

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/148/2017

Dated 22<sup>nd</sup> June, 2018

**Order in Revision No. 21 /2018 under Section 25-D of the Customs Act, 1969**  
**against Valuation Ruling No. 1205/2017 dated 29-08-2017**

- 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. Dawn Convertec (Pvt.) Ltd & Other

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

05-12-2017 & 11-01-2018

For the Petitioners

Mr. M. Saleem Bikiya  
Mr. M. Anees  
Mr. Muhammad Ali

For the Respondent

Mr. Nadeem Sh. Valuation Officer

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No. 1205/2017 dated 29-08-2017 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

**FACTS**

- 1) That the petitioner is a regular importer of Paper & Paper Board falling under Chapter 48 of the Customs tariff, from various worldwide sources. The Petitioner mainly imports a sizeable quantity of both side Coated Art Paper (heading 4810.1310 & 4810.1390) from Japan, China and Europe, only against valid Proforma Invoices, Commercial invoices and letters of credit.
- 3) That the learned Director has utterly failed to grant a proper and satisfactory hearing to the petitioner and some other importers as well prior to the issuance of the impugned valuation ruling.

it is respectfully submitted that the learned Director has issued only one hearing notice dated 22.08.2017 (Annex-C) for convening meeting for determination of impugned values. The Petitioner and some other importers filed adjournment applications on 28.08.2017 .However, the meeting was not adjourned and the learned Director conducted the same on 28.08.2017 and the impugned Ruling dated 29.08.2017 was issued the very next day, purportedly, on the request of All Pakistan Paper Merchant Association.

4) That the learned Director has issued impugned Valuation Ruling under Section 25(9) of the Customs Act, 1969 without properly applying sub-Section (9).

5) That the Petitioner is aggrieved by the Customs Value of Japan, China and European origins Both Coated Art Paper appearing at serial No.2 of Table-B of the impugned Ruling. Whereas currently, the actual transaction value in these countries is significantly lower than the value so fixed in the impugned ruling. In order to demonstrate current trend of value of Art paper in these three countries evidences are enclosed as under:-

Copies of China evidence alongwith GDs are as Annexed  
Copy of Japan evidence alongwith GDs is as Annexed  
Copies of European evidences alongwith GDs are Annexed

6) Hence, the impugned valuation ruling is assailed on the following grounds, namely:-

#### GROUND

A. That the impugned valuation ruling, purportedly issued in terms of Section 25 (9) of the Customs Act 1969, is since appealable before the Director General Valuation under Section 25-D of the Act, therefore, the valuation ruling in this backdrop has attained the status of an order, decision and direction. As such, in legal sense the respondent Director Valuation was under legal obligation to pass a speaking and judicious order for determination of the Customs Value for each type of Art Paper, after giving reasons as to why the Transaction Value is not acceptable and as to why the same is being determined at the Value given against each country separately.

B. That the impugned valuation ruling has been passed in violation of Section 24-A of the General Clauses Act which binds every authority, office or person in the following manner:-

(1) Where, by or under any enactment, a power to make any order or give any direction is conferred on any authority, office or person such power shall be exercised reasonably, fairly, justly and for the advancement of the purposes of the enactment.

(2) The authority, office or person making any order or issuing any direction under the power conferred by or under any enactment shall, so far as necessary or appropriate, give reasons for making the order or, as the case may be, for issuing the direction and shall provide a copy of the order or, as the case may be, the direction to the person affected prejudicially.

C. That the respondent Director has incorrectly suggested in Para 5 of the ruling that "Transaction Value method provided in Section 25(1) was found inapplicable because the requisite information was not available as per law".





D. Bare perusal of Para 5 reveals that the respondent Director has claimed that valuation methods stipulated in sub-Section (5) & (6) of Section 25 of the Act were also examined to determine the Value of Art Paper. However, these two sub Sections were also skipped by him on the ground that declared values were higher than the determined Customs values in the existing valuation ruling.

E. That kind attention of this Honorable Authority is also invited forwards another vital point i.e. the manner in which sub-Section (7), Deductive Value Method, after conducting market inquiry has been un-lawfully discarded, dropped and not followed. In fact as a result of market inquiry the transaction value declared by the petitioner was found absolutely fair, correct and just. Similarly sub-Section (8) has also been dropped and the impugned ruling has been issued in terms of sub-Section (9) of Section 25. However, while applying sub-Section (9) does not provide an independent mechanism like previous methods but (sub-Sections) and determine the value 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. Sub-Section (9) of Section 25 of the Customs Act, 1969 is reproduced as under:-

(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 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.

