

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/956/2016

Dated: 26th January, 2017

**Order in Revision No. 292/2017 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.952/2016 dated 13-10-2016**

- 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 Nafay Traders & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date (s) of hearing

08-12-2016

For the Petitioners

Mr. Rizwan Ahsan GM M/s Venus Pakistan
Mr. Raja Ataul Noor GM, M/s Shezan
Mr. M. Arif, Shangrila Pvt. Ltd.
Mr. Smeer Iftikhar M/s Swiz Int.
Mr. Shakaib Arif M/s National Foods
Mr. Waseem Mahmood M/s Pak Fruit Proc. Ass.
Mr. Zia ul Hasan Adv.
Raja M. Aamir Janjua M/s Solution Inn
Mr. Javed Iqbal M/s Mitchels
Mr. M. Jaffar Dadabhai M/s Young's Pvt. Ltd.
Dr. Shafquat Abdullah



For the Respondent

Mr. Abdul Majeed, Assistant Director,

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.952/2016 dated 13-10-2016 issued under section 25-A of the Customs Act, 1969 inter alia, on the following grounds:

2. We have been shocked to know that the Director Customs Valuation has notified a Valuation Ruling in respect of Sauces/Salad Dressing/Mayonnaise/ Mustard & Tomato Ketchup at very higher side from all origins vide Valuation Ruling No. 952/2016 dated 13.10.2016. Being

aggrieved with the notified Customs values of said items, we hereby file this review application under section 25D of the Customs Act, 1969 on the following grounds:

- i. That the determination of value of Sauces/Salad Dressing/Mayonnaise/ Mustard & Tomato Ketchup by the Director of Customs Valuation under Section 25-D read with Section 25 (9) of the Customs Act, 1969 is unjust, void ab initio and contrary to the provisions of law.
- ii. That the impugned valuation ruling is contrary to the mandatory provisions of Section-25 read with Section-25A of the Customs Act, 1969 as well as the principles laid down by honorable High Court of Sindh in the case of M/s Bearing Sale Centre and others (CP No. D 3353 of 2010).
- iii. That a uniform price of goods in question for different varieties and brands, imported from worldwide sources is highly unjustified.
- iv. That the Director of Customs Valuation while issuing the impugned valuation ruling had erred in law by not taking into consideration that the actual transactional values depend upon the terms of payment, quantities sold and the history of commercial relationship between the supplier and the importer as well as the origin and brand of imported goods.
- v. That the respondents were required to determine value of the subject consignment strictly in accordance with the methods laid down in Section- 25 of the Customs Act, 1969. In case of any valuation dispute between the Customs Authorities and the importer, Section-25 of the Customs Act, 1969 provides the basis to determine customs value of the goods by applying the following methods in sequential order.
 - Transaction value of identical goods.
 - Transactional value of similar goods.
 - Deducted method.
 - Computed value method.
 - Fall back method.
- vi. That the Director of Customs Valuation had not undertaken any legal exercise for determination of correct value in accordance with the above- mentioned methods in sequential order which is against the mandatory provision of Section-25 of the Customs Act, 1969 as well as the WTO agreements. All the methods, for the determination of value by the Director were rejected merely on the basis of surmises and presumptions.
- vii. That Director Valuation had notified the prices vide above mentioned ruling in terms of provisions of Section 25(9) of the Customs Act, 1969. Provisions thereof are reproduced below for a quick reference:

Section-25(9)



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."

Customs Rule No. 121 regarding the procedure for determining value under Section-25(9) is reproduced below:

Rule-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.

(2) The methods of valuation, 10 he employed under sub-section (9) of section 25 of the Act may be inclusive of those laid down in subsections (1), (5), (6), (7) and (8) of the said section, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of subsection (9) of that section.

Explanation: - Some examples of reasonable flexibility are as follows, namely:-

Identical Goods

- (a) The requirement that the identical goods shall be imported at or about the same time as the goods being valued could be flexibly interpreted.
- (b) Identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; and determined under sub-section (7) and (8) of section 25 could be used.

Similar Goods

- (a) The requirement that the similar goods shall be imported at or about the sometime as the goods being valued could be flexibly interpreted.
- (b) Similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; and 283.
- (c) Customs-values of similar imported goods already determined under sub-sections (7) and (8) of section 25 of the Act could be used.

