

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

File No. DG (V)/Val.Rev/32/2018

Dated th08 October, 2018

**Order in Revision No. 38 /2018 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1309/2018 dated 05-07-2018**

- 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. Peshawar Particle Board Industries Private Limited

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

23-07-2018

For the Petitioners

Mr. Ishtiaq Ahmad
Mr. M. Riaz
Mr. Muhammad Tahir

For the Respondent

Dr.Abdul Qudoos Sh. Deputy Director
Mr. Nadeem Shaikh, Valuation Officer

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No. 1309/2018 dated 05-07-2018 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

GROUND

1) Density of MDF has been ignored in the impugned ruling. The assessment of MDF for the purposes of Custom duties and taxes is dependent upon the weight of the goods. The Director Valuation admits that the stakeholders i.e. importers representatives form Karachi Timber Merchant Group and Officers from Field Formation were invited in a number of meetings but the impugned ruling is silent about the comparison of density of MDF, taken by the Officers of Customs for assessment of weight at the time of clearance of MDF Board and the actual density declared by the manufacturers of imported MDF Board. The comparison shown in the below table clearly speaks for favour of the commercial importers that shall not only cause damage to the exchequer by way of

short payment of revenue but also shall have a devastating effect on local MDF Industry in terms of fair market competition. The Director Valuation did not ask the Officers of Customs with regard to such damage to the exchequer and local MDF Industry being stakeholder in the matter.

Comparison of Density for Assessment of Customs and Declaration by the Manufacturer

	2.2mm	3.2mm	7mm	10mm	16mm	18mm	24mm
Density being taken by the Customs for Assessment	763.650	763.650	672	672	651	651	700
Density (As per Foreign Manufacturer Declaration)	770-800	770-800	710-760	710-760	690-720	690-720	680-710

The difference in density culminates into shortage of weight of imported goods and thus and thus lesser quantity of good is assessed to levy of duty and taxes resultantly causing short realization of revenue. The valuation ruling therefore, is not sustainable in law.

2) Actual current value of MDF not correctly ascertained. The Director Valuation vide his letter C.No. Misc/01/2007/HB/111/396 dated 05/04/2018 informed the applicant for participation in the meeting to be held on 17-04-2018 wherein the applicant suggested the Director Valuation to make a market inquiry in terms of Section 25A (3) of the Customs Act, 1969 for determination of the actual Customs value so sold in the greatest aggregate quantity. The Director Valuation was agreed to the suggestion. However, to the dismay of the applicant, no subsequent meetings of the stakeholders, only the commercial importers who had interest in reducing the Customs value, were invited in subsequent meetings and the Director Valuation solely relied upon the verbal information provided by the commercial importers i.e. Karachi Timber Merchants Groups and passed the impugned ruling. The bias of the Director Valuation is evident from the fact that only the verbal arguments of commercial importers were considered and the other stakeholders i.e. representatives of local MDF manufacturers were not even invited for participation in the meetings. This is admitted fact that the relief of incidence so called reduction in price in the international market and the incidence of reduction in duty and taxes in terms of the impugned ruling, has not been passed on to the ultimate consumer which falls within the ambit of unlawful enrichment as held by the superior judiciary in the matter of Facto Belarus.

3) Difference of value in Sales Tax Invoices not confirmed through returns. Although the Director Valuation asked the commercial importers and Karachi Timber Market Association to furnish sales tax invoices for the last three months showing the difference the price but the valuation ruling is silent about any difference observed in the sales tax invoices for the obvious reasons that no such document was furnished as admitted by the Director Valuation in the impugned ruling. Each and every sales tax invoice is entered the return with value and amount of sales tax but no return whatsoever or for that matter any sales tax invoice was considered while determining the Customs value of MDF. It has been admitted that online prices were obtained to corroborate the findings of market survey but the authentic documentary evidences with the applicant negate the stance of the Director Valuation so expressed in his Customs Valuation Ruling. The detail of documentary evidences negating the impugned ruling is as follows:-

Importer Name	Thickness	GD No	GD Date	Rate / M3
Panel Plus MDF Co Ltd	17mm	KAPW-HC-181674	09/05/18	220
Panel Plus MDF Co Ltd	17mm	PAPW-HC-193938	28/05/18	220
Premier Formica Indus	16mm	KAPE-HC-168603	26/03/18	217
Empire Trading Co	16mm	KAPE-HC-143151	13/02/18	215-225
Mateen Traders	16mm	KAPE-HC-137553	02/02/18	215-225
Premier Formica Indus	16mm	KAPE-HC-169713	27/03/18	217
Premier Formica Indus	16mm	KAPE-HC-177389	09/04/18	217
Premier Formica Indus	16mm	KAPE-HC-191927	03/05/18	217
Mohsin Enterprises	16mm	KAPE-HC-190859	02/05/18	220

4) It has been held by the Sindh High Court at Karachi in a case reported as PTCL 2008 cl 401 while dilating upon such issue that:-

“For the reason of some wrong does the policy of law or the principles for determination of value prescribed under the law cannot be compromised. It is true that the law as are framed to recover revenue and thus the prime interest is that of the revenue however the rules of interpretation which have now the approval of the courts with special reference to fiscal statutes been known, there is no question of penalizing those who may be few a number but are doing business as per law rules.”



Keeping in view the above submissions, it is humbly prayed that the impugned ruling may kindly be set aside and the earlier ruling No. 873/2016 dated 21/06/2016 may kindly be restored.

5. The respondent department defended the valuation process adopted by them. They also submitted rebuttal to the main arguments of the petitioners. The department briefly stated that while obtaining the local market price all factor i.e. size of sheet, thickness as well as weight of the goods were also taken into account. Price statement in this regard may kindly be seen. As regard compression of Density of assessment customs and declaration by the manufacturers given by the appellant, falls within the domain of examining section of the concerned Collectorate. Moreover, applicant contention that they were not invited for subsequent meeting after the meeting dated 05-04-2018 is not correct as they were appeared on the subsequent meeting on 17-04-2018 as per their signature on attendance sheet.

ORDER

6. The representatives of M/s Peshawar Particle Board requested for personal hearing. The opportunity of hearing was granted on 23.07.2018. The petitioners agitated that the department has not made the calculations properly according to the density of product while applying deductive value method and notifying the values of MDF Board. The petitioners raised technical objections and pointed out factual differences in the density and insisted that the calculations which were made the basis of valuations were inconsistent with international market norms. They agitated vehemently that the submissions to this effect duly made by them in the first stakeholders' meeting were completely ignored while issuing the ruling. The contentions of the petitioner were referred to the Director, Customs Valuation, Karachi vide Office Note No.DG(V)/Misc/1/2018 dated 23rd July, 2018, to revisit the valuation of MDF Board, meeting out fair treatment to all stakeholders and

engaging M/s Peshawar Particle Board as well as the Federation's representatives in the meetings. The DR has informed this office that prompt action has been initiated in compliance of the cited directions dated 23.07.2018 and the matter is under review. This Revision Petition is therefore disposed of with the directions to the Director, Customs Valuation, Karachi to conclude the initiated exercise within two weeks, decide the disputed values in accordance with law and notify the same under Section 25A of the Customs Act, 1969 after hearing the stakeholders including the petitioner. The petition is disposed of accordingly.


(Suraiya Ahmed Butt)
Director General

Registered copy to:

M/s. Peshawar Particle Board Industries (Pvt) Ltd,
Plot No. W-16-17, Industrial Estate,
Jamrod Road, Peshawar.

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