

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/18/2018

31st August, 2018

Order in Revision No. 28/2018 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 639/2014 dated 21-02-2014 in compliance of the
Order dated 12-04-2018 passed in WP No.70331/2017
by the Honourable Lahore High Court, Lahore

- 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. M.N. Traders, Lahore

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT



Date(s) of hearing

15-05-2018 and 02-08-2018

For the Petitioners

Ch. Saeed Ashraf Advocate

For the Respondent

Mr. Umar Baloch, Principal Appraiser

This revision petition was filed in compliance of Honorable Lahore High Court Order dated 12-04-18 against Valuation Ruling No. 639/2014, dated 21-02-2014 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the Valuation Ruling No.639/2014 was issued by the Respondent No.1, while determining the Customs values of Canned Mushrooms. Significant to mention here that another Valuation Ruling No. 956/2016 dated 26-10-2016 was issued pertaining to the similar / identical items i.e. Olives wherein it was clearly mentioned that the goods shall be considered for Customs value instead of net weight. Basic reason for such clarification was that the Olives are packed in bottles or cans which contain a fixed quantity of salted water which is included just to preserve the Olives and to enhance its shelf life. It is made clear that said salted water is not an edible stuff that is why according to the Valuation Ruling 956/2016 dated 26-10-2016 the salted water is excluded from the weight and goods are considered for Customs Valuation, on drained weight.

3. That for the reasons narrated above petitioner filed an application pertaining to Valuation Ruling No. 639/2014 dated 21-02-2014 before the respondent No.2 to clarify the ambiguity related to net or drained weight as said Valuation Ruling is also for identical / similar items i.e. Canned Mushrooms and salted water in its packing is also not an edible stuff. Worthwhile to mention here that said application for clarification was filed due to the reason that the description related to net or drained weight was not given in Valuation Ruling 639/2014.

4. That the application dated 20-04-2017 filed for certification was decided by the respondent No.2 with the clarification that said description be considered as the goods will be assessed on net weight instead of drained weight. Being aggrieved with the order passed by the respondent No.2 the petitioner filed a writ-petition No. 70331/2017 before Honorable High Court Lahore while challenging the impugned order dated 05-09-2017 passed by the respondent No.2. That said petition was disposed of vide order dated 12-04-2017 by the Honorable Lahore High Court with direction to the petitioner to file revision petition before the competent authority within seven days. Hence the revision petition is being filed against the Valuation Ruling No. 639/2014.

5. That the main issue for filing this revision is that Valuation Ruling No. 639/2014 may be revised on the ground that the Valuation Ruling No. 956/2016 was issued for identical items therefore; same formula for determining the weight of the goods may also be mentioned to be adopted in the Valuation Ruling No. 639/2014.

6. That the impugned VR and the VR no 956/2016 are issued for similar / identical goods i.e. canned/ bottled Olives and Mushrooms which are packed and preserved in salted water which is not an edible stuff that is why the VR No 956/2014 was clarified pertaining to the determination of weight of the goods that weight of salted water will be excluded and goods will be determined on drained weight instead of net weight.

7. That the sole grievance of the petitioner is that the impugned Valuation Ruling may also be revised as per the Valuation Ruling No. 956/2016 as both are issued for identical / similar goods. Moreover, while revising the impugned Valuation Ruling the determination of weight of goods may also be clarified that the goods will be determined on drained weight instead of net weight.

8. PRAYER

Keeping in view the facts and circumstances of the case it is requested that the revision petition may kindly be accepted and impugned Valuation Ruling No. 639/2014 dated 21-02-2014 may kindly be revised as per Valuation Ruling No. 956/2016 dated 26-10-2016 to the extent of determination of weight of the goods that the goods to be assessed on drained weight instead of net weight being similar goods to the Valuation Ruling dated 26-10-2016.

9. 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

Analysis of import data indicated that Canned Mushroom imported from different origins were being cleared at different Customs stations at very low values, causing loss of revenue

to Government exchequers. This prompted an exercise to determine the Customs values for imported Canned Mushroom. Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied in regular sequential order to address the particular valuation issue at hand. The transaction value method as provided in sub-Section (1) of Section 25 was found inapplicable because of non availability of sufficient information. Identical / similar goods value method provided vide sub-Sections (5) & (6) of Section 25 ibid furnished unreliable values. In line with the statutory sequential order of Section 25, this office then conducted market inquiries using Deductive Value Method under Sub-Section (7) of the Section 25 read with sub-Section (9) of the Customs Act, 1969 was applied to arrive at the assessable Customs values and determined customs values of Canned Mushroom and Valuation Ruling No. 639/2014 issued on 21-02-2014 under section 25-A of the Customs Act, 1969 as per law.

Para- (1)&(2) Denied. For the determination of customs values of Canned Mushroom was initiated under section 25-A of the Customs Act, 1969. Meetings with stakeholders including importers, and representatives of trade bodies and representative of Clearance Collectorate were held on 04.02.2014 & 18-02-2014 to discuss the current international prices of subject goods and accordingly the customs value of the imported canned mushroom was determined in order to rationalize values of subject goods vide Valuation Ruling No. 639/2014 issued on 21-02-2014. The Valuation Ruling No. 639/2014 dated 21-02-2014 in the light of Colum No.(6) which categorically states that the customs value is C&F US\$/Kg and not on drained weight.

