

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/902/2016

19838

Dated: 14th November, 2016

**Order in Revision No 265/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.901/2016 dated 04-08-2016**

- 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 Master Enterprises

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PETITIONER

VERSUS

Director, Customs Valuation, Karachi

....

RESPONDENT

Date (s) of hearing

26-09-2016

For the Petitioners

Mr. Darwesh K. Mandhan

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.901/2016 dated 04-08-2016 issued under section 25-A of the Customs Act, 1969 inter alia, on the following grounds:

2. The applicant being aggrieved and dissatisfied with the valuation ruling No.901/2016 dated 04.08.2016 (in respect of items listed in the Annexure to this application) issued by the Director of Valuation in terms of section 25A of the Customs Act 1969.
3. That the applicant is importer & manufacturer and engaged in the import of all kinds of "Tooth Brushes" assessable under HS Code 9603.2100 and others in various forms and accordingly import the same regularly from China and Bangladesh. The applicant is aggrieved with the above valuation ruling issued specifically in respect of prices notified for "other origins" and hereby prefer instant review petition and humbly state as under:-
4. That the applicant is one of the importers of the said item and contribute substantial

amount of revenue in respect of duty and taxes to the exchequer. The impugned valuation ruling being a malafide act of the Valuation Department has been issued with malafide intentions, without deliberating over issue of origin.

5. That before issuance of subject ruling the prices of subject item i.e. "tooth brushes" for all classes (children as well adults) were being assessed by the Collectorates under valuation ruling No. 736/2015, on a value @ US\$.024 to US\$ 0.45 cents for the respective categories as imported from China origin.

6. 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 prefer this review application without prejudice to their right to contest the same before any other forum available in law, on the following grounds:-

GROUNDS

7. That the applicant import from Bangladesh is being subjected to discrimination besides highly unjustified rates are fixed against the class and category (other origins). It is further submitted that while issuing subject valuation ruling No. 901/2016 dated 04.08.2016 the issuing authority miserably failed to pin point the issue of "other origin".

8. That the valuation authority failed to incorporate "Bangladesh as separate exporting country" in respect of subject valuation. The valuation ruling in absence of Bangladesh country is discriminatory in nature and against the constitutional rights provided by the law.

9. The imports of applicant from Bangladesh cannot be categorized in other origins being cheaper as compared to China. It is further submitted that applicant is suffering higher duty and taxes due to higher prices fixed in relation to category "other origins".

10. That the applicant is unable to compete and transact its business in the local market unless the "Bangladesh" as separate country is introduced / added in the valuation ruling, excluding it from the purview of other origins. It is submitted that since other origin also includes lots of countries having higher values the applicant is unable to even order for the consignments.

11. That it is also being brought to notice of learned Director General Valuation that since the labour charges and cost for the manufacture of tooth brush is cheaper by 20% to 25 % as such the values against such country i.e. Bangladesh may also be fixed 20% to 25% lower as compared to China as various examples are available for different class of goods to prove the Chinese goods higher in value comparing them with the Bangladesh.

12. That at the outset it is submitted that the values determined by the respondent vide the impugned ruling in terms of section 25A of the Customs Act, 1969 are wrongly notified applied on the imported of the consignments, being imported regularly by the applicant, are illegal,

arbitrary, unjust, malafide and without justification as valuation ruling has been issued by the Valuation Department on the basis of a fall back method under section 25(9) of the Customs Act, 1969 and purported market survey which was carried out without any notice to the Applicant, hence the same is illegal and cannot be sustained.

13. That Valuation Method under section 25 (9) opted by Respondent, which is not permissible under the law as the Respondent has ignored to adopt sequential method of customs valuation as provided in section 25 of the Customs Act, 1969. It is pertinent to point out that it is a well settled law as per Hon'able Supreme Court of Pakistan in case of Collector of Customs, Port Qasim V/s Zymotic Diagnostic International, reported as 2008 SCMR 438 and the Hon'able High Court of Sindh has also confirmed the same view in case law reported as (i) (M/s Rehan Umer V/s Collector of Customs 2006 PTD 909, (ii) M/s Wania Impex V/s Assistant Collector of Customs 2008 PTD 1760, (iii) M/s Najam Impex Lahore V/s Assistant Collector of Customs Karachi, 2008 PTD 1250, (iv), M/s Khan Trade International v/s Collector of Customs Appraisal Group VII, Karachi (v) M/s. Pakistan Dry Battery Manufacturers Association v/s Federation of Pakistan, 2006 PTD 1119 and Hon'able Lahore High Court has held in case of M/s Toyo International Motorcycle V/s Federation of Pakistan and 3 others, PTCL 2008 CL 40 has held that sequential method has to be applied for customs Valuation. In this case Respondent has not applied sequential method of customs valuation, hence it tantamount to mal-administration. The Principles of law as enunciated by High Courts or Supreme Courts are binding on the Respondents under Article 189 and 201 of the Constitution of Islamic Republic of Pakistan and any deviation from the set principles tantamount to illegal act and therefore the determination of Customs Value under section 25 (9) of the Customs Act, 1969 is ultra vires, illegal and discriminatory and is liable to be set-aside. It was obligatory on part of learned Respondent to indicate the cogent reason for rejecting / not accepting the Transaction Value / price actually paid to the manufacturer in China which is indicated on the invoice, contracts and letter of Credits; There is no reason or justification as to why valuation method under sub Section (9) to section 25 has been adopted, hence the Values determined by impugned valuation Ruling are liable to be discarded.



