GOVERNMENT OF PAKISTAN DIRECTORATE GENERAL OF CUSTOMS VALUATION CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/36/2018 159

05 December, 2018

Order in Revision No. 42 /2018 under Section 25-D of the Customs Act, 1969 against Valuation Ruling No. 1315/2018 dated 15-08-2018

- 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 Blue Sea Trading Co

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

...... RESPONDENT

Date(s) of hearing

30-10-2018

For the Petitioners

Mr. Ghulamullah Shaikh Advocate

For the Respondent

Mr. Abdul Majeed, Deputy Director Mr. Altaf Hussain Mangi, Valuation Officer

This revision petition was filed through their Counsel, under Section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No. 1315/2018, dated 15-08-2018 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

- 2. That, our client is sole proprietorship concerns that is engaged in the business of import of Wrist Watches of different style for every age and gender from all over the global including China. Our client is income tax payee and enjoys credibility in the commercial circle in general and especially in the circle of importers.
- 3. That our client being active importer has been importing Wrist Watches continuously without any hindrance and or any allegation of under invoicing and mis-declaration.

- 4. That the Director Valuation has recently issued Valuation Ruling No. 1315/2018 dated 15-08-2018, whereby the values of Wrist Watches of different characteristics of China origin have been fixed / determined arbitrarily at exuberantly high value in superseding of the assessment practice / policy established by the Clearance Collectorates. Hence, the subject Valuation Ruling is patently illegal and typical example of the colourful exercise of power by the authority.
- 5. That as to the brief background of the instant assessment policy, the subject imported Directorate General of Valuation initiated an arbitrary valuation determination process and issued valuation guidance date 28-02-2018, without any statutory jurisdiction. The Customs values of Wrist Watches (Low End Brands) were unilaterally fixed to a very high level through the aforesaid valuation guidance. In pursuance of the fact the said valuation guidance was issued without jurisdiction and without associating stakeholders. That subsequently various suits were filed challenging the impugned so- called valuation guidence, and indeed the Honourable Court declared the Valuation guidance to be illegal, thus, suspened the same.
- 6. That thereafter, the Clearance Collectorate reverted back to the assessment practice as per the provisions of Section 25 of the Customs Act 1969. However, few officials of the Clearance Collectorate being dis-satisfied and motivated to gather more revenue through illegal means conducted market inquiry under Section 25(7) of the Customs Act, 1969, beyond their mandate and framed a contravention against our client vide Show cause Notice No. CN-68089625042017 dated 27-04-2017, Indeed, the Collector of Customs Adjudication-I vide Order-In-Original No. 690737, 26-05-2017, declared the assessment done on face of market inquiry performed under Section 25(7) of the Act, illegal on ground of being beyond the mandate of the Clearance Collectorate.
- 7. That subsequent to above discussed differences of assessment between the importer of the subject goods and the Clearance Collectorate, the higher officials of the Clearance Collectorate settled the assessment problem by releasing an assessment guidance, by following the provisions of Section 25(5) & (6) of the Customs Act, 1969, and directed all groups to assess the subject imported goods in the light of assessment policy / practice. Indeed, since the circulation of the said policy practice the Clearance Collectorate has duly released several of our client's consignment on the basis of assessment policy.
- 8. However, to the dismay of our client and other similar importers in the industry, the Director Valuation initiated a valuation determination process under Section 25A of the Customs Act, 1969, in absence and ignorance of the stakes of our client, and issued the subject Valuation Ruling No. 1315/2018, date 15-08-2018. It may be highlighted that the so called market enquiry is not shared with our client or any other stakeholders, making the so-called market enquiry illegal and without any legal basis.
- 9. That it may be highlighted that as per the setttled principle of the Honourable High Court of Sindh in the case of Saadia Jabbar [cited as PTCL 2014 CL 537], that no Valuation Ruling can be issued under Section 25A of the Customs Act, 1969, without catering for the interest of all the possible stakeholders. Thus, in the light of such settled principle the subject Valuation Ruling is devoid from statutory and common law provisions, hence, illegal and ultra vires.