Para- (3)to(6) That the contents of memo of the Revision Petition of Para 3 to 6 are misleading. The petitioners stated that the Valuation Ruling 639/2014 and Valuation Ruling No. 956/2016 cover the similar and identical goods and should be applied in the same manner/method however they ignore the most crucial factor that different parameters were adopted while determining the unit value in aforesaid Valuation Rulings that is why in Valuation Ruling No. 639/2014 unit value was worked out at US\$ 0.75/kg C&F whereas in Valuation Ruling No. 956/2016 the unit value was determined at ranging from US\$ 3.76/kg to US\$ 1.97 /kg on drained weight basis (depending upon mode of packing), for similar and identical goods as claimed by the petitioners. In case they are convinced with the parameters/method of Valuation Ruling No. 956/2016, they should also demand for the application of value determined at ranging from US\$ 3.76/kg to US\$ 1.97 /kg depending upon mode of packing instead of claiming US\$0.75/kg C&F. The fact of the case is that the both Valuation Rulings under discussion are distinct and issued under different parameters as evident from their unit values determined, hence should not be confused with each other. As the stake holders were well aware of the parameters/method applied for determination of customs values vide Valuation Ruling No. 639/2014 therefore they have not raised any question about its application/ method of application because it is very clear and there is no ambiguity. The Valuation Ruling No. 639/2014 dated 21-02-2014 in the light of Colum No.(6) which categorically states that the customs value is C&F US \$/Kg and not on drained weight.



P R A Y E R

It is respectfully submitted that the Customs value of imported goods, were determined under Section 25-A of the Customs Act, 1969 in accordance with the law and give level playing field to all importers, as the said values are applicable across the board without any discrimination. The impugned Valuation Ruling was issued under four corners of law, as

provided under Section 25A of the Customs Act 1969. In view of above stated legal facts, under reference petition is not maintainable and may be dismissed/ rejected.

ORDER


10. Hearings in this case were fixed for 15-05-18 and 02-08-18. Ch. Saeed Ashraf advocate appeared for hearings. He was accorded ample opportunity during the hearing proceedings to present his case and supportive evidences. He reiterated the same arguments as already submitted in his written petition. The Departmental Representative (DR) on the other hand explained the background as well as the methodology adopted to determine the Customs value of Canned Mushroom notified vide the VR 639/2014. The DR emphasized the point that canned mushroom of HS 2003.1000 and HS 2003.9000 both carry ad valorem rates of duty; hence correct valuation thereof is considered necessary for realization of due amount of duties/ taxes.

11. The case record reflects that the stakeholders, including the importers of subject goods and the representatives of FPCCI & KCCI, were engaged by the Directorate in the valuation process. The valuation ruling was accepted by trade for assessment purpose and no Revision Petitions were filed in the wake of issuance of the subject VR. Regular clearances were made on values notified vide the VR No.639/2014. The petitioner during the hearing proceedings agreed to the cited facts; the petitioner also got his goods cleared regularly as per values notified vide the said VR since its issuance i.e., 21.02.2014; after continuing with this practice for good three years, the petitioner, in respect of two GDs No. LAPR-HC-12357 dated 23-02-17 and LAPR-HC-12995 dated 04-03-17, raised the issue of drained weight and net weight and got his consignments released provisionally under Section 81 ibid. While deciding the matter, the Director, Valuation, Lahore seeking clarification from the issuing authority i.e. Director, Valuation, Karachi that the Customs value of subject goods is not on the drained weight basis, rejected the stance of the appellant. The petitioner filed this revision petition before the Director General.

12. The viewpoint of the petitioner as well as the respondents was heard in detail. The case record was also referred. The issue at hand has been examined from all angles. The Valuation Ruling No.639/2014 dated 21.02.2014, was issued notifying the Customs value of Canned Mushroom. Factual position as explained by the DR is that the subject goods were being imported at different Customs stations at very low values causing loss of revenue to the government exchequer. The Directorate of Valuation Karachi investigated the market prices and determined the Customs value of subject item under Section 25 (7) of the Customs Act, 1969. The DR explained that following the sequence in the methods provided under Section 25 ibid, the department conducted a comprehensive and fair market inquiry in pursuance of deductive value method as the goods were available in market being sold in the condition as imported. The DR clarified that price of canned mushrooms on net content basis, as obtained from the market, were made the basis of calculation and fair margins of sale at various levels were given. The petitioners' stance to reduce this value further by way of charging duty/ taxes only on the drained weight of the mushroom is not tenable as the calculations done during the valuation process were on the basis of net content weight.

13. In view of all above, it is concluded that the department's stance that customs value of canned mushrooms notified vide VR No.639/2014 dated 21-02-2014 was determined on net weight

basis is very clear and substantiated by the methodology explained. The revision petition is not tenable and merits no consideration; hence the same is rejected accordingly.


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. M.N. Traders, Lahore
Through Ch. Saeed Ashraf Advocate
The Lawyers Canvas, Office No. 15-16, 3rd Floor,
Sadiq Plaza, 69-The Mall, 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, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/
Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. Director, Customs Valuation, Karachi/Lahore.
6. Additional Registrar (Judicial), Lahore High Court, Lahore w/r to WP No.70331/2017.
7. Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for
Uploading in One Customs and WeBOC Database.
8. Deputy Director (Review), Karachi.
9. All Deputy/Assistant Directors (Valuation).
10. Guard File.