14. That such an exercise, without prejudice, is in complete violation of the law laid down in 2014 PTD 176 "M/s. Good Will Traders v/s Collector of Customs" as well as under provisions of section 25 of the Customs Act 1969, read with the valuation rules notified vide Chapter IX of SRO 450(1)/2001.

15. That it is further submitted that perhaps "some prices obtained on the internet survey have also been considered for determining the said impugned values", which again is against the law as well as judgments of Hon'able Courts, wherein it is clearly held that "price quotation or proforma invoice cannot be treated as correct and valid evidences as no transactions are carried out on such prices and until and unless the imports are affected on those prices, the same cannot be made the basis of assessment of other imports", hence the Ruling is liable to be brushed aside.

16. That if the impugned Ruling sustained the rates of subject item, will reach high class prices, for which ordinary person would not be in position to buy a cheap commodity from

market and it would also enhance the capital amount to be invested for the import purposes.

17. That without prejudice, it is submitted that even in applying the deductive method of valuation the exercise of market survey has to be carried out in each and every case and a general survey cannot be made basis for fixation of values as otherwise the same would be in total negation to law declared by Hon'able Courts and as if ruling may be read carefully no such exercise for the subject item in issue is carried out by the department.


18. That it is also needless to say that determination of such arbitrary and excessive valuation will only promote smuggling of the subject goods which is already alleged by department in many cases, is going on in the garb of Afghan Transit and will cause loss to the exchequer as the Applicant are paying duties and taxes. Therefore it is requested to look into this aspect of the matter as well as the trade is already in a very depressing situation coupled with numerous other factors and cannot bear any other cost increasing element in it.

19. That in view of the above submissions coupled with the fact the Customs officials have their interest involved in higher fixation of prices of the goods of the Applicant, therefore the basis and input in to the fixation of prices of these goods may be discarded and Valuation Ruling impugned herein is liable to be set-aside.

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

PRAYER

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

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- a) Declare that the act of valuation department by issuing the subject valuation ruling 901/2016 dated 04.08.2016 in terms of section 25A of the Customs Act 1969 is illegal and is hereby set aside.
 - b) Direct the Director valuation to issue a fresh Valuation Ruling by incorporating the new country Bangladesh taking Bangladesh out of purview of other origins and also notify prices of such country for Tooth Brush as 25 % lower to the rates of China.
 - c) 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), (7) & (8) of section 25 of the Customs Act 1969, is illegal and liable to be set aside;
 - d) Direct the Department to assess the goods of the Applicant strictly in terms of section 25(1) of the Customs Act 1969 until new ruling with separate category Bangladesh is issued in respect of Tooth Brush.

- e) and pending finalization of this review application direct the Collectorates concerned to assess the future consignments in terms of section 81 of the Act by depositing of post dated cheques for the differential amount;
- f) Grant such other relief(s) as this Honourable Forum may deem just and proper in the circumstances of the case

22. 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:

Parawise Comments.

23. Brief of the case is that Customs Values of Tooth Brushes (low end brands) were determined vide Valuation Ruling No.736/2015, dated 25-05-2015. 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 Tooth Brushes (low end brands).

24. Meeting with stakeholders was held on 25-07-2016 and importers were also 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.



25. The meeting was attended by local manufacturer and different importers. The importers, during the meeting, were of the view that the prices of subject commodity have not increased in the international market. They, claim that market values of the impugned goods were equivalent to the values determined vide previous Valuation Ruling. The local manufacturer present during the meeting contended that value determined already for Tooth Brushes in retail packing were not truly reflecting international prices and also submitted documents, claiming that the values in international market, in certain cases, were higher than the determined values vide previous valuation ruling. One importer objected that the difference in values determined in retail packing viz-a-viz bulk importer was substantial. However, the manufacturer strongly claim of importers. They presented calculation sheets showing that the actual difference between the prices of goods imported in bulk packing viz-a-viz goods imported in retail packing was higher than that determined vide the valuation ruling No.736/2015, dated 25-05-2015.

26. Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at fair value of Tooth Brushes (low end brands). 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. 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 Tooth Brushes (low end brands). Consequently, the customs values of Tooth Brushes (low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

27. Parawise Comments

Para-1: Need no comments as the applicant have not disclosed their transaction value. As regards other origin, it is submitted that majority of the import are being effected from China. The customs values determined for other origin, it is submitted that these values have been determined for conveyance of the clearance Collectorate as well as for the importers who can import from other than China origin for speedy clearance.

Para-2: Denied. Paragraph-03 and 04, of the impugned Valuation Ruling clearly reveal that not only the valuation methods in Section 25 of the customs Act, 1969, were exhausted but also relevant stakeholders were associated while determining the customs values.