- 10. It is pertinent to mention here that Section 25 and 25A of the Customs Act, 1969, governs on the principle that assessment be made on true transactional value. Indeed, the previous Collectorate's assessment practice / policy was closest approximate of the prevalent transactional value because the same was framed in accordance with prevalent assessment data the department and exorbitantly increased the Customs value of the subject imported good on the ground un recorded / shadow market inquiry. Therefore, the subject Valuation Ruling is liable to be set aside on the ground of being arbitrary and prima facie abuse of power.
- 11. That it further submitted in reliance on a well established principle of the Supreme Court of Pakistan in the case of Al-Samrez that for those consignments of our clients against earlier valuation policy / practice, because the Valuation Ruling cannot be applied retrospectively. Hence for those consignments, which were assigned Master Bill of Lading before the determination of impugned Valuation Ruling (i.e. 15-08-2018), the same may be assessed at an earlier assessment practice because a vested right with respect to those consignments has been created in favour of our client.
- 12. To the dismay of the applicant, the impugned Valuation Ruling has fitted the Customs values that are much higher than the actual values of the items, and the method adopted in determining the impugned Valuation Ruling is in utter violation of under Section 25 and 25A of the Customs Act, 269, and as interpreted in Saadia Jabar case as well as in Goodwill Traders case reported as 2014PTD176.
- 13. That it is clear from the foregoing that the power to issue Valuation Ruling is primarily subject to the methods contained in Section 25 of the Act, 1969. However, the impugned Valuation Ruling has not been issued in accordance with the dictates of contained in Section 25 of the Act, hence, is liable to be set aside.
- 14. That the Hon'ble Sindh High Court, in the case of Sadia Jabbar v/s Federation fo Pakistan (reported as PTCL 2014 CL 537), at paragraph 19 has held that. "19. [....] Section 25A has not of Court, been cut loose from the valuation agreement. It still remains expressly tehtered to it. In determining the Customs value under sub-Section (1), the concerned officer is still limited and restricted only to the methods set forth in Section 25. If therefore, some method other than that specified in Section 25 is applied, that would be clearly ultra vires the powers conferred by Section 25A."

In light of the above, it is submitted that the impugned Valuation Ruling No. 1315/2018, dated 15-08-2018 is liable to be set aside with immediate effect.

- 15. That, even otherwise, the learned Director failed to ascertain whether the values determined under Valuation Ruling No.1315/2018, dated 15-08-2018 were properly determined and whether those values had any application to the present market value on which the goods are being regularly bought. Therefore, it is submitted that the impugned Valuation Ruling is not reflective of the actual transaction values at which our clients, as well as other importers of Wrist Watches.
- 16. That the learned Director has gravely erred in law. In this regard, it is important to allude to the mandatory provisions of Section 25 of the Act, 1969, wherein it has been repeatedly stated that the value to be determined there under has to be the, as per sub-Section (1) thereof, the price it has

been stated that the value has to be "the transaction value of identical goods sold for export to Pakistan and exported at or about the same time as the goods being values.

- 17. That the Act, 1969, aslo defines the phrase "Custom value of imported goods" as being the value of goods [...] `. The learned Director has, however, without undertaking any exercise for the determination of the goods, has ignored this important fact of law.
- 18. That it is clear that the law does not permit the learned Director to completely ignore the price at which the goods are being sold to the importer. Rather, the law imposes a positive duty upon the learned Director to determine the value of the goods strictly in light of the provisions of Section 25 of the Act, 1969.
- 19. That the learned Director has erred in relying upon the provisions of Section 25(9) of the Act, 1969 to 'determine 'impugned Valuation Ruling. Firstly, the learned Director has not provided any lawful reasons for not following the methods of valuation contained in the preceding provisons of Section 25 of the Act, 1969. Secondly, the learned Director has wrongly applied the provisions of Section 25(7) of the Act, 1969.
- 20. That, although sub-Section (9) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable for the Glassware / Porcelaain at the time of import into Pakistan.
- 21. That the order is steereotype order and almost the same wording is used in every Valuation Ruling. According to Section 25A of the Customs Act, 1969, the concerned Officer may issue a Valuation Ruling but he is required to determine the Customs value and not to fix the value. The determination is a multi step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the ruling should contain sufficient details to show that Section 25A has been properly applied. And without visible exercise reflected on record, a Valuation Ruling cannot be said to have issued legally as provided in Section 25A and interpreted by higher judiciary.
- 22. In this regard some of the judgments of the Higher Judiciary are quoted herein below for ready reference:

Sadia Jabbar Satiat Para 17



the changes made to sub-Section 910) have made no substantive change, and the principle of sequential application continues, as before, to apply to Section 25 in full rigour."

