

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/951/2016 /363

Dated: 13th February, 2017

Order in Revision No. 306 /2017 under section 25-D of the Customs Act, 1969
against Valuation Ruling No. 939/2016 dated 28-09-2016

- 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. Shama Communication

PETITIONER

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

01-12-2016, 30-12-2016

For the Petitioners

None

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.939/2016 dated 28-09-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds as reproduced below:

2. That the applicant/importer duly registered member with the Karachi Chamber of Commerce and has been running business of import and export for about last 10 years and is well reputed name in the businesses community and well vested in the field.

3. That the instant revision application is arise out from import consignment of the Glass Beads/Chitton was imported from China and same cleared US\$ 0.72.

4. That the respondent was issue the valuation ruling for Glass Beads/Chitton Diamond Shape, respondent himself. In exercise of the powers conferred under Section 25A of the Customs Act, 1969, customs values of Glass Beads. Glass beads Crystal/Glass Chaton Beads are determined as follows:-



5. Background of the valuation issue: Customs values of imported Glass Beads, and Glass Beads Crystal were issued vide valuation ruling 412/2012, dated 13-01-2012, and its corrigendum dated 11-09-2012. It was felt appropriate to revise the value of subject goods keeping in view the changes in value in the international market as the same was more than 4 years old. Therefore, this Directorate General initiated an exercise to re-determine the value of imported Glass Beads, Glass Beads Crystal Glass Chaton Beads.

6. Stakeholders participation in determination of customs values stakeholders meetings were scheduled on 17-08-2016, 30-08-2016 and 28-09-2016. The stakeholders had been requested to submit the following documents before or during the meeting:-

- (i) Invoices of imports made during last three months showing factual value.
- (ii) Websites names and E-mail addresses of known showing factual value can be ascertained.
- (iii) Copies of contracts made LCs opened during the last three months showing the value of item in question.
- (iv) Copies of Sales Tax Invoices issued during last four months showing the difference in price in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

7. No one appeared for the meetings. No documents as requisitioned were submitted in this Directorate General on or even after the said scheduled meetings.

8. Method adopted to determine Customs values: L-Valuation methods given in Section 25 of the Customs Act, 1969 were followed. Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical similar goods value methods provided in Section 25(5) & (6) were also not found helpful in determination of value due to wide variation in values. Consequently, marked enquires as envisaged under Section 25(7) of the Customs Act, 1969, were conducted and Customs values of Glass Beads, Glass Beads Crystal/Glass Chaton Beads were determined under Section 25(7) of the Customs Act, 1969.

Customs values for Glass Beads, Glass Beads Crystal/Glass Chaton Beads hereinafter specified shall be assessed to duty/taxes at the following customs values.

S. #.	Specification of Goods	PCT	Proposed PCT for WelBOC	Origin	Customs Values (C&F) US\$/Kg
1	Glass Beads up to No.12/0	7018.1000	7018.1000.1000	China	1.00
2	Glass Beads up to No.12/0	7018.1000	7018.1000.1100	Other	1.15
3	Glass Beads No. 14/0	7018.1000	7018.1000.1200	China	1.30



4	Glass Beads No. 14/0	7018.1000	7018.1000.1300	Other	1.50
5	Glass Beads No. 16/0	7018.1000	7018.1000.1400	China	1.70
6	Glass Beads No. 16/0	7018.1000	7018.1000.1500	Other	1.96
7	Glass Beads Crystal Size 3mm	7018.1000	7018.1000.1600	China	13.50
8	Glass Beads Crystal Size 3mm	7018.1000	7018.1000.1700	Other	15.53
9	Glass Beads Crystal Size 4mm	7018.1000	7018.1000.1800	China	17.50
10	Glass Beads Crystal Size 4mm	7018.1000	7018.1000.1900	Other	20.13
11	Glass Crystal/Chaton Beads Size 19	7018.1000	7018.1000.2000	China	3.50
12	Glass Crystal/Chaton Beads Size 19	7018.1000	7018.1000.2100	Other	4.03
13	Glass Crystal/Chaton Beads Size 24	7018.1000	7018.1000.2200	China	3.80
14	Glass Crystal/Chaton Beads Size 24	7018.1000	7018.1000.2300	Other	4.37
15	Glass Crystal/Chaton Beads Size 38	7018.1000	7018.1000.2400	China	4.00
16	Glass Crystal/Chaton Beads Size 38	7018.1000	7018.1000.2500	Other	4.60
17	Glass Crystal/Chaton Beads Size 42	7018.1000	7018.1000.2600	China	4.10
18	Glass Crystal/Chaton Beads Size 42	7018.1000	7018.1000.2700	Other	4.72
19	Glass Crystal/Chaton Beads Size 45	7018.1000	7018.1000.2800	China	4.30
20	Glass Crystal/Chaton Beads Size 45	7018.1000	7018.1000.2900	Other	4.95

