

**GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI**

File No. DG (V)/Val.Rev/152/2017

Dated 22nd June, 2018

**Order in Revision No. 17 /2018 Under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1212/2017 dated 22-09-2017**

- 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. Standard Enterprises

..... PETITIONER



VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

30-11-2017 and 22-03-2018

For the Petitioners

Mr. Farukh Saleem Consultant

For the Respondent

Mr. Abdul Majeed, Deputy Director

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No. 1212/2017, dated 22-09-2017 issued under Section 25-A of the Customs Act, 1969. The petitioner's major arguments against the impugned valuation ruling 1212/2017 dated 22-09-2017 are reproduced below:

- The applicant is one of the largest importers of Master Batches in the country and enjoys high esteem amongst the trade bodies, government departments and business circles of the country owing to his honest and law compliant business transactions. The applicant imported different grade of Master Batches from Cabot Dubai, Switzerland, Belgium, France, Canada etc.
- The learned Director also mentioned the methodology for arriving at the values depicted in Valuation Ruling 1212/2017 dated 22.09.2017 as follows:-

"Method adopted to determine Customs Values: Valuation methods given in Section 25 of the Customs Act, 1969, were followed to arrive at fair value of Master Batches. Transaction Value Method provided in Section 25(1) was found inapplicable owing to wide variation in the values being declared to the Customs. Identical / similar goods value Method 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 upon 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. For the purpose, different markets were surveyed repeatedly. The computer 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. Online values of subject goods were also obtained. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. Consequently, the Customs values of Master Batches have been determined under Section 25(9) of the Customs Act, 1969".

- However, the applicant feels that the parameters of revisions of Valuation Ruling as agreed by the department in the Honorable High Court of Sindh at Karachi were not adopted accordingly. Therefore, being aggrieved with non-adherence to legal provisions for revision of Ruling and ignoring the legal provisions of law coupled with superior court's rulings by the learned Director request the Honorable Director General Customs Valuation, Directorate General of Customs Valuation, Karachi to review the Customs Valuation Ruling 1212/2017 dated 22.09.2017 on the following grounds:

GROUNDS

- A. That while formulation of Customs Valuation Ruling 1212/2017 dated 22.09.2017, the learned Director did not consider the reasons for revision of Valuation as mentioned in Para 2 of the Ruling.
- B. That without any proper alignment with prices of Master Batches in International market for (Export to Pakistan), the values were determined under Section 25(9) of the Customs Act, 1969, and without any plausible reason for rejecting the values under Section 25(1) of the Customs Act, 1969.
- C. That impugned Ruling is based on the premise that value could not be determined under Section 25(1) of the Customs Act, 1969, whereas, the Applicant provided the Export GDs of Exporting country of the Master Batches imported by the applicant.
- D. That when the relevant GDs of exporting countries are available then ignoring the transaction value is contrary to basic principles of Customs valuation incorporated in Section 25 of the Customs Act, 1969, and Customs Valuation Rules.
- E. That Customs Valuation Ruling has been issued without considering the prices of crude, prices of polymers, and prices of pigments. Further, no regard has been shown for the very

nature of Master Batches, their grades, their carrier polymer, the concentration of pigments, melt flow index (MFI).

