

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/29/2018

Dated 11th October, 2018

**Order in Revision No. 39 /2018 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1296/2018 dated 25-04-2018**

- 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. Choice Asia International Company
M/s S. S. Corporation

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

31-07-2018

For the Petitioners

Mr. S.A.Sattar
Mr. Noman

For the Respondent

Mr. Amanullah Soomro Dy.Director
Mr. Abdul Hameed, Principal Appraiser

These revision petitions were filed under Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No.1296/2018 dated 25-04-2018 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. M/s Choice Asia International Company

- i) That M/s Choice Asia International Company gratefully introduces our self as a manufacturer/ importer of general household products including Disposable Razors etc. We always tried our best to the people of our nation. We have significantly improved ourselves to provide better quality products at best economical price in Pakistan.
- ii) That the purpose of the submission of this letter towards your kind honor is a request to kindly review the subject Valuation Ruling as Valuation Ruling number 1296/2018 of Disposable Razors under PCT 8212.1000, 8212.2000 & 8212.9000.

iii) That before the detail discussion it is very important to mention here that, the reason taken by the respondent Director regarding the determination of Customs values of Razor and Parts should be discuss as below.

Determination of Valuation Ruling

i) That the respondent Director in Valuation Department increase the values of razor parts without any justification even the respondent ignore all the manufacturing process cum expense occurred to make disposable razor in finish form.

ii) That the respondent Director discuss the PCT/HS Code which is not the matter of the respondent even the PCT can be decided by the assessment officer but the values of the parts can be treated by the respondent.

iii) That the respondent Director also ignores the facts that the disposable razor parts even from the start of the import always assessed in kgs but the respondent Director mentioned it separately in pieces under this ruling which is unjustified at all.

iv) During the determination we completely provided all the documentation along with machinery pictures and the material used to make the razor in to finish form but the respondent director fully ignored this fact even didn't give his fair intention on our submission.

In this Valuation Ruling the respondent Director discussed the representative of M/s. S.S Corporation who requested to mention HS Code separately in fresh ruling even the person as mention above is not an importer of this item even he was unable to show his import, sale invoice or any relevant documents to his defence but the respondent Director only on verbal discussion of the concern person changed the H.S code which is not the matter of respondent.

vi) During the determination we provided all the superior court order cum decision regarding the determination of razor parts which also decides the PCT of the said items but the respondent Director didn't treat it at all.

GROUNDS

- a. That the impugned order is illegal, arbitrary, unjust, ex-parte and without any lawful authority and, as such, is liable to be set aside with immediate effect.
- b. That the superior court in so many judgments have ruled and observed that the determination of the import value should be on the basis of transaction value as provided under sub-Section (1)(a) of the Customs act, 1969, however. If the conditions stipulated under sub-Section (1) (a) of Section 25 are not fulfilled or an importer is crossing sub-Section (1) (a) the other sub-Sections of Section 25 of the act to be followed in sequential manner. The hon'ble Sindh high court in its judgment reported as PTCL 2008 CL 457 has ruled as under:

"4. After a hearing the leaned counsel. We observed that through the comments filed in the petition by the respondent that they have made up their mind to avail the department ruling given in the document. Dated 27.12.2006, therefore, no useful purpose will be served if the

cases are finally examined under Section 81 as the petitioner's request, as has been made here, will not be entertained by Customs authority. We have also observed that the language of Section 25 of the Customs Act is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if there is no result coming out then they may avail the remedy under Section 25-A as per language of the above Section the determination of the import value should be on the basis of transaction value, provided that conditions provided in sub-Section (1)(a) of Section 25 are not available. If an importer is crossing sub-Section (1) (a) then other sub-Section of Section 25 of the act to be followed. Here in the case, the Customs Authorities have given the ruling without any reasoning nor it has been mentioned as to how they have reached that conclusion or do they have evidence of other import on more value nor the effected person have been given any opportunity to be hear.