10. That the provision of Section 25 of Customs Act, 1969 is to be followed in the sequential manner. In addition to the concession on the part respondent, it is specifically provided by the legislature in sub-section (10) of Section 25 that sub-section (1), (5), (6), (7), (8) and (9) define how the customs value of imported goods is to be determined under the Customs Act. The methods of Customs Valuation are required to be applied in a sequential order except reversal of the order of subsections (7) and (8) at the importer's request, if so agreed by Collector of Customs. This aspect has been examined in a Division Bench Judgment of this Court in the case of Sohaib Khan vs. Collector of Customs (Appraisement 2005 PTD 1069), wherein it has been held that, whenever a question for determination of the Customs value of goods for the purpose of Customs Act, arises, the methods provided in section 25 are to be applied in a sequential order. In the cited judgment the question under consideration was as to how section 25A of the Customs Act, is to be applied and it was held that, the appropriate officer is required to determine that the value of imported goods declared by the importer is understated in accordance with the methods specified in section 25 of the Customs Act.

11. The established principle of interpretation of the tax laws is that the plain language of the law is to be applied. A bare perusal of Section 25 shows that it is specifically provided in subsection (1) of section 25 that the customs value of the imported goods, subject to the provision of this section and rules shall be the transaction value of the imported goods, subject to the provisions of this section and rules shall be the transaction value, i.e. the price actually paid or payable for the goods when sold for export to Pakistan. The detailed guidelines in this behalf are given in sub-sections (1), (2), (3) and (4). The provisions contained in section 25 (1) to (4) contain primary method of valuation and in the first instance the primary method of valuation is required to be adopted in each case of valuation of the imported consignment which is mandatory. The detailed guidelines in this behalf are contained in section 25 and the rules reproduced above. Thus, it is the mandatory requirement of law that before resorting to the method provided in subsection (5), the Customs official's shall make an exercise in accordance with the provisions contained in subsections (1) to (4) of section 25 and if thereafter they find that the customs value of the imported goods cannot be determined under the provisions of subsection (1) they shall resort to the method provided in subsection (5) and not otherwise. It shall be an exercise duly reflecting on the record so that the appellate forums may examine whether the mandatory requirement of law has been carried out or not. We are further fortified in our view in this behalf with the provisions contained in of Rule 119 which provides that, "when a final decision is made, the appropriate officer shall communicate to the importer in writing his decision and the grounds therefore." In addition to the specific provisions contained in subsection (10) of section 25 to the effect that the methods of customs valuation are required to be applied in a sequential order we find that it is provided in subsection (6) that, if the customs value of the imported goods cannot be determined under the provisions of subsection (5) the method provided in subsection (7) shall be resorted to and similar provisions are contained in subsections (7), if on aforesaid provisions and method value of goods are not determined then SRO 450 Chapter IX sub chapter IV rule 119 would be applicable to determine the same. It is also pertinent to mention here that Goods Declaration of last three months according to the data maintained by PRAL, for the consignment of Glass Beads/Chitton Diamond Shape 90% GDs assessed on the value of US \$0.72 from which it is very obvious that no any. Inquiry had been conducted in that connection.

12. For the foregoing reasons it is held that different methods of valuation provided in section 25 of the Customs Act, 1969 and the Customs Rules 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to subsection (5) and likewise without similar exercise under subsection (5) no resort can be made to subsection (6) in the same manner without an exercise in writing on record under subsection (7). The exercise is to be made in each case separately. On the basis of exercise in the case of earlier imports. The reasons being that it is provided in Rule 119 that where appropriate officer has reason to doubt the truth or accuracy of the particulars or of documents produced in support of the declaration, such officer may ask the importer to provide further explanation, including documents or otherwise. Under sub-section (1) of section 25, the customs value of the imported goods is to be determined subject to the provisions of section 25 and the rules. The rules envisage inquiry in case of each import giving right to each importer to provide explanation and produced documents or other evidence in support of his/her declaration. When the provisions contained under section 25 (1) of the Customs Act and the rules are read with section 79 the owner of any imported goods is required to file a goods declaration containing correct and complete particulars of the goods and its assessment i.e. valuation of the goods, its value and the duty,



