

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/981/2016

Dated: 16th January, 2017

Order in Revision No. 289/2017 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.977/2016 dated 24-11-2016

- 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 Aamena Enterprises
M/s Pet Mania

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

06-01-2017

For the Petitioners

Mr. Darvesh K. Mandhan Advocate
Ms. Saba Fahad

For the Respondent

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.977/2016 dated 24-11-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

- a) That the applicant is importer & manufacturer and engaged in the import pet food items "WINNER PLUS" assessable under HS Code 2309.1000 and others and accordingly import the same from Germany.
- b) The applicant is aggrieved with the above Valuation Ruling issued specifically in respect of prices notified for "other brands" at serial No. 2 i.e. US\$ 1.10/kg.
- c) That the applicant is one of the importers of the said item and contribute substantial amount of revenue in respect of duty and taxes to the Exchequer. The impugned valuation ruling being a



malafide act of the Valuation Department has been issued with malafide intentions, without proper deliberation over issue of Other brands.

- d) That before issuance of subject ruling the prices of subject items for all classes of importers were being assessed by the Collectorates under valuation guidelines at a value @ US\$0 .50/Kg for the respective categories as imported from various origins.
- e) That since the valuation ruling issued is patently illegal, without any justification, arbitrary, discriminatory, completely against the law and in violation of the mandatory provisions of the Customs Act 1969 and the directions/interpretations of the Honorable Courts from time to time and hence the applicant prefer this review application without prejudice to their right to contest the same before any other forum available in law, on the following grounds:-

GROUNDS

- f) That the applicant's imports from Germany is being subjected to highly unjustified values, fixed / imposed against the class and category (other brands). It is further submitted that while issuing subject Valuation Ruling No. 977/2016 dated 24.11.2016 the issuing authority has portrayed frivolous reasons to arrive at the Valuation Method provided under section sub-section (9) to section 25 of the Customs Act, 1969, hence the subject valuation has no leg to stand in the eyes of law.
- g) That the values determined vide subject Ruling are also discriminatory in nature and against the constitutional rights provided by the law and on account of technical issues in respect of origins. It is further submitted that applicant is suffering higher duty and taxes due to higher prices fixed in relation to category "other origins". The imports at serial No.1 is being facilitated at price of US\$.90/ Kg as the items available at serial No. 1 of the Ruling are importable under distribution of a certain company as such the categorization is concocted, frivolous and based on ill wills of departmental representatives.
- h) That without prejudice the valuation authorities have notified higher prices against the "Pet Food items" the applicant is unable to compete and transact its business in the local market. It is submitted that since other brands includes so many items having different values the applicant is unable to even order for other consignments.
- i) That it is also being brought to notice of learned Director General Customs Valuation that since the labour charges and cost for the manufacture of the subject item is cheaper and no material for consideration was taken into consideration by the Director Valuation to arrive at justified prices hence the valuation fixed vide subject Ruling is an eye wash.
- j) That at the outset it is submitted that the values determined by the Respondent vide the impugned Ruling in terms of section 25A of the Customs Act, 1969 are wrongly notified applied on the imported of the consignments, being imported regularly by the Applicant, are illegal, arbitrary, unjust, malafide and without justification as Valuation Ruling has been issued by the Valuation department on the basis of a Fall back method under section 25 (9) of the Customs Act, 1969 and purported market survey which was carried out without any notice to the applicant, hence the same is illegal and cannot be sustained.
- k) That Valuation Method under section 25 (9) opted by Respondent, which is not permissible under the law as the Respondent has ignored to adopt sequential method of customs valuation



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

- l) That such an exercise, without prejudice, is in complete violation of the law laid down in 2014 PTD 176 "M/s Good Will Traders v/s Collector of Customs" as well as under provisions of section 25 of the Customs Act 1969, read with the valuation rules notified vide Chapter IX of SRO 450(I)/2001.
- m) That it is further submitted that perhaps "some prices obtained on the internet survey have also been considered for determining the said impugned values", which again is against the law as well as judgments of Hon'able Courts, wherein it is clearly held that "price quotation or proforma invoice cannot be treated as correct and valid evidences as no transactions are carried out on such prices and until and unless the imports are affected on those prices, the same cannot be made the basis of assessment of other imports", hence the Ruling is liable to be brushed aside.
- n) That if the impugned ruling sustained the rates of subject item, will reach high class prices, for which ordinary person would not be in position to buy a cheap commodity from market and it would also enhance the capital amount to be invested for the import purposes.
- o) That without prejudice, it is submitted that even in applying the deductive method of valuation the exercise of market survey has to be carried out in each and every case and a general survey cannot be made basis for fixation of values as otherwise the same would be in total negation to law declared by Hon'able Courts.
- p) That it is also needless to say that determination of such arbitrary and excessive valuation will only promote smuggling of the subject goods which is already alleged by department in many cases, is going on in the garb of Afghan Transit and will cause loss to the exchequer as the Applicant are paying duties and taxes. Therefore it is requested to look into this aspect of the



matter as well as the trade is already in a very depressing situation coupled with numerous other factors and cannot bear any other cost increasing element in it.

