

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

File No. DG (V)/Val.Rev/533/2016

Dated: 18th August, 2016

**Order in Revision No.233/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.838/2016 dated 20-04-2016**

- 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. Shadr-E-Wala Brothers.....

PETITIONER

VERSUS

Director, Customs Valuation, Karachi.....

RESPONDENT

Date(s) of hearing 08-06-2016 & 20-06-2016

For the Petitioners Mr. Younus

For the Respondent Mr. Abdul Majeed, Assistant Director
Mr. Safdar Abbas, Principal Appraiser

These revision petitions were filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.838/2016 dated 20-04-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following same facts and grounds:

2. In this regard being an aggrieved and dissatisfied with the values of "Walker" Brand Biscuits appears against S.No. I of the impugned Valuation Ruling, I, Sheikh Rizwan Elahi S/o. Sheikh Abdul Hameed having CNIC No 42301-5067358-5 Sole Proprietor of M/s. Shanderwala Brothers, Karachi would like to file review application against the aforesaid Valuation ruling on the basis of following facts and grounds.

1. That my firm is engaged in the Business of import of various products including "Biscuits" of assorted brands from worldwide sources and enjoys good name and reputation in the local market as well as in the Custom House.

2. That my firm has always discharged it's legal obligations in a lawful manner and has always conducted in accordance with law and has regularly contributed huge amount to the exchequer in terms of revenue.
3. That previously the under reference item was being assessed as per the values mentioned in the Valuation ruling No. 504/2012 Dated 19-12-2012 However, on reliance of a letter No. SI/MISC/18/20164 dated 05-03-2016 whereby upward trend in the prices of Biscuits in the international market was pointed out by the Appraisement Collectorate (West), the said valuation ruling was withdrawn on 15-03-2016 by the Director of Customs Valuation stated to be more than three years old. (Copy of VR No. 504/2012 and it's with-drawl letter dated 15-03-2016 attached)
4. That on 20-04-2016 a fresh valuation Ruling No. 838 was issued on the basis of market enquiry, whereby prices of almost all such brands mentioned in the previous ruling were revised by 10% to 29% enhanced values of Biscuits, however the values of "OREO" brand were maintained as same as notified in the previous ruling, furthermore the value of "WALKER" Brand was separately mentioned as US\$ 11.30 per Kg. (Copy of Ruling No. 838/2016 attached)
5. That it was shocking to peruse the under reference Valuation ruling, whereby the value of only brand i.e. "Walker", was determined as US\$ 11.30 per kg, which is unjustified, discriminatory, and baseless. „
6. It seems that there was some typographical error in the VR regarding value of Walker Brand Biscuits or deliberate intention to mention such high values under guidance /instructions of someone to restrict the specific brand for such period till the time the valuation ruling is revised.
7. That since issuance of Valuation Ruling, clearance of this specific brand biscuits is held and the consignments are lying at port pending clearance due to the unjustified value mentioned in the impugned VR. Therefore I prefer to file this review application in terms of section 25D of the Customs Act 1969 on the following grounds.

Grounds

8. That all along the Valuation Department has acted in an arbitrary and discriminatory manner.
9. That in the under reference Valuation ruling, maximum values of plain biscuits of some specific brands for all origin are mentioned at S. No. 3 & 4 as US\$. 1.60 & 1.45 Per Kg. respectively, and value of all other brands is mentioned at S.No.5 as US\$ 1.5/ Kg, similarly value of same item for USA & Europe origin is mentioned at S. No. 5 as US\$ 2.40 Per kg, it does not sound good to hear that maximum value covering entire range of biscuits in the world is determined as US\$ 2.40 Per Kg whereas "WALKER" is the only brand in the world which is sold or marketed @ US\$ 11.30 per Ka i.e. at almost 4 to 5 times higher value than any other brand in the entire world. Therefore it seems there is some error in the VR which needs to be rectified immediately for equal treatment of valuation with all other brands.