taxes and other charges payable thereon. Under section 80, on the receipt of goods declaration under section 79, an officer of the customs shall satisfy himself of the correctness of the import including declaration and assessment. It indicates that initially the valuation of goods and assessment is to be given by the importer himself, which, if found satisfactory, shall be accepted. However, the appropriate officer is not satisfied with the said declaration, he shall make his own assessment in accordance with the law. This exercise cannot be done without examination of each consignment, declaration of goods examination of assessment given by importers and of the documents in this behalf. This point came for consideration before a Division Bench of this Court in the case of Collector of Customs Appraisement Karachi v. Messrs H.M. Abdullah 2004 PTD 2993 and it was held that the enhancement in value without sufficient evidence was not permissible. No enhancement in the value could be made on the recommendation of some working committee, which is not supported with any evidence. This point was considered by a Division Bench of the Customs, Excise and Sales Tax Appellate Tribunal Karachi also in the case of Messrs Dawlance Private Limited v. Collector of Customs 2002 PTD (Trib). 3077. We approve the findings given by the Tribunal in this behalf to the effect that resort to subsection (5) of section 25 of the Customs Act, can only be made when the value cannot be determined under subsection (1) and that where no evidence to show that the disputed transaction is false or is an outcome of a fraudulent activity, in possession of the customs, the commercial documents presented by an importer cannot be rejected. We further approve the findings that a transactional value cannot be rejected because there are some contemporaneous imports at higher price. It has to be shown that invoice price was not genuine and does not show the real price paid by the importer. In short the provisions contained in section 25 of the Customs Act and the rules framed there under are complete code in themselves, so far, the customs valuation of the imported goods are concerned, which are required to be applied and acted upon strictly in the manner and method contained therein. There is no room for any deviation from these rules on the part of the customs officials.

13. That it is evident from the plain reading of the above said ruling that respondent violated the basic principles and mis-use authority vested in him as the survey carried out by the Valuation Directorate himself and it is also not even bother to mention in said ruling that when market inquiry of Glass Beads/Chitton Diamond Shape was conducted. Above all neither any representative of Chamber of Commerce was appointed being observer nor any member of customs agent was appointed to make the same crystal clear. Even no any member of Glass Beads/Chitton Diamond Shape Associations or no any Importer of Glass Beads/Chitton Diamond Shape was appointed which is mandatory under the law.

14. That it is settled principle of law that no one should be condemned unheard, either in the determination of the Customs Value of the goods, it has not been stated as to on which stake holder were invited in the meeting with the entire stake holder was conducted. It is also not been stated how many people and representative or how many stake holders were called upon by the Customs Authority. Therefore the Customs Authority be put to strict proof for said observation in above said ruling.

15. That the prejudice caused is so clear that either in the 25-A or determination of the value of the goods, the Directorate General of Customs Valuation has not been done under so 450 Chapter IX rule deductive Method which methods means that where value

cannot be assessed under the previous provisions it should be derived from among the methods of valuation SO stippled in subsection 15, 6, 7 to arrive at a custom value.

16. That it has been stated as to how this sequential way of assessment was gone about for determination of a fair value by the Customs Authority, either in ruling above said or the order passed for determination of the value of goods only states that Customs Authority are competent to determine the value following the methods laid down in section 25 whichever is applicable. Without disclosing as to what portion of which method was under went and how the value was assessed virtue method so laid down and how were they applicable.

17. That it has been stated not only in the order that when and where the surveys were conducted. Order are silent to the effect as to if a committee was made for conducting the survey, how many & who were appointed as member of the said committee, and when any letter to such extent was written by the Customs Authority. So also it does not correspond as to if the Survey report was furnished by the Committee or people or person carrying out the survey, the order not state or observe to this effect and are silent.

Prayer

18. It is therefore, upon the basis of above drawn facts and advancements, it is with great respect prayed that this Honourable Appellate Tribunal may be pleased to pass an order as under:-

- (a) To Set-aside the impugned Valuation Ruling No.939/2016, dated 28-09-2016 ab-initio void and illegal & declare the transaction value of applicant as final.
- (b) To restrain & direct the respondent not to pass any further adverse order against the applicant or against the importer/applicant at large until pendency of this applicant.
- (c) To direct the respondents re-determine the value after constituting committee wherein importers, Customs Agents Associations and Members of Chamber of Commerce be made its member and then accordingly it should develop survey or the Court be please to assess the duty of own and be please to fix its according to its actual calculation.
- (4) To direct the respondents to re-determine the value after as required under provision of Section 25 of Customs Act, 1969, and further be please to let applicant get his consign released till the finalization value / Section 81 of the Customs Act, 1969.
- (5) Any other relief or reliefs which this Honorable Authority may deem fit and proper in the favour of the applicant.

19. 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:



PARA WISE COMMENTS

In response to the contents of the instant petition, parawise comments on facts of instant petition on behalf of respondent are submitted as under :-

Para-(1) : Need no comments being introduction of the petitioners.

Para-(2) : No comments.

Para-(3) : Need no comments being reproduction of the Valuation Ruling.