- q) That in view of the above submissions coupled with the fact the customs officials have their interest involved in higher fixation of prices of the goods of the applicant, therefore the basis and input in to the fixation of prices of these goods may be discarded and Valuation Ruling impugned herein is liable to be set-aside.
- r) That the applicant craves leave of this Honourable forum to raise any further grounds at the time of hearing of this application.

Prayer

- s) It is therefore, prayed by the applicant above named that the Honorable Director General Valuation by virtue of powers vested under section 25D of the Customs Act 1969 may be pleased to pass orders as follows: -
- t) Declare that the act of valuation department by issuing the subject Valuation Ruling No. 977/2016 dated 24.11.2016 in terms of section 25A of the Customs Act 1969 is illegal and is hereby set aside.
- u) Direct the Director valuation to issue a fresh Valuation Ruling by incorporating the new values with logical reasons and rationale against each country for its imports.
- v) Declare that the action of Valuation Department by resorting to assessment in terms of sub section (9) of section 25 of the Customs Act 1969 directly without first exhausting the methods of assessment provided under sub section (1), (5), (6), (7) & (8) of section 25 of the Customs Act 1969, is illegal and liable to be set aside;
- w) Direct the Department to assess the goods of the Applicant strictly in terms of section 25(1) of the Customs Act 1969 and pending finalization of this Review Application direct the Collectorate concerned to assess the future consignments in terms of section 81 of the Act by depositing of post dated cheques for the differential amount;
- x) Grant such other relief(s) as this Honourable Forum may deem just and proper in the circumstances of the case.

ORDER

2. Hearing in this case was fixed for 06-01-2017. The commercial importer M/s Aamena Enterprises, Lahore represented by Mr. Darvesh K. Mandhan, Advocate appeared for hearing. He stated that they are importing Cat & Dog Food under brand name "Winner Plus" from Germany which does not fall in the existing table and is being assessed in 'Others' brands category at US\$ 1.10/kg. They further contended that there is no justification for the customs values determined at US\$ 0.90/kg and for other brands at US\$ 1.10/kg. They are importing at \$ 0.70/kg.

3. Ms. Saba Fahad Owner of M/s Pet Mania also appeared and stated that their brand 'Josera' from Germany was being imported at US\$ 0.50/kg but now increased to US\$ 1.10/kg falling in 'Others' brands category. She produced computer receipts of super stores where 'Josera' is regularly being sold in 25 kg packing at Rs.5100/bag.

4. The petitioners contended that only one category should be made instead of two categories. They further stated that Chinese / Thailand are not exporting much as in bulk quantity is being imported from Europe. Two brands 'Smart Heart', 'Me-O' and 'A-Pro' are being imported from China / Thailand. These are being imported on higher rates in the market but the value has been fixed uniformly at \$ 0.90/kg for all higher brands. By making 'Others' category they have been driven out of the business. They are being assessed at higher rates whereas their products are of low price in the market. There is no justification for two categories when all higher brands are placed in first category, under low value.

5. In view of the above facts, I am of the view that both petitioners brands 'Josera' and 'Winner Plus' as are being imported from Europe falls under serial No. 01 of Valuation Ruling No.977/2016 dated 24-11-2016. The category 'Others' may be abolished as all higher value brands are placed in first category at S.No.1, so there is no justification of other brands at higher rates. Therefore, two categories may be made region-wise as under:-

S.No.	Description	PCT Code	Proposed PCT for WeBOC	Origin	Customs values on Net Content basis US\$ / per kg
(1)	(2)	(3)	(4)	(5)	(6)
01.	Cat / Dog Food (Pet Food) All Brands	2309.1000	2309.1000.1000	Europe / North America	0.90
02.	Cat / Dog Food (Pet Food) All Brands	2309.1000	2309.1000.1100	Thailand / China	0.76

6. The petitions are disposed off accordingly.


(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Aamena Enterprises,
Through Darvesh K. Mandhan, Advocate High Court,
B-33, Asif House Fatima Jinnah Road, Civil Lines, Karachi

M/s Pet Mania,
Shop No.2, Plot # 26, 5th street,
Badar Commercial Area, DHA Phase-5, Karachi

Copy to:

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

3. Collector, MCC Appraisalment (East)/ Appraisalment (West)/Port M. Bin Qasim/ Preventive, Karachi.
4. Collector, MCC, Appraisalment/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.