

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

File No. DG (V)/Val.Rev/68/2017

Dated 26th September, 2018

Order in Revision No. 34/2018 Under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1062/2017 dated 01-03-2017

- 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. Ghazali Brothers & Others

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

16-05-2017 and 15-08-2018

For the Petitioners

Mr. Ahmed Ghazali
Mr. M. Afzal
Mr. Muhammad Arif
Mr. Muhammad Haris

For the Respondent

Mr. Iqbal Kalyar, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No.1062/2017 dated 01-03-2017 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That the applicant M/s. Ghazali Brothers is one of the regular importers of above commodities since last so many years. The applicant enjoys high esteem amongst all trade bodies (including KCCI) and amongst business circles doing business of above commodities.
3. That the Director Customs Valuation invited us as well as traders and stakeholders to appear in meeting held on 28.02.2017 and advised them to produce all relevant supporting documents regarding finalization of customs assessed value of above commodities.
4. That we appeared in meeting with the traders / stakeholders appeared in above scheduled hearing alongwith all relevant supporting documents as well as discussed above matter in length.

5. That the traders/ stakeholders raised main issue regarding finalization of Customs assessed value of following items:

Serial No of V/R # 1062	Item Description
5	3 Way Stop Cocks without Tube
6	3 Way Stop Cocks with Tube (10 CM)
7	Spino Soft Needle
11	Digital Sphygmonano Meter
12	Medical Sphygmonano Meter
13	Thermometer (Oral Type)
14	Thermometer (Flat Type)

6. That the Valuation Department issued Valuation Ruling No. 1062/2017, Dated 01-03-2017 vide letter no. Misc/12/2017-IX/581, dated 01-03-2017.

7. **GROUND**S

1) That we do not agree with the above Valuation Ruling because the same seriously harms the interest of the applicant.

2) That the above Valuation Ruling indicates above items mainly discussed during the course of meeting whereas at the other hand 09 other items added.

That no market enquiry was conducted as well as the Valuation Rulings issued without justifying the current international markets scenario where the price stands much lower than the same proposed in Valuation Ruling.

4) That above Valuation Ruling issued arbitrarily at sole discretion of Valuation Department.

5) The method adopted to determine the Customs values for assessment is against the several orders passed by the Honorable High Court of Sindh at Karachi, which clearly directed that Section 25 of the Customs Act, 1969, must be applied in sequence.

6) That the supplier of above commodities are ready to make shipment of above goods afresh at much lower prices than the Customs values for assessment proposed in above Valuation Ruling.

8. **PRAYER**

Keeping in view of the infirmities and deviation from practices of past Valuation Ruling, the applicant prays as follow:

a. The Valuation Ruling No. 1062/2017 dated 01-03-2017, required to be revised and the same re-issued in the light of the prices currently prevailed in international markets so that assessment of Customs values of above commodities may be completed at fair level smoothly in future.

b. That the Section 25 of the Customs Act, 1969, should be applied in sequence to get the correct values for above commodities.



- c. That till the finalization of the new Valuation Ruling interim relief should be granted.

M/s. Fabnos International

That being aggrieved and dissatisfied with the impugned Valuation Ruling dated 01.03.2017, the petitioner above named prefer this petition against the said Valuation Ruling, on the facts and grounds stated here in below:-

FACT

1) That the Director, Directorate General of Customs Valuation, Custom House Karachi issued Valuation Ruling No.1062/2017 dated 01.03.2017 and determined Customs value of different types of medical items / equipment. The medical items / equipments inter alia included Dental Chair imported from China, Europe, USA, Canada and Japan (note expensive brand like Belmont, Siemens and Clesta etc. are not included in these values). In the impugned Valuation Ruling, the value of Dental Chair imported from China was determined as US\$ 12/kg. Before determination of value in the impugned Valuation Ruling, the above named petitioner had imported one consignment of Dental Chair from M/s. Tribest Dental Products Co. and two consignments of Dental Chair from M/s. Ideka HK International Co. Ltd, China during the period from Sept.2016 to Dec, 2016. The transaction value in all these three consignments was US\$.200/-per Dental Unit to US\$.220/per Dental Unit with all standard accessories and attachments. In these consignments, the net weight was approximately declared 226 kg/per unit in the packing list. The Collectorate of Customs Appraisement (West) had finalized the assessment by enhancing the unit value from US\$.220/- per Dental Unit to US\$.256/per Dental Unit and in other two consignments, the value was enhanced from US\$.200/- per Dental Unit to US\$.300/per Dental Unit. In these consignments, the value was enhanced arbitrarily without assigning any cogent and plausible reason for not accepting the transaction value, and the enhancement of value at whims as it was without furnishing of any evidence of identical or similar goods. The assessment was accepted as the consignment was incurring demurrage at the port area.



