

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

File No. DG (V)/Val.Rev/05/2018

Dated 22nd June, 2018

**Order in Revision No. 22 /2018 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1241/2018 dated 04-01-2018**

- 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. I-Con Traders & Others

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

05-04-18, 24-04-18, and 22-05-18

For the Petitioners

Mr. Abu Bakar
Mr. Aslam
Mr. Usman
Mr. Suleman

For the Respondent

Mr Shadad Mari, Principal Appraiser,

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No. 1241/2018, dated 04-01-2018 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the petitioners are sole proprietorship concerns that are engaged in the business of Import of Glassware and Porcelain mainly from China. Our clients are income tax payee and enjoy credibility in the commercial circle in general and in the circle of importers in particular.
3. That the petitioner being active importer have been importing Glassware and Porcelain from various countries including China continuously without any hindrance and or any allegation of under invoicing and mis-declaration.
4. That the Director Valuation has issued Valuation Ruling No. 1241/2018 dated 04-01-2018, ostensibly under Section 25A of the Customs Act, 1969, illegally and in violation of Section 25A and Superior Courts Judgments pronounced in a number of cases.

5. It may be highlighted that the Director Valuation had earlier issued Valuation Ruling No. 1088/2017, which was impugned by all the stakeholders include our clients and ultimately the learned Customs Appellate Tribunal vide order dated 21-08-2017, set aside the impugned Valuation Ruling, directing the Director Valuation to issue a proper Valuation Ruling under Section 25(A) as per the guidelines highlighted in Sadia Jabbar Case PTCL 2014 CL 537 and Good Will Traders Case 2014 PTD 176.

6. That brief of the case is that Custom values of Glassware / Porcelain were previously determined under Valuation Ruling No. 788/2016 dated 05-01-2016, whereby the Customs values of Porcelain from China was fixed at US\$ 0.75/Kg and Glassware imported from China was fixed at US\$ 0.89/Kg. The same was challenged by a number of parties on the grounds that the same was illegal and in violation of Section 25A of the Customs Act, 1969.

7. In this background the impugned Valuation Ruling No. 1242/2018 was issued which is issued illegally and in violation of directions given by High Court of Sindh in Sadia Jabbar Case and Good Will Trader Case.

8. In this background a number of representations were made to the Director Valuation to issue a new Valuation Ruling representing the current downwards market value. However, to the utter dismay of our clients and other importers, the Valuation Ruling No. 1088/2017 dated 17-03-2017 was enhancing the value even further, increasing the Custom values of Porcelain from China at US\$ 1.00/Kg from US\$ 0.75/Kg, and of Glassware from China at US\$ 1.20/Kg from US\$ 0.89/Kg. The Valuation Ruling 1088/2017 was set aside by the learned Customs Appellate Tribunal.

9. That the impugned Valuation Ruling has enhanced the values of Porcelain and Glassware unilaterally and illegally, and it is most respectfully submitted that if a proper survey or enquiry is initiated and any of the super markets such as City Shopping Centre behind Gul Plaza, Imtiaz Super Market Karachi, Janna Market Karachi, Khoya Gali Lee Market Karachi, and V. Metro Cash & Carry are surveyed, the prices of the Porcelain and Glassware from China will not be more than US\$ 0.50/Kg and US\$ 0.64/Kg respectively, much lower than the Customs values fixed by the impugned Valuation Ruling No. 1241/2018 dated 04-01-2018.

10. If all the invoices are perused, the average value of Glassware comes around US\$ 0.64/Kg and Porcelain US\$ 0.5/Kg. Such Sale Tax Invoice may further be provided by our clients, if and when the same may be required along with other requisite supporting documents evidencing the genuineness of sale tax invoice.

11. That, it is humbly submitted, even US\$ 0.89/Kg under the previous Valuation Ruling is not acceptable to our client and is ready to offer any person to buy the subject goods at US\$ 0.89/Kg. It is further submitted that if the learned Collector is not satisfied that the declared value is not the actual transactional value, he may entertain any offers at US\$ 0.89/Kg for Glassware and US\$ 0.75/Kg for Porcelain as per the previous Valuation Ruling, and appropriate proceedings in this regard may be initiated under Section 25C of the Customs Act, 1969.

12. To the dismay of the Applicant, the impugned Valuation Ruling has fitted the Customs values that are much higher than the actual values of the items, and the method adopted in determining the impugned Valuation Ruling is in utter violation of under Section 25 and 25-A of the

Customs Act, 1969, and as interpreted in Sadia Jabar case as well as in Goodwill Traders case reported in 2014 PTD 176.

