GOVERNMENT OF PAKISTAN DIRECTORATE GENERAL OF CUSTOMS VALUATION CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/977/2016

Dated 17th May, 2017

Order in Revision No. 33 7/2017 under Section 25-D of the Customs Act, 1969 against Valuation Ruling No. 968/2016 dated 16-11-2016

- 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. Abid Zakria Traders & Others

VERSUS

Director, Customs Valuation, Karachi

.RESPONDENT

Date(s) of hearing

17-01-2017, 30-01-2017, 27-02-2017,

22-03-2017 & 18-04-2017

For the Petitioners

None

For the Respondent

Mr. Igbal Ali, Principal Appraiser

This revision petition was filed under section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No.968/2016 dated 16-11-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

That, facts of the case in brief arising the instant petitions are that the values of Domestic Sewing Machines and Arms & Body for different import origins including India & China determined under the impugned Valuation Ruling No. 968/2016 dated 16-11-2016 in terms of Section 25(9) of the Customs Act, 1969 are frivolous, exuberntly /peculiarly high. Thus, it is lament to bring in your kind knowledge that the same being hypothetical / afterthought are not acceptable to the importers/association as a whole inter alia on the following;

Facts of the case

That, the petitioners located at Lahore/Quetta are regular importers of domestic sewing machines and arms & body for different import origins (herein after referred to as "the impugned goads") from India & China claiming assessment on transaction value in terms of Section 25(1) of the Customs Act, 1969 read with Rule 113 of the Customs Rules, 2001 and first Customs duty and other allied taxes are deposited in the national exchequer.

- 4. That, in this context & contest, at the very outset it is pertinent to mention that the above stated Valuation Ruling No.968/2016 dated 16-11-2016 (herein after referred to as the "impugned valuation ruling") has been issued without consultation with the stake holders, disclosure and depiction of the criterion; particularly the petitioners conducting their business at Lahore and imports from India; and cleared as per by Customs laws, rules & procedures.
- 5. That, the petitioners are engaged in lawful business are engaged in the import and distribution / sale of imported Domestic Sewing Machines and Arms & Body from India & China for past many years without concealing actual description / value of the goods on the GD as per conditions envisaged under Section 79(1) (a) of the Customs Act, 1969, read with Customs Rules 2001.
- 6. That, scrutiny of the para 2 of impugned valutation ruling reveals that the referred meeting held by the stakeholders on 10.11.2016 requiring the requisite documents is factually incorrect. In fact concerned importers / petitioners were neither served with the notice nor hearing was attended rather than by the so called complainant i.e. All Pakistan Cottage & small Traders Association, Lahore; who was heard one sided by the Director of Customs Valuation, Karachi. Thus the exparte / one sided determination of impugned VR being unjust and not tenable under the law is vehemently denied & rebutted.

ANNEXURE-1 OF THE VALUATION RULING

 That, the Annex-1 enclosed with the VR issued for different categories of standard size Domestic / Household Sewing Machines are summarized as under;



- Ordinary in CBU Condition (HS Code 8452.1090)- US\$ 29-47/pc(China @US29 & India (35)
- Sewing Machine of Household Type Zigzag in CBU Condition (HS Code 8452.1090) -US\$ 63---102/pc (China) US 63 & India @ 75)
- Ordinary in CKD Condition (HS Code 8452.1010)- US\$ 26--43/pc(China US26 & India @32)
- Sewing Machine of Household Type Zigzag in CKD Condition (HS Code 8452.1010)-US\$ 57-91/pc (China @US57 & India @67)
- Arms and bed (body) for Ordinary Machine (8452.9020)- US\$ 2.6---2.9/kg
- 8. That, contrary to the above said determined values that Ordinary Domestic Machines imported from India / China are regularly been assessed by the Customs as below;
 - Domestic Sewing Machine @ US\$ 17/Pc (VR enhanced to 100%)
 - Arms & Body @ US\$ 2.70/Kg (VR enhanced to 75%)

ANNEXURE-II OF THE VALUATION RULING

9. That whereas the Arms & Body are being regularly been assessed by the Customs at US 1.72/per unit; hence the above said values US S 2.70/kg being unjust and exaggerated are not acceptable under the law which are required to be revised per unit as it was 1.72 per unit in the past vide Valuation Ruling No.376, dated 26.09.2011.