In such a situation above ruling relied upon by the department cannot be sustained and asseskrat on its basis is set-aside. Mr. Raja Muhammad Iqbal, states that is such a situation, the petitioner be directed to approach the respondent, so that value of the goods may be determined. Of course, after setting aside the assessment on above ruling the respondent is required to issue a notice to the entire petitioner within 15 days time and will determine the value of goods keeping in view strictly the step provided for its determination in Section 25 of the Customs Act. The said process is to be done within two month with further observation on the request of the petitioners that the post dated cheques submitted by the petitioners towards the differential amount will not be encashed by the department until final determination of the Customs duty. The entire petitions stand disposed of in above terms.



c.

That, the hon'ble Sindh Court while deciding the Constitutional Petition No. 1483 of 2005 (2006 PTD 909) at Para 19 has ruled that if market survey is conducted in terms of sub-Section (7) of Section 25, the importer must be associated. Para 19 is reproduced as under:-

"19. Coming to the second question we find that in the standing operative procedure 1 of 2005, it is specifically provided that the importer or his representative shall be associated with the working committee if deductive method of valuation under Section 25(7) is to be restored. No lengthy discussion is therefore, required and it is held that no assessment can be made on the basis of working of a committee continued for the purpose of determining the deductive valuation under Section 25(7) without associating importer or his representative in each case."

d.

That, the respondent Director during all exercise for the determination of Disposable Razor & Parts didn't consider any view point of the importer cum manufacturer's even only in a single meeting with the petitioner. The respondent Director finished the determination and ignored all the process of manufacturing of Disposable Razors & Parts which is a very blind decision of the respondent Director because without considering manufacturing the Respondent Director is unable to find out any value of the Disposable Razors & Parts.

e.

That, the respondent Director ignored the entire decision passed by the superior court in which the values of the Disposable Razor Parts decided. Collector of Custom Port

Muhammad Bin Qasim hold the consignment of Disposable Razor Parts in which the respected Assistant Collector Adjudication authority issued an O-N-O vide Order in Original No.155720 dt.11-12-2013 in which it is clearly stated as:

"I have gone through the case and heard written as well as verbal submission of the trader, the trader has imported the consignment declares to contain lower major component of Disposable Razor (handle side). Packing 4000 Pcs/Carton. Declared PCT 3926.9099. It is stated that upper major component i.e plastic head with blade and plastic cover were lying in another container No. CAJU-2422060 came for Examination the same day (26.10.2013). (Images of the same also attached). Group may check the imported in two different containers, as discussed with AC Incharge Examination on 26.10.2013. Suggestive PCT 8212.1000, 8212.2000 or 8212.9000. The contravention report is framed that the imported goods are complete article. It is submitted that the goods imported cannot be used directly because further processing is required to turn the goods in to complete and finished article. It is further pointed out that the importer in an industrial concern and carries manufacturing process on the imported item to make them finish goods. Further, perusal of the contravention report reveals that the physical description declared by the importer and found by the department is the same. The importer also submitted evidences of part clearances of identical goods affected through MCC Port Qasim vide GD No. KPPI-FIT-26054 dated 19.01.2013 and KPPI-HC-397-03.07.2013. The similar No-151607-01122013 is also passed and is taken as evidence. Hence, the charge of mis declaration of physical description to evade duty and taxes in not tenable in the eyes of law. Since, the charges leveled against the trader are not established; therefore, I hereby order to vacate the show cause notice without imposing fine and penalty. The Assessing Officer is directed to finalize the goods, collect duty and taxes involved and apply correct, PCT, SRO Applicabale 8. The case is disposed of on the above terms.



- f. That the Model Custom Collectorate Karachi, after adopting a proper valuation method issued a guideline of complete Disposable Razor which was USD 0.02/Pcs and after issuance of this all the Collectoratès of Pakistan were assessing the finish Disposable Razor as USD 0.02/ Pieces and there were not any objection received by the importer of Pakistan due to the fair valuation of the goods.
- g. That, the respondent Director also overlooked the order passed by the Customs Appellate Tribunal Bench Karachi, vide Custom Appeal No K-412/2015 in which the honorable member issued an order for finalized the value of Disposable Razor Parts. Order details as below,

