

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/900/2016

Dated: 23 November, 2016

**Order in Revision No. 268/2016 under section 25-D of the Customs Act, 1969  
against Valuation Ruling No.905/2016 dated 11-08-2016**

- 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 Al-Aziz Enterprises & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date (s) of hearing

03-10-2016 & 20-10-2016

For the Petitioners

Rana Zahid Hussain Advocate  
Mr. Madan Lal, Advocate  
Mr. Wahid Bux Sh. Consultant

For the Respondent

Mr. Safdar Abbas, Principal Appraiser  
Mr. Muhammad Aslam Principal Appraiser  
Mr. Iqbal Hussain Valuation Officer

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.905/2016 dated 11-08-2016 issued under section 25-A of the Customs Act, 1969 inter alia, as reproduced below:

2. Being aggrieved and dissatisfied with the Valuation Ruling No. 905 of 2016 dated 11.08.2016, the Petitioner prefers this Revision Petition under section 25-D of the Customs Act, 1969, before this Hon'ble Authority on the following facts and grounds, namely:

**FACTS**

1. That the petitioner is engaged in the import and trade of, inter alia, unbranded ordinary Hair Accessories made of Base Metal or Plastic or Combination of both items of China origin. The Petitioner scrupulously discharges its liabilities under

the various laws and has contributed huge sums to National Exchequer by way of, inter alia, diligent payment of duties and taxes. The Petitioner, in due course of its business, undertakes imports of the said hair accessories from China.

2. That the Respondent Director has been entrusted by the Legislature through the enactment of section 25A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods imported into Pakistan. The Petitioner is seriously aggrieved by the acts of the Respondent Director, whereby it has unlawfully, arbitrarily, without making a determination, and on an ex-parte basis fixed the values of hair accessories made of plastics / ordinary iron and hair accessories made of electroplated steel (hereinafter collectively referred to as 'the hair accessories') vide Valuation Ruling No. 906 of 2016. The Respondent Director has acted in grave violation and in excess of the powers conferred thereupon and, through its actions, is causing serious harm and loss to the Petitioner.
3. That the Petitioner may submit a brief background to the issuance of the impugned Valuation Ruling. The impugned Valuation Ruling was purportedly issued in supersession of the Valuation Ruling No. 492 of 2012 dated 15.11.12, wherein the values of hair accessories had been determined following the proper association of stakeholders, including importers of hair accessories. The values of hair accessories were determined as follows,

**TABLE I**



S. No.	Description of Goods	PCT Headings	Proposed PCT for WeBoc	Origin	Customs Value S/kg
			<b>9615.1100.1000</b>		
1.	Hair accessories made of Plastics/ordinary Steel (excluding Stainless Steel)	9615.1100 9615.9020 9615.9090	9615.1100.1100 9615.9020.2100 9615.9090.9000	<b>China</b>	<b>1.00</b>
2.	Hair accessories made of Plastics/ordinary Steel (excluding Stainless Steel)	9615.1100 9615.9020 9615.9090	9615.1100.1900 9615.9020.2900 9615.9090.9000	<b>Other Origins</b>	<b>1.50</b>

4. That the previous Valuation Ruling held field for a number of years, i.e. from 15.11.12 to the issuance of the impugned Valuation Ruling, and was accepted by both the importers of hair accessories as well as the Respondent, as being at or about the international market rate. Although the values in the previous Valuation Ruling were higher than the actual rate at which hair accessories were available in the international market, such difference was not prohibitive nor exceptionally detrimental to the local trade, hence, was acceptable for the purposes of valuation.
5. That the Respondent Director initiated proceedings for determination of value of hair accessories purportedly on the pretext that the values determined through the previous Valuation Ruling were no longer reflective of the prices at which hair



accessories were available in the international market. In light of this, the Respondent Director invited stakeholders to participate in proceedings for determination on 16.06.16, at which date the Petitioner, being represented by its counsel, sought time, vide letter dated 16.06.16, to collate, gather and present documents to assist the Respondent in order to come to a fair and lawful determination of values of hair accessories.

6. That, thereafter, the Respondent Director / it's officer addressed a hearing notice for a meeting on 23.06.16. At the said date, the counsel for the Petitioner, as well most other importers of hair accessories, was engaged in a hearing before this learned Authority in relation to another revision petition. By the time the said hearing before this learned Authority concluded, the Respondent Director had already left the offices of the Directorate General of Customs Valuation. As such, the counsel for the Petitioner intimated the Respondent Director as to why the stakeholder meeting on 23.06.16 could not be attended vide letter dated 29.06.16. Through the same letter, it was prayed that another stakeholder meeting be convened so that the interests and rights of the Petitioner, as well as the other stakeholders, be safeguarded and a true determination of values may be carried out.
7. That the Respondent Director, however, failed to convene any such meeting to associate the stakeholders in the process of purported determination. Although the aforementioned letters were well within the knowledge of the Respondent Director, however, to the detriment of the Petitioner as well as the other stakeholders of hair accessories, the Respondent Director issued the impugned Valuation Ruling No.905 of 2016 on 11.08.16 (hereinafter referred to as 'the impugned Valuation Ruling'). As is apparent from the foregoing, the Respondent Director remained silent for more than seven (07) weeks and did not carry out any process for determination of values of hair accessories. In fact, the impression conveyed by the omissions of the Respondent Director was that he had appreciated the fact that the values contained in the previous Valuation Ruling did not require any redetermination and, for this reason, did not convene any further hearings.
8. That, however, to the surprise and dismay of the Petitioner as well as the other importers of hair accessories, the Respondent Director issued the impugned Valuation Ruling without carrying out any determination of values as envisaged under the Act, 1969, and, instead, issued a list of values which have no foundation in fact nor law. Through the impugned Valuation Ruling, the values for hair accessories were fixed as follows