BACK GROUND OF THE COMPLAINT

- 10. That, at the very outset it is worth mentioned that the complainant i.e. Chairman Cottage Industry is neither an industry nor involved in the import of impugned goods rather than selling the local domestic machines as retailer. Moreover, the complainant is illiterate in the procedure and valuation for imported goods rather having business jealousy / rivalry to the importers. Thus, complainant being irrelevant and prejudice has no legal right for any complaint/ determination of valuation; hence the impugned VR being fractious, void ab initio and illegal is not tenable under the law.
- 11. The due to energy crises and other economic factors and absence of friendly business scenario in Pakistan; the impugned goods imported from India & China Cost on the much cheaper / lower side than the local production. Thus the comparison of import values with the locally produced domestic machines is after thought and not tenable under the law.
- 12. That, the market value of locally produced domestic ordinary machines are being sold with exaggerated profit i.e. Rs. 7000 to 8000/Pc as against the actual cost Rs. 3000-3200/per unit approx whereas the Indian & Chinese domestic household machines are frequently available in the country i.e. Rs 3000 to 3200/ pc. Thus, the prices of the local machines can not be made the basis of impugned VR.
- 3. That, thorough scrutiny of the manufacturing cast in India 86, Pakistan revealed that it comes to US\$ 14-16/Pc and Rs. 300 3200 respectively. Moreover, as far as quality aspect is concerned the India origin Machines are durable, good finished in less price than the local one. Furthermore, in Pakistan Bench Type Sewing Machines are being manufactured and sold on high demanded prices / undue profits burned on the Public; while all types of Machines like Industrial / Zigzag (Function) are not being locally manufactured in Pakistan. Thus, the local prices can not be made the basis of impugned VR.
- 14. That, in fact if the VR is not revised, there will be unbearable burden on the poor segment of the society who earn their bread & butter from the impugned imported domestic / machines. Therefore, it is in the fitness of the things that the value of the imported Domestic Sewing Machines of Indian & Chinese origin may kindly be revised & ascertained as US\$ 17 20/Pc to save the poor segment of the society and legitimate national exchequer.
- 15. That, it is also transpired that despite the same standards / quality, and durability of impugned Sewing Machines of both Chinese & Indian origin the huge difference in the VR is not justified under the Customs laws, rules 8s regulations. Thus, the unjust difference / discriminately treatment may also be removed and the values be re-determined at par.

- 16. That, contrary to the above stated facts pertaining to regular evidential clearance of Identical items both from India & China through countrywide Customs Collectorates; the impugned VR being frivolous, unsubstantiated and blatant violation of the express provisions of Section 25 ibid and Customs Valuation Rules notified SRO 450(I)/2001 in not sustainable under the law.
- 17. That, the Director of Customs Valuation has issued impugned VR for domestic Sewing Machines and Arms & Body determined in terms of sub-Section (9) of the Section 25 ibid and issued under Section 25-A of the Customs Act, 1969. That the impugned VR has not been issued in consonance with the measures postulated under, express provisions envisaged under Section 25(1) to (9) of the Customs Act, 1969.
- 18. That, the procedures & methods mentioned in the impugned VR are stereo type and neither exhausted practically and nor in letter and spirit of the fore-stated provisions of law. Furthermore, the so called documentary exercise shown in the impugned VR does not reflect the ground realities, facts and circumstances of the import piJes / values Domestic Sewing Machines and Arms & Body. Moreover, the impugned VR has been issued without proper' application of methods in sequential order in terms of the express provisions nvisaged under Section 25(1) to (9) of the Customs Act, 1969. Moreover, the sufficient opportunity of hearing is not provided which is against the principle of natural justice i.e. audi alt rem partem meaning thereby that "one can not be condemned unheard".
- 19. That it is pertinent to mention here that due to global financial crisis, the prices of above commodity have set a downfall trend, which resulted decrease of prices in international markets day by day. In the event if above valuation ruling is not revised, the impugned goods shall definitely be routed through smuggling whereas at the other hand lawful importers will be unable to continue importation of above commodity because they are not in such a position to compete against smuggled goods.
- 20. That Section 25-A of the Customs Act, 1969 can not be applied one sided determination of the customs value which trans forms the "determination" in view of section 25-A to an impressible fixation of value. In the instant matter, the Director of Customs Valuation in contrary to the provisions envisages under Section 25- A has fixed the customs value of the impugned goods which is impressible as held by the Hon'ble Sindh High Court in the case of Sadia Jabbar Vs The Federation of Pakistan & others (C.P No. 2673 of 2009). As such, the Customs Department instead of determining the value under section 25 in sequential order has made malpractice of assessing the impugned goods on the predetermined value on the basis of the valuation ruling on the alleged ground of under invoicing from time to time, which is not permissible under the law.
- 21. That the impugned Valuation Ruling reveals that in order to fulfill the formality, the transaction value of identical and similar goods methods provided under the sub-Section (5) and (6) of the Customs Act, 1969 were merely mentioned without carrying out any exercise mentioned therein, which clearly established that impugned ruling is arbitrary and has been issued in contravention of Section 25-A of the Customs Act, 1969.