Faco Trading case (2013 PTD 825) Para 12 (from line 10), presently, the Valuation Officer may adopt any of the method provided _iii-Section 25 of the Customs Act, 1969, however, it does not mean that Valuation Officer has unfettered powers to adopt any method on the basis of pick and choose. In fact the valuation officer has to keep in view the interest of the importer as. He has discrettion to follow any, method provided in sub-Section (1), (5), (6), (7) or (8). However, the method adopted must not be to the detriment of the importers and for that purpose for excluding the other methods, reason must be give. Similarly, the reasons for adopting a particular method are also required to be giving, so it becomes clear to the importer that the order is in the public interest and not to the detriment of the importer."

23. <u>PRAYE</u>R

In view of the above facts and grounds, it is earnestly prayed on behalf of the applicant that this reputed authority may kindly be pleased to remand back the impugned Valuation Ruling No. 1315/2018, dated 15-08-2018, with the order of fresh exercise of determination of the Customs values of "Wrist Watches" to be strictly in accordance with the provisions of Section 25 and 25(A) of the Customs Act, 1969, on the basis of guidelines highlighted by Hon'ble High Court of Sindh in celebrated judgments of Saadia Jabbar (PTCL 2014 CL 537) and Good Will Traders case (PTCL 2014 cl 176).

24. 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:-

COMMENTS BY DEPARTMENT

Brief facts of the case are that the Directorate General of Customs Valuation issued Data Base Value for Wrist Watches (Low End Brand) bearing VDB No 192 dated 28.02.2017. This Directorate General has been mandated to determine Customs values vide S.R.O. 494(I)/2007 dated 09-06-2007. Furthermore, the Collectorates are being advised to monitor these prices closely and if any importer claims the valuation to be higher or lower than the suggested values, then the Collectorate after investigation, shall forward the new suggested values for updation of the valuation database. Para 04 of the under reference valuation database letter no. 192 dated 28.02.2017 state;

"4. The clearance Collectorates may like to consider the values given above before finalizing the assessment of the subject items. If further fine tuning in specification and ensuing values are required, Collectorate may forward a reference along with detailed justifications and work sheets so that requisite adjustments are accordingly issued."

But neither from the clearance Collectorate nor from any stake holder including importers, any representation or request for adjustments was received in this Directorate General.

Keeping in view the above stated position this Directorate General converted the afore said VDB 192/2017 into Valuation Ruling No 1315/2018 dated 15.8.2018 against which the subject review petition is filed.

Para (1) & (2):

The contents of Para (1) & (2) require no comments.

Para (3) to (6):

The contents of Para (3) to (6) are misleading. The factors affecting values were duly considered while issuing impugned Valuation Ruling. For the purpose of determining Valuation of, "Wrist Watches (Low End Brand)" the department gathered information from different sources. As indicated in the impugned Valuation Ruling in order of sequence, Valuation methods were applied and Ruling was issued under section 25(7) of the Custom Act, 1969. During the proceedings different stakeholders, including importers and trade bodies, were invited for their input. Due consideration was given to the prices of the primary constituent raw material prices i.e. plastic granules around US\$ 1.5/kg, artificial leather approx US\$ 3/kg and stainless steel sheets around US\$ 2/kg. Perusal of the clearance data revealed that Wrist Watches (Low End Brand) were being imported and cleared at US\$ 1.50/ kg which is even lower than their primary raw materials. Therefore, it became evident that the claims of the importers were contrary to the factual position and not justified in terms of Rule 108 of the Customs Rules, 2001. Further the importers have not disclosed their local selling prices of imported Wrist Watches (Low End Brand) to substantiate their claim that Customs value determined vide impugned Valuation Ruling is not correct. Therefore, their contentions are incorrect and misleading. Kindly appreciate that market surveys are conducted in accordance with standardized procedure given in Office order No. 17 dated March 19, 2014. It is not out of place to mention here that it is the established principle of interpretation of the tax law that the plain language of the law is to be applied. The Section 25-A (1) of the Customs Act, 1969 specifically. empowers the Director of Customs Valuation to determine the customs value on his own motion or, on a reference made to him by any person, after following the methods laid down in Section 25, whichever is applicable.

