

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/14/2018

28th September, 2018

Order in Revision No. 36 /2018 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1266/2018 dated 02-03-2018

- 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 Nice Traders & Others

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

31-07-2018, 16-08-2018 and 13-09-2018

For the Petitioners

Mr. Adnan Asad (M/s Venus Pakistan Pvt. Ltd.)
Mr. Rizwan Ahsan (M/s Venus Pakistan Pvt. Ltd.)
Mr. Abdul Basit (M/s Venus Pakistan Pvt. Ltd.)
Mr. M. Haroon (M/s Famy Industries)
Mr. Rafique Khan (M/s Pacific Distributors)
Mr. Javed (M/s Hana Dairies)
Mr. Abeer Mirza Advocate for M/s Nice Traders
Mr. Imran Gandhi

For the Respondent

Mr. Muhammad Umar, Principal Appraiser
Mr. Irfan Masih Valuation Officer

These revision petitions were filed under Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No. 1266/2018, dated 02-03-2018 issued under Section 25-A of the Customs Act, 1969, inter alia, mainly on the following grounds:

1. M/s Hana Dairies

That Valuation Ruling No. 1266/2018 dated 02-03-2018 issued under Section 25A the Directorate General Customs Valuation through letter No. Misc/13/2015-1/281, dated 02-03-2018. The Directorate has issued the subject valuation ruling of Non Dairy Topping / Whipping Cream under H.S. Code 2106.9090 from Vietnam, USA, EU Malaysia and all other origins (subject to importability conditions as IPO) origin nullity to the provision read with Chapter IV of Customs

Rules, 2001 and without evaluation the nature of the products in question and the dictum laid down by Higher Courts.

We wish to bring in your kind notice towards the facts and figure of this ITP Valuation matter before the Review Committee for a favorable decision on grounds of the following facts:

1. We Hanna Dairies are commercial importer of Non Dairy Topping / Whipping Cream from Vietnam. We are importer / distributor of Silver Whip Non Dairy Topping / Whipping Cream in Pakistan.
2. That the principal of the above product M/s. Tan Nhat Huong Co Ltd. Vietnam was in search of a sole importer / distributor in Pakistan. We have attended various meetings with the same supplier and also surveyed the local markets to launch their product in Pakistan markets. We have presented a market based forecast for minimum three years and on the basis of our market survey they agreed to give us exclusive distribution of their product in Pakistan. We never charged them a single penny for the cost involved for market survey, marketing activities and other over heads. They M/s. Tan Nhat Huong Co Ltd. Vietnam very kindly agreed to give us much competitive rates to survive in the competitive markets of Pakistan.
3. The supplier from Vietnam is exporting the same product to other countries i.e. Brazil / Hong Kong on the same transaction value as exported to Pakistan. The trade mission of Vietnam in Pakistan also submitted evidence of Vietnam Customs Declaration Goods copies of Brazil / Hong Kong / Pakistan as well as attested copies of Vietnam Chamber of Commerce for commercial invoices of Pakistan / Brazil / Hong Kong.
4. We had submitted sufficient evidences from time to time e.g. copies of Sales Tax Returns with bank payments, Work Back Sheet, Commercial Invoices, Copies of Contracts with the supplier and swift copies from the bank from where Custom may analyze our margin after paying various over storages / management fees / marketing and selling costs / losses during transportation of the product from Karachi Port to up countries in Pakistan.

Our above all evidences in vain because of a false complaint by the local manufacturer. In other hand the local manufacturer is continuously arguing but unable to submit any evidences to prove their claim yet.

It is therefore, requested kindly look into the pros and cons of ITP Valuation and Review our petition on the light of facts and figures and set aside the subject ruling and fix the ITP at transaction value of US\$ 0.90/Kg for "Silver Whip" Non Dairy Topping / Whipping Cream of Vietnam origin.