- 22. That, the impugned valuation ruling refers to some of the methods of Section 25 of the Custom Act, 1969, but it does not disclose any discrete evidence either obtained from the producer of the imported goods or from the commercial market. It appears that no exercise of any market enquiry (Work Back Method) was carried out from the retail market instead whole sale under corresponding Rule 119 of the Customs Valuation Rules; therefore, the impugned Valuation Ruling is illegal and unlawful.
- 23. That besides above, the Customs value is to be determined under Section 25, subject to Rules made which is international commitment and, according to which the market inquiry can only be conducted at first commercial level in term of the corresponding Rule-119 envisages under the Customs Rules, 2001. Rule 119 is reproduced verbatim as under:-

119 - DEDUCTIVE VALUE METHOD

"For the purposes of this Rule, the expression "unit price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sale takes place."

- 24. That there is nothing on record that the market inquiry was conducted at first commercial level after importation at which, such sale takes place. It is pointed out that market inquiry from open market is neither permissible nor can be conducted for determination of the customs value of the imported goods but in this case, according to the information of the Petitioners, the so-called market inquiry was conducted at 3rd and 4th commercial level from the shops and store i.e. Retailers, which action on the part of Respondent No. 2 is patently void and illegal.
- 25. That, it is pertinent to note that impugned ruling was so haphazardly issued that no market data found mentioned or found Low have been received and as such the alleged Valuation Ruling is based on assumption & presumptions, surmises. The previous data of similar goods has also not been taken into consideration and the alleged Valuation Ruling being abnormally on the higher side is vague, illegal and against the independent of determination of value under the law.
- 26. That admittedly, the impugned Valuation Ruling does not mention that the record available with Customs authorities were taken into consideration which reflects the impugned ruling as colorable exercise by the Director of Customs Valuation, which is prohibited under the law. Moreover, the importers were not issued the mandatory/requisite hearing notices deliberately so that fair market value may not come on record regarding subject goods and even no opportunity was provided to the Petitioners to provide import documents under Rule 109 of the Valuation Rules of Chapter X of the Customs Rules, 2001, therefore, such exercise is illegal and unlawful and vitiates the determination exercise under subsection 25(7) read with sub-section (9) of the Customs Act, 1969.
- 27. That it is further pointed out that the Hon'ble Sindh High Court, Karachi in another judgment in C.P No.2673 of 2009 was pleased to set aside a numbers of Valuation Rulings which are against Section 25 of the Customs Act, 1969, hence on the touchstone of these judgments, the

impugned ruling is illegal and unlawful and is on higher side and issued without following the relevant provisions of law, hence liable to be set aside.