- F. That Customs value of Master Batch (Black) of agricultural use (Irrigation Pipe and Tape, Silage Sheet, Silage Stretch Wrap), automotive parts (interior and exterior parts, Fuel System), Plastic Pipe, Wire and Wire Jackets, Plastic Film, Plastic Molded Product conductive and ESD, beauty products (Lipstick Covers etc.), Pharmaceutical / Medical products (BP Apparatus, Glucometer etc.) all are different.
- G. That by placing all the above categories of master batches under same price bracket is legally not tenable, as importer's goods have to be assessed to duty on basis of specification, grade, and the very nature of imported product and not assumptions.
- H. That the concept of transaction value as envisaged in Article-VII to Agreement of implementation of GATT (WTO Customs Valuation Agreement) is not bound by any influence of "fair" or "normal value" consideration by Respondent. Further Section 25 and 25A of the Customs Act, 1969, both are replica of WTO Customs Valuation Agreement. Therefore, the basic spirit of Section 25 of the Customs Act, 1969, has been ordered to be followed while implementation of Section 25 of the Customs Act, 1969.
- I. That scheme of arriving at Customs Valuation through Section 25A of the Customs Act, 1969, is not based on any concept of "fixation of value" for imported goods through a Customs valuation, rather it is a scheme of well throughout plan for "determination of Customs value" following the principle of transaction value incorporated in Section 25 of the Customs Act, 1969, coupled with Customs Valuation Rules and dictates of superior courts in shape case laws.
- J. That Honorable Sindh High Court in case of Sadia Jabbar V/s Federation of Pakistan [PTCL 2014 CL 5371] reflect the following parameters to be kept in view while issuing any ruling under Section 25A of the Customs Act, 1969:-
- (a) On arbitrary fixation of Customs Values the Honorable Court orders that:
- "The exercise carried out under Section 25A is a "determination" and not a mere 'fixation" (as was the case, e.g., under Section 25B, or sub-Section (14) of Section 25, both omitted from the Act in 2004 and 2005 respectively). The "determination" is a multi-step exercise, at each stage of which there has to be a proper application of mind by the concerned officer. It is therefore appropriate that the ruling should contain sufficient details to show that Section 25A has been properly applied. Furthermore, the fact that the determination is subject to revision by the Director General Valuation under Section 25D and the latter's decision is now appealable to the Appellate Tribunal (see Section 194A(1)(c), also make it necessary that the valuation ruling should be a speaking order ".
- (b) In fact the impugned Ruling is defective for its contents and mode of formulation as neither has it taken into consideration the relevant data of relevant raw material like pigments nor does it abide by the parameters for issuance of Customs Valuation Ruling deliberated and issued by superior courts in various case laws.



- (c) As submitted in the earlier Paras of this petition the principal method of valuation is Section 25, which the learned Customs Authorities, abandoned without any legally sustainable reason by rejecting the verifiable data of imports and accepting the true values. The Honorable Court has given its verdict vide Para (g) of their order in Sadia Jabbar V/s Federation of Pakistan IPTCL 2014 CL 537] to elaborate that Section 25A is not a substitute of Section 25 as follows:-

"Before concluding Section 25A, one general observation must also be made, Section 25A is only an enabling Section. It permits, but does not mandatorily require, a predetermination of Customs value in terms as explained above. The principle method of determining Customs Value is, and must remain, Section 25, Section 25A is not intended to be a substitute for Section 25, nor can it be resorted to in such manner and with such frequency that it marginalizes the later provisions. It is merely an adjunct to Section 25 to be resorted to in appropriate circumstances and for an appropriated period".

- K. That unfortunately the learned Respondent did not keep in view the above guiding principles laid down for issuance of Customs Valuation Ruling while issuing impugned Valuation Ruling No.1212/2017 dated 22.09.2017 and the concept of "transaction value" which is the basic corner stone of Customs Valuation has been ignored altogether by the learned respondent.



- L. That instead of depending on the factual Customs values of transaction based upon the market dynamics, the learned Director has based the impugned Customs Valuation on hypothetical data and irrelevant values. It goes without saying that the international market has depicted a declining pattern of Master Batches value in the last six Months.
- M. That Applicant provided the original export GDs of the impugned imports which is the ultimate proof of transaction value (Annex-I, II, III & IV). However, unfortunately, the learned Director ignored this valuable evidence of transaction value and instead of accepting the provision of Section 25(1), a resort has been made to Section 25A of the Customs Act, 1969, which is not allowed in the law.
- N. That the price pattern of polymers shows falls in price. This decrease in price is also natural in prices of Master Batches as these prices are contingent upon prices of raw material.
- O. That however, while issuing the impugned ruling this basic fact has not been kept in view and price has been "fixed" on basis of a hypothetical data of Master Batches which do not exist anywhere in the world. Therefore, prices "fixed" by the Respondent are not the "price determined" as per parameters laid down by the Honorable Sindh High Court in Sadia Jabbar V/s Federation of Pakistan [PTCL 2014 CL 537] case. It goes without saying that any procedure prescribed by the superior court in connection with administering any provision of law is mandatory to be complied with in the same fashion in which it has been prescribed by the law or case law (issued by the superior courts). However, unfortunately, none of the parameters laid down by Honorable Sindh High Court in Sadia Jabbar V/s Federation of Pakistan [PTCL 2014 CL 537] has been adhered to while formulating and issuing Valuation Ruling.