13. That the learned Director has acted in direct contradiction with the provisions of Section 25-A of the Act, 1969, which states as under, "25A. Power to determine the Customs value-(1) Notwithstanding the provisions contained in Section 25, the Collector of Customs on his own motion, or the Director of Customs Valuation on his own motion or on a reference made to him by any person or, any officer of Customs, may determine the Customs value of any goods or category of "goods imported into or exported out of Pakistan, after following the methods laid down in Section 25, whichever is applicable."

14. That it is clear from the foregoing that the power to issue Valuation Rulings is primarily subject to the methods contained in Section 25 of the Act, 1969. However, the impugned Valuation Ruling has not been issued in accordance with the dictates of contained in Section 25 of the Act, hence, is liable to be set aside.

15. That the Honorable Sindh High Court, in the case of Sadia Jabbar v/ s Federation of Pakistan (reported as PTCL, 2014 CL 537), at paragraph 19 has held that. "19. [...] Section 25-A has not of course, been cut loose from the Valuation Agreement. It still remains expressly tethered to it. In determining the Customs values under sub-Section (1), the concerned officer is still limited and restricted only to the methods set forth in Section 25. If therefore, some method other than that specified in Section 25 is applied, that would be clearly ultra vires the powers conferred by Section 25A. In light of the above, it is submitted that the impugned Valuation Ruling No. 1241/2018 dated 04-01-2018 is liable to be set aside with immediate effect."

16. That, even otherwise, the learned Director failed to ascertain whether the values determined under Valuation Ruling No. 1241/2018 dated 04.01.2018 were properly determined and whether those values had any application to the present market value on which the goods are being regularly bought. Therefore, it is submitted that the impugned Valuation Ruling is not reflective of the actual transaction values at which our clients, as well as "other importers of Porcelain and Glassware are purchasing the goods."

17. That the learned Director has gravely erred in law. In this regard, it is important to allude to the mandatory provisions of Section 25 of the Act, 1969, wherein it has been repeatedly stated that the value to be determined there under has to be the, as per sub-Section (1) thereof, the price actually paid or payable for the goods when sold for export to Pakistan". As per sub-Section (5), it has been stated that the value has to be "the transaction value of identical goods sold for Export to Pakistan and exported at or about the same time as the goods being valued."

18. That the Act, 1969, also defines the phrase "Customs value of imported goods" as being the value of goods the learned Director has, however, without undertaking any exercise for the determination of the goods, has ignored this important facet of law.

19. That it is clear that the law does not permit the learned Director to completely ignore the price at which the goods are being sold to the importer. Rather, the law imposes a positive duty upon the learned Director to determine the value of the goods strictly in light of the provisions of Section 25 of the Act, 1969.

20. That the learned Director has erred in relying upon the provisions of Section 25(9) of the Act, 1969, to determine the values of the Glassware/ Porcelain imported from China under the impugned Valuation Ruling; Firstly, the learned Director has not provided any lawful reasons for not following the methods of valuation contained in the preceding provisions of Section 25 of the Act, 1969. Secondly, the learned Director has wrongly applied the provisions of Section 25(9) of the Act, 1969.

21. That, although sub-Section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the Respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable for the Glassware / Porcelain at the time of import into Pakistan.

22. That the order is stereotype order and almost the same wording is used in every Valuation Ruling. According to Section 25-A of the Customs Act, 1969, the concerned Officer may issue a Valuation Ruling but he is required to determine the Customs value and not to fix the value. 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, necessary that the Valuation Ruling should contain sufficient details to show that Section 25A has been properly applied. And without visible exercise reflected on record, a Valuation Ruling cannot be said to have issued legally as provided in Sec 25A and interpreted by higher judiciary.

23. In this regard some of the judgments of the Higher Judiciary are quoted herein below for ready reference:

Sadia Jabbar Satiat Para 17:

"Therefore, on its proper interpretation, the change made to sub-Section (10) has only a limited ambit. It is only on rare occasions, and in exceptional circumstances and/ or for compelling reasons that the appropriate Customs officer may deviate from the principle of sequential application. Otherwise, the invariable practice must be to adhere to the said principle in the strict sense described in para 12 supra. Secondly, and perhaps more importantly, even if the Customs officer is now to be regarded as having some discretion in the matter, it is difficult to see how he would be able to exercise it. The reason is that, as noted above, each of sub-Section (5), (6), (7), (8) and (9) expressly opens with words that make it applicable only if the Customs value of the imported goods cannot be determined under" the preceding applicable sub-Section. These words lock-in the principle of sequential application into the very structure of Section 25....."In our view, therefore, the changes made to sub-Section (10) have made no substantive change, and the principle of sequential application continues, as before, to apply to Section 25 in full rigor."