- 28. That, in the wake of above stated facts & circumstances the impugned VR being peculiarly at the higher side to the tune 200-300% as compared to previous the prevalent evidential data and contradictory to comparative current international market prices criteria are not acceptable to the importer / Association as a whole.
- 29. That, in the event if the impugned VR is not revised, the impact of smuggling shall eventually affect the lawful imports; as sucti the importers are not in such a position to compete against smuggled goods in the domestic market.
- 30. That, the instant. Revision Petition is within the period of thirty days time from the date of knowledge. Moreover, the sufficient opportunity of hearing may also be provided.

PRAYER

- 31. In wake of the upshot of the above discussed facts and circumstances, it is requested that the impugned VR may very, kindly be ordered for Revision on the following factors: -
 - Promulgated Valuation Ruling is hypothetical, under-mining fair process of determination of normal values for assessment purpose.
 - ii) Valid import data is not available to support promulgated Valuation Ruling.
 - iii) No representative of commercial importers was part of market survey.
 - iv) The impugned Valuation Ruling has not been issued in consonance with the measures postulated / exhausted in sequential order under express provisions envisaged under Section 25(1) to (9) of the Customs Act, 1969.
- 32. That, it is further requested that the sufficient opportunity of hearing be given to meet the ends of natural justice. We shall be highly obliged and thanking in anticipation.
- 33. The respondent department was asked to furnish comments to the arguments submitted by the petitioner in the case. Para-wise comments on the petition are given as under:-

PARAWISE COMMENTS

The Valuation Ruling No.968/2016 dated 16-11-2016 has been issued after consultation with stakeholders including Federation of Pakistan Chamber of Commerce and Industry who is main representing body of trade. As far as concerned methodology adopted it is stated that "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 examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value



method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of different brands of Sewing Machine have been determined under Section 25(9) of the Customs Act, 1969.

Facts

ara F

- Para A No comments being relates to introduction of importers.
- Para B The impugned Valuation Ruling No.968/2016 dated 16-11-2016 was issued duly under Section 25 A of the Customs Act, 1969 in transparent way. The stakeholders i.e. importers of the subject goods as well as Chamber of Commerce and Industries were invited in the meetings.
- Para C No comments being relates to transaction of importers.
- Para D Denied: All the stakeholders i.e. importers, Chamber of Commerce & Industry, Lahore, Karachi were invited to attend the scheduled meeting. Valuation Ruling 968/2016 dated 16-11-2016 was revised because the Valuation Ruling No.376/2011, dated 26-09-2011 more than 90 days and did not reflect the true customs values in accordance with international price trend.
- Para E Valuation Ruling was issued after gathered all information for the purpose of determination of customs values under Section 25(9) of the Customs Act, 1969.
 - The Valuation Ruling was issued in the light of price trend in the international mrket.
 - ara G The Valuation Ruling i.e. 376/2011 dated 26-09-2011. Being an old VR. Values of Arms and body were determined in the light of price trend in the international market.
- Para H No comments being not related to Directorate General Customs Valuation. The customs values were determined under Section 25 of the Customs Act, 1969 in sequential manner and rule 25 of the frame thereupon.
- Para I The Valuation Ruling i.e. 376/2011 dated 26-09-2011. Being an old VR. Values of Arms and body were determined in the light of price trend in the international market.
- Para J The Valuation Ruling i.e. 376/2011 dated 26-09-2011. Being an old VR. Values of Arms and body were determined in the light of price trend in the international market.
- Para K The Valuation Ruling i.e. 376/2011 dated 26-09-2011. Being an old VR. Values of Arms and body were determined in the light of price trend in the international market.
- Para L The Valuation Ruling i.e. 376/2011 dated 26-09-2011. Being an old VR. Values of Arms and body were determined in the light of price trend in the international market.

Para M Need no comments being related to future expectation of smuggling of the subject goods.

Para N Denied. Valuation Ruling itself a speaking one clearly reveals that section 25 of the Customs Act, 1969 for the purpose of determination of customs values have been exhausted in accordance with it spirits for determination of Customs value under Section 25A of the Customs Act, 1969.

