

GOVERNMENT OF PAKISTAN  
CUSTOMS APPELLATE TRIBUNAL  
SPECIAL BENCH  
3<sup>RD</sup> FLOOR, JAMIL CHAMBERS  
SADDAR, KARACHI.

Before: **Mr. Muhammad Nadeem Qureshi, Member (Judicial-I), Karachi**  
**Mr. Muhammad Nazim Saleem, Member (Technical-II), Karachi**

**01. Customs Appeal No.K-2162/2016**

**M/s. Carewell Traders,**  
Karachi.

**02. Customs Appeal No.K-2166/2016**

**M/s. Dawn Trading Company,**  
Lahore.

**03. Customs Appeal No.K-2167/2016**

**M/s. Horizon Enterprises,**  
Lahore.

**04. Customs Appeal No.K-2168/2016**

**M/s. A.A. Interlining,**  
Lahore.

**05. Customs Appeal No.K-2169/2016**

**M/s. Royal Business International,**  
Karachi.

**06. Customs Appeal No.K-2170/2016**

**M/s. Latif Bukram Store,**  
Karachi.

**07. Customs Appeal No.K-2171/2016**

**M/s. Amir Brothers,**  
Karachi.

**08. Customs Appeal No.K-2172/2016**

**M/s. Qadir Trading Company,**  
Karachi.

**09. Customs Appeal No.K-2173/2016**

**M/s. Fine Traders,**  
Karachi.

**10. Customs Appeal No.K-2174/2016**

**M/s. Fine Industries,**  
Faisalabad.

**11. Customs Appeal No.K-2175/2016**

**M/s. ALPHA Trading Company,**  
Lahore.

**12. Customs Appeal No.K-2176/2016**

**M/s. SS International,**  
Karachi.

**13. Customs Appeal No.K-2186/2016**

**M/s. Pak Fabric,**  
Karachi.

**14. Customs Appeal No.K-2260/2016**

**M/s. Waris Sharif & Co.,**  
Karachi.

**15. Customs Appeal No.K-2286/2016**

**M/s. Ihsan & Sons,**  
Karachi.

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**Appellants**

***Versus***

1. **Director General,**

Directorate General of Customs Valuation,  
Customs House,  
Karachi.

2. **Director,**

Directorate General of customs Valuation,  
Customs House,  
Karachi.

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**Respondents**

Mr. Muhabbat Hussain Awan, Advocate, along with Ms. Suraiya Sarwar, Advocate, present for the Appellants  
(C.A.No.K-2162/2016, K-2166 to 2176/2016, K-2186/2016,  
K-2260/2016 & K-2286/2016),

Mr. Ghulamullah, Advocate, present for the Appellant  
(C.A.No.K-2171/2016),

Mr. Allison Stephen, P.A & Mr. Nadeem Anwar, V.O, present for the Respondents.

Date of Hearing: 11.01.2017

Date of Judgement: 13.02.2017

**J U D G E M E N T**

**MUHAMMAD NADEEM QURESHI, MEMBER JUDICIAL-I:** We intend to dispose of instant appeals filed by appellants, against the Order-in-Revision No.264/2016 dated 11.11.2016, passed by the Director General of Customs Valuation, Karachi against the Valuation Ruling No.926/2016 dated 08.09.2016 passed by the Director, Valuation, Customs House, Karachi. All appeals have identical issues of law and facts and are therefore being heard, dealt with and disposed of simultaneously through this single consolidated judgment in the light of judgment of the Hon'ble High Court of

Sindh in Customs Reference No.157/2008 (S.M. Naqi S/o Syed Muhammad Hussain, Karachi Vs. Collector of Customs (Adjudication-I) & Others, Karachi).

02. Since, these fifteen (15) appeals are based on similar facts and question of law, therefore, it is needless to reproduce facts of each case separately, hence for reference the fact of Appeal No. K-2162/2016 are taken into consideration for decision, wherein, facts of the case are that, the appellant is importer of Woven & Non-Woven interlining Buckram material in Black & White colors classifiable under PCT Heading 5901 & 5603, respectively. The goods are being imported from China, Korea and other Countries, previously the goods have regularly been imported @ US \$ 0.80/Kg to US\$ 1.80/kg depending on the category/quality of the buckram. The local manufacturers of the said item approached the officers of Directorate General of Customs Valuation Customs House, Karachi for enhancement of import value of said item to protect their industry. The Director General Valuation, Customs House, Karachi with the active collaboration of local manufacturers issued a Valuation Ruling No. 428/12 dated 13.02.2012 & revised the values with the pre-text that the international prevailing prices of the said item are on higher side. The Values were fixed as follows:

- i. *China Origin (Black) enhanced from US\$ 3.12/ kg*
- ii. *Korea Origin (Black) enhanced from US\$ 3.62/ kg*
- iii. *Other Origins (Black) enhanced from US\$ 3.21/kg*
  
- i. *China Origin (White) enhanced from US\$ 2.96/ kg*
- ii. *Korea Origin (White) enhanced from US\$ 3.51/ kg*
- iii. *Other Origins (White) enhanced from US\$ 3.12/kg*

Whereas the guideline values for Non-Woven interlining Buckram intimated by the customs itself were US \$ 2/kg of all origins and colors.

03. The Director Valuation again re-determined the values without proper consultation with stake holders & issued Valuation Ruling No. 926/16 dated 08.09.2016 as follows:-

<b>S. No.</b>	<b>Description of Goods</b>	<b>P.C.T.</b>	<b>Proposed PCT for Weboc</b>	<b>Origin</b>	<b>Customs Values (C&amp;F) US\$/Kg</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
01	Woven Interlining Buckram Material	5901.1000 5901.9010	5901.1000.1000 5901.9010.2000	China Korea	5.14 6.65

	(Black)	5901.9090	5901.9090.3000	Others	5.75
02	Woven Interlining Buckram Material (White)	5901.1000	5901.1000.1000	China	4.90
		5901.9010	5901.9010.2000	Korea	5.39
		5901.9090	5901.9090.3000	Others	5.49
03	Non Woven Interlining Buckram Material (Black)	5603.1100	5603.1100.1000	China	4.63
		5603.1200	5603.1200.2000	Korea	5.09
				Others	5.19
04	Non Woven Interlining Buckram Material (White)	5603.1100	5603.1100.1000	China	4.41
		5603.1200	5603.1200.2000	Korea	4.84
				Others	4.94

04. The Said Valuation Ruling No. 926/16 dated 08.09.2016 was also issued by the Director, Valuation without the active participation of the Association of the major Stake Holders i.e. importers, therefore, the same was not acceptable to the importers and they filed revision application before the Director General Valuation, Customs House, Karachi for consideration of their request and allow clearances under section 81 of the Customs Act, 1969 till the order-in-revision. The Director General Valuation, Customs House, Karachi allowed the request for provisional release, examined the case and passed the following Order:-

*“The case record and return as well as verbal submission of the petitioners were examined in detail. The main contention of the petitioners was that the customs values of woven and non-woven interlining buckram material was enhanced arbitrarily by the respondent in absence of lawful justification, legal base, facts gross of the base under apparent non-bonafides for undue enrichment. They demanded for fresh market inquiry from neutral person. The request of the petitioners was acceded to and fresh market inquiry was conducted, which showed downward prices than the values determined in the valuation ruling. It was discussed that a local manufacturer M/s Mundia exports, Karachi is manufacturing this item. His costing of the prices of the items i.e. non-woven interlining buckram material may be considered. The said local manufacturer was called upon on 25.10.2016 to discuss material and expenses on manufacturing of said goods. The local manufacturer also brought a new item Polypropylene Spun Bond Fabric imported from China/India Non-woven and stated that this item is assessed at a lower rate US\$ 2.00/Kg under the garb of guideline issued by the clearance Collectorate. They requested to determine the values of said item immediately to save the government revenue and industry.*

*In view of the contention and submissions of local manufacturers M/s Aruj Industries Ltd. Lahore for Woven and M/s Mundia Exports, Karachi for Non-Woven fabric and the working of the department following value are re-determined of the following goods:-*

<b>S. No.</b>	<b>Description of Goods</b>	<b>PCT</b>	<b>Proposed PCT for Weboc</b>	<b>Origin</b>	<b>Customs Values (C&amp;F) US\$/Kg</b>
<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
01	Woven Interlining Buckram Material (Black)	5901.1000	5901.1000.1000	China	4.90
		5901.9010	5901.9010.1000	Korea	5.40
		5901.9090	5901.9090.1000	Others	5.50
02	Woven Interlining Buckram Material (White)	5901.1000	5901.1000.1100	China	4.65
		5901.9010	5901.9010.1100	Korea	5.10
		5901.9090	5901.9090.1100	Others	5.20
03	Non Woven Interlining	5603.1100	5603.1100.1000	China	4.17