FACO TRADING CASE (2013 PTD 825) Para 12 (from line 10),

Presently, the Valuation Officer may adopt any of the method provided _ iii. Section 25 of the Customs Act, 1969, however, it does not mean that Valuation Officer has unfettered powers to adopt any method on the basis of pick and choose. In fact the Valuation Officer has to keep in view the interest of the importer as well. He has discretion to follow any, method provided in sub-Sections (1), (5), (6), (7) (8). However, the method adopted must not be to the detriment of the importers and for that purpose for excluding the other methods, reasons must be given. Similarly, the reasons for

adopting a particular method are also required to be given, so it becomes clear to the importer that the order is in the. Public interest and not to the detriment of the importer."

Rehan Umar (2006 PTD 909) PARA 18.

"For the foregoing reasons it is held that different methods of valuation produced in section 25 of the Custom Act, 1969 and the custom rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to sub-Section (5) and likewise without similar exercise under sub-Section (5) no resort can be made to sub-Section (6). In the same manner without an exercise in writing on record under sub-Section (6) no resort can be made to sub-Section (7) and similarly to sub-Sections (8) & (9). This exercise is to be made in each case separately."

24. PRAYER

In light of the preceding narrations, it is humbly prayed that this petition may be allowed, and

- a. Declare that the impugned Valuation Ruling 1241/2018 dated 04.01.2018, issued by the learned director is ultra vires of the Constitution of Pakistan, 1973 and the same is arbitrary, illegal and mala fide.

Set aside the impugned Valuation Ruling. 1241/2018 dated 04.01.2018 being violative of the methods set out in Section 25 of the Customs Act, 1969 and rules made there under.

- c. Direct that our client's imports be allowed to be assessed as per the actual transaction value.
- d. Restrain the officers of the learned Director and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1241/2018 dated 04-01-2018 till the final disposal of this review petition.
- e. That in the meanwhile, the pending and impending imports of our clients are allowed to be provisionally released in terms of Section 81 of the Customs Act, 1969.

25. 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

Parawise comments on Review petition filed by M/s. Franklin Law Associates, Karachi, on behalf of M/s. Icon Traders, Karachi, & Others, M/s. Bilal Enterprises, Lahore and M/s. Trend International, Lahore, under Section 25-D of the Customs Act, 1969, before the worthy Director General of Customs Valuation against Valuation Ruling No.1241/2018, dated 04-01-2018.

Para 1- Need no comments being introduction of the petitioners regarding filing of revision
2 petition before the Director General under Section 25-D of the Customs Act, 1969, by M/s. Franklin Law Associates, Karachi, on behalf of the petitioners.

Para 3 Denied. Para-5 of the impugned Valuation Ruling reveals that "Method adopted to determine Customs values: Valuation methods given in Section 25 of the Customs Act, 1969 were applied sequentially to address the valuation issue at hand. Transaction Value

Method under Sub-Section (1) of Section 25 of the Act *ibid* was found inapplicable because required information under the law was not available to arrive at correct transaction value. Identical / similar goods value methods provided in Section 25(5) & 25(6) of the Customs Act, 1969 were also examined and considered for applicability to determine Customs value of the subject goods. Due to wide variation in values, the valuation methods as contained in Section 25(5) and (6) are not helpful in determining Customs values. In line with the statutory sequential order of Section 25 of the Customs Act, 1969, this office resorted to market enquiries using Deductive Value Method under Section 25(7) of the Customs Act, 1969. However, it was found that the market values vary to the great extent and could not be made the sole basis for the determination of Customs Values. Further, PRAL database, market information and international prices were examined thoroughly. Keeping all the factors in view and carefully analyzing all the available information for determination of Customs Value of the subject goods, the Customs values of Porcelain Ware / Glass Ware have been determined under Section 25(9) of the Customs Act, 1969.



Para 4 Not agreed. It is submitted that this Directorate General had filed an appeal before the Honourable High Court against the Customs Appellate Tribunal's decision.

Para 5 Denied. As Para-3 above.

Para 6 Denied. As Para-3 above.

Para 7 Denied. It is submitted that the impugned Valuation Ruling was not set aside by the Honourable Customs Appellate Tribunal.

Para 8 Denied. It is submitted that Para-5 of the Valuation Ruling No.1241/2018, dated 04-01-2018 reveal that this office resorted to market enquiries using Deductive Value Method under Section 25(7) of the Customs Act, 1969. However, it was found that the market values vary to the great extent and could not be made sole basis for the determination of Customs values. Consequently, Customs values were determined under Section 25(9) of the Customs Act, 1969.