2. **M/s Venus Pakistan Pvt. Ltd.**

- a) That the impugned Valuation Ruling No. 1266/2018 dated 02-03-2018 has various anomalies therein due to which the value determined therein in VR No. 1266/2018 is very much questionable: especially in regards to the assess value of Non Dairy Whip Topping Crème of All other Brands excluding RICH's Brand. It is pertinent to mention here that Venus Pakistan (Pvt) Ltd has in the past submitted evidences and letters with all supporting evidences to prove the suspicion that the


Customs was not presented with fair facts and evidences, we will again be submitting a detailed documents along with evidences to support our case.

b) That, we would like to bring following points to the notice of relevant authorities. We pray that the facts provided to customs during the hearing for review did not provide a true and fair view of current market position.

i) Palm Kernel Oil Prices:

The Palm Kernel Oil prices have ranged from \$ 1400 to \$ 2000 per ton during the last year. However, the prices of products have remained same. This is highly unlikely that the vendors have managed to keep the prices constant.

3. Department's Comments



It is submitted that earlier Customs values of Non-Dairy Topping/Whipping Cream were determined vide Valuation Ruling No. 1153/2017 dated 08-05-2017. Director General of Customs Valuation vide Order-in-Revision No.406/2017 dated 07-11-2017, directed to conduct comprehensive valuation exercise thoroughly, and to re-determine Customs values of subject goods under section 25-A of the Customs Act, 1969. Therefore, this Directorate General initiated an exercise for re-determination of Customs values for the subject goods. Meetings were held on 24-11-2017 and 20-02-2018 with the stakeholders including the local manufacturer of the subject goods, M/s Venus Pakistan (Pvt.) Limited. During the meetings the importers contended that the values of the subject goods determined vide the impugned Valuation Ruling No.1153/2017 dated 08.05.2017, are on the higher side and requested to revise it in accordance with the international market prices. M/s Hana Dairies and M/s Pacific Distributors, importers of non-dairy cream from Vietnam, contended that their declared values are correct and also submitted copies of their GDs and Sales Tax invoices to substantiate their claims. They also furnished certain export GDs from the country of origin in support of their contentions. The values available on the Export GDs of "non-dairy topping cream", when compared with import documents, were found to be in proximity with the values declared by the importer.

4. The representative of the manufacturer M/s Venus Pakistan, on the other hand argued that the values of the subject goods are higher, however, he could not submit any substantial evidence to prove his claim. However, during the scrutiny of import data, it transpired that the complainant M/s. Venus Pakistan had earlier imported the identical goods from Vietnam at a much lower price @ US\$ 0.76/Kg. Market inquiries as envisaged under section 25(7) of the Customs Act, 1969, were also conducted by this Directorate General of Non-Dairy Topping /Whipping Cream and the values that come out after using deductive value method are more akin to the values being declared by the importers and were lesser than the values determined vide the existing Valuation Ruling. The view point of all stakeholders was heard in detail and considered to arrive at Customs values of Non-Dairy Topping /Whipping Cream. The information so gathered was analyzed and evaluated for determination of Customs Value of the subject goods Non-Dairy Topping / Whipping Cream and Customs values were determined and notified vide Valuation Ruling No. 1266/2018 dated 02-03-2018.

5. It is pertinent to mention here that the complainant, M/s Venus Pakistan (Pvt) Ltd. is requesting to increase the customs values arbitrarily, of the items which he has started manufacturing locally, i.e. non-dairy topping cream. On the other hand, he is also requesting to decrease the values of items imported by him e.g. sauces, mayonnaise etc. This clearly shows that he has approached the Department for his personal motives and to get an edge over his competitors.

6. In order to ensure proper assessment of goods, the values of Non Dairy Topping Cream/Whipping Cream was determined in accordance with law, after taking all the stakeholders on board. Opportunity of meeting was provided to stakeholders including petitioners which were also attended by the petitioners. The values so determined were notified under Section 25A of the Customs Act, 1969 for uniform implementation across the country and is applicable unless revised or rescinded in terms of 25A(4) of Customs Act, 1969.