- P. That non-adherence to dictates of superior court in Sadia Jabbar V/s Federation of Pakistan [PTCL 2014 CL 537] case for following a specific procedure in issuance of Valuation Ruling No.1212/2017 dated 22.09.2017 under Section 25A of the Customs Act, 1969, also attracts violation of dictates of Honorable Supreme Court of Pakistan in case of [Shahzad Ahmed Corporation vs. Federation of Pakistan (2005 PTD 23)] wherein it has been ordered to do a thing in the manner prescribed by the law.

If any procedure has been prescribed for any legal business, then that legal business will only be transacted under the prescribed procedure only. The clear and plain meaning of law will always prevail over the implied meaning".

- Q. "That unfortunately the learned Director failed to adhere to principles laid down by Honorable Sindh High Court in Sadia Jabbar case thus negated its dictates. Similarly, it is also violation of Order of Honorable Supreme Court of Pakistan to dispose any legal matter only in accordance with the prescribed procedure. Honorable Supreme Court of Pakistan has settled the legal principle that a void input would lead to an equally void final decision vide (ANISA REHMAN V. P.I.A 1994 SCMR 2234) which inter-alia states as follows:-

"It is now a well settled law, that where the initial order or notice was void, all subsequent proceedings, or superstructures build on it were also void. Where any adverse finding was given in the adjudication order on allegations or contentions or findings which are not incorporated in the show cause notice, the entire proceedings would be rendered as void for reason of breach of natural justice, which was breach of law".

- R. That as the impugned Valuation Ruling No.1212/2017 does not take into account the basic data of crude prices and resulting value of petrochemicals / polymers and resulting Master Batches, besides ignoring the parameters for issuance of Valuation Ruling under Section 25A of the Customs Act, 1969, therefore, the impugned Valuation Ruling No.1212/2017 is also void ab-initio and without legal force and need immediate review by your kind-self.

7. PRAYER

Keeping in view of above it is requested that:

- a. The Valuation Ruling No. 1212/2017 dated 22.09.2017 may kindly be ordered to be reviewed for downward correction or Cabot products may be allowed to be dealt under Section 25(1) by excluding their valuation from the scope of Valuation Ruling.
 - b. The prices of petrochemicals and actual transaction values of Master Batches may be factored in the calculations for Customs value determination of Master Batches.
 - c. Till the finalization of new ruling the held up or arrived or in pipeline may be allowed under Section 81 of the Customs Act, 1969, without any delay as per orders of Honorable Sindh High Court.
8. 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

Several meetings with stakeholders and local manufactures were scheduled on 17.7.2017, 10.8.2017 and 21-08-2017, to discuss the current International prices of subject goods. The meetings were attended by the consultant of M/s. Standard Enterprises Lahore and representatives from local manufacturers, M/s. Clariant Pakistan, M/s Bin Rashid and M/s FAV Pakistan. During the meeting the consultant of commercial importer stated that their particular item, master batch black colour, may be deleted from the valuation ruling as its value is lower than the value notified in the existing valuation ruling. On the other hand the view point of local manufacturers was diagonally opposed to the commercial importers. The local manufacturer informed that the values of constituent material i.e. plastic material (PE) and inorganic pigments (Carbon black pigment grade, titanium oxide etc) are showing upward trend in the international markets and requested to revise the values upward of master batches all grade. The view point of all participants was heard in detail and considered to arrive at Customs value of Master Batches. For the purpose of determination of Customs values of Master Batch, the Valuation methods given in Section 25 of the Customs Act, 1969 were followed in sequential orders to arrive at Customs values of Master Batches. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. Consequently, the Customs values of Master Batches were determined under Section 25(9) of the Customs Act, 1969 vide Valuation Ruling No. 1212/2017 dated 22-09-2017.