	<i>Buckram Material (Black)</i>	5603.1200	5603.1200.1000	<i>Korea</i>	4.63
				<i>Others</i>	4.73
04	<i>Non Woven Interlining Buckram Material (White)</i>	5603.1100 5603.1200	5603.1100.1100 5603.1200.1100	<i>China</i>	3.95
				<i>Korea</i>	4.38
				<i>Others</i>	4.48
05	<i>Non-Woven polypropylene Spun Bond Fabric</i>	5603.1100 5603.1200	5603.1100.1200 5603.1200.1200	<i>China/ India/ Vietnam/ Far East</i>	4.10
				<i>Others</i>	4.53"

05. That the Director General Valuation, Customs House, Karachi has considered the Revision Application & decreased the values up to approximately 5% to 10% on the grounds that the Valuation Ruling No 926/16 dated 08.09.2016 was issued after fresh inquiry which showed downward prices than the values determined in the impugned Valuation Ruling. The Fresh Impugned Order-in-Revision 264/16 dated 11.11.2016 indicating the Values on lower side from 5% to 10% as compared to values determine by the Director Valuation, Customs House, Karachi, under section 25-A of the Customs Act, 1969.

06. Being aggrieved with the Order-in-Revision passed by the Director General of Customs Valuation, Karachi, present appellants filed the instant appeals before this Tribunal on the grounds incorporated in the Memo of Appeal.

07. On the date of hearing Mr. Muhabbat Hussain Awan, Advocate along with Ms. Suraiya Sarwar, Advocate, and Mr. Ghulamullah, Advocate, appeared on behalf of all the appellants (collectively / separately) and reiterated the contents of their appeals and contended that, the Interlining Woven Buckram is based on various combinations ranging from 100% polyester to 100% cotton yarn plus HDPE/glue. The price of polyester yarn and cotton yarn used in prime quality of Interlining Woven Buckram is as low as about US \$ 1/kg and US \$ 2/kg in the international market, respectively. Whereas recycled polyester and cotton yarns are used in standard/ordinary Interlining Woven Buckram, which are available in half of the price of prime quality. The Non Woven Buckram is invariably manufactured from recycled Polyester Staple fiber or recycled cotton mixed with polyester fiber plus LDPE/glue. The price of polyester and cotton fibers used in Non Woven Interlining Buckram is as low as US \$ 0.6/kg and US \$ 0.4/kg, respectively in the international market therefore, the value determined in the Impugned Order-in-Revision is exorbitantly on higher side & without Justification hence are liable to be set aside. They further contended that, the Director General, Directorate General Valuation in the impugned Order-in-Revision has inter alia depended on Zauban Import data which pertains to the Indian import data and has no relevance with Pakistan and has no legal value in the light of section 25 of the Customs Act, 1969 and the rules for valuation made there under, therefore, the impugned Order-in-Revision is without any Justification which is liable to be set aside. The market values of Woven & Non Woven Buckram have been collected only from Karachi at the choice of staff of the Directorate Valuation, Customs House, Karachi, without the assistance & presence of Stake Holders. The value determined in the Impugned Order-in-Revision are enforceable to all Pakistani importers therefore, the market inquiry conducted at only one city of Pakistan cannot be considered for whole of Pakistan, therefore, the impugned Order-in-Revision is not acceptable. They also contended that, the Values determined in the both