Para O "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 examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of Sewing machines have been determined under Section 25(9) of the Customs Act, 1969.

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Para Q No comments being not related to Directorate General Customs Valuation.

Para R The impugned Valuation Ruling No.968/2016 dated 16-11-2016 were issued after detailed meeting with stakeholders and Chamber of Commerce & Industry hence it cannot be called one sided.

Para S. "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 examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the



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- Para AA The impugned Valuation Ruling No.968/2016 dated 16-11-2016 were issued after detailed meeting with stakeholders and Chamber of Commerce & Industry both Karachi and Lahore and not on presumption.
- Para BB It is reiterated that all the stakeholders were invited for the determination of customs values and notices were issued to all stakeholders in time. Lahore Chamber of Commerce who is representing authority of Lahore based importer. The determination of values of Domestic Sewing machine completed under Section 25(9) of the Customs Act, 1969.
- Para CC No comments being not related to Directorate General Customs Valuation.
- Para DD The impugned Valuation Ruling No.968/2016 dated 16-11-2016 are reflect international price trend.
- Para EE No comments being not related to Directorate General Customs Valuation.
- Para FF No comments being related to further discussion during the course of review proceeding before the Director General.

PRAYER

It is respectfully prayed that the customs values were determined vide Valuation Ruling No. 68/2016 dated 16-11-2016 strictly in accordance with Valuation methods given in Section 25 of the Act, 1969. Moreover the Appeal has no merit for consideration and is liable to be rejected.

ORDER

34. The record of the case has been examined and the comments submitted by the Respondent Department have been considered. Perusal of the case record reveals that the petitioners were invited for hearing fixed on 17-01-2017, 30-01-2017, 13-02-2017, 27-02-2017, 22-03-2017 & 18-04-2017 vide letters of even number dated 04-01-2017, 20-01-2017, 30-01-2017, 16-02-2017, 07-03-2017 and 07-04-2017 alongwith relevant import documents i.e. copies of L/C, B/L, invoices, sale contract, payment transaction record to the exporter, sales tax paid invoices etc. But neither the petitioner himself nor any of his authorized representative appeared for hearing on the said dates to defend their case. No documents have been submitted; it is thus evident that the petitioner is not interested in furnishing valid and legally maintainable documents e.g. proforma invoice, sales contract, L/C, B/L etc. so as to enable this forum to verify truth and accuracy of transaction value under Section 25(1) of the Customs Act, 1969. As per Rule-109 of the Valuation Rules,

2001 (Chapter-X), the absence of valid import documents clearly manifests that the petitioner failed to substantiate their case with any conclusive evidence.

- 35. In view of aforesaid factual improprieties and legal infirmities, the revision application merits no consideration and is accordingly rejected.
- 36. Being identical on facts and law point, this order shall apply mutatis mutandis to following (05) petitions.
 - 1. M/s. Al Furgan Traders
 - 2. M/s. Allians Enterprises
 - 3. M/s. New Orbit Trading Company
 - 4. M/s. Lal Khan & Company
 - 5. M/s. Muddasir Riaz & Co.

(Suraiya Ahmed Butt) Director General

Registered copy to:

M/s. Abid Zakria Traders

M/s. Al Furqan Traders

M/s. Allians Enterprises

M/s. New Orbit Trading Company

M/s. Lal Khan & Company

M/s. Muddasir Riaz & Co.

C/o Ch. Sakhi Muhammad Advocate

Suite No.10, 1st Floor, SAF Centre, 8-Fanr Road, Lahore.

Copy to:

- 1. Member (Customs), FBR, Islamabad.
- Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/ (North) Islamabad / (Central) Lahore.
- Collector, MCC Appraisement (East)/ Appraisement (West)/Port M. Bin Qasim/ Preventive, Karachi.
- Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/ Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
- Director, Customs Valuation, Karachi/Lahore.
- Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for uploading in One-Customs and WeBOC database.
- Asstt. Director (Review), Karachi.
- 8. All Deputy/Assistant Directors (Valuation)
- Guard File.