Para (1) Need no comments being introduction of the Petitioner and related to the filing of revision petition against the impugned Valuation Ruling No.1212/2017 dated 22-09-2017.

Para (2) The Petition was filed before the Director General of Customs Valuation under section 25-D of the Customs Act, 1969 was time barred. Since 90 days have passed and a representation was received from the commercial importers regarding values determined in the valuation ruling. In this regard, several meetings with stakeholders and local manufactures were scheduled on 17.7.2017, 10.8.2017 and 21.08.2017, to discuss the current International prices of subject goods. The meetings were attended by the consultant of M/s. Standard Enterprises Lahore and others. The local manufacturer informed that the values of constituent material i.e. plastic material (PE) and inorganic pigments (Carbon black pigment grade, titanium oxide etc) are showing upward trend in the international markets and requested to revise the values upward of master batches all grade. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. Consequently, the Customs values of Master Batches were determined under Section 25(9) of the Customs Act, 1969 vide Valuation Ruling No. 1212/2017 dated 22-09-2017.

Para (3) It is submitted that for the purpose of determination of Customs values of Master Batch, the Valuation methods given in Section 25 of the Customs Act, 1969 were followed in sequential orders to arrive at Customs values. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. Consequently, the Customs values of Master Batches were determined under Section 25(9) of the Customs Act, 1969 vide Valuation Ruling No. 1212/2017 dated 22-09-2017.

Para (4) That the contents of para 4 are vehemently denied being devoid of any point of law. All the parameters of revision of valuation ruling as agreed by the department in the



Honorable High court of Sindh at Karachi were duly observed before the determination of custom values of master batch vide valuation ruling no.1212/2017 dated 22-09-2017. Moreover the assertion of the petitioner i.e. non adherence/ignoring the legal provisions of law for revision of ruling and superior court's verdicts by the learned Director is baseless. As each and every step was taken under four corners of law to determine the Customs values vide Valuation Ruling No.1212/2017 dated 22-09-2017.

GROUNDS

Para A Denied being devoid of any point of law. Before the determination of Customs values vide Valuation Ruling No.1212/2017 dated 22-09-2017, the reasons for its determination (mentioned in para (2) were kept in view however when the entire exercise was initiated, it was observed in the light of the proposals submitted by Pakistan Chemicals Manufacturers Association, M/s. Bin Rasheed, M/s. Clariant Chemical Pvt Ltd as well as local market inquires that the cost of basic raw material i.e. Carbon Black being used for manufacturing of master batch black colour was higher than the values proposed by the applicant.

Para B That the contents of this para are denied on the following grounds, section 25 of the Customs Act 1969, was duly followed sequentially in order to reach at Customs values. Section 25(1) of the Customs act cannot be relied on solely. It is stated here that transactional value method provided in Section 25(1) was 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 the subject goods. Therefore, the exercise was preceded to subsequent methods sequentially in order to reach at merit based decisions.



Para C Though the applicant provided documentary evidences substantiating their claim for the acceptance of transactional value yet it cannot be solely relied on as comparative analyses of values retrieved through import data was showing vast variations among declared values.

Para D No any principle of custom valuation enshrined under the Custom Act and the Custom Rules was ignored while carrying out the exercise for the afresh determination of Custom Values vide Valuation Ruling No.1212/2017 dated 22-09-2017.

Para E The subject items in the impugned valuation ruling were analyzed from every possible dimension along with the prices of basic raw materials in the light of market surveys, online prices and proposals from several applicants. Consequently, it was observed that prices of crude, polymers and pigments justify the values being determined by the department. Moreover, due regard was given to the very nature of master batches, their grades, carrier polymers, the concentration of pigments and melt flow index (MFI).

Para F Needs no comments.

Para G During the execution of the exercise for the determination of Custom values vide impugned Valuation Ruling No.1212/2017 dated 22-09-2017 along with diversified usages of the item the prices of its constituent raw material i.e. Carbon Black was duly considered in order to determine an all embracing and feasibly applicable value.