**TABLE II**

S. No.	Description of Goods	PCT Headings	Proposed PCT for WeBoc	Origin	Customs Value \$/kg
			9615.1100.1000		
1.	Hair accessories made of Plastics /ordinary Iron		9615.1100.1000 9615.9020.1000 9615.9090.1000	China	3.1

	(excluding Stainless Steel) (low-end brands only)	9615.1100 9615.9020 9615.9090	9615.1100.1100 9615.9020.1100 9615.9090.1100	Middle East/ Far East	4.4
			9615.1100.1200 9615.9020.1200 9615.9090.1200	Other Origins	7.0
2.	Fancy Hair accessories made of Electroplated Steel (low-end brands only)		9615.1100.1300 9615.9020.1300 9615.9090.1300	China	4.8
		9615.1100 9615.9020 9615.9090	9615.1100.1400 9615.9020.1400 9615.9090.1400	Middle East/ Far East	6.2
			9615.1100.1500 9615.9020.1500 9615.9090.1500	Other Origins	10.0

9. That, as apparent from the impugned Valuation Ruling, the Respondent Director has misstated the facts and has totally concealed the letters dated 16.06.16 and 29.06.16. While acting on the incorrect pretext that the stakeholders "*abstained from attending the scheduled meetings*", the Respondent Director proceeded to fix values of hair accessories which is not permissible under the law.
10. That, through the impugned Valuation Ruling, the Respondent Director created two categories of hair accessories without stating any reason or rhyme therefore. As is apparent from the description of the categories created through the impugned Valuation Ruling, no effort was expended by the Respondent Director to verify if such categories actually exist in the trade of hair accessories.
11. That, further, as apparent from paragraph 4 of the impugned Valuation Ruling, the Respondent Director utterly failed in applying the provisions of the Act, 1969, in a lawful manner. The Respondent Director has failed to provide any lawful or even plausible reasons for rejecting the valuation methods contained in Section 25 of the Act, 1969. Instead, however, the Respondent Director has attempted to justify the unlawful fixation of values through an arbitrary application of the provisions of Section 25(9) of the Act, 1969.
12. That, on a factual plane, the Respondent Director totally ignored the price actually paid / payable for the import of hair accessories into Pakistan. As is apparent from the import documentation of the Petitioner, the value of hair accessories remains much lower than the value purportedly 'determined' / fixed by the Respondent Director.
13. That it is submitted that the Respondent Director has failed to make an actual determination of values of hair accessories under the law, including but not limited to Sections 25 and 25A of the Act, 1969, and, instead, the Respondent Director has issued an arbitrary and highly prejudicial list of values which is causing serious loss and harm to the lawfully operated business of the Petitioner.
14. That, under the Act, 1969, and the Customs Rules, 2001, the Respondent Director was required to act in a strict manner while considering the application of each





method of valuation provided under Section 25 of the Act, 1969. Further, as required by the aforesaid provision, the Respondent Director needed to state lawful grounds for rejecting any particular method of valuation as being not applicable as given under the Act, 1969, whereas the Respondent Director has failed to provide any such grounds.

15. That, without prejudice to the preceding, the Respondent Director has relied upon some market survey purportedly carried out by him in order to justify the fixation of values which are otherwise unlawful and highly prejudicial to the Petitioner, as well as other importers of hair accessories. Even if the existence of such a market survey is accepted for the sake of argument, it is submitted that a market survey conducted without the association of any independent party and/ or the stakeholders is a nullity in the eyes of the law.
16. That the market survey purportedly conducted has been conducted in violation of the principles of natural justice and equity, as well as the Act, 1969, and the Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in the "greatest aggregate quantity", which has to be at least at par with the quantities of sale of the Petitioner, as well as other importers, dealing on a wholesale basis. Whereas, the Respondent Director has failed to produce any evidence in support of its contention that a lawful market survey was conducted.
17. That the phrase "greatest aggregate quantity" has been further explicated in Rule 119 of the Rules, 2001, wherein it has been stated that such quantity, in addition to being the greatest aggregate, also needs to be the greatest number in units sold at the first commercial stage after importation. Further, the provisions of Rule 119(3) also necessitate the involvement of the importers, including the Petitioner, in the process of market survey and determination in consequence thereof.
18. That the Respondent has also erred in relying upon the provisions of Section 25(9) of the Act, 1969, to purportedly 'determine' the values of hair accessories under the impugned Valuation Ruling. Firstly, the Respondent has not provided any lawful reasons for not following the methods of valuation contained in the preceding provisions of Section 25 of the Act, 1969. Secondly, the Respondent has wrongly applied the provisions of Section 25(9) of the Act, 1969.
19. That, as to the first submission, it is submitted that the Respondent has failed to provide reasons in conformity with Section 25 of the Act, 1969, as to why the methods of valuation laid down in sub-sections (1), (5), (6), and (7) were not followed. As to sub-section (7), the Respondents have not even attempted to state why determination proceedings were not limited thereto. This by itself is an incurable defect in the impugned Valuation Ruling.
20. That, although sub-section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the Respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable for the footwear at the time of import into Pakistan.