7. The importers contended that the values of the subject goods determined vide the impugned Valuation Ruling No.1153/2017 dated 08.05.2017, are already on the higher side. M/s Hana Dairies, importers of Silver Brand non-dairy cream from Vietnam contended that their declared values are correct and also submitted their Sales Tax invoices and also the export GDs from the country of origin in support of their contentions. The representatives of importers M/s Pacific Distributors and M/s Nice Traders also requested to revise the Valuation Ruling in accordance with the international market price. The representative of the manufacturer M/s Venus Pakistan, on the other hand argued that the values of the subject goods are higher, however, he could not submit any substantial evidence to prove his claim. However M/s. Hana Dairy importer of Non Dairy Topping Cream stated and submitted the submitted the import Data which the complainant M/s. Venus Pakistan imported the identical goods from Vietnam @ US \$ 0.76/Kg same as The view point of all stakeholders was heard in detail and considered to arrive at Customs values of Non-Dairy Topping /Whipping Cream. Market enquiries as envisaged under section 25(7) of the Customs Act, 1969, were conducted. The information so gathered was analyzed and evaluated for determination of Customs Value of the subject goods Non-Dairy Topping / Whipping Cream and Customs values were determined under Section 25(7) of the Customs Act, 1969. Customs values of Non Dairy Topping /Whipping Cream and Valuation Ruling No. 1266/2018 dated 02-03-2018 under section 25-A of the Customs Act, 1969 per law.

8. In this regard it is submitted that Section 25-A of the Customs Act, 1969 is itself a speaking one clearly reveals that Collector of Customs or Director of Customs Valuation may determining the customs values any goods or category of goods imported or exported into the Pakistan, after following the methods laid down in section 25, which are is applied. The view point of all stakeholders was heard in detail and considered to arrive at Customs values of Non-Dairy Topping /Whipping Cream. Market enquiries as envisaged under section 25(7) of the Customs Act, 1969, were conducted. The information so gathered was analyzed and evaluated for determination of Customs Value of the subject goods Non-Dairy Topping / Whipping Cream and Customs values were determined under Section 25(7) of the Customs Act, 1969. Customs values of Non Dairy Topping /Whipping Cream and Valuation Ruling No. 1266/2018 dated 02-03-2018 under section 25-A of the Customs Act, 1969 per law.

PRAYER

9. The Valuation Ruling No. 1266/2018 dated 02-03-2018 of imported Non Dairy Topping Cream issued under Section 25-A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform application, there exists no justification to accept the transaction value for assessment.

ORDER

10. Hearings in the subject case were held on 31-07-2018, 16-08-2018 and 13-09-2018. Petitioners and Counsel of the petitioners attended the hearings. The DRs were also present. M/s Venus Pakistan (Pvt.) Ltd. insisted that the values determined for Non-Dairy Topping Cream, Vietnam origin was not reflective of the international price trend of the product and that the values are not commensurate with the international prices of its ingredients. They further mentioned that the element of freight is also suppressed in the declared values of the imports from Vietnam and the impugned VR 1266/2017 dated 02-03-2018 did not address the same. They objected to the values of Non-Dairy Topping Cream from Vietnam as notified vide the impugned Valuation Ruling on the grounds that proper investigations viz. international value of the product and freight element was not conducted which created unfair competition in local market; a situation which needs to be addressed immediately. Representatives of M/s Hana Dairies, the importers from Vietnam defended their declared values. Their petition mainly rests on the argument that they were able to negotiate a very competitive price with their suppliers in Vietnam who wanted to enter and penetrate Pakistani market of Non Dairy Topping Cream. They insisted that the freight incurred by them is lower as they were offered very competitive rates by the shipping lines/ agents given the large quantities imported by them. The importers M/s Pacific Distributors were aggrieved by the prices notified vide the impugned VR for Vietnam origin and the parity maintained vis-a-vis the prices of the same product from Europe. They insisted that price difference of US\$ 0.60 cents per/kg that comes to 57% is not correct and needs to be addressed. The importers from Korea had similar objections.

11. The departmental representatives during the hearing proceedings tried to defend the valuation exercise conducted by them and the 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. During hearing proceedings it was enquired from department to make it clear as to how the margins given were determined while using deductive method and which retail markets were touched while doing the market inquiry. Sales tax invoices issued by the petitioners were also to be examined and to be confirmed if the levels of margins given correspond to the market realities and whether the chain of suppliers in subject item includes distributors and/or wholesalers. Element of freight was ordered to get verified through independent sources for Vietnam origin refrigerated edible products. As regards the objection of one petitioner that the price of Topping Cream notified for Vietnam origin is lower than the ingredients used therein, department was directed that check from import data and put up comments thereto.