Para (7) to (9):

The contents of Para (7) to (9) are based on misinterpretation of law. The petitioner erred in law for interpreting the relevant Section 25 and Section 25A of the Customs Act.1969. It is submitted that the department endeavors to get hold of information from different sources so that values determined are reflective of correct Customs transaction values. For the purpose, data of previous transaction is taken into account, but also, in order of sequence, other Valuation methods are adopted in accordance with law. Market inquires are also conducted. Different stakeholders are also invited for their input. As explained above the clearance data of PRAL reflected that declared and assessed value of wrist watches (low end brand s) was much lower than their primary raw materials i.e. plastic granules, artificial leather and stainless steel sheets. Therefore, it became evident that the claims of the importers were



contrary to the factual position and not justified in terms of Rule 108 of the Customs Rules, 2001. There was no deviation from the prevalent practice while issuing the impugned valuation ruling. The contention of the petitioner is baseless and liable to be rejected.

Para (10):

That the contents of para (10) relates to the clearance Collectorates. However, it is humbly submitted that the action taken by the clearance Collectorate is in accordance with the law and established practice. As explained above the clearance Collectorates are performing their duties within their jurisdiction on genuine grounds and are well within four corners of law. Hence allegations are baseless and are liable to be rejected.

Para (11) to (22):

that the contents of para (11) to (22) are misleading and based on misunderstanding of law/ procedure. As explained in Para (3) to (9) above all legal procedures were followed in accordance with the prevailing law. The Petitioner has not disclosed his local selling price of imported subject item to substantiate their claim. Therefore, the allegations are incorrect and misleading. Kindly appreciate that market surveys are conducted in accordance with standardized procedure given in Office Order No. 17 dated March 19, 2014. The case merits no relief at this stage.

PRAYERS

It is submitted that the Valuation Ruling No.1315/2018 dated 15.08.2018 was issued under four corners of law, as provided under Section 25 A of the Customs Act, 1969. It is prayed that instant petition may be dismissed being devoid of merit.

<u>ORDER</u>

- 25. Hearing in the subject case was fixed for 30-10-2018. The Counsel of the petitioner appeared for hearing and reiterated the same arguments as already given in their petition. The main thrust of their 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 in respect of wrist watches (low end brands) Chinese origin do not reflect the prevalent market prices. They further contended that this huge enhancement in prices and wrong categorization of brands encourage smuggling channel and discourage legal channel of import and this application of prohibitively high values at import stage would cause hardship to the importers; hence a possible shift from legal imports to smuggling regime. On the other hand, the departmental representative 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 DRs presented various details of the valuation exercise/ working.
- 26. After going through the verbal as well as the written arguments forwarded by the petitioners and respondent department and scrutiny of facts surrounding the case as evident from record that the valuation exercise conducted to arrive at the assessable Customs values of wrist watches as notified suffers from infirmities. The traders' participation in the valuation meetings held in the Directorate

before the issuance of the ruling was limited. The trade has general perception that the values notified for wrist watches are unrealistically high not reflective of the correct market position. The snap check got done by the department during the revision proceedings corroborate this stance of the petitioners as well as general trade. The trade has issues viz. the brands mentioned in the foot note of the impugned VR. Therefore, the case is remanded back to the Director, Customs Valuation, Karachi for re-determination of Customs values, according to law, with due attention to the areas which have not yet been properly focused immediately. The Director is hereby ordered to start the proceedings for revision and conclude the same on priority; and meanwhile issue a Valuation Advice to the Collectorates intimating values for assessment purpose in the intermittent period when the fresh Valuation Ruling is in process. The petition is disposed of accordingly.

(Suraiya Ahmed Butt) Director General

Registered copy to:

M/s. Blue Sea Trading Co.
C/o M/s. Franklin Law Associates,
1st Floor, Plot No. 4C, Lane No.3, Al-Murtaza Commercial, DHA Phase No.VIII, 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.