21. That the Respondent has failed to elaborate the 'flexible manner' in which the valuation methods were supposedly applied. The Respondent was under a positive duty to identify the provisions of Section 25 which were flexibly applied in arriving at the values purportedly determined in the impugned Valuation Ruling.
22. That, in addition to the above, it is submitted that the Respondent Director, while undertaking such an exercise for the determination of values of hair accessories, was required to strictly adhere to the provisions of the Customs Act, 1969, as well as the Customs Rules, 2001, and apply those in a transparent, judicious and lawful manner in determining the values of hair accessories. The Respondent Director, however, while causing serious prejudice and harm to the Petitioner, completely ignored the dictates of the Act, 1969, as well as the Rules, 2001, and, instead, fixed values of hair accessories in an entirely arbitrary, capricious and unreasonable manner, as has been demonstrated herein.
23. That the actions of the Respondent Director are in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the Petitioner as enshrined in the Constitution of Pakistan, 1973, including Articles 4, 8, 10A, 18, and 25A, thereof.
24. That, in light of the preceding factual narration, the petitioner prefers this petition on, inter alia, the following grounds, namely

3. GROUNDS

- A. That the impugned order is illegal, arbitrary, unjust, ex-parte and without any lawful authority and, as such, is liable to be set aside with immediate effect.
- B. That, the Hair accessories imported from China are made of base metal or plastic, re-cycled plastic or combination of both materials. Such accessories are of very ordinary and disposable in nature having very short life. The input cost of raw material can be easily ascertained from import record of China origin or even from the Valuation Rulings of Base Metal and Plastic Raw Materials issued by the Directorate of Customs Valuation time to time. The Directorate as per very old practice adds conversion cost. If an honest exercise is carried out, the C&F price of hair accessory cannot fall beyond US \$ 1/kg or around it. However, the learned Director has determined the C&F Value of Hair Accessories of China origin at US \$ 3.1/kg which is about \$ 2.10/kg higher than the previous Ruling. No reason and ground has been incorporated in the impugned Ruling as to how C&F Value at US \$ 3.1/kg for China origin has been arrived at.
- C. That the impugned Ruling is totally silent as how the learned Director arrived at to determine the value of Hair Accessories at US \$ 3.1/kg from China, \$ 4.4/kg from Middle East/Far East and US \$ 7/kg from other origins of the world. Similarly, in category No.2, Fancy Hair Accessories made of Electro Plated Steel (low end brands) is also hypothetically fixed at;
  - (i) China US \$ 4.8/kg
  - (ii) Middle East/Far East US \$ 6.2/kg





(iii) Other origins US \$ 10/kg

D. That a critical review and minute study of so-called values fixed through the impugned Ruling revealed that learned Director has not only improperly applied cost of materials etc. but description given in both serial numbers is also in-correct, mis-leading and carries a number of contradictions and anomalies as elaborated here-under:

(a) In serial No. 1 & 2, there is difference of ordinary Steel and Electro Plated Steel, ordinary Steel and Electro plated Steels of China origins are fixed at US \$ 3.1/kg and US \$ 4.8/kg or US \$ 3100/PMT and US \$ 4800/PMT, respectively. Meaning thereby, there is difference of US \$ 1700/PMT in ordinary and Electro Plated Steel. The learned Director has not considered that Hair Accessories are made of base metal. The Electro Plated Tin Plate, HRC, CRC and Stainless Steel being imported from China range between US \$ 400-1200/PMT on C&F basis. How it has been imagined that such Steel converted into Hair Accessories by a Chinese Industry would cost US \$ 3100 and US \$ 4800 per ton. This learned authority deals with entire Trade of the world can decide itself the way learned Director and subordinate staff has calculated values?

(b) Like-wise, the value of other origins with same material is manifold higher than China. For example, Hair Accessories made of ordinary and Electro Plated Steel are fixed US \$ 4400, 700, 4800, 6200, 10,000 per ton. Meaning, thereby C&F Value of a 15 Metric Ton Container will be around US \$ 100, 000/- on average basis. Such value does not commensurate with the original cost of the Raw Material. Besides, the Chinese Industry is running on annual profit basis. Infact, the subordinate staff of the learned Director did not move in accordance with law and perhaps, submitted their own values which are approved by the learned Director.

