GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/850/2016 Dated: 27 September 2016

Order in Revision No242/2016 under section 25-D of the Customs Act, 1969 against Valuation Ruling No.892/2016 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 Astrontech Inc. & Others ..... PETITIONERS

VERSUS

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

Date(s) of hearing	18-08-2016
For the Petitioners	Mr. Khurram Azhar
For the Respondent	Mr. Abdul Majeed, Assistant Director

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.892/2016 dated 27-07-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the appellant is engaged in importation of 'PVC Flex" from China, (hereinafter referred to as "Goods") in Pakistan.

3. That recently respondent issued valuation ruling No.892/ 16 dated 27.07.2016 on the basis of order dated 10.11.2015 passed by Honorable High Court Sindh at Karachi in CP No.6918/2015 and fixed the Customs value (C&F) of PVC Panaflex/Banner Sheet @ 1.25 US$/kg from China and @ 1.40 US$/kg from other origin.

4. That the unjust and harsh valuation ruling dated 27.07.2016 has been passed by the respondent under section 25(A) of the Customs Act, 1969 and determined the values of the imported PVC Flex Banner Sheets not in accordance with law, therefore, the same is liable to be

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set aside.

Grounds

5. That the valuation ruling No.892/2016 dated 27.07.20 16 issued by the respondent without reasoning, without mentioning as how they reached that conclusion the valuation ruling cannot be sustained, hence the same is liable to be set aside. Reliance is placed upon PTCL 2008 CL.457.

6. That while passing the impugned valuation ruling respondent did not consider the material submitted at the time of hearing by the appellant and issued the impugned valuation ruling No.892/16 dated 27.07.20 16 which is not sustainable, therefore, without considering the material documents valuation ruling is liable to be set aside /reviewed.

7. That while passing the impugned valuation ruling No.892/2016 dated 27.07.2016 respondent neither show method of its preparation nor it find mention of unit price or its retail price in market, it should have been bases upon proper discussion and reference to value of disputed goods, therefore, valuation ruling is not justified hence the same is liable to be set aside. Reliance is placed upon PTCL 2010 CL.95

8. That valuation ruling issued by respondent are in total ignorance of the directions provided in section 25A of the Customs Act, 1969, none of the same complied with requirements mentioned therein, in stricto senso, therefore, valuation ruling No.892/16 dated 27.07.2016 is illegal and no legal effect, hence the same is liable to be set aside.

9. That while issuing the valuation ruling respondent did not consider that for the preparation of fresh valuation ruling provisions of section 25 have been made mandatory, therefore, without considering the mandatory requirement of section 25 of the Customs Act, 1969, the valuation ruling is not sustainable hence the same is liable to be reviewed. Reliance is placed upon PTCL 2008 CL. 409.

10. That while determining the valuation ruling under section 25A of the Customs Act, 1969 with reference to the fall back method, the concerned authority is duty bound to exercise power must be lawful and also to keep in mind and take into consideration the relevant rules. Whereas respondent did not consider the relevant rules and not exercise the power lawfully at the time of issuance of ruling with reference fall back method, therefore, the valuation ruling No.892 / 16 dated 27.07.2016 is liable to be set aside/reviewed. PTCL 2014 CL. 590

11. That Rule 110 of the Customs Rules, 2001 clearly states that if the value cannot be determined in accordance with the valuation methods laid down in subsection (1), (5), (6), (7) and (8) (i.e. resort must be had to the fall back method under subsection (9), then the importers data available with the Department must be used, therefore, without considering the importers data of the relevant period the valuation ruling determined under subsection (9) of section 25 of the Customs Act, 1969 is illegal and the same is liable to be reviewed.

12. That the impugned ruling is void of all legality as it is passed without fulfilling the

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requirements as laid down in section 25(9) of the Customs Act, 1969 read with Customs Rules 121 86 123, which is unlawful and ultra vires of law and facts. Therefore, the impugned valuation ruling is liable to be reviewed.