"In view of the aforesaid detailed discussion, judgment of apex courts, Tribunal and data of 90 days providing that the similar consignment s of appellant as well as other importers have been assessed and released @ US 1.10/Kg, it is evident that the impugned consignment was dealt with differently by taking value on per piece basis, higher side. It is in order to refer to Judgments of the Hon'ble Supreme Court of Pakistan passed in CP No. 1502 of 2004 upholding the principle enshrined in Articles 25 of the Islamic Republic of Pakistan" A facility allowed to some and denied to one is the discrimination". That being so, I am of the

considered view that the assessment order as well as order-in-appeal No. 9885/2015 dated 18.02.2015 suffer from obvious illegalities. Both the orders are hereby declared illegal and set aside with direction that the impugned goods be assessed to duty ad taxes g US\$ 1.10/Kg. The appeal is disposed of accordingly.

h. That, the respondent Director also ignored the assessment order as well as the value of Disposable Razor parts finalized by the Model Custom Collectorate Karachi (East), vide file number MCC/MISC/812015/R&D/MCCAPP(E) in which the value of Disposable Razor Parts determine by the department as USD 2.0/Kg.

i. That, the respondent Director also ignored the order of Disposable Razor parts, passed by the Collector of Customs (Appeals) Karachi, vide Order-in-Appeal No. 10532/ 2015 in which Honorable. Collector of Appeal was allowed the appeal and upheld the decision Tribunal Appeal No. K-412 and stated as,

"I have examined the case record. The appellants declared invoice value of the impugned goods US\$ 0.80/Kg. The said value was not accepted as transaction value and was enhanced ho US\$ 2.50/Kg by applying some formula. 1st review against the determination was upheld by principal appraiser on the basis of data of identical goods 0 1.30/Kg. This value was later disturbed without providing any reason. The respondents have been toying with determination of value in utter disregard of principles contained in Section 25 of the Customs Act, 1969. In this volley of assessments, determination of value by principal appraiser came close to provision of Section 25(5). This value is in close proximity to value upheld by Customs Appellate Tribunal in Customs Appeal No. K-412/2015 dated 27.05.2015. In view of the above appeal is allowed".

j. That, the respondent Director also ignored the order passed by the Customs Appellate Tribunal Bench-II Lahore, in which the Honorable Member passed a detail order for the determination of the values of Disposable Razor Parts vide CA. No 213/LB/2014 dated of judgment 16.06.2016 details is as below,

"In view of what has been discussed we are of the considered opinion that the impugned cartridges fall under the residuary PCT heading 8212.9000 and thus are to be classified thereunder. As far as the issue of valuation concerned the authorities below erred in assessing the impugned goods on some calculation methodology pivoted on prices of Razors, we are of the considered opinion that suc a valuation infringes the mechanism of assessment contained in Section 25 of Customs Act 1969, we therefore, direct the respondent Collectorate to re-ascertain the value of impugned blade unites /cartridges under PCT heading 8212.9000, strictly in accordance with Section 25 of Customs Act, 1969 read with Customs valuation rules 2001".

k. That, the respondent Director didn't consider the order passed by the Honorable High Court of Sindh, passed in Suit No. 579 of 2017 in the matter of valuation of Disposable Razor Parts which was later then decided by the Collector of Customs Appraisement East Karachi, order details are as follow,

"The suit along with the pending applications stands disposed of with directions to the concerned officials to reassess the goods in terms of Section 25 of the Customs Act and/or if any judgment which covers the issue as raised by the plaintiff within 15 days. In case the goods assessed to be of the value as declared by the plaintiff, the delay detention certificate is issued."

- l. That, the respondent Director fully ignored the valuation of Disposable Razor Parts decided by the Collector of Custom East with the concern of R&D staff for complying the Honorable High Court of Sindh order which was decide before a month only and that assessment also challenged in the Collector Of Customs Appeal and pending for the decision. The value which was determined by the Collector of Custom East after conducting of all manufacturing process of Disposable Razors as USD 1.80/Kg, that case already pending in Collector of Customs Appeal.
- m. That, the respondent Director couldn't try to understand the procedure of manufacturing of Disposable Razor even ignored all the cost of packing material) factory expense etc, which is the blind decision of the Respondent Director.
- n. If the respondent Director conducted a fair determination/valuation of the Disposable Razor Parts so the value couldn't be increase as mention in the Valuation Ruling because the actual price of the disposable Razor Parts not more then USD 1.10/Kg which is the genuine value of Disposable Razor Parts. All the authorities have decided the values of Disposable Razor Parts such as, Collector of Custom Karachi, Collector of Customs Appeal Karachi, Customs Appellate Tribunal Karachi, Customs Appellate Tribunal Lahore, High Court of Sindh Karachi, R&D etc, so how does it possible that the difference of the Valuation Ruling and the above authorities could be a more than 300% higher then the value finalized by the above. It is a very major error of the Respondent Director side.
- o. That, the petitioner craves leave of this learned authority to prefer further grounds at the time of arguments.