Valuation Rulings & Order-in-Revision are based on market inquiry & recommendations of local manufacturers and issued under section 25(9) of the Customs Act, 1969 without exhausting sub section 1, 5, 6 & 7 of Section 25 of the Customs Act 1969 which is clear cut violation of the Customs Act, 1969 as well as the order passed by the Honorable High Court of Sindh at Karachi in CP No. D- 2673/2009 (Sadia Jabbar Versus Federation of Pakistan & other) and the Provisions of other laws. *“The primary method for assessment remains within section 25(1) of the Act. In case, it is not possible to determine Custom value under section 25(1), the other methods prescribed under section 25 of the Act has to be applied in the sequential order strict sensu. The reasons for adopting a particular method have to be provided over the preference of preceding ones. The enquiring from local market as stated in the valuation market and record did not provide any source or information which led to the ascertainment of this assessment. The whole exercise has been under taken in a perfunctory manner in total disregard to legal provisions. In the instant case, adoption of assessment under deductive method of section 25(7) has been made without giving reasons and that too in total disregard to the formula of deduction provided under the rule as discussed above. Reliance is placed upon judgments of superior fora in cases as reported in PTCL 2008 CL 409, CP No. 2673 of 2009 Sadia Traders V/s Federation of Pakistan, 2007 PTD 2623 and 2006 PTD 909.”* They also contended that, neither the Director Valuation nor the Director General considered the invoices of local manufacturers which are on very lower side despite their inefficiencies and deprivation from the economies of scale, especially in the circumstances when the importers submitted some such invoices for Director General Valuation’s consideration. The Valuation Ruling was issued by the Director Valuation without exhausting sub sections of section 25 of the Customs Act 1969, but the Director General Valuation has not taken the notice of the irregularities committed by Valuation Directorate. They further contended that the department could not produce even a single evidential Invoice before the Director General of Directorate General, Customs Valuation, Custom House, Karachi, at the time of hearing but even then he has not considered the requests of the applicants and fixed the values arbitrarily without any justification. The prices fixed in the Impugned Order-in-Revision No. 264/16 dated 11.11.2016 were grossly on higher side as the values were fixed with the consents and recommendations of local manufacturers to safeguard their under interests, during the hearing of Review application the local manufacturers did not raise any objection regarding the Values fixed in Valuation Ruling No. 926/2016 dated 08.09.2016. In the light of above submissions, they respectfully prayed in the interest of natural justice, that the impugned Order-in-Revision No. 264/2016 dated 11-11-2016, Valuation Ruling No. 926/16 dated 08.09.2016 and Valuation Ruling No. 428/12 dated 13.02.2012, may kindly be set aside with the directions to Customs Valuation Directorate, Customs House, Karachi to re-determine the values of imported Woven & Non Woven Buckram taking into consideration the Value of raw material i.e. grey Fabric and other raw Materials in the interest of Justice and in the meantime allow the importers to clear their consignments provisionally under section 81 of the Customs Act, 1969.

08. No cross objection under sub-section 4 of Section 194-A has been submitted by the Respondent. However, the representative of the Department / Respondents opposed the arguments of the appellant and contended that, the impugned Valuation Ruling is issued well within the legal frame work and within the jurisdiction laid down in Customs Act, 1969 in sequential method laid down in Section 25 of the Customs Act, 1969. On the basis of documentary evidences available on records. He further contended that, three meetings were held in the Chamber of Director Valuation wherein the local manufacturer as well as importers participated and put-forth their point of view.

Director Valuation after considering their point of view and keeping in view the evidences placed on records values were determined. The values were determined keeping in view the raw material working, international prices over internet and data. Prices received from different Chinese supplies of said goods prices forwarded by local manufacturer and reliance was placed on fall back method as provided under Section 25(9) of the Customs Act, 1969. He prayed that, this Honorable Tribunal may allow the said ruling to hold the decision by the Director General Valuation orders on this issue.