13. That the value determined by the respondent is in violation of the section 25(9) of the Customs Act, 1969 the relevant extract of the section 25(9) of the Customs Act, 1969 is re-produced as follows;

> *(9) Fall back method — If the Customs value of the imported goods cannot be determined under sub-section (1) (5), (6), (7) and (8), it shall, subject to rules, be determined on the basis of a value derived from among the methods of valuation set out in sub-section (1), (5), (6), (7) and (8) that, when applied in a flexible manner to the extent necessary to arrive at a customs value.*

14. That the higher Hon'ble Court set aside the valuation ruling where there are no reasons given as to how value of goods could not be determined under the provisions of subsections (1), (5), (6), (7) and (8) of-section 25 and why the recourse to subsection (9) was necessary and where the section (9) was also not adopted in accordance with the law. Reliance is place upon 2013 PTD 825.

15. That it is an established principle of interpretation of the tax laws that plain language of the law is to be applied. Adhering to the principle, by reading section 25-A of the Act, it envisages -

(i) the Collector of Customs on his own motion or Director of Customs Valuation on his own motion or on a reference made to him by any person or an officer of customs, may determine (not *fix)* customs value of any goods or category of goods imported into or exported out of Pakistan, after following the methods laid down in Section 25, whichever is applicable.

From the reading of the above it is clear that before proceeding with the determination of the value of imported goods It is mandatory for the Collector or Director to take 1st step to ascertain/decide which of the method is applicable out of the methods u/s. 25.

In all manners, either the powers of Collector or Director or Director General shall always be subservient to the provisions of 25-A (1) and subject to the methods mentioned in Section 25 read with rules 107 to 122 of the Customs Rules 2001.

(ii) The customs value determined under subsection (1) *{it means that the determination is must, not estimation or guess work rather should be under the method mentioned in Section* 25}shall be applicable to the relevant imported goods. See clause (2) of section 25A.

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(It means the customs value determined u/ s.25-A (1) is not either precedent or permanent fixation of value or ruling for goods to be imported in future).

(iii) In case of any conflict - *{conflict means between Collector 86 Director)* in the customs value determined (determine has been repeatedly used) u/s. 25A(1) the Director General of Customs Valuation shall determine the applicable customs value *(applicable means applicable method).*

16. That in the recent Judgment of the Honorable Sindh High Court of Karachi was ruled the same position of law, wherein it was categorically held that;

> *"Language of section 25 is mandatory and it requires the department to follow step by step for the purpose of determining value and if there is no result coming out then they may avail the remedy under section 25-A. -The language of section 25 of the Customs Act is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if there is no result coming out then they may avail the remedy render section 25-A. as per language of the above section the domination of the import value should be on the basis of transaction value, provided that conditions provided in sub-section (1)(a) of section 25 are not available. If an importer is crossing sub-section (1)(a) then other sub-section of section 25 the Act to be followed [Para 4 at A.*

17. That the Goods of the appellant is a combination of two items i.e. PVC and Polyester Yarn. PVC is a byproduct of Oil and according to the Customs own weekly basis data, the prices of base oil including its byproducts (PVC) are declining. This fact is in common knowledge of every person. Whereas the price of Polyester Yarns is concerned, the Customs Department has already reduced the value due to decrease in international market. Therefore, the value for the purpose of duty on import of PVC determined by the respondent is not based on the current international standard and hence the same is liable to be reviewed.

18. Notwithstanding anything above it is important to mention here that due to drastic reduction in Oil prices the byproduct/raw materials produce from oil are decreasing in international market. Therefore, the impugned valuation ruling is liable to be set aside and needs to be revised as per latest international market prices.

19. That the impugned valuation advice issued by respondent is arbitrary and leans to favor the department without proper reasoning of the facts in hand.

20. That the respondent has committed material irregularity by ignoring the relevant facts while issuing the impugned valuation ruling.

Prayer

21. In view of the aforementioned facts and circumstances, it is prayed in the interest of justice and equity that this Honorable authority may be pleased to set aside ruling dated

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27.07.2016 as the same are void and illegal and the same are not applicable on the imports to be made by the Applicant.

22. It is further prayed that interlocutory orders may be passed to grant the interim relief and suspend operation of the impugned valuation ruling till the disposal of this application.

23. It is further prayed that till the decision of the instant petition all the future consignment of the appellant may kindly be released provisionally u/s 81 of the customs Act, 1969 read with rule 125(2) of the Customs Rules, 2001 on declared value in the interest of substantial justice.