That the respondent determined Customs values of different types of Medical items / Equipment including Dental Chair for the first time and issued impugned Valuation Ruling. Previously the Directorate General of Customs Valuation had circulated VDB Values of different medical instruments vide letters No. 180/2017, 181/2017, 182/2017, 188/2017 and 189/2017 dated 03.02.2017 and 11.02.2017. The value of Dental Chair was not included in the aforementioned letters and the clearance Collectorate had determined Customs value of Dental Chair Unit with all standard accessories at their level by arbitrarily and enhancing the value at their whims. The transaction value of similar / identical goods was available with the Directorate General of Customs Valuation and it was in their knowledge that the impugned goods from China were being released from US\$ 250/per Dental Unit to US\$ 300/per Dental Unit with all standard accessories. The Directorate General of Customs Valuation ignored the transaction values as well as the assessed values by the Clearance Collectorate and determined Customs value of Dental Unit @ US\$:12/Kg and issued Valuation Ruling No.1062/2017 dated 01.03.2017. The value determined was stated to have been applied under Section 25(9) of the Customs Act, 1969. The value determined was very high, unfair and the above named petitioner was unable to continue his business of importing Dental instruments and Dental Chairs.

3) That the Valuation Ruling was issued on 01.03.2017 which came into our knowledge in the first week of March, 2017. The above named petitioner one consignment of Dental Unit (02 units) with all standard accessories along with 22 other disposable dental materials and instruments was in the pipeline and its GD was filed on 09.03.2017. The clearance Collectorate had applied at the assessed value @ US\$ 12/Kg and determined the value of both the Dental Units @ US\$ 5520/for two units against the transaction value of US\$ 440/for two units. The above named petitioner had paid the taxes of the Dental Unit under duress as the consignment contained other twenty two (22) items pertaining to Dental Materials, Instruments and X-Ray Machine and cleared the consignment vide G.D. No. KAPW-HC-178938 dated 09.03.2017. The Dental unit was costing so high that the above named petitioner being unable to sell the material even at loss and the units were still available with the petitioner.

GROUND

A. That the above named respondent determined value of Dental Chair of China origin @ US\$.12/Kg by applying Valuation Method envisaged under Section 25(9) of the Customs Act, 1969. The value determined under the aforesaid sub section is fall back method which is applied only if the Customs Value of the imported goods could not be determined under sub-Section (1), (5) , (6), (7) and (8), it shall subject to the rule be determined on the basis of value derived from among the methods of Valuation set out in sub-Section (1), (5) / (6), (7) and (8), that when applied in a flexible manner to the extent necessary to arrive at a Customs value. It is submitted respectfully before the Director General that number of importers of Dental Trade are importing Dental Units from various suppliers / manufacturers of China and values of similar / identical goods are available with the clearance Collectorates as well as with the Directorate General of Customs Valuation. The respondent intentionally ignored the transaction value / value of similar and identical goods value. The Directorate General of Customs Valuation could had determined the value by conducting market inquiry under sub-Section (7) of Section 25 of the Customs Act, 1969 but the respondent resorted to apply Valuation method envisaged under Section 25(9) of the Customs Act, 1969. It may be submitted before the Director General that the respondent may have determined the customs value of any goods or category of goods imported into Pakistan after falling the method laid down in Section 25 whichever is applicable. These methods are to be applied in sequential manner as mentioned under Section 25 of the Customs Act, 1969. The respondent has malafidely determined the value on the basis of presumptions. The customs value based on presumptions is not acceptable. It is therefore, submitted that the value determined is arbitrary and has no legal basis. It is therefore, requested that the value determined by the respondent may be set aside and the respondent may be directed to apply sequential method to determine the value of the Dental Unit in accordance with the method prescribed under Section 25 of the Customs Act, 1969 and as required under Section 25A of the Customs Act, 1969.