E. That on a careful perusal of the Valuation Rulings vis-à-vis 492 of 2012 and 905 of 2016, it can be easily gathered that the impugned Valuation Ruling 905 of 2016 dated 11.08.2016 contains un-fair, artificial and un-realistic values and seems to have been issued in haphazard manner. The learned Director has issued impugned Valuation Ruling under sub-section (9) of Section 25 (the fall back method). Sub-section (9) itself does not provide any mechanism but clearly stipulates that:-

*FALL BACK METHOD.- "If the customs value of the imported goods cannot be determined under sub-sections (1),(5),(6),(7) and (8), it shall, subject to the rules, be determined on the basis of a value derived from among the methods of valuation set out in sub-sections (1),(5),(6),(7) and (8), that, when applied in a flexible manner to the extent necessary to arrive at a customs value."*

F. That from the foregoing extract of sub-section (9) of Section 25, it is very clear that while adopting sub-section (9), the learned Director, in the first



instance, is bound to apply rules corresponding to each sub-section detailed in sub-section (9). First of all, the learned Director was under legal obligation to follow Rule 121 which corresponds to sub-section (9) Fall Back Method, then to follow all the preceding rules 120, 119, 118, 117, 116, 115, 114 and 113 of the Custom Rules notified vide SRO 450/2001 dated 18.06.2001 as amended time to time. However, from perusal of the impugned Valuation Ruling, it is not difficult to ascertain that the learned Director has neither followed the rules nor sub-sections of Section 25 of the Customs Act, 1969 in its letter and spirit. For example, rule 121 itself stipulates that value of imported goods determined under Section 25 of the Act shall, to greatest extent possibly be based on previously determined Customs Values of identical goods assessed within 90 days. Sub rule (1) of Section 25 is re-produced for kind perusal:-

*121. Fall Back Method.-*

*"(1) Value of imported goods determined under sub-section (9) of section 25 of the Act, shall, to the greatest extent possible be based on previously determined customs values of identical goods assessed within ninety days."*

- G. That, without prejudice to foregoing submissions, kind attention of this learned Authority is invited towards Para 4 of the impugned Valuation Ruling wherein the learned Director, in order to discard the Transaction Value, has adopted a very novel mode. This point has been used by the learned Director in every Valuation Ruling issued till filing of this Petition. The learned Director at Para 4 says that "the Transaction Value method as provided in sub-section (1) of Section 25 found inapplicable in light of the wide variation in the values being declared to the Customs and in-complete description. In this regard, it is respectfully submitted that the learned Director is not authorized to reject the commercial documents produced by the Petitioner/importer at import stage without giving plausible reasons in each and every case, individually coupled with background and solid evidence to treat the invoices fake or fabricated. Besides, it is also important to point out here that the language of allegation itself describes that such invoices are produced at import stage. Meaning thereby such invoices are produced before the clearance Collectorate not before the officers of the Directorate General of Customs Valuation. On the contrary, it is an admitted position that the clearance Collectorates have never objected or leveled any such allegations with regard to authenticity of Commercial documents at the time of scrutiny of the Goods Declarations. It simply means that such allegations have been raised by the learned Director without any report or evidence from the Collectorates; therefore, such allegations are not sustainable under the Qanoon-e-Shahadat 1984. Likewise, while skipping remaining sub-sections, (5), (6), (7) & (8) the learned Director has not placed any legal or lawful piece of evidence in support of his so-called observations. Had the learned Director considered law elucidated in these sub-sections, issuance of impugned Ruling would have averted. The application of valuation provisions as contained in all relevant sub-sections have been brushed aside with the stroke of baseless accusations. Hence, the impugned Valuation Ruling is not maintainable under any circumstances as explained herein above.





- H. That it is respectfully submitted that the defective market surveys being conducted by the Directorate in the retail markets are resulting into issuances of illegal and un-lawful valuation rulings. Infact, sub-section (7) of Section 25, and corresponding rule 119 does not speak of retail market surveys but it clearly stipulates that the unit price of the greatest aggregate quantity will be taken into account which is carried out at the first commercial level after importation. Similarly, sub-rule (2), (3), (4), (5), (6), (7) and (8) provide detailed mechanism to arrive at C&F Value after making necessary deductions based upon generally accepted accounting principles. Neither the sub-sections nor the rules provide deductions of 10% profit at three stages i.e. (i). importer (ii). Whole seller (iii). Retailer. The Customs Act, Sales Tax Act or the Income Tax Ordinance does not bind a business entity to sale his goods at a fix ratio of profit. Every retail out-let spread over the whole of Pakistan has its own level of running expenditures which fix the ultimate price & profit on each sale. It is not possible for the Directorate to survey the retails of whole Pakistan and thereafter determine the value of imported goods. That is why Section 25 and the rules have restricted the Customs authorities to remain with the scope of first commercial sale after importation in greatest aggregate quantity. However, this aspect is totally ignored by the learned Director and his subordinates while conducting surveys.
- I. That the Superior Courts in so many judgments have ruled and observed that the determination of the import value should be on the basis of transaction value as provided under sub-section (1)(a) of section 25 of the Customs Act, 1969. However, If the conditions stipulated under sub-section (1)(a) of section 25 are not fulfilled or an importer is crossing sub-section (1)(a) then other sub-sections of section 25 of the Act to be followed in sequential manner. The Hon'ble Sindh High Court in its judgment reported as PTCL 2008 CL.457 has ruled as under:

*"4 . After hearing the learned counsel, we observe that through the comments filed in the petition by the respondent that they have made up their mind to avail the department ruling given in the document, dated 27.12.2006, therefore, no useful purpose will be served if the cases are finally examined under section 81 as the petitioner's request, as has been made here, will not be entertained by the Customs Authority. We have also observed that 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 under section 25-A. As per language of the above section the determination 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-sections of section 25 of the Act to be followed. Here in the case, the customs authorities have given the ruling without any reasoning nor it has been mentioned as to how they have reached that conclusion or do they have evidence of other imports on more value nor the affected persons have been given any opportunity to be heard.*



5. In such a situation, above ruling relied upon by the department cannot be sustained and assessment on its basis is set-aside. Mr. Raja Muhammad Iqbal, states that in such a situation, the petitioners be directed to approach the respondent, so that value of the goods may be determined. Of course, after setting aside the assessment on above ruling, the respondent is required to issue a notice to all the petitioners within 15 days time and will determine the value of goods keeping in view strictly the step provided for its determination in section 25 of the Customs Act. The said process is to be done within two months with further observation on the request of the petitioners that the post-dated cheques submitted by the petitioners towards the differential amount will not be encashed by the department until final determination of the customs duty. All the petitions stand disposed of in above terms."

J. That, the Hon'ble Sindh Court while deciding the Constitutional Petition No.1483 of 2005 (2006 PTD 909) at Para 19 has ruled that if market survey is conducted in terms of sub-section (7) of Section 25, the importer must be associated. Para 19 is reproduced as under:-

"19. Coming to the second question we find that in the Standing Operative Procedure I of 2005, dated 13.09.2005, it is specifically provided that the importer or his representative shall be associated with the working committee if deductive method of valuation under section 25(7) is to be restored. No lengthy discussion is therefore, required and it is held that that no assessment can be made on the basis of working of a committee continued for the purpose of determining the deductive valuation under Section 25(7) without associating importer or his representative in each case."

K. That it is pertinent to draw the attention of this learned Authority to paragraph 6 of the impugned Valuation Ruling, whereby the learned Director has attempted to direct the field formations to apply the transaction value under sub-section (1) of section 25 of the Act, 1969, wherever the said value is higher than the value fixed in the impugned Valuation Ruling. It is submitted that the inclusion of such a paragraph in a Valuation Ruling is ultra vires of the provisions of section 25 and 25A of the Act, 1969. This has also been held by the Hon'ble Sindh High Court in the case of *Sadia Jabbar* (supra), at paragraph 25, as follows,

"25. [...] Finally, it also purports to apply the "invoice value" (i.e. the transaction value) if it is "higher" than the value determined in the ruling. This ruling is therefore, also ultra vires section 25A."

L. That the Petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments.

4. PRAYER

In light of the preceding narrations, the Petitioner prays of this Hon'ble Authority that this petition may be allowed, and





- i. Declare that the impugned Valuation Ruling 905 of 2016 dated 11.08.2016 issued by the Respondent Director is ultra vires of the Constitution of Pakistan, 1973, the Customs Act, 1969, the Customs Rules, 2001, and the same is arbitrary, illegal and mala fide.
- ii. Set aside the impugned Valuation Ruling 905 of 2016 dated 11.08.2016 being violative of the methods set out in Section 25 (9) of the Customs Act, 1969 and Rules made there-under.
- iii. Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling 905 of 2016 dated 11.08.2016 till the final disposal of this review petition.
- iv. That, in the meanwhile, the pending and impending imports of the Petitioner be allowed to be provisionally released in terms of Section 81 of the Customs Act, 1969.
- v. Grant any other relief deemed just and appropriate in the circumstances of the case.
- vi. Grant cost of the petition.



5. 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:

6. Brief of the case is that customs values of Hair Accessories (Low end brands) were determined vide Valuation Ruling No.492/2012, dated 15-11-2012. As the Valuation Ruling has been notified about four years back therefore, it needed revision in line with the prevailing prices in the international market. Hence this Directorate General initiated an exercise for determination of customs values of Hair Accessories.

7. Meetings with stakeholders were held on 16-06-2016 and 23-06-2016. The stakeholders had been requested to submit the following documents before or during the meeting.

- 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.

8. The importers abstained from attending the scheduled meetings. No documents were submitted in this Directorate General on or even after the said scheduled meetings.

9. Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of Hair Accessories. 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 inquiries, as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. Different types of hair accessories are available in the market and specifications vary widely therefore, for ease of examination and assessment the averages of all the so gathered accessories were calculated to arrive at customs values. 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 Hair Accessories. Consequently, the Customs values of Hair Accessories (Low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

#### PARAWISE COMMENTS

10. In reply to the contents of the instant Revision Petition, parawise comments on behalf of Respondent are submitted as under :-

**Para-1:** Need no comments being related to the introduction of importer as importer of unbranded ordinary Hair Accessories.

**Para-2:** Denied. The Director of Valuation is empowered to determine the customs value under Section 25A of the Customs Act, 1969, of the goods imported into and exported out of Pakistan on a reference or his own motion.

**Para-3:** Need no comments being related to previous determined customs values vide Valuation Ruling No.492/2012, dated 15-11-2012.

**Para-4:** Need no comments being related to acceptance of previous Valuation Ruling.

**Para-5:** It is to be submitted that the referred letter dated 16-06-2016, was received in this Directorate and accordingly, a fresh meeting was fixed on 23-06-2016. However, after giving sufficient time the existing Valuation Ruling No.905/2016, was issued 11-08-2016.

**Para-6 & 7:** Denied. After a fresh meeting was fixed on 23-06-2016, more than one month time was available with the petitioner but they have failed to attend the meeting and furnished the requisite documents particularly 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.

**Para-8:** Denied. It is to be submitted that Valuation Methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of Hair Accessories. 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 inquiries, as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. Different types of hair accessories are available in the market and specifications vary widely therefore, for ease of examination and assessment the averages of all the so gathered accessories were calculated to arrive at customs values. 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 Hair Accessories. Consequently, the Customs values of Hair Accessories (Low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

**Para-9:** Denied. After a fresh meeting was fixed on 23-06-2016, more than one month time was available with the petitioner but they have failed to attend the meeting and furnished the requisite documents particularly 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.

**Para-10:** Denied. It is to be submitted that the Hair Accessories consist mainly three basic raw materials i.e. Plastic, Ordinary Iron and Electro Plated Steel. In the local market the prices of the subject goods depends upon the above referred three different materials. It may be added here that these categories of the goods will not the conveyance of the examination staff of customs but it will also conveyance for the importer of the good to release their consignments smoothly without any obstructions or delay.



**Para-11 to 14:** Denied. Paragraph-4 of the impugned Valuation Ruling, is itself clearly reveals that Valuation Methods given in Section 25 of the Customs Act, 1969, were applied in sequential manner and after mentioning the reasons for not accepting the primary methods of Valuation. Finally, failure to submission of requisite documents by the petitioner the customs values of Hair Accessories had to be determined under Section 25 (9) of the Customs Act, 1969,

**Para-15:** Denied. There exists no law to conduct market inquiry with the importer/association.

**Para-16 & 17:** Denied. The customs values of the subject goods were not determined under Section 25 (7) of the Customs Act, 1969. However, local market survey was conducted taken into the account the aggregate quantity of the subject goods.

**Para-18 & 19:** Denied. Paragraph-4 of the impugned Valuation Ruling, is itself clearly reveals that Valuation Methods given in Section 25 of the Customs Act, 1969, were applied in sequential manner and after mentioning the reasons for not accepting the primary methods of Valuation. Finally, failure to submission of requisite documents by the petitioner the customs values of Hair Accessories had to be determined under Section 25 (9) of the Customs Act, 1969,

**Para-20:** Denied. Section 25 (9) of the Customs Act, 1969, which is called Fall Back Valuation Method is itself method of Valuation which has been applied in a Flexible Manner to the extent necessary to arrive at customs value.

**Para-21 to 23:** Denied. It is to be submitted that Valuation Methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of Hair Accessories. 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 inquiries, as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. Different types of hair accessories are available in the market and specifications vary widely therefore, for ease of examination and assessment the averages of all the so gathered accessories were calculated to arrive at customs values. 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 Hair Accessories. Consequently, the Customs values of Hair Accessories (Low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

#### 11. GROUNDS

**A.** The petitioners have not furnished any corroboratory documents in support of their contention, simply mentioning few words i.e. illegal, arbitrary and ex-party.

**B.** Denied. The petitioners have not furnished any corroboratory documents in support of their referred values whether through their invoice or sales paid invoices. It may be mentioned here that while exercising the determination customs values under Section 25A of the Customs Act, 1969, the petitioner and their association and other stakeholders were asked to furnish their import documents including sales ta invoices but they neither furnished the same at that time nor with this petition.

**Para-C:** Denied. It is to be submitted that Valuation Methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of Hair Accessories. 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 inquiries, as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. Different types of hair accessories are available in the market and specifications vary widely therefore, for ease of examination and assessment the averages of all the so gathered accessories were calculated to arrive at customs values. 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 Hair Accessories. Consequently, the Customs values of Hair Accessories (Low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

**D.** Denied. The petitioners have not pointed out the correct description of goods, and anomalies in the impugned Valuation Ruling.





E & F. Denied. Section 25 (9) of the Customs Act, 1969, which is called Fall Back Valuation Method is itself method of Valuation which has been applied in a Flexible Manner to the extent necessary to arrive at customs value.