Deductive Method.

The requirement that the goods shall have been sold in the "condition as imported" as provided in clause (a) of sub-section (7) of section 25 of the Act could be flexibly interpreted, and the ninety days requirement could be administered flexibly."



Clearly the provisions of Section 25(9) and Rule 121 have neither been followed nor applied by the Director Valuation in determining the Customs value of goods in question and hence the valuation ruling mentioned above is void ab initio. Since import data in respect of said goods was available with the Customs, identical goods method as envisaged under Section 25(5) of the Customs Act, 1969 could not have been bypassed. Likewise there was no justification to avoid application of deductive method as envisaged under Section-25(7) *ibid*. Section 25(9) does not permit determination of Customs value in total disregard of the secondary methods of valuation as laid down in section-25(5) to 25(8) of the Customs Act, 1969.

viii. That it is a well-settled law that transaction value cannot be discarded unless the customs could challenge the same on account of any evidence to controvert the genuineness of the transaction value. The transaction/invoice value as declared by us is correct and in accordance with the statutory provisions of law.

ix. That earlier on the basis of valuation ruling 769/2015 20% quantity discount was given in respect of goods iii question imported in bulk packing (Above 2 kg) however, in respect of impugned Valuation Ruling the learned Director of Customs, Valuation arbitrarily and illegally restricted the 20% quantity discount to the extent of bulk packing above 5 kg. The said act of the Director is discriminatory and contrary to the provisions of law.

3. In view of the factual and legal position stated above, it is requested that the valuation ruling 952/2016 dated 13-10-2016 may kindly be set aside/ rescinded.

4. 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:

5. Briefly of subject issue is that consequent upon representation by commercial importers, regarding re-determination of Valuation Ruling No.769/2015 dated 03-11-2015 for Sauces/ Salad Dressing / Mayonnaise / Mustard & Tomato Ketchup, due to downward trend in international market prices an exercise was undertaken to re-determine the Customs Values, in terms of Section 25-A of the Customs Act, 1969. Meetings were held on 14-08-2016 and 09-08-2016, with all the stakeholders of subject goods and representatives of clearance Collectorate who participated in the meetings. All the stakeholders strongly contended and requested that the said valuation Ruling may be reviewed in the light of prevailing international market prices. This trend needs to be revised downward, otherwise these products will find their way into market through illegal routes and under the garb of various cargoes. This will create a grey area which will adversely affect the bona-fide trade of the country. Therefore, valuation ruling price may be revised to save the commercial genuine importers. It was also highlighted that the subject goods are perishable items and therefore have got limited shelf life, consequently, near the expiry dates, these perishable items are sold on sale and discounted prices. It was further contended by the traders that since the subject goods are mainly being sold on super and general stores; therefore, a lot more expenses (shelf rent, marketing expenses etc.) are contributed at retail level which cannot be managed



without adding extra value to the subject goods. The importers contended that all these factors may also be considered in fixing value of subject goods. Valuation methods provided in Section 25 of the Customs Act, 1969 were duly followed and applied sequentially to address the valuation issue at hand. Transaction value method provided in sub-section (1) of section 25 was found inapplicable because it is generally known to all that majority of invoices produced at import stage are manipulated/fabricated and hence the requisite information required under the law was not available to arrive at the correct transaction value. Identical / similar goods value method provided in Sub-Sections (5) & (6) of Section 25 ibid were examined for applicability to determine Customs value of subject goods, this data provided some references, however, it was found that the same cannot be solely relied upon due to the absence of absolute demonstrable evidence of qualities, and quantities of commercial level etc., and also it was observed that same importers provide misleading description while declaring goods, as other types and varieties of similar goods to avoid the application of valuation ruling. Information available was, hence, found inappropriate. In line with the statutory sequential order of Section 25, this office then conducted a market inquiry using Deductive Value Method under Sub-Section (7) of the Section 25 of the Customs Act, 1969, however, it was found that the determination of Customs value could not be based solely upon this method either. Therefore, valuation method provided vide Section 25 (8) of Customs Act 1969, could not be applied as the conversion cost from constituent materials and allied expenses, at country of export were are not available. Finally, Pral database, market information and international prices through Web were examined thoroughly. All the information so gathered was analyzed for determination of Customs Value of the subject good. Consequently, the Fall Back Method as provided under section 25(9) of the Customs Act, 1969 was applied to arrive at assessable customs values of Sauces / Salad Dressing / Mayonnaise / Mustard & Tomato Ketchup and Valuation Ruling No. 952 dated 13-10-2016 is issued under section 25A of the Customs Act, 1969.