10. That before issuance of impugned valuation ruling all such imported Consignments of biscuits including "walker" brand, were allowed released by the respective Customs Collectorates on the basis of Values mentioned in the then prevailing Valuation ruling No. 504/2012. Now through the fresh valuation ruling, prices of almost all such brands are revised by enhancement of 10% to 29% of values mentioned in the previous ruling of Biscuits, except the values of "OREO" brand which are at par with the values notified in the previous ruling.

11. That comparison of previous and fresh ruling will clearly shows that specifically "WALKER" brand has been targeted by mentioning the value as US\$ 11.30 per kg, such determination is illegal, discriminatory, and a willful attempt to discourage the import and consumption in the local market for this specific brand.

12. That the "Walker" is neither a famous or recognized brand nor being sold at an extra ordinary price than any other brand even in the local market.

13. That the contents of para 4 of the valuation ruling is self explanatory, wherein date of meeting with the stake holders has been mentioned 'as 19-04-2016, i.e. only one day before the date of issuance of the impugned valuation ruling, the contents of this para are sufficient to acknowledge that the VR has been issued in hurriedly manners to target the only brand which is none other than WALKER" Brand,

14. It is pertinent to mention here that the only reason for issuance of the said impugned ruling was that it was brought to the notice of the Directorate General that there is higher, upward trend in the values of this product, subsequently values of entire range of biscuits has, been determined in the impugned ruling, but value of "Oreo" Brand was maintained, there might be no difference in value since last 4 years, on the other hand through the under reference VR, the impression is given that there is only one specific brand in the world for which the upward trend at about 465% is noticed.

15. That as the impugned valuation ruling covers entire range of Biscuits, the undersigned failed to understand the reason as to why the same could not be applied in the case of "Walker" Brand biscuits, the determination of the values of specific brand which is almost 400% higher than any other brand mentioned in the VR is not understandable, unjustified and illegal and the amount of gross discrimination. Therefore the value mentioned at S. No. 1 of the impugned ruling is liable to withdrawn.

PRAYER

16. In the light of above it is therefore requested to kindly issue necessary orders for revision / withdrawal of S. No. 1 of the Valuation ruling No. 838/2016.

17. 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:

18. Model Customs Collectorate Appraisement (West) vide letter No. Sl/Misc/18/2016-1 Group-1 (AW) dated 05-03-2016, had informed that the recent clearance data of imported Biscuits is higher than the determined value of the Biscuits which was determined by this

Directorate General under Section 25-A of the Customs Act, 1969 vide Valuation Ruling No. 504/2012 dated 19-12-2012. This Directorate General of Customs Valuation as per order of Director General of Customs Valuation issued withdrawal orders of Valuation Ruling No. 504/2012 dated 19-12-2012 vide this office letter No. Misc/9/2012-I/8497 dated 15-03-2016. An exercise to re-determine the Customs values of subject goods was accordingly under taken by this Directorate General. Valuation methods provided in Section 25 of the Customs Act, 1969 were adopted and applied sequentially to address the valuation issue at hand. Transaction value method provided in Sub-Section (1) of Section 25 was found inapplicable because it is generally known to all that majority of invoices produced at import stage are manipulated / fabricated and hence the requisite information required under the law was not available to arrive at the correct transactional value. Identical and similar-goods valuation methods provided in Sub-Sections (5) & (6) of Section 25 ibid were examined sequentially for applicability to determine Customs value of subject goods, this data provided some references however, it was found that the same could not be solely relied upon due to absence of absolute demonstratable evidence of qualities, commercial levels etc. and also it was observed that importers usually provide misleading descriptions while declaring their imports, as other types and varieties of similar goods to avoid the valuation ruling. Information available was hence found inappropriate. In line with the statutory sequential order of section 25, this office then conducted a market enquiry using Deductive Value Method under Sub-Section (7) of the Section 25 of the Customs Act, 1969. Consequently, the method provided under section 25(7) of the Customs Act, 1969 was applied and relied upon to derive at and determine assessable customs values of Biscuits. Meeting with stakeholders including importers, and representatives of trade bodies was held on 19.04.2016 to discuss the current international prices of the subject goods. The view point of all participants was heard in detail and considered to arrive at fair value and impugned Valuation Ruling No. Valuation Ruling No.838/2016, dated 20-04-2016 for imported Biscuits. The Petitioner Brand (Walkers) is also determined @ US \$ 11.30/Kg under section 25-A of the Customs Act, 1969.