G. Denied. Section 25 (9) of the Customs Act, 1969, which is called Fall Back Valuation Method is itself method of Valuation which has been applied in a Flexible Manner to the extent necessary to arrive at customs value. The petitioner have not pointed out the correct description of goods, and anomalies in the impugned Valuation Ruling

H. Denied. The market survey was conducted on the basis of aggregate quantity..

I. Denied. It is to be submitted that Valuation Methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of Hair Accessories. 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 inquiries, as envisaged under Section 25(7) of the Customs Act, 1969, were conducted. Different types of hair accessories are available in the market and specifications vary widely therefore, for ease of examination and assessment the averages of all the so gathered accessories were calculated to arrive at customs values. 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 Hair Accessories. Consequently, the Customs values of Hair Accessories (Low end brands) have been determined under Section 25 (9) of the Customs Act, 1969.

J It is to be submitted that there exists no law to associate the importers while applying deductive method of valuation under Section 25 (7) of the Customs Act, 1969. The referred Honourable High Court's letter is related to a specific C.P.No.1483/2005.

K. Denied. The transaction value of higher side than the determined customs values cannot be rejected as there exists no reason in the Customs Rule and Customs Act, 1969.

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

#### PRAYER

12. It is respectfully prayed that the customs values of the subject goods were determined after exhausting all Valuation Methods given in Section 25 and finally, the customs values were determined under Section 25 (9) of the Customs Act, 1969. It may be added here that the petitioner had neither furnished the requisite import documents particularly the sales tax invoices at the time of exercising the determination of customs value under Section 25A nor forwarded the same with this revision petition. Moreover, the paras of the revision petition does not consist any documentary evidence/proof.



13. Under the circumstances mentioned above that without counter evidences, the petition has no merit for consideration and is liable to be rejected.

### ORDER

14. The case record and written as well as verbal submissions of the petitioners were examined in detail. The petitioners in their review applications dated 29-08-2016 under section 25-D of the Customs Act, 1969 contended that they were aggrieved of the customs value determined vide Valuation Ruling No.905/2016 dated 11-08-2016 for unbranded Ordinary Hair Accessories made of plastic and base metal (ordinary iron/ or combination of both items of China origin). They further stated that the same goods are also imported from India on very small scale, therefore Indian origins value may also be included in revision order. They stated that Indian origin hair accessories are slightly superior in quality. The petitioners objected that they are seriously aggrieved by the Valuation Ruling as this has been issued unlawfully, arbitrarily, without making a determination and on an ex parte basis of hair accessories made of plastics/ordinary iron etc (hereinafter collectively referred to as the hair accessories) vide Valuation Ruling No.906/2016. The hair accessories include hair clips, pony, hair band etc. The learned counsel also contended that in the impugned ruling in-correct categories have been incorporated. The hair accessories are combination of plastic or steel & plastic and are further combined with filler and recycled material. The valuation ruling of tin plate, CRC and GP sheet can be taken as reference values. By adopting input cost of all input raw material plus profits, the value of Hair Accessories does not exceed US\$ 1000 to US\$ 1200/MT, therefore, the category and customs value may please be redetermine accordingly. The learned counsel added that despite the facts that adjournment letter was submitted, the hearing was fixed.



15. The importers also challenged the previous market inquiry and stated that this was conducted from posh area of Clifton and Defence and not from ordinary markets where 90% goods are sold to general public. The importers further argued that market survey may again be conducted.

16. Keeping in view the above position Group was directed to conduct market survey, they conducted market survey and submitted the values of hair clips of plastic, by work back method which comes to Rs.60 to 216/kg of 12 pieces. Similarly "Poni" was available from Rs.30 to Rs.108/kg. This shows that price range is too wide and it is not possible to determine value of different designs and assorted categories. Prices of subject articles on websites are in pieces while unit of measurement are kgs.

17. India's import data (Zauba website data), was obtained which showed range of US\$ 1.50/kg to \$ 1.80/kg. Average of which comes at US\$ 1.65/kg. The import of India from China (prices from Zauba websites) are on much lesser side. The learned Advocates stressed to reduce prices as these have been determined exorbitantly on higher side of Chinese origin. He said that value of hair clips and hair bands have been increased even more than the value of artificial jewellery which is determined at US\$ 2.50/kg. Therefore, they pleaded to reduce the prices of plastic hair accessories and also requested for inclusion of Indian origin articles.