Para-(4) : Not agreed. It is submitted that the customs values in the impugned Valuation Ruling were determined after properly and sequentially following the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Para-5 of the Valuation Ruling No.939/2016, dated 28-09-2016 clearly reveals the process of determination of customs values.

Para-(5) : Not agreed. It is submitted that the customs values in the impugned Valuation Ruling were determined after properly and sequentially following the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Para-5 of the Valuation Ruling No.939/2016, dated 28-09-2016 clearly reveals the process of determination of customs values. Due process of following the valuation methods provided in Section 25 was adopted sequentially but as the requisite information was not available, values could not be determined in terms of sub-Section (1) of Section 25. However, next valuation methods i.e. sub-section (5) & (6) were examined but due to variation in values the same could not be applied. As such next valuation method i.e. sub-Section (7) of Section 25 was examined and local market enquiry was conducted from various markets and values were determined under Section 25(7) of the Customs Act, 1969, for uniform assessment all over the country.

Para-(6) : Not agreed. It is submitted that the customs values in the impugned Valuation Ruling were determined after properly and sequentially following the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Para-5 of the Valuation Ruling No.939/2016, dated 28-09-2016 clearly reveals the process of determination of Customs values. Due process of following the valuation methods provided in Section 25 was adopted sequentially but as the requisite information was not available, values could not be determined in terms of sub-Section (1) of Section 25. However, next valuation methods i.e. sub-Section (5) & (6) were examined but due to variation in values the same could not be applied. As such next valuation method i.e. sub-Section (7) of Section 25 was examined and local market enquiry was conducted from various markets and values were determined under Section 25(7) of the Customs Act, 1969, for uniform assessment all over the country.

Para-(7) : Not agreed. It is submitted that the Respondent has not violated the basic principles or mis-use of authority rather the said customs values were properly determined after properly conducting a local market enquiry as envisaged under Section 25(7) of the Customs Act, 1969. As such the same have lawfully and justifiably been determined for uniform assessment purposes.

Para-(8) : Not agreed. It is submitted that in regard to get view points and inputs of the relevant stakeholders, three meetings were scheduled on 17-08-2016, 30-08-2016 and 28-09-2016. All the stakeholders were requested to participate in the said meetings alongwith corroboratory import documents i.e. copies of invoices, contracts made, websites/email addresses of manufacturers and sales tax paid invoices but no one appeared on any occasion alongwith said documents for participation in the meetings.

Para-(9) : It is submitted that the customs values were determined in the said Valuation Ruling after thorough investigation and after following all valuation methods as envisaged under Section 25 of the Customs Act, 1969, as per law. When value could not be determined



under Section 25(1) & 25(6), reliance was placed upon next valuation method i.e. 25(7), i.e. deductive value method. As such the same have correctly and lawfully been determined.

Para-(10) : It is submitted that the customs values were determined in the said Valuation Ruling after thorough investigation and after following all valuation methods as envisaged under Section 25 of the Customs Act, 1969, as per law. When value could not be determined under Section 25(1), 25(5) & 25(6), reliance was placed upon next valuation method i.e. 25(7), i.e. deductive value method. As such the same have correctly and lawfully been determined.

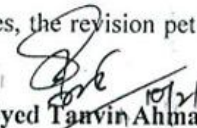
Para-(11) : It is submitted that a proper local market enquiry was conducted from various markets of the city by the Directorate General of Customs Valuation and prices were obtained and after analyzing and evaluating all the information, customs values were determined.

In the light of the above stated factual and legal position, the petitioners have simply stated for the acceptance of their declaration and in support of their claim no tangible documents as required under the law have been submitted to disclose full and accurate details of the value of imported goods. Hence, merely on presumption the declaration cannot be accepted and is liable to be rejected accordingly.

ORDER

21. Hearing in the case was fixed on 30-12-2016. No one appeared from the importer side. However, the record of the case has been examined and comments submitted by the respondent department have been considered. Perusal of the case record reveals that neither the importer appeared for hearing on due date nor submitted any written submissions in favour of their contention. It appears that the petitioner was not interested to defend his case or in furnishing valid and legally maintainable documents in favour of his view point, so as to enable this forum to verify truth and accuracy of transaction value under section 25(1) ibid as per Rule 109 of the Valuation Rules issued under SRO 450(I)/2001, dated 18th June 2001 (Chapter-X). In the absence of valid import documents, the burden, to prove correctness of transaction value shifts to the importers/petitioner. Non submission of valid import documents clearly manifests that the petitioner failed to substantiate their case with any conclusive evidence/non prosecution.

22. In view of aforesaid position, factual improprieties and legal infirmities, the revision petition is not maintainable, merits no consideration and is accordingly rejected.


(Syed Tanvir Ahmad)
Director General

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Copy to:

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