PRAYER

In the light of the proceeding narrations. The petitioner prays of this Honorable Authority that this petition may be allowed, and

- a. Declare that the impugned Valuation Ruling 1296 of 2018 dated 25.04.2018 issued by the respondent Director is ultra vires of the Constitution of Pakistan, 1973, the Customs Act 1969, 2001, and the same is arbitrary, illegal and mala fide and should be suspend.
- b. Restrain the officers of the respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling 1296 of 2017 dated 25.04.2018 till the final disposal of this review petition.

- c. That in the meanwhile, the pending and impending imports of the petitioner are allowed to be provisionally released in terms of Section 81 of the Customs Act 1969.
- d. Grant any other relief deemed just and appropriate in the circumstances of the case.

3. **M/s S. S. Corporation**

a) That M/s. S.S. Corporation, having business address at Luxmi Building, M.A. Jinnah Road, Karachi, hereby give our objection in writing on Valuation Ruling No. 1296/2018 of Disposable Razor issued on 25th April, 2018. It is important to consider the previous review application, which was considered by your office and resulted in the issuance of fresh VR. Although, the fresh VR does not address many issues which were highlighted in the last review application. We had objected on the value of the Cartridges / Blades to be on the lower side. The department has further reduced the value for Cartridge Blades to be on the lower side. The department has further reduced the value for Cartridge / Blade. According to the fresh VR, the value of the Cartridge that consists of Stainless Steel is lower than the value of Plastic Handle.

b) That the value fixed for a Cartridge is US\$ 0.008 / Pc, whereas the value fixed for the Plastic Handle is US\$ 4.25/Kg (which comes to US\$ 0.0127 / Pc). The weight of one Plastic Handle is 3 grams, which means the value fixed for one Plastic Handle is US\$ 0.0127/Pc. This is beyond comprehension, how the Stainless Steel Blade could be cheaper than a Plastic Handle.

4. The respondent department was asked to furnish comments to the arguments submitted by the petitioners in the cases. Comments on the petitions are given as under:-

5. **Department's Comments**

Brief history of valuation issue regarding Valuation Ruling No. 1179/2017 dated 12-06-2017 and current existing Valuation Ruling No.1296/2018 dated 25-04-2018. It is stated that M/s Sky Overseas, Lahore & Others was filed revision petition under Section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No. 1179/2017 dated 12-06-2017 issued under Section 25-A of the Customs Act, 1969. They have agitated that Customs value determined are on higher side and have claimed for the acceptance of their declarations. The Worthy Director General remanded back to the Director, Customs Valuation, Karachi to conduct comprehensive valuation exercise inclusive of removing discrepancies in terms of description / H.S. code and to issue a fresh ruling under section 25-A of the Customs Act,1969. Moreover, M/s Choice Asia International Co. submitted letter along-with values of import data and M/s Ahmad International Trading Co. submitted their letters for revision of Customs value of the aforementioned subject goods. The meeting with stakeholders was fixed on 25-01-2018. During the course of meeting Mr. Abdul Sattar, representative of M/s S.S. Corporation stated that H.S. Code 8302.2000 for Cartridge should be mentioned separate in fresh Valuation Ruling. Mr. Noman Majeed representative of M/s Choice Asia contested that Customs value of Disposable Razor & Razor Parts are on higher side which needs to be revised on lower side.