Para-3: It is to be submitted that the referred Valuation Ruling No.736/2015, was issued on 25-05-2015. Hence, the existing valuation ruling have been issued after more than one year, after taking in to account prevailing prices in the international market as well as local market.

Para-4: 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 Tooth Brushes (low end brands). 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. 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 Tooth Brushes (low end brands). Consequently, the customs values of Tooth Brushes (low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

28. Grounds

i. Denied. As regards other origin, it is submitted that majority of the import are being effected from China. The customs values determined for other origin, it is submitted that these values have been determined for conveyance of the clearance Collectorate as well as for the importers who can import from other than China origin for speedy clearance.

ii. Denied. Bangladesh origin goods falls in the category of other origin. It is to be added that the prices of the Chinese origin are often lower than the other Asian Countries because the China manufacturer their goods in mass production.

iii & iv. Denied. The applicant have not furnished any corroboratory documents neither at the time of exercising the determination of customs value under Section 25A of the Customs Act, 1969, nor with this petition that Bangladesh origin Tooth Brushes are cheaper than China origin.

v. Denied. The applicant have not furnished any corroboratory documents that in support of their contention that Bangladesh origin goods may be fixed 20 to 25% lower as compared to China.

vi. Denied. The customs values of the subject goods were determined after exhausting valuation methods given in Section 25 of the Customs Act, 1969. There exist no law to issue any notice informing them about conducting of market survey.

vii to xiii. 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 Tooth Brushes (low end brands). 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. 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 Tooth Brushes (low end brands). Consequently, the customs values of Tooth Brushes (low end brands) have been determined under section 25 (9) of the Customs Act, 1969.

xiv. Need no comments being related further grounds at the time of hearing.


PRAYER

29. It is respectfully prayed that the import are being effected from China. The customs values determined for other origin, it is submitted that these values have been determined for conveyance of the clearance Collectorate as well as for the importers who can import from other than China origin for speedy clearance. It is to be further added that the prices of the Chinese origin are often lower than the other Asian Countries because the China manufacturer their goods in mass production. In addition to above, it is also prayed that the applicant have not furnished any corroboratory documents in support of their contention, enabling this Directorate to examine the issue. Accordingly, in the absence of corroboratory documents petition has no merit for consideration and is liable to be rejected.

ORDER

30. I have gone through the record of the case. Mr. Darwesh Mandhan appeared. In Valuation Ruling No.901/2016, the brushes have been valued for only two origins i.e. China and Others. They are importing from Bangladesh. A new category of Far East should have been included.

31. The price has been fixed on per dozen basis. The Principal Appraiser was asked as to why value was fixed in dozen whereas the tariff is in pieces, but he could not give any reason. The value has been fixed at Rs.5 – 6/pc which is one lower side. The importer of Bangladesh / Far East requested that values of Far East, Europe and South East Asia should be separately fixed. Market inquiry was conducted to ascertain actual value. After conducting market inquiry and consulting international data some values needs to be adjusted. The values are therefore determined as under to provide level playing field to all:



S.No	Description of goods	PCT	Proposed PCT for WEOC	Origin	Customs Values (C&F) US\$/Pc
(1)	(2)	(3)	(4)	(5)	(6)
1.	Tooth Brushes for adult (in retail packing)	9603.2100	9603.2100.1000	China	0.07/pc
2.	Tooth Brushes for adult (in retail packing)	9603.2100	9603.2100.1100	Far East	0.08/pc
3.	Tooth Brushes for adult (in retail packing)	9603.2100	9603.2100.1200	Others	0.09/pc
4.	Tooth Brushes for children (in retail packing)	9603.2100	9603.2100.1300	China	0.05/pc
5.	Tooth Brushes for children (in retail packing)	9603.2100	9603.2100.1400	Far East	0.06/pc
6.	Tooth Brushes for children (in retail packing)	9603.2100	9603.2100.1500	Others	0.07/pc

7.	Tooth Brushes for adult (in bulk packing)	9603.2100	9603.2100.1600	China	0.05/pc
8.	Tooth Brushes for adult (in bulk packing)	9603.2100	9603.2100.1700	Far East	0.06/pc
9.	Tooth Brushes for adult (in bulk packing)	9603.2100	9603.2100.1800	Others	0.07/pc
10.	Tooth Brushes for children (in bulk packing)	9603.2100	9603.2100.1900	China	0.04/pc
11.	Tooth Brushes for children (in bulk packing)	9603.2100	9603.2100.2000	Far East	0.05/pc
12.	Tooth Brushes for children (in bulk packing)	9603.2100	9603.2100.2100	Others	0.06/pc

(Syed Tanvir Ahmad)
Director General
11/11/16

Registered copy to:

M/s. Master Enterprises,
Plot No.1, Gulistan-e-Ali, Block-D,
Faizan-e-Madina, Hyderabad.

M/s. Shamim Enterprises,
B-61, Block-5, K.A.E.C.H.S.,
Karachi.

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