Reply Objections / Comments

19. In reply to the contents of the above referred review petition the, parawise comments on behalf of the Respondents are submitted as under:-

Para (1): Need no comments introduction of importer

Para (2): Need no comments.

Para (3) Model Customs Collectorate Appraisement (West) vide letter No.SI/Misc/18/2016-1 Group-I (AW) dated 05-03-2016. had informed that the recent clearance data of imported Biscuits is higher than the determined value of the biscuits which was determined by this Directorate General under Section 25-A of the Customs Act, 1969 vide v ruling No. 504/2012 dated 19-12-2012. This Directorate General of Customs Valuation as per order of then Director General of Customs Valuation issued withdrawal orders of valuation ruling No. 504/2012 dated 19-12-2012 vide this office letter No. Misc/9/2012-I/8497 dated 15-03-2016. An exercise to re-determine the Customs values of subject goods was accordingly under taken by this Directorate General.

Para (4) The Customs value of biscuits was determined under section 25A of the Customs Act, 1969. The import data of identical and similar goods in terms of Section 25(5) & (6) of the Act was examined. Local market inquiry, under Section 25(7) of the Customs Act, 1969, was resorted and accordingly the customs value of the Imported biscuits was determined vide valuation ruling No.838/2016, dated 20-04-2016. As per prevailing valuation ruling issued by the competent authority and is applicable under section 25 A (4) of Customs Act 1969.

Para (5 & 6) The Valuation Ruling No.838/2016, dated 20-04-2016 of imported Biscuits is determined in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. The Walker Brand Biscuits also determined @ US \$ 11.30/Kg. The values were determined after proper investigation/enquiry on merit and therefore Ruling was issued the subject consignment is liable to assessed as per determined value.

Para (7) The valuation ruling 838/2016, dated 20-04-2016 of imported Biscuits issued under Section 25A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform applicable, there exists no justification to accept the transaction value for assessment. The subject consignment is liable to assessed as per determined customs values. The review is not maintainable and is prayed to be dismissed.

20. GROUNDS

Para (1to4) In response to the under reference para it is submitted that the valuation ruling No.838/2016, dated 20-04-2016, has correctly and lawfully been issued in terms trade bodies were held on 19.04.20 16 to discuss the current international prices of biscuits. In the meetings the representatives of KCC&1, including representatives of MCC, Appraisement, (West) participated in the meeting. The view point of all participants was heard in detail and considered to arrive at fair value and valuation ruling issued. Local market inquiry, under Section 25(7) of the Customs Act, 1969, and during the market enquiry it found that walker brand sale price is higher than other brand (Cash memo & work back calculation sheets are in file).

Para (5) Market enquiry conducted under section 25(7) of the Customs Act, 1969 Walker Brand biscuits is available in local market @ Rs. 490/150 gram and 490/125 gram after work back the average C& F value of Walker Brand biscuits comes US\$ 11.30/Kg . In connection it is submitted that MCC West also conducted market enquiry and informed the after work back C&F value US\$ 11.53Kg.

Para (6) Meeting with stakeholders including importers, and representatives of trade bodies was held on 19.04.2016 to discuss the current international prices of the subject goods. The view point of all participants was heard in detail and considered to arrive at fair value. It was appreciated that there is higher, up wardly trend in the values of this product and valuation Ruling is accordingly issued.