F. That when the learned Director has pronounced all sub-sections non applicable on grounds then under which method the Value has been determined in the impugned Valuation Ruling, it not clear anywhere.



That the learned Director has not only violated sub-Section (9) of Section 25 while determining values in the impugned ruling but has also seriously offended the spirit of corresponding Rule 121,

H. That sub-Rule (2) of Rule 121 has also been discarded and ignored completely.

I. That in a Judgement, passed in CP No. 2673 of 2009 and other connected petitions, the Honorable Sindh High Court while dilating upon Section 25 and 25-A has laid down at Para 22, a golden principle as under:-

“ The principal method of determining Customs value is, and must remain, Section 25, Section 25-A is not intended to be the substitute for Section 25, nor can it be resorted to in such manner and with such frequency that it marginalizes the latter provision. It is merely an adjunct to Section 25, to be resorted to in appropriate circumstances and for an appropriate period. In our view, in enacting Section 25A, the legislative intent was not, nor could be for the reasons stated above, to create a statutory bypass to the valuation agreement. While the issuance of valuation rulings under Section 25A cannot be regarded as limited only to those cases where the department concludes that there is group under invoicing, the Section also cannot be used for the wholesale determination of Customs values. Such an approach



would, in effect, transform the determination permissible under Section 25-A to an impermissible fixation of value. This is an important point which must be kept in mind, and be relevant in appropriate cases when considering the vires of a valuation ruling”.

- J. That the guidelines laid down by the Honorable Court are binding on each subordinate authority. In view of above stated authority of the Honorable Sindh High Court respondent Director is not authorized to use Section 25A for the wholesale determination of Customs value of Paper imported from worldwide sources without following the mandate of Section 25 of the Act. It is evident from the values fixed in the impugned ruling, it has clearly emerged that the Judgment of the Honorable Court has been grossly violated.
- K. That the Director General Valuation while deciding a review application No. 115/2008, dated 16-02-2009 on the somewhat identical issue has laid down a golden principal based on the true spirit of GATT Code of Valuation.
- L. That the Petitioner craves leave of the authority to urge further grounds at the time of hearing of Review application.

#### PRAYER

In view of above submissions it is respectfully prayed that the impugned valuation ruling, to the extent of serial No.2 appearing in Table-B, may graciously be quashed and Transaction Value of the Art Paper in question, i.e. Japan, China and European origins; may be restored to protect the legitimate and bona fide business and trade of the petitioner. Any other relief this Honorable authority deem fit under the circumstances of this case.

- 2. 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:-

Valuation Ruling No.826/2016 dated 06-04-2016 had in field. A representation was submitted by All Pakistan Paper Merchants Association, Karachi with the request that the existing Valuation Ruling needs revision as the current prices have increased in the international market. Hence, this Directorate General initiated an exercise for determination of customs values of the subject goods. Therefore, finally Valuation Ruling No. 1205/2017 dated 29-08-2017 had issued in accordance with the international price trend.

The Valuation Ruling No. 1205/2017 dated 29-08-2017 has been issued after consultation with stakeholders including Federation of Pakistan Chamber of Commerce and Industry and All Pakistan Paper Association. As far as concern 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 Non Carbon releasing paper, art card/coated board paper and light weight coated papers have been determined under Section 25(9) of the Customs Act, 1969.

### Parawise Comments

- Para 1            Need no comments being related to petitioner's introduction.
- Para 2&3        It is stated that the Director Valuation has issued Valuation Ruling No. 1205/2017 dated 29-08-2017 under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the Customs Act, 1969 in the hat of direction issued by the superior courts time to time.
- Para 4            It is stated that petitioner is of the view that prices of the impugned goods have been decreased in the international markets and on the other hand Association of Paper goods were of the view that prices of paper has been increased in the international market. Therefore Valuation Ruling No.1205/2017 dated 29-08-2017 has been issued after detailed discussion and taking output from the stakeholders including Federation, Karachi Chambers and Paper Association.
- Para 5&6        It is stated that no confidential documents can openly show to any person. On the other hand it is stated that impugned Valuation Ruling No.1205/2017 dated 29-08-2017 had issued on the basis of sequential method under Section 25(9) of the Customs Act, 1969.
- Para 7            It is stated that the Director Valuation has issued Valuation Ruling No. 1205/2017 dated 29-08-2017 under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the Customs Act, 1969 to safeguard the government legitimate revenue.
- Para 8            It is stated that the Director Valuation has issued Valuation Ruling No. 1205/2017 dated 29-08-2017 under Section 25A of the Customs Act, 1969 accordin2, to WTO Agreement with Pakistan on the basis of sequential method under Section 25(9) of the Customs Act, 1969 to safeguard he government legitimate revenue.
- Para 9            It is stated that the Director Valuation has issued Valuation Ruling No. 1205/2017 dated 29-08-2017 under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the Customs Act, 1969 to safeguard the government legitimate revenue.
- Para 10          It is stated that the impugned Valuation Ruling had issued under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the



Customs Act, 1969 in the light of superior court which were issued time to time also to safeguard the government legitimate revenue.