Para H Reasons to proceed on subsequent methods have been elaborated in preceding para.

Para I-J It is submitted that the Director of Customs Valuation is fully empowered to determine the Customs values in terms of Section 25-A of the Act., after following the methods prescribed under Section 25 of the Act. It is pertinent to mention here that the order passed by the Honorable Court in Sadia Jabbar case are also in the knowledge of the Director of Customs Valuation, therefore the impugned valuation ruling was rightly issued under four corners of law. It is respectfully submitted that in terms of Section 25-A(2) of the Act, it is mandatory for the Director of Customs Valuation/ assessing officer of the clearance Collectrates to make the assessment of imported goods as per Customs values determined by the Director (Valuation) in terms of Section 25-A of the Act.

Para K It is respectfully submitted that the Customs values of the subject goods were determined after following all primary methods of Valuation i.e. section 25(1), (5), (6) and (7) of the Customs Act, 1969 in sequential orders keeping in view the principles/guidance laid down in the Sadia Jabbar case. Consequently Customs values were determined under Section 25(9) of the Customs act, 1969.

Para L It is submitted that the local manufacturers informed that the constituent material i.e. plastic material (PE) and inorganic pigments (Carbon black pigment grade, titanium oxide etc), which was examined and observed that the prices trend in the international market showing upward.

Para M The documentary evidences provided by the applicant were duly considered and compared with others, consequently huge variations were observed owing to which subsequent methods enshrined under section 25 of the Customs Act 1969 were sequentially applied in order to reach at merit based values.

Para N That the contents of para (14) lack any substantial proof and comprise of distorted facts. Along with other polymers, carbon black is one of the constituent raw materials of master batch and its value is higher than the finished product.

Para O That the contention of the petitioner does not carry any weight hence denied strenuously. The Customs Act 1969 and the Customs Rules as well as the parameters laid down by the Honorable Sindh High Court in Sadia Jabbar Vs Federation of Pakistan [PTCL 2014 CL 537] case were stringently followed in order to reach at merit based decision. Under the aforementioned guiding principles, the values are determined and not fixed, hence the same was observed.

Para P-Q That the contents of para (16) are denied vehemently as no any dictates of Superior court have been violated by the concerned authorities.

Para R Need no comments.

P R A Y E R

It is respectfully prayed that petitioner failed to furnish the corroboratory documents to justify their point of view and the existing Valuation Ruling No. 1212/2017 dated 22-09-2017 was issued in the light of current price trends. Method of Valuation Section 25 (1), (4), (5), (6) & (7) were exhausted and finally section 25 (9) was found applicable for determination of Customs value



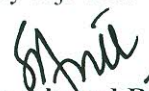
of Master Batch. Accordingly, Honorable Director General may graciously rejected the petition and maintain the Valuation Ruling No.1212/2017 dated 22-09-2017 issued under section 25A of the Customs Act. 1969.

ORDER

9. The viewpoint of the petitioner was heard in detail. The main contention of the petitioner was that the Customs values of subject item determined vide impugned valuation ruling No.1212/2017 dated 22-09-2017 are on higher side and not reflective of the prevalent international market prices and that legal obligations were not met in the process of determination of these values. The departmental representative, on the other hand, explained in detail the valuation methodologies adopted by them to arrive at the Customs values determined vide the impugned valuation ruling. In support of their contention they presented various details of their valuation exercise/ working.

10. I have gone through examined the written as well as verbal submissions of the petitioner and the respondent department. The petitioner insisted that their declared values may be accepted for assessment purpose. The petitioner was given ample opportunity to substantiate his point of view; however, they could not substantiate his contention with relevant supportive documentary evidence.

11. As the petitioner failed to put forward any solid argument, therefore, I do not find any cogent reason to interfere with the Customs values determined by the department vide Valuation Ruling No.1212/2017 dated 22-09-2017. Hence the revision petition is hereby rejected.


(Suraiya Ahmed Butt)
Director General

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