18. I have deliberated on the case record as well as verbal and written arguments put forth by the petitioners and the respondent department. In view of the above, I have inferred that the values of Chinese origin hair accessories have been determined on much higher side as the subject articles are made of recycled material of plastic and the base metal clip is made of ordinary iron and steel. The customs values of Chinese and Indian origin are, therefore, re-determined under section 25-A of the Customs Act, 1969 as under:

S.No.	Description of goods	PCT	Proposed PCT for WeBoc	Origin	Customs value determined in US\$/Kg
1	Hair accessories made of plastic/ordinary iron (excluding stainless steel) low end brands only) of Electroplated steel (low end brand)	9615.1100 9615.9020 9615.9090	9615.1100.1100 9615.9020.2100 9615.9090.9000	China	1.65
	Hair accessories made of plastic/ordinary iron (excluding stainless steel) low end brands only) of Electroplated steel (low end brand)	9615.1100 9615.9020 9615.9090	9615.1100.1100 9615.9020.2100 9615.9090.9000	India	1.75
2	Other Articles	9615.1100 9615.9020 9615.9090	9615.1100.1100 9615.9020.2100 9615.9090.9000	China/India	2.00

19. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (24) petition.



S #	Petitioners Name	File No
1.	M/s. Nafees-ur-Rehman	DG(V)Val. Rev/889/2016
2.	M/s. SMB Trading Company	DG(V)Val. Rev/889/2016
3.	M/s. Sulson International	DG(V)Val. Rev/889/2016
4.	M/s. Ahad International	DG(V)Val. Rev/889/2016
5.	M/s. Faisal Traders	DG(V)Val. Rev/889/2016
6.	M/s. Yasir International	DG(V)Val. Rev/889/2016
7.	M/s. Al-Rehman Trading Company	DG(V)Val. Rev/889/2016
8.	M/s. Zafar Impex	DG(V)Val. Rev/889/2016
9.	M/s. Rizwan Enterprises Lahore	DG(V)Val. Rev/890/2016
10.	M/s. M.R. Trading Company Lahore	DG(V)Val. Rev/890/2016
11.	M/s. Al-Naqeeb Enterprises Lahore	DG(V)Val. Rev/890/2016
12.	M/s. M.N. Trading Company Lahore	DG(V)Val. Rev/890/2016
13.	M/s. Al-Qasim Traders Lahore	DG(V)Val. Rev/890/2016
14.	M/s. Mobeen Enterprises Lahore	DG(V)Val. Rev/890/2016
15.	M/s. Haq Trading Company Lahore	DG(V)Val. Rev/890/2016
16.	M/s. Subhan Enterprises Lahore	DG(V)Val. Rev/890/2016
17.	M/s. Sadaf Nageen Traders Lahore	DG(V)Val. Rev/890/2016
18.	M/s. Sameer Enterprises Lahore	DG(V)Val. Rev/890/2016
19.	M/s. Jawad Trading	DG(V)Val. Rev/898/2016

20.	M/s. A.R. Trading	DG(V)Val. Rev/899/2016
21.	M/s. Waqar Traders Lahore	DG(V)Val. Rev/900/2016
22.	M/s. Mola Enterprises Lahore	DG(V)Val. Rev/900/2016
23.	M/s. Kashif M. Shehroz Jewellery House, Lahore	DG(V)Val. Rev/900/2016
24.	M/s R. K. Enterprises	DG(V)Val. Rev/889/2016

(Syed Tanvir Ahmad)  
Director General

Registered copy to:

S #	Petitioners Name	File No
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5.	M/s. Faisal Traders	DG(V)Val. Rev/889/2016
6.	M/s. Yasir International	DG(V)Val. Rev/889/2016
7.	M/s. Al-Rehman Trading Company	DG(V)Val. Rev/889/2016
8.	M/s. Zafar Impex C/O Shaikh & Madan Law Associates	DG(V)Val. Rev/889/2016
9.	M/s. Rizwan Enterprises Lahore	DG(V)Val. Rev/890/2016
10.	M/s. M.R. Trading Company Lahore	DG(V)Val. Rev/890/2016
11.	M/s. Al-Naqeeb Enterprises Lahore	DG(V)Val. Rev/890/2016
12.	M/s. M.N. Trading Company Lahore	DG(V)Val. Rev/890/2016
13.	M/s. Al-Qasim Traders Lahore	DG(V)Val. Rev/890/2016
14.	M/s. Mobein Enterprises Lahore	DG(V)Val. Rev/890/2016
15.	M/s. Haq Trading Company Lahore	DG(V)Val. Rev/890/2016
16.	M/s. Subhan Enterprises Lahore	DG(V)Val. Rev/890/2016
17.	M/s. Sadaf Nageen Traders Lahore	DG(V)Val. Rev/890/2016
18.	M/s. Sameer Enterprises Lahore	DG(V)Val. Rev/890/2016
19.	M/s. Al-Aziz Enterprises	DG(V)Val. Rev/900/2016
20.	M/s. Waqar Traders Lahore	DG(V)Val. Rev/900/2016
21.	M/s. Mola Enterprises Lahore	DG(V)Val. Rev/900/2016
22.	M/s. Kashif M. Shehroz Jewellery House, Lahore C/O G.A Jahangir & Associates	DG(V)Val. Rev/900/2016
23.	M/s. Jawad Trading	DG(V)Val. Rev/898/2016
24.	M/s. A.R. Trading	DG(V)Val. Rev/899/2016
25.	M/s R. K. Enterprises	DG(V)Val. Rev/889/2016

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, 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.



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