Parawise Comments

- Para (1): With respect to contents of para (1) it is submitted that warrants no comments being introduction of the Trader
- Para (2): With respect to contents of para (2) it is vehemently denied. Meetings were held on 14-08-2016 and 09-08-2016, with all the stakeholders of subject goods and representatives of clearance Collectorate who participated in the meetings. All the stakeholders strongly contended and requested that the said valuation Ruling may be reviewed in the light of prevailing international market prices. This trend needs to be revised downward, otherwise these products will find their way into market through illegal routes and under the garb of various cargoes. This will create a grey area which will adversely affect the bona-fide trade of the country. Therefore, valuation ruling price may be revised to save the commercial genuine importers. It was also highlighted that the subject goods are perishable items and therefore have got limited shelf life, consequently, near the expiry dates, these perishable items are sold on sale and discounted prices. It was further contended by the traders that since



the subject goods are mainly being sold on super and general stores, therefore, a lot more expenses (shelf rent, marketing expenses etc.) are contributed at retail level which cannot be managed without adding extra value to the subject goods. The importers contended that all these factors may also be considered in fixing value of subject goods. Valuation methods provided in Section 25 of the Customs Act, 1969 were duly followed and applied sequentially to address the valuation issue at hand. Transaction value method provided in sub-section (1) of section 25 was found inapplicable because it is generally known to all that majority of invoices produced at import stage are manipulated/fabricated and hence the requisite information required under the law was not available to arrive at the correct transaction value. Identical / similar goods value method provided in sub-sections (5) & (6) of section 25 ibid were examined for applicability to determine customs value of subject goods, this data provided some references, however, it was found that the same cannot be solely relied upon due to the absence of absolute demonstrable evidence of qualities, and quantities of commercial level etc., and also it was observed that same importers provide misleading description while declaring goods, as other types and varieties of similar goods to avoid the application of valuation ruling. Information available was, hence, found inappropriate. In line with the statutory sequential order of Section 25, this office then conducted a market inquiry using Deductive Value Method under sub-section (7) of the section 25 of the Customs Act, 1969, however, it was found that the determination of Customs value could not be based solely upon this method either. Therefore, valuation method provided vide Section 25 (8) of Customs Act 1969, could not be applied as the conversion cost from constituent materials and allied expenses, at country of export were are not available. Finally, Pral database, market information and international prices through Web were examined thoroughly. All the information so gathered was analyzed for determination of Customs Value of the subject good. Consequently, the Fall Back Method as provided under section 25(9) of the Customs Act, 1969 was applied to arrive at assessable customs values of Sauces / Salad Dressing / Mayonnaise / Mustard & Tomato Ketchup and Valuation Ruling No. 952 dated 13-10-2016 is issued under section 25A of the Customs Act, 1969 as per law.



Para (3): It is humbly requested to set-aside the petition being devoid of merits.

6. It is respectfully prayed that the customs values of subject goods were determined after associating all the possible relevant stakeholders and following the valuation methods as laid down in section 25 of Customs Act, 1969 and finally customs values were determined under section 25(9) of Customs Act, 1969 after obtaining the local market prices and deductions of profit margin and duty & taxes. Accordingly, the appeal has no merit for consideration and is liable to be rejected.

ORDER

7. Hearings in this case were fixed on 08-12-2016 and 19-12-2016. The petitioner Mr. Rizwan Ahsan General Manager M/s Venus (Importer) appeared and stated that Valuation Ruling has not challenged but he only challenged 20% discount for more than 5/kg packing. Whereas previously 20% discount was on 2/kg and above. In market there is no retail packing of 2/kg. They are only contesting bulk quantity which has been increased from 2 /kg to 5/kg so they cannot avail the benefit of 20% on bulk packing. They further requested to add Venus brand ketchup in the valuation ruling.

