant and others into account without any logical reasons and determined the impugned values most capriciously and wholly arbitrarily. That since the valuation ruling issued is patently illegal, without any justification, arbitrary, discriminatory, completely against the law and in violation of the mandatory provisions of the Customs Act 1969 and the directions/interpretations of the honorable courts from time to time and hence the applicant prefers this review application without prejudice to his right to contest the same before any other forum available in law, on the following grounds:-

#### GROUNDS

8. That at the outset it is submitted that the values determined by the respondent vide the impugned Ruling in terms of section 25-A of the Customs Act 1969 and followed and being applied on the importation of the consignments being the provisions of section 25 of the Customs Act 1969 read with the valuation rules notified vide Chapter IX of SRO 450(1)/2001.

9. That since neither the contention of the Applicant has been given any consideration nor the legal provisions have been applied in a fair and just manner, therefore it cannot be said that the applicant was a party to such fixation of values as the transactional values declared by the applicant are the correct and genuine values and must be accepted in terms of sub section (1) of section 25 of the Customs Act 1969.

10. That the observation to the effect that import data of identical and similar goods was examined and since clearances were being made on the basis of values as determined vide earlier ruling or there was the variation in the declared import prices therefore the import data was not found to be of much help and such is not proper and just is completely denied in so far the



present applicant is concerned. It is also a matter of record that all the previous imports made by the applicant were either against the Bank Contract or Letter of Credits and always the payment were been made through the proper banking channel without any iota of doubt about the veracity of the transaction value.

11. It is submitted that if the transactional value is not acceptable to the department, then assessment could have been done on the basis of identical goods method in terms of other sub sections of section 25 of the Customs Act 1969. Therefore the Valuation arrived at is whimsical in nature without following the provisions of law and hence the exercise of the discretion of power by the Valuation Department is arbitrary and patently illegal. Also, the correctness of the determination of valuation through the valuation ruling by the department is highly doubtful, as no uniform method has been adopted to ascertain the correct value of the subject consignments.

12. That it is further submitted that in terms of section 25 (1) of the Customs Act 1969, an invoice price cannot be routinely discarded except on the strength of a clear evidence that the invoice is not genuine and it does not show the real price as has been transacted between the applicant and foreign supplier, and that something else has passed clandestinely between the applicant and the foreign supplier. Unfortunately none of such exercises have been carried out in the case of applicant and has imported the subject consignments from reputed concerns through a firm contract and with complete transparent documentations.

13. That even otherwise and without prejudice, it is submitted that even in applying the deductive method of valuation, the exercise of market survey has to be declared by the Honorable High Court of Sindh vide judgment reported as Rehan Urner V/s Collector of Customs & others (2006 PTD 909) wherein the Honorable court at Para 18 of the judgment has held that 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 sub section (5) and likewise without similar exercise under sub section (5) no resort can be made to sub section (6). In the same manner without an exercise in writing on record under sub-section (7) and similarly to subsections (8) & (9). This exercise is to be made in each case separately. On the basis of exercise in the case of earlier imports by other importers it cannot be applied to any subsequent import by another importer.

14. That in the same judgment another related question was also raised that whether an assessment can be made on the basis of working committee constituted for that purpose to adopt method under section 25(7) without associating the importer or his representative in each case, and the Honorable Court went on to hold that no assessment can be made on the basis of a working committee constituted for the propose of determining the deductive valuation under section 25(7) without associating importer or his representative in each case. Needless to submit that in this ruling while conducting the market surveys neither the applicant nor his representative was ever called for. Therefore such values obtained after a market survey cannot be relied upon for assessment under section 25(7) of the Act *ibid*.

15. That even otherwise the said ruling is in complete violation of the guidelines issued by the Honorable High Court of Sindh in judgment dated 5.3.2011 in CP No. 2673 of 2009 (Sadia Jabbar VS Federation of Pakistan & others), 2014 PTD 176 (Goodwill Traders VS Federation of Pakistan & others) and in number of other cases, wherein a number of Valuation Rulings have been found to be illegal under similar and identical circumstances and have been accordingly set aside and the Respondents have been directed to act in accordance with law while issuing the



Rulings under section 25A of the Customs Act 1969. Therefore the said ruling is also liable to be set aside on the touchstone of the said observations of the honorable High Court.

16. That the respondent has also failed to take into account the submissions made by the applicant vide its letter dated 26.07.2016 regarding the international price of the said product. That for the guidance and assistance of the learned respondent the name and the websites of the 3 largest manufacturers / suppliers of the said products were provided through the above said letter to check the international prices of the said product, but in all fairness while issuing the Ruling this aspect has not been considered at all and hence the impugned Ruling is illegal and liable to be set aside.

17. That the impugned ruling has been issued without giving any weightage to the submissions made by the Applicant in so far as arriving at correct values is concerned and the respondent has not bothered to rely or discuss the suggestions in this regard and also in complete violation of the provisions of section 25 of the Customs Act 1969, hence the impugned Ruling is illegal and liable to be set aside.

18. That the applicant craves leave of this Honorable Forum to raise any further grounds at the time of hearing of this application.

#### PRAYER

19. It is therefore, prayed by the Applicant above named that the Honorable Director General Valuation by virtue of powers vested under section 25(1) of the Customs Act 1969 may be pleased to pass orders as follows: -



a) Declare that the impugned Valuation Ruling being No 891/2016 dated 27.07.2016 in terms of section 25-A of the Customs Act 1969 is illegal. Unlawful and is alien to the provisions of section 25 of the Customs Act 1969 and hence be set aside.

b) Declare that the action of Valuation Department by resorting to assessment in terms of sub section (9) of section 25 of the Customs Act 1969 directly without first exhausting the methods of assessment provided under sub section (1), (5) (6), of section 25 of the Customs Act 1969, and without associating the Applicant in such an exercise is illegal and liable to be set aside;

c) Direct the department to assess the goods of the petitioner strictly in terms of section 25 (1) of the Customs Act 1969.

d) Direct the department to release/finalize the pending and future imports of the applicant under section 81 of the Customs Act 1969 pending this review, in terms of section 81 of the Customs Act 1969 applying the judgment of the Honorable High Court in CP D-6918 of 2015. Such other relief as this authority may deem fit and proper in the circumstances of the case.

20. 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:

#### ORDER

21. The case record and written as well as verbal submission of the petitioner's were

examined in detail. Mrs Naveen defence counsel appeared on behalf of the petitioner and stated that the prices have been determined on higher side whereas import prices of the subject item are available on lesser side on international website. Zaub data shows almost US\$ 90 to 100/MT. Similarly Chinese websites values of the subject item Sodium Sulphate Anhydrous of China origin are again available on lower side ranging from US\$ 90 to US\$ 100/MT instead of determined custom values.

22. Keeping in view of the above facts I have inferred that the contention of the imported is valid and customs values are reduced from US\$ 110/MT to US\$ 100/MT of Sodium Sulphate Anhydrous of China origin.

  
**(Syed Tanyir Ahmad)**  
**Director General**

Registered copy to:

M/s Colgate Palmolive (Pakistan) Limited  
Through Merchant Law Associates,  
Lakson Square, Building No.2, Sarwar Shaheed Road,  
Karachi-74200.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/  
(North) Islamabad/ (Central) Lahore.
3. Collector, MCC Appraisalment (East/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.