Para (7) Valuation rulings are issued under Section 25A of the Customs Act, 1969 by the Directorate Valuation who has the authority to determine the value of under above

said Section 25A. As per prevailing valuation ruling issued by the competent authority and is applicable under section 25 A (4) of Customs Act 1969.

Para (8) The valuation ruling 838/2016, dated 20-04-2016 of imported biscuits issued under Section 25A of the Customs Act, 1969 is as per law. In presence of valid valuation ruling issued by the competent authority for uniform applicable, there exists no justification to accept the transaction value. The review is not maintainable and is prayed to be dismissed.

PRAYER

21. The Valuation Ruling No.838/2016, dated 20-04-2016 of imported Biscuits issued under Section 25A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform applicable, there exists no justification to accept the transaction value for assessment. In view of the above fact & legal position review is not maintainable and is prayed to be dismissed.

ORDER

22. The record of the case has been examined and the arguments forwarded by the applicant, as well as departmental representative during the course of hearing have been considered.

23. The petitioner has contended that the under reference item was being assessed as per values mentioned in Valuation Ruling No.504/2012 dated 19-12-2012. But on a reference forwarded by MCC Appraisalment (West) ruling was withdrawn on 15-03-2016 and issued a fresh valuation Ruling No.838/2016 dated 20-04-2016. The previous ruling was revised by uplifting the values from 10% to 29%, however, values of Oreo brand were maintained, and only the value of walker brand was fixed at US\$ 11.30/kg which is unjustified and discriminatory. The petitioner further argued that maximum values of plain biscuits of some specific brands for all origin have been determined at S No. 3 & 4 at US\$ 1.60/kg and US\$ 1.45/kg, and they suggested that the value of 'Walker' brand should also be fixed @US\$ 2.40/kg.

24. On the other hand, Departmental Representative submitted his arguments that MCC Appraisalment (West) forwarded a recent clearance data which was higher than the determined values vide Valuation Ruling No.504/2012 dated 19-12-2012. Then this Directorate General of Valuation issued withdrawal orders of Valuation Ruling No.504/201 2 vide this office letter dated 15-03-2016. An exercise of re-determination of customs values of the subject goods was accordingly undertaken by this Directorate General of Valuation. Valuation methods provided in section 25 of the Customs Act, 1969 were adopted and applied sequentially to address the valuation issue at hand. Consequently, the method provided under Section 25(7) of the Customs Act, 1969 was applied to derive at and determine assessable customs values of biscuits. Nevertheless, the importer did not substantiate their point of view with any substantive documents. The petitioner basically contended that if reduction in price is not acceded to their prices of all other brand needs to be fixed. They stated that brand like 'Quick Bury Marzipan Cookies, McVities Victoria Saphire biscuit, Cad Choco short cake, Oreo biscuits etc. are their competitors. Their values have been fixed much under the actual value.

25. The record of the case has been examined. The plea of the importers is genuine and values of other similar brands also need to be fixed. Accordingly market survey was conducted. It was found that plain biscuits, cream biscuits, wafers etc. were sold at a very high rate as compared to declared values. The values were worked back and following values are fixed accordingly.