B. That the above named petitioner submits shipping documents along with the goods declaration assessed by the clearance Collectorate showing release of Dental Unit with standard accessories and attachments in the following cases:

GD No. KAPW-HC-46067, dated 05-09-2016



GD No. KAPW-HC- 87706, dated 07-11-2016

GD No. KAPW-HC-112543, dated 08-12-2016

In the above referred Goods Declarations, the Dental Chairs with standard accessories and attachments has been finally assessed @ US\$.256/per Unit to US\$ 300/per Unit. These are the evidences which shows that the identical goods have been released by the Clearance Collectorate and the respondent above named malafidely has ignored the value of the identical goods imported within a period of 90 days as envisaged under Rule 107 of the Customs Rules issued vide Notification SRO 450(1)/2001 dated 18.06.2001. The above named petitioner has imported a consignment vide GD No.KAPW-HC-178938 dated 09.03.2017 wherein the value has been applied @ US\$ 12/Kg and for the two units of Dental Chairs with accessories and attachments. The total assessed value had been applied as US\$ 5520/- equivalent to Pak Rs.590, 687/-. This means that the value has been enhanced from US\$ 440/ for two units to US\$ 5520/ for two units. This enhancement is extremely on the upper side and the above named petitioner won't be able to continue his business in the Dental Trade. It is therefore, requested that value may be re-determined for the Dental Chairs imported from China.

- C. That the above named petitioner is submitting herewith the evidence of remittance through banking channel of the previous imports to the supplier of the goods. The instrument submitted pertains to NIB Bank and the amount has been remitted to the Standard Chartered Bank, New York. This shows that the amount has been lawfully remitted to the supplier through Banking Channel.



PRAYER

It is respectfully prayed before the Director General, Directorate General of Customs Valuation, Custom House Karachi to pass an order:-

- a. That the value determined in the Valuation Ruling No.1062/2017 dated 1.3.2017 is arbitrary and has been issued in violation of the method envisaged under sub-Section (1), (5) , (6), (7) and (8), of the Section 25 of the Customs Act, 1969 and therefore, the impugned Valuation Ruling is set aside.
- b. That the respondent may be directed to re determine the value considering Customs value of similar / identical goods imported during the period of 90 days and available in the Valuation data.
- c. That the appeal may be allowed.
9. The respondent department was asked to furnish comments to the arguments submitted by the petitioners in the case. Para-wise comments on the petitions are given as under:-

PARAWISE COMMENTS


Brief of the case that this Directorate General has earlier circulated VDB values of different medical items/equipment vide Valuation Data Base Letter Nos.180/2017, 181/2017, 182/2017,

188/2017, 189/2017, dated 03-02-2017 and 11-02-2017, respectively. However, some importers approached this Directorate General and requested revision of certain VDBs. Therefore, this Directorate General initiated an exercise for determination of Customs value for the subject goods.

Meeting with stakeholders was held on 28-02-2017. The stakeholders were requested to furnish the following documents before or during the course of above said meeting:-

- a) Invoices of imports during last three months showing factual value.
- b) Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
- c) Copies of Contracts made / LCs opened during the last three months showing the value of item in question.
- d) Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

The representatives of Pakistan Chemist and Druggists Association and many importers attended the meeting. The association and importers agreed with most of the prices circulated vide VDBs as reflective of traded values. However, agitating on few items some importers claimed that the circulated Customs values were on higher side, whereas as per their claim, there was a downward trend in prices in the international market. However they did not submit any corroboratory document/evidence in support of their contentions. All the items' values were discussed one by one in detail.



Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at Customs value of different types of Medical items/Equipment-II. Transaction value method provided in Section 25 (1) was found inapplicable owing to wide variation in the values being declared to the customs and incomplete descriptions. 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. A number of items sold in the local market were obtained and Customs values were worked back from the same. Online prices were also obtained to corroborate the findings of the market surveys. Computed Value Method as provided in Section 25 (8) could not be applied for valuation of the aforementioned goods as the cost of raw material and fabrication charges under clause (a) and amount of profit and general expenses under clause (b) of Section 25 (8) of the Act, in the country of export, could not be ascertained. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values of different types of Medical items/Equipment-II, have been determined under Section 25 (9) of the Customs Act, 1969.

1. Need no comments being related to inviting the trader to appear in meeting on 28-02-2017, with advice to produce all relevant supporting documents.
2. Denied. No documents were provided by the petitioner and they have not furnished copy of the acknowledgement receipt for the same.

3. Need no comments being related to Customs values of seven items
4. Need no comments being related to issuance of impugned Valuation Ruling.

GROUND

1. Denied. The petitioner has not mentioned the reasons for not accepting the impugned Valuation Ruling.
2. Need no comments being related to items mainly discussed in the meeting.
3. Denied. It is to be submitted that paragraph-5, of the impugned Valuation Ruling clearly reveals that market inquiry as envisaged under Section 25 (7) of the Customs Act, 1969, was conducted. A number of items sold in the local market were obtained and Customs values were work backed from the same. Consequently, the customs values were determined under Section 25 (9) of the Customs Act, 1969.
4. Denied. The petitioner has not mentioned any reason that the Valuation Ruling was issued arbitrary.
5. Denied. It is to be submitted that Valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at Customs value of different types of Medical items/Equipment-II. Transaction value method provided in Section 25 (1) was found inapplicable owing to wide variation in the values being declared to the customs and incomplete descriptions. 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. A number of items sold in the local market were obtained and customs values were worked back from the same. Online prices were also obtained to corroborate the findings of the market surveys. Computed Value Method as provided in Section 25 (8) could not be applied for valuation of the aforementioned goods as the cost of raw material and fabrication charges under clause (a) and amount of profit and general expenses under clause (b) of Section 25 (8) of the Act, in the country of export, could not be ascertained. All the information so gathered was evaluated and analyzed for the purpose of determination of Customs values of different types of Medical items/Equipment-II, have been determined under Section 25 (9) of the Customs Act, 1969.
6. Need no comments being related to shipment of the above goods afresh at much lower value than the Customs values of the impugned Valuation Ruling.



PRAYER

It is respectfully prayed that the Customs values of the subject goods were determined strictly in the light of valuation methods given in Section 25 of the Customs Act, 1969, in sequential manner. On other side, stakeholders did not submit any corroboratory document/evidence in support

of their contentions, so the appeal do not merit for consideration and accordingly, the same is liable to be rejected.

ORDER

10. Hearings in the subject case were fixed for 16-05-2017 and 15-08-2018. The petitioner appeared for hearing and reiterated the same arguments as already given in their petitions. Their major 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 No.1062/2017 dated 01-03-2017 in respect of Medical Items/Equipment-II 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. The Departmental representative defended the values ascertained by them and 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. Moreover, the DR stated that after issuance of impugned Valuation Ruling No.1062/2017 dated 01-03-2017, some importers approached Valuation Directorate and requested revision of the same as well as VR No.1021/2017 dated 26-01-2017 which was earlier issued notifying customs values of different medical items/equipments. Therefore, the department has since issued a revised VR vide No.1202/2017 dated 18-08-2017 after complete valuation exercise under the law and re-determined the customs values vide VR No.1021/2017 dated 26-01-2017 which is now in field. In view of above, the subject revision petitions merit no consideration and are accordingly rejected.

11. Being identical on facts and law point, this order shall apply mutatis mutandis to following (02) petitions.

M/s. Hyderabad Dental Supply Co	DG (V) Val. Rev/68/2017
M/s. Fabnos International, Karachi	DG (V) Val. Rev/68/2017


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. Ghazali Brothes,
1st Floor, 1st Floor, Azzainab Court, Campbell Street, Karachi.

M/s. Hyderabad Dental Supply Co
M/s. Fabnos International, Karachi
C/o Muhammad Abbas Advocate, 176-Z, Block-2, P.E.C.H.S. , Karachi.

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.