12. The respondent department submitted the details of deductive value method & margins given and confirmed that market enquiry was conducted but the subject imported goods were not found from the known retail markets. Therefore, prices obtained from one shop (essentially wholesaler) only were relied upon. The department also obtained import data of relevant period (01.12.2017 - 01.03.2018) for Hydrogenated Palm Kernel Oil, basic raw material of Non Dairy Topping Cream which confirmed imported Hydrogenated Palm Kernel Oil prices. Sales Tax Invoices provided by the petitioners showed that they supplied Non Dairy Topping Cream to various bakers like United King, Khalid Foods and United King bakers Nimco. Moreover, element of freight verified by the department from the independent sources for Vietnam origin are considerably higher than the ones being quoted by the importers from Vietnam and which were relied upon while calculating the C&F values for Non Dairy Topping Cream of Vietnam origin notified vide the impugned ruling. Department's response containing details of the investigations conducted as part of revision proceedings are placed on record.

13. I have carefully examined the arguments given in the petitions and the points agitated by the petitioners during hearing proceedings. The methodology adopted by the department in pursuance of deductive value method and the calculations of margins as explained by the DRs as available on record were scrutinized. After listening to the petitioners/respondents in detail and scrutiny of the case record, it is observed that the exercise/inquiries done and the procedure adopted by the department to determine the Customs values of subject items vide impugned Valuation Ruling No.1266/2018 dated 02-03-2018 is lacking in material aspects. Market survey conducted was not comprehensive; the department mentioned that the product is not generally available on shelves in retail departmental stores; therefore, proper and comprehensive market inquiry could not possibly be conducted. The importers, during discussion indicated that in respect of Non-Dairy Topping Cream, supplies are made to bakeries/ private caterers etc. for their consumption (many of them unregistered and not documented). It conclusively suggests that the margins given by the department while calculating the assessable values are excessive and not in line with the actual practice. In fact the department could not explain satisfactorily as to why total reliance was made on deductive method when the basic requirement of law was not being fulfilled. Apparently the exercise to consult the import data to investigate the prices of basic ingredients of the product which was done under the direction of the revision authority during the hearing proceedings was not carried out at the time of issuance of the impugned VR. Further, investigations also reveal that the freight component is suppressed in respect of imports from Vietnam by the importer; the petitioner's stance on freight was not supported by independent investigations made by department during revision proceedings. Similarly, on the question of parity maintained between Non-Dairy Topping Cream from different origins and the factual basis thereof, the department could not give a reasonable explanation. The case record did not either reflect as to how the price difference between Vietnam and other origins was ascertained. Therefore, keeping in view the cited deficiencies, the case is remanded back to the respondent Director, Customs Valuation, Karachi, with the advice not to rely exclusively on deductive method as it is not a product which is normally available on retail stores; rather to investigate thoroughly the price, margins, international commodity prices trend, the freight aspect and re-determine Customs values of subject goods under Section 25A of the Customs Act, 1969 in accordance with a valuation method that is consistent with the provisions of law. All the stakeholders including the petitioners, representatives of FPCC&I and KCC&I and concerned trade



bodies/Associations may be taken on board. It is further advised that views of clearance Collectorate(s) may also be obtained and their representative(s) may be included in the meeting/proceedings. The petitions are disposed of accordingly.


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. Nice Traders
Through Nadeem & Company,
B-3, 2nd Floor, Pak Chamber, West Wharf, Karachi.

M/s. Venus Pakistan (Pvt) Ltd,
Warehouse, 9/1, K-28, Hawksbay Road, PAF, Mauripur, Karachi.

M/s. Pacific Distributors,
B-172, Block-2, Gulshan-e-Iqbal, Karachi.

M/s. Famy Industires,
E/2-G, Estate Avenue, S.I.T.E., Karachi.

M/s. Hana Dairies,
111, 1st Floor, Al Rehmat Trade Centre, Opposite City Court, Dandia Bazar, 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, 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 (Review), Karachi.
8. All Deputy/Assistant Directors (Valuation)
9. Guard File.