09. We have examined the case record and given due consideration to the arguments put forth by both the parties, it has been noticed and observed that a vital and basic contention raised by both the parties in the subject appeal revolves around the issue whether the Director Valuation has travelled beyond his authority and jurisdiction and authorized under Section 25-D of the Customs Act, 1969 to determine the customs value of a new item which was not earlier determined in the valuation ruling impugned before him. Plain reading of Section 25-D and its interpretation under the legal prospective simply demonstrate that, the Director General Valuation can only deliberate with the value earlier determined in a ruling issued by the Director Valuation under Section 25A of the Customs Act, 1969. The revision petition may be filed before the Director General Valuation within 30 days from the day of determination of customs value. In presence of such legal and statutory obligations the Director General Valuation does not have any inherent power or jurisdiction to travel beyond his authority. The Director General Valuation not authorized to re-determine or adjudicate the issue which was never been assailed before him against any valuation ruling. In this particular case, the Director General Valuation without any warrant of law added/inserted a new item i.e. '*non-woven polypropylene spun-band fabric*' at sr. No.5 of the Table given in the impugned Order-in-Revision which was in fact not the integral part of the Valuation Ruling No.926/2016 dated 08.09.2016 issued by the Director of Customs Valuation under Section 25-A of the Customs Act, 1969. On the other hand the respondents representative strongly agitated the point that, the Director General of Customs Valuation has got the same powers under Section 25-A (3) as that of Director of Customs Valuation under Section 25-D of the Customs Act, 1969 read with SRO-495(I)/2007 dated 09.06.2007. This point also requires clarification as envisaged under the prescribed law and statute. Under the circumstances, question arises whether the Director General Valuation while sitting under the jurisdiction in terms of Section 25-D of the Customs Act, 1969 can exercise authority under the law by assuming jurisdiction under Section 25-A of the Customs Act, 1969 simultaneously. No doubt, SRO-495(I)/2007 dated 09.06.2007 specify the powers and duties of the officers of the Directorate General of Customs Valuation. At the S.No.1 of the table of SRO-495(1)2007 dated 09.06.2007, the Director General, Customs Valuation is empowered to exercise powers and discharge duties under Section 25-A and 32 of Customs Act, 1969, sub-section (3) of Section 25-A of the Customs Act, 1969 empowers the Director General of Customs Valuation to determine the "applicable customs value" of any imported goods in case of any conflict in the customs value determined under Section 25-A of the Customs Act, 1969. It is further observed that, the contents of Section 25-D envisage that a revision petition may be filed before the Director General within thirty days from the date of determination of customs value under Section 25-A, and in case of jurisdiction of Director General under section 25-A (3), he is competent to determine applicable value on his own motion on a reference from Collector of Customs or Director, Customs Valuation. The Director General only has the power or jurisdiction under sub section (3) of Section 25-A of the Customs Act, 1969, in case of any conflict in the

customs values determined under sub-section (1) of Section 25-A, to determine the “*applicable*” Customs value. The intent and wisdom of the legislature by coining two distinct phases “*applicable customs value*” and “*determination of customs value*” is quite evident. Determination of customs values exclusively fall within the jurisdiction of Director, Customs Valuation and Collector of Customs only. But, jurisdiction with reference to “*applicable customs values*” is restricted to “*conflict*” arising out of application of customs value determined in terms of Section 25-A(1) of the Customs Act, 1969. In this particular case, only Revision Petition was filed before the Director General under Section 25D, and no Application or Reference under Section 25-A(3) was pending before the Director General at the time of passing the impugned Revision Order, as such, the act of Director General Valuation initiated in this case is illegal, void and without lawful authority. On the same proposition of law, this court has already passed the judgements in Customs Appeal Nos. K-2137/2016 to K-2141/2016, K-2185/2016 and K-2182/2016.

10. The Valuation Ruling issued under Section 25A, applies only for a certain period and no more. This position has been defined in Chapter-XI of the Rules, (in Rule 107 meaning) “*within 90 days prior to the importation or within 90 days after the importation of goods being valued*”. In our view, Valuation Ruling must, therefore, ordinarily be regarded valid for a period of 90 days from the date of issue. After the amendment, Section 25A Sub-section (4) of the Customs Act through Finance Act, 2010 provides that a Valuation Ruling “*shall be applicable until or unless revised or rescinded by the competent authority*”. Which the Valuation Ruling will continue to hold the field unless revised or rescinded, any aggrieved importer has the right to approach the Director, Customs Valuation, after 90 days period mentioned above and he would then has to give reasons why the Ruling has not been revised or rescinded, as such, the observation made by the Director General, Customs Valuation, are perverse from the evidence, ultra vires and without lawful authority.

11. Before the court of law it is mandatory for the department to show some material to justify the observations caused and imposed by the Director General of Valuation in the impugned Order-in-Revision. In case of such lacking and legal lacunae and such disclosures discredit the impugned action. The impugned Order-in-Revision ruling and its perfunctory and sketchy revision by the Director General of Customs are devoid from the foregoing attributes and are, therefore, declared without lawful authority, void and illegal hereby set-aside up to the extent of present appellants only. The respondents are further directed to re-assess the impugned goods of the appellant in accordance with the value as declared in terms of Section 25 (1) (5) (d) of Customs Act, 1969 read with Rule 107 (a) of Customs Rules 2001. The Appeals are allowed in the above terms.

12. Judgement passed and announced accordingly.

**(MUHAMMAD NAZIM SALEEM)**  
Member (Technical-II)  
Karachi

**(MUHAMMAD NADEEM QURESHI)**  
Member (Judicial-I)  
Karachi