| S# | Description of Goods | PCT Code | Proposed PCT for WEOC | Origin | Present Customs Value C&F US\$/kg | New Customs values (C&F) US\$/kg |
|----|--|------------------------|----------------------------------|------------------------------------|-----------------------------------|----------------------------------|
| | Biscuits and Cookies, Wafers & Waffles and similar products | | | | | |
| 1 | Walker brand | 1905.3100 1905.9000 | 1905.3100.1000 1905.9000.1000 | All Origin | 11.30 | 11.30 |
| 2 | Oreo brand Milk Chocolate | 1905.3100 1905.9000 | 1905.3100.1100 1905.9000.1100 | All Origin | 2.65 | 5.00 |
| 3 | Plain Biscuits Parle-G & Britannia Brand | 1905.3100 1905.9000 | 1905.3100.1200 1905.9000.1200 | India | 1.55 | 3.00 |
| | | 1905.3100 1905.9000 | 1905.3100.1300 1905.9000.1300 | All Other Origin | 1.60 | 3.05 |
| 4 | Plain Biscuits Best in Brand Nutro, Julies, Jack & Jill, Zuka Hollanda, Eterna, Bissin, Kalsen As Bisca, Tiffany, Danisa, Torto, Deemah, Hwatai, Munchys, Maliban, Mayora Dolphin, K. Rogers, Glenda, Amara, Amulya, Marks & Spencer, Cofee Joy, Astor, Kokola, McVities, Royalty, Best-in Marks and Spencer | 1905.3100 1905.9000 | 1905.3100.1300 1905.9000.1300 | All Origin | 1.45 | 3.05 |
| 5 | Plain Biscuits other brands | 1905.3100 1905.9000 | 1905.3100.1400 1905.9000.1400 | All Origins Excluding USA & Europe | 1.55 | 3.00 |
| | | | 1905.3100.1500 1905.9000.1500 | USA & Europe | 2.40 | 4.20 |
| 6 | Cream Biscuits Parle-G & Britannia Brand | 1905.3100 1905.9000 | 1905.3100.1600 1905.9000.1600 | India | 1.60 | 4.95 |
| | | 1905.3100 1905.9000 | 1905.3100.1700 1905.9000.1700 | All Other Origin | 1.65 | 5.00 |
| 7 | Cream Biscuits Nutro, Julies, Jack & Jill, Zuka Hollanda, Eterna, Bissin, Kalsen As Bisca, Tiffany, Danisa, Torto, Deemah, Hwatai, Munchys, Maliban, | 1905.3100 1905.9000 | 1905.3100.1800 1905.9000.1800 | All origin | 1.60 | 4.80 |

| | | | | | | |
|----|--|-------------------------------------|-------------------------------------|---|------|------|
| | Mayora Dolphin,K. Rogers, Glenda, Amara, Amulya, Cofee Joy, Astor, Kokola | | | | | |
| 8 | Cream Biscuits other brands | 1905.3100 1905.9000 | 1905.3100.1900 1905.9000.1900 | All Origins Excluding USA & Europe | 1.65 | 4.80 |
| | | 1905.3100 1905.9000 | 1905.3100.2000 1905.9000.2000 | USA & Europe | 2.50 | 5.80 |
| 9 | Wafer Biscuits Parle-G & Britannia Brand | 1905.3200 | 1905.3200.1000 | India | 1.50 | 3.10 |
| | | | 1905.3200.1100 | All Other Origin | 1.55 | 3.30 |
| 10 | Wafer Biscuits Nutro, Julies, Jack & Jill, Zuka Hollanda, Eterna, Bissin, Kalsen As Bisca, Tiffany, Danisa, Torto, Deemah, Hwatai, Munchys, Maliban, Mayora Dolphin,K. Rogers, Glenda, Amara, Amulya, Cofee Joy, Astor, Kokola | 1905.3200 | 1905.3200.1200 | All Origin | 1.45 | 3.05 |
| 11 | Wafer Biscuits other brands | 1905.3200 | 1905.3200.1300 | All Origins Excluding USA & Europe | 1.55 | 3.00 |
| | | | | USA & Europe | 2.35 | 4.30 |
| 12 | All Other Biscuits/Cookies etc. of all other brands | 1905.3100 1905.3200 1905.9000 | 1905.2100 1905.1400 1905.2100 | All Origins except UK, USA | -- | 4.50 |
| | | | | USA/UK | -- | 5.50 |

sd/-

(Syed Tanvir Ahmad)
Director General

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 5. Director, Customs Valuation, Karachi/Lahore.
 6. Deputy Director (WeBOC/Database), Customs Valuation, Karachi for uploading in One-Customs and WeBOC database.
 7. Deputy Director (Review), Karachi.
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