Para 9 This para relates to the submission of Sales Tax Paid Invoices whenever are required.

Para 10 This Para relates to Model Customs Collectorates with regard to Section 25(C) of the Customs Act, 1969

Para 11 Denied. As Para-3 above.

PRAYER

In view of above factual position and submissions, it is respectfully prayed that the Customs values of the subject goods were determined strictly keeping in view the valuation methods as laid down in Section 25 of the Customs Act, 1969. Consequently, Customs values were determined under Section 25(9) of the Customs Act, 1969. On other side the Appellants had never furnished the requisite import documents particularly copies of their Sales Tax Paid Invoices. Accordingly, under reference revision petition has no merits for consideration and is liable to be dismissed and rejected.

ORDER

26. Hearings in the subject case were fixed for 05-04-2018, 24-04-2018 and 22-05-2018. 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 follow the valuation methods properly and also objected to the market inquiry conducted by the department and stated that the values determined vide impugned Valuation Ruling in respect of Glassware do not reflect the prevalent market prices. 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.


27. I have gone through the written as well as the verbal arguments of the petitioners. They were mainly agitating against the values of glassware as notified vide the impugned Valuation Ruling. However they could not produce any documentary evidence to substantiate their grievance. 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 abysmally low. The DR, on the other hand, presented details of comprehensive market inquiry reports as available on record to support the values determined by them. The DR stressed the point that fair market inquiry was conducted and the values of glassware as notified vide the impugned VR were already rationalized after thorough exercise.

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

29. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (20) Petitions.

S. No.	Petitioner Name	File No
1	M/s. Bilal Enterprises	DG(V) Val. Rev/05/2018
2	M/s. G-Tex International	DG(V) Val. Rev/05/2018
3	M/s. A&H Trading	DG(V) Val. Rev/05/2018
4	M/s. Credence Traders	DG(V) Val. Rev/05/2018
5	M/s. Muhammadi Traders	DG(V) Val. Rev/05/2018
6	M/s. A.K.C. Traders	DG(V) Val. Rev/05/2018
7	M/s. Shafiq & Sons Associates	DG(V) Val. Rev/05/2018
8	M/s. Mansuri Trading Company	DG(V) Val. Rev/05/2018
9	M/s. Al-Tawakal Gift & Variety Center	DG(V) Val. Rev/05/2018
10	M/s. Salman Enterprises	DG(V) Val. Rev/05/2018
11	M/s. Raheek Enterprises	DG(V) Val. Rev/05/2018
12	M/s. A.R.I. Traders	DG(V) Val. Rev/05/2018
13	M/s. Madni Traders	DG(V) Val. Rev/05/2018

14	M/s. Melamine Emporium	DG(V) Val. Rev/05/2018
15	M/s. Haji Muhammad Enterprises	DG(V) Val. Rev/05/2018
16	M/s. Zamir Brothers	DG(V) Val. Rev/05/2018
17	M/s. United Traders	DG(V) Val. Rev/05/2018
18	M/s. M.Z. Trading Company	DG(V) Val. Rev/05/2018
19	M/s. Ahmed Enterprises	DG(V) Val. Rev/05/2018
20	M/s. Trend International Rafias	DG(V) Val. Rev/05/2018


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. I-Con Traders,
M/s. G-Tex International,
M/s. A & H Trading,
M/s. Credence Traders,
M/s. Muhammadi Traders,
M/s. A.K.C. Traders,
M/s. Shafiq & Sons Associates,
M/s. Mansuri Trading Company,
M/s. Al-Tawakal Gift & Variety Center,
M/s. Salman Enterprises,
M/s. Raheek Enterprises,
M/s. A.R.I. Traders,
M/s. Madni Traders,
M/s. Melamine Emporium,
M/s. Haji Muhammad Enterprises,
M/s. Zamir Brothers,
M/s. United Traders,
M/s. M.Z. Trading Company,
M/s. Ahmed Enterprises,
C/o Franklin Law Associates,
1st Floor, Plot No.4C, Lane No. 3, Al-Murtaza Commercial, DHA Phase-VIII, Karachi.

M/s. Trend International Rafias,
13th Block – Dnew Muslim , Lahore

M/s. Bilal Enterprises
1st Floor, Fandi Centre, Near Plastics DanaMarket, Shahalam Lahore

Copy to:

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, 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. Deputy Director (Review), Karachi.
8. All Deputy/Assistant Directors (Valuation)
9. Guard File.