- Para 11&12 It is stated that the impugned Valuation Ruling had issued under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the Customs Act, 1969.
- Para 13 It is stated that the impugned Valuation Ruling had issued under Section 25A of the Customs Act, 1969 on the basis of sequential method under Section 25(9) of the Customs Act, 1969 within the jurisdiction of legal effect.
- Para 14-20 It is stated that the impugned Valuation Ruling had issued under Section 25A of the Customs Act, 1969 according to WTO agreement with Pakistan on the basis of sequential method under Section 25(9) of the Customs Act, 1969 to safeguard the government legitimate revenue.
- Para 21 Needs no comments being related period within appeal can be filed before the Director General Customs Valuation under Section 25D of the Customs Act, 1969.
- Para 22 Need no comments being related to pleading the case through duly appointed counsel i.e. Mr. Aqeel Ahmed Khan.

#### PRAYER

It is respectfully prayed that the customs values were determined vide Valuation Ruling No. 1205/201 7 dated 29-08-201 7 strictly in accordance with valuation methods given in section 25 of the Customs Act, 1969 and in the light of WTO Agreement. Consequently Customs values were determined under section 25(9) of the Customs Act, 1969. Therefore, the Appeal has no merit for consideration and is liable to be rejected.

#### ORDER

3. Hearings in the subject case were fixed for 05-12-2017 and 11-01-2018. The petitioners appeared for hearing and reiterated the same arguments as already given in their petitions. The main thrust of their arguments was that the Valuation Department did not engage them in the valuation proceeding and did not follow the valuation methods properly. They insisted on accepting their declared values as correct transaction value; however, no supportive documentary evidence was produced to substantiate their contention. On the other hand, the Departmental representative explained in detail the valuation methodologies adopted by them to arrive at the Customs values determined vide the impugned Valuation Ruling. In support of department's contention, the DR presented various details of the valuation exercise/ working.

4. After listening to the detailed discussions/ arguments of respondents and perusal of the case record; it is evident that the Valuation department had duly invited taken the stakeholders at the




time of issuance of the impugned Valuation Ruling. They were given sufficient time and opportunity to give their inputs including documentary proof/evidence to substantiate their transaction value but they failed to provide any such proof or fact in support of their declared values which were low.

5. In view of aforesaid factual improprieties and legal infirmities, the revision applications merits no consideration and are accordingly rejected.

6. 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 Hamdam Paper Products Pvt. Ltd	DG(V)Val.Rev/148/2017
2	M/s International Business Management	DG(V)Val.Rev/148/2017
3	M/s Rawaha International Pvt. Ltd C/O MGM Legal Consultants	DG(V)Val.Rev/148/2017
4	M/s Trade International C/o G.A. Jehangir Associates	DG(V)Val.Rev/148/2017

  
(Suraiya Ahmed Butt)  
Director General

Registered copy to:

M/s Hamdam Paper Products Pvt. Ltd.  
F-526/B, SITE, Karachi

M/s. Dawn Convertec (Pvt) Ltd  
M/s. Trade International  
C/o G.A. Jahangir & Associates,  
Suite No. 509, Marine Point, Block-9, Clifton, Karachi.

M/s International Business Management,  
1<sup>st</sup> floor, Darul Hina Building, Tayabjee Road, near Burhani Hospital, Paper Market, Karachi

M/s Rawaha International Pvt. Ltd  
C/O Mumtaz Ghazi Magsi (Legal Consultants),  
112, 1<sup>st</sup> floor, Clifton Centre, Khayaban-e-Roomi, Clifton, Karachi-75600

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/
3. (North) Islamabad / (Central) Lahore.
4. Collector, MCC Appraisement (East)/ Appraisement (West)/Port M. Bin Qasim/  
Preventive, Karachi.
5. Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/

6. Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
7. Director, Customs Valuation, Karachi/Lahore.
8. Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for Uploading in One Customs and WeBOC Database.
9. Deputy Director (Review), Karachi.
10. All Deputy/Assistant Directors (Valuation).
11. Guard File.