8. M/s Al- Nafay Traders and other stated that the customs values notified vide Valuation Ruling No.952/2016 dated 13-10-2016 in respect of sauces / salad dressing /mayonnaise /mustard and tomato ketchup are at very higher side from all origins. The appellant contended the impugned ruling that a uniform values of goods for different varieties / brands imported from different sources are highly unjustified. The appellant further stated that during the determination of customs values, all stakeholders strongly contended and requested that the Valuation Ruling No.769/2015 dated 13-11-2015 may be reviewed in the light of prevailing international market prices. They stated that the trend needs to be revised downward otherwise these products will find their way into market through illegal routes under by way of mis-declaration.

9. Mr. Waseem A. Mahmood from Pakistan Fruit Processor Associates (PFPA) stated that there are 11 companies manufacturing sauces (Shezan, National). The importers contended that the manufacturers are manufacturing tomato ketchup and Chili sauce. 90% is tomato ketchup. Though the prices have been fixed on higher side. Mr. Shoaib Warraich, CEO of National Foods, stated that the tomatoes paste is available at US\$ 0.87/kg in 220 kg drum packing. They have opened L/C on the said price. So after including packaging, printing and over manufacturing charges, one (1) bottle's cost cannot be less than US\$ 1.00 kg. He further gave comparison of market selling price between 'Heinz' and 'Shezan'. The manufactures were basically concerned with the tomato and chili ketchup and wanted that values of these products may not be reduced. They also contended that though other sauces are not being manufactured in Pakistan but their prices should be increased.

10. Mr. Raja Ata-ul-Noor, G.M M/s Shezan, manufacturers of tomatoes ketchup said that the value of 5 kg packing is just. They are providing from 10 grams to 20 kg packing.

11. Representative of M/s Qureshi Enterprises stated that they deals in sauces of 'Razmin' brand which is low end brand from Thailand. This brand has not been included in the Valuation Ruling and now falls in "Others" category. Its valuation is at US\$ 2.05/kg whereas its import price is at US\$ 1.30/kg. Mr. Siddique Zia from Zia Bashir Associates stated that their brand 'Delicio' has been mentioned at S No.02 on higher values whereas 'Remia' and 'Razmin' brands are new entry in Pakistani market. Both brands are cheaper but fall in "Others" category therefore, it may be inserted after Serial No.03 at a new serial number on lower value. The upshot of discussion was that 'Peri Peri' sauce is expensive and should be included in serial No.1 to increase its value.



- (i) Sauces of brand 'Peri Peri' may be inserted at S.No.01 of the table given in Valuation Ruling No.952/2016 dated 13-10-2016 to increase its value as it is expensive brand.
- (ii) The value of sauces of brands 'Remia', 'Razmin' and "Delicio" brands is fixed at US\$ 1.80/kg.

12. Rest of the values and contents of ruling will remain unchanged including that of ketchup which is being manufactured in Pakistan. Director may see prices of other brands. Importers are contending that these other sauces are of higher value. These may be revised in next Valuation Rulings. The petition is disposed off accordingly.

13. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (04) petition.

S#	Petitioner' Name	File No.
1	M/s Venus Pakistan (Pvt) Ltd	DG(V)Val.Rev/957/2016
2	M/s Swiz International Traders,	DG(V)Val.Rev/955/2016
3	M/s Qureshi Enterprises,	DG(V)Val.Rev/957/2016
4	M/s Heinz Pakistan Pvt. Ltd.	DG(V)Val.Rev/955/2016

(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Al Nafay Traders
Office 56-B, Airport Road, Lahore Cantt.

M/s Venus Pakistan (Pvt.) Ltd.
Head Office: 9/1, K-28, Hawksbay Road,
P.A.F. Masroor, Mauripur, Karachi-75750.

M/s Swiz International Traders
232, Khadim Hussain Road, Lalkurti, Rawalpindi.

M/s Qureshi Enterprises
Razmin Tower, F-24, 25, Main Korangi Creek Road,
near CBM University, Karachi.

M/s Heinz Pakistan Pvt. Ltd.
Office No.112, The Forum, Block-9, Clifton, Karachi.

Copy to:

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