ORDER

24. Hearing in this case was conducted on 18.8.2016. Mr Khurram Azhar appeared. He stated that PVC Panaflex / Banner flex Sheets are imported from China and price of its raw materials i.e. PVC and polyester has been reduced in the international market. He referred to Scan prices of PVC which were US$1021/M. Ton in 2013 and US$763/M.Ton in year 2016. He also referred to valuation rulings issued for customs values of polyester yarn for the year 2014 at US$1.78/kg and at US$ 1.39 in 2016. For the manufacture of PVC Panaflex / Banner flex Sheets, he stated that 45% Calcium Carbonate (Ca CO3) as filler is added with PVC material and then DOP is added 10% and fabric also used to separate upper and lower polyester films and Titanium dioxide 1% added. He requested to reduce the V.R. price by US$ 300/MT. He stated that he has submitted Chinese GDs which shows US$0.961/ kg to US$1.05/kg (FOB) and after addition of freight at US$ 0.01/kg it shall be at US$ 0.971 or US$ 1.06/kg which may be verified from China.

25. On the other hand the Respondent Department submitted that the ratio of raw material for the manufacture of PVC Panaflex / Banner flex Sheets, now verbally provided without any supportive documents, is 45% Calcium Carbonate (Ca CO3) as filler + D0I 10% + fabric + Titanium dioxide 1%. This ratio of raw materials is entirely different from that ratio of raw materials previously provided by them during the hearing of Review Petition No 178/2016 dated 15.04.2016, which was PVC 70% ± polyester 15% ± fabric 15%. As their submissions are without supportive documents therefore cannot be relied upon. Since PVC material, calcium carbonate and titanium dioxide all three components, are rigid materials therefore it is hard to accept that same are used to manufacture PVC flexible panaflex / PVC flexible banner sheets from that raw material. It is also a matter of fact that they failed to provide international magazine or manufacturer's catalogue for the ratio of raw materials consumed. 90 days data for the relevant period was retrieved from PRAL, which clearly shows that value of this item declared by different importers is at US$1.32/kg i.e. slightly higher than existing V.R values at US$1.25/kg for China Origin. Similarly as per ratio of raw materials previously submitted the value worked out close to the value declared by different importers at US$1.32 /Kg. Hence the submissions of the petitioners are not based on facts and are misleading. The valuation ruling was correctly and lawfully revised after giving hearing opportunity to all stake holders/ importers. The inputs during meeting from the participants to determine the customs value were taken into consideration. The department further stated that all valuation methods from sub-Section (1) to (8) were properly exhausted sequentially to address the valuation issue in hand

and reasons for rejection of the same have also been clearly mentioned in the ruling. Consequently, the impugned valuation ruling was issued under Section 25(9) of the Customs Act, 1969 after examining the import data, on line prices from international websites and by analyzing all the gathered information.

26. I have deliberated on the case record as well as verbal and written arguments put forth by the petitioners and the respondent department. The respondent department submitted that the valuation ruling was correctly and lawfully revised after giving hearing opportunity to all stake holders/ importers. The inputs during meeting from the participants to determine the customs value were taken into consideration. The department further stated that all valuation methods from sub-Section (1) to (8) were properly exhausted sequentially to address the valuation issue in hand and reasons for rejection of the same have also been clearly mentioned in the ruling. Consequently, the impugned valuation ruling was issued under Section 25(9) of the Customs Act, 1969 after examining the import data, on line prices from international websites and by analyzing all the gathered information.

27. In view of above, I have inferred that customs values have been determined on reasonable and sound basis after giving fair opportunity to the stake holders, in accordance with the law. The Valuation Ruling No.892/2016 dated 27.7.2016, is therefore upheld and revision petition is rejected.

28. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (01) petition.

S#	Petitioner' Name	File No.
01	M/s Sheikh Azhar Javaid Proprietor Azhar Chemical Company, Lahore	DG(V)Val.Rev/842/2016

(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Astrontech Inc.
Mr. Khurram Azhar C/O M/s Mazhar Law Associates,
Head Office Suite No.427, Executive Floor, Sadiq Plaza, 69-The Mall, Lahore. 042-36360488

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 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 (Review), Karachi.
7. All Deputy/Assistant Directors (Valuation)
8. Guard File.

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