6. In compliance of worthy Director General of Customs Valuation vide Order In Revision No. 410/2017 dated 15.12.2017, remanded back the Valuation Ruling with the direction to conduct comprehensive valuation exercise thoroughly, and to re-determine Customs values of subject goods under Section 25-A of the Customs Act, 1969 after removing discrepancies. Therefore, this Directorate General initiated an exercise for re-determination of Customs values for the subject goods. The methods provided in sub-Sections (5) and (6) of Section 25 of the Customs Act, 1969, provided some reference values but due to wide variations in the declarations the same could not be relied upon exclusively. In the sequential order this office conducted market inquiries in terms of sub-Section (7) of Section 25 of the Customs Act, 1969. The Customs values of Disposable Razors & Razor Parts were determined under Sub-Section (7) of Section 25 of the Customs Act, 1969.

7. During the meeting, the importers contended that the Customs values are on the higher side and should be revised downward; no body submitted tangible documents except some import data of lower values. Representative of M/s. S.S. Corporation requested that H.S. Code for Cartridge should be mentioned separately in fresh Valuation Ruling. The view point of all stakeholders was heard in detail and considered to arrive at Customs values of Disposable Razors and Razor Parts. The statement of working sheet of Disposable Razors & Parts reflecting per piece and per Kilogram values is enclosed.

8. It is pertinent to mention here that the importer M/s S.S. Corporation, address at Laxmi Building, M.A. Jinnah Road, Karachi has not been imported a single import since issuance of impugn Valuation Ruling No. 1296/2018 dated 25-04-2018. The data for the month of April, May, June, 2018 pertains to import of Disposable Razor & Razor Parts under PCT heading 8212.1000, 2000 & 9000 from China, Egypt/Vietnam is enclosed for kind perusal.

PRAYER



In the light of aforementioned facts and hectic exercise conducted and considering the contentions of the stakeholders, the review petition /application under section 25-D of the act against Valuation Ruling 1296/2018 dated 25-04-2018 filed by M/s S.S. Corporation has no weight and doesn't merit consideration which may kindly be rejected.


ORDER

10. Hearing in the subject case was fixed for 31-07-2018. The petitioners appeared for hearing and reiterated the same arguments as already given in their petitions. The petitioners agitated that the department has not made the working/calculations properly while notifying the customs values of the Disposal Razor and Razor parts. One petitioner also agitated against the price parity maintained between the disposable plastic razors from various origins. The Departmental representatives were confronted with the arguments of the petitioners. In response they explained the valuation methodologies adopted by them to arrive at the Customs values determined vide the impugned Valuation Ruling.

11. I have gone the arguments of the petitioners as well as the defense of the Department alongwith the case record and import data details as presented by DRs. I have reached the conclusion

that there are some deficiencies in the impugned VR viz, values notified as well as the descriptions given in column 2. The point raised by the petitioners regarding price parity between disposable razors from different origins (serial Nos 1-3) was examined. How the parity was ascertained between disposable razors of China, Vietnam and Egypt origins, in consideration of the quality as well as the local market price of the same while using the deductive value method, was not satisfactorily explained by the department. Similarly, whether the values notified against serial no 4-5 are for blades or cartridges remains unclear. Further, there is description overlap in the VR. The impugned VR is also silent on assessment parameters for products of subject PCTs of high end brands. Another area of focus highlighted during the course of revision proceedings was the correct assessment in terms of classification and valuation of plastic disposable razors imported in two parts which bear the essential character of razor of PCT 8212.1000. Whereas the Director, Valuation Karachi may tackle the valuation part, the correct PCT may be mentioned in the VR after due consultation with experts from clearance Collectorates.

12. In view of the above factual and legal position, these revision petitions are disposed of with the directions to the Director, Customs Valuation, Karachi to revisit the impugned VR removing the deficiencies, in accordance with law and notify the Customs values under Section 25A of the Customs Act, 1969 also taking on board the regular major importers as well as the representatives of FPCC&I and KCC&I. It is further advised that views of clearance Collectorate(s) may also be obtained especially on the aspect of descriptions, overlap of description and correct PCT to be incorporated in the VR. The petitions are disposed of accordingly.


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. Choice Asia International Company,
Plot No.C-5, Gulshan-e-Hali, Near Masjid-e-Aqsa, Hali Road, Hyderabad.

M/s. S.S. Corporation,
Luxmi Building, M.A. Jinnah Road, Karachi.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/ (North) Islamabad / (Central) Lahore.
3. Collector, MCC Appraisalment (East) / Appraisalment (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.