

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

File No. DG (V)/Val.Rev/628/2016

Dated: July, 2016

**Order in Revision No. /2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.843/2016 dated 02-05-2016**

- 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 Haji Razak Haji Habib Janoo PETITIONER
and Others

VERSUS

Director, Customs Valuation, Karachi..... RESPONDENT

Date(s) of hearing 28-06-2016

For the Petitioners Mr. Abdul Basit
Mr. Sohail Hanif Janoo
Mr. Asad Khan Adv.

For the Respondent Mr. Safdar Abbas, Principal Appraiser

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.843/2016 dated 02-05-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following facts and grounds:

2. Being aggrieved and dissatisfied with the Valuation Ruling No. 843 of 2016 dated 2.05.2016 (**Annex A**), the Petitioner prefers this Revision Petition under section 25-D of the Customs Act, 1969, before this Hon'ble Authority on the following facts and grounds, namely:

FACTS

1. That the Petitioner is engaged in the trade of, inter alia, milk powder and other milk products. The Petitioner scrupulously discharges its liabilities under the various laws and has contributed huge sums to National Exchequer by way of, inter alia, diligent payment of duties and taxes. The Petitioner, in due course of its business, undertakes imports of Skimmed Milk Powder (in bulk packing) from various sources around the world.

2. That the Respondent Director has been entrusted by the Legislature through the enactment of section 25A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods imported into Pakistan. The Petitioner is seriously aggrieved by the acts of the Respondent Director, whereby it has unlawfully, arbitrarily, and in contradiction with the dictates of Sections 25 and 25A of the Customs Act, 1969, determined the values of Skimmed Milk Powder (hereinafter collectively referred to as 'Milk Powder') vide Valuation Ruling No. 843 of 2016. The Respondent Director has acted in grave violation and excess of the powers conferred thereupon and, through it's actions, is causing serious harm and loss to the Petitioner.
3. That the values determined by the Respondent Director through the impugned Valuation Ruling for Skimmed Milk Powder are as follows,

TABLE I

S. No.	Description of goods	PCT Code	Proposed PCT for WeBOC	Origin	Customs Values (C&F) US\$ per Kg
(1)	(2)	(3)	(4)	(5)	(6)
01.	Skimmed Milk Powder (In Bulk Packing)	0402.1000	0402.1000.1000	New Zealand, Australia, West Europe, Canada and USA	US\$ 2.45/Kg
		0402.1000	0402.1000.1100	Iran	US\$ 1.80/Kg
		0402.1000	0402.1000.1200	Other origins	US\$ 2.25/Kg

4. That, by way of background, it is submitted that the impugned Valuation Ruling has been issued in purported supersession of the Valuation Ruling No.780 of 2015 dated 9.12.15 (hereinafter 'VR 780/15'). VR 780/15 had been issued by the Respondent Director / it's predecessor without any determination of values and was, in fact, an exact reproduction of Valuation Ruling it had superseded, i.e. Valuation Ruling No. 708 of 2015 which was issued in January 2015. Copies of VR 780/15 and 708/15 are attached as **Annex B** and **C**.
5. That the values purportedly determined / reproduced through VR 780/15 were as follows,

TABLE II

S. No.	Description of goods	PCT Code	Proposed PCT for WeBOC	Origin	Customs Values (C&F) US\$ per Kg
(1)	(2)	(3)	(4)	(5)	(6)

01.	Skimmed Milk Powder (In Bulk Packing)	0402.1000	0402.1000.1000	New Zealand, Australia, West Europe, Canada and USA	US\$ 2.60/Kg
		0402.1000	0402.1000.1100	Iran	US\$ 2.00/Kg
		0402.1000	0402.1000.1200	Other origins	US\$ 2.50/Kg

6. That although VR 780/15 was issued in December 2015, it was an exact reproduction of the values contained in VR 708/15. Such issuance, although unlawful, was also in direct contradiction to the actual price paid or payable for imports of Skimmed Milk Powder (In Bulk Packing). Exemplary values at which Skimmed Milk Powder (In Bulk Packing) was available at the time from various origins were as follows,

Origin	Value	Date / Month of Purchase
Turkey	US\$ 1.800/kg	November
Turkey	US\$ 1.800/kg	20.10.2015
Turkey	US\$ 1.800/kg	15.10.2015
Turkey	US\$ 1.800/kg	02.10.2015
USA	US\$ 1.865/kg	30.09.2015
Germany	US\$ 2.030/kg	11.11.2015
Germany	US\$ 2.030/kg	14.10.2015
Germany	US\$ 2.030/kg	06.10.2015
New Zealand	US\$ 1.675/kg	23.08.2015

7. That as apparent, the values in VR 780/15 were even otherwise not reflective of the actual international market and rates at which Milk Powder was available. Although the Petitioner challenged VR 780/15 before this learned Authority, it was constrained to file an appeal before the Customs Appellate Tribunal when such challenge failed. The appeal has been reserved for judgment by the Tribunal and, as such, judgment is awaited.
8. That although the values in the earlier Valuation Ruling were not properly determined, the impugned Valuation Ruling has also been issued without proper determination. Although the impugned Valuation Ruling has been issued in supersession of VR 780/15, it has nonetheless maintained VR 780/15 as a benchmark and has been issued after assigning arbitrary discounts to the values contained in VR 780/15. Whereas, the international market values of Skimmed Milk Powder (In Bulk Packing) have seen a further decline and are presently at values lower than those listed above at paragraph 6.
9. That in support of the above contention, the Petitioner, along with other stakeholders, had submitted Commercial Invoices as well as other import documents which attested the fact that the values in VR 780/15 are not incorrect in light of the actual factual position. By way of illustration, some values are listed as below,

Origin	Value	Date / Month of Purchase
USA	US\$ 1.940/kg	09.02.2016
USA	US\$ 1.850/kg	09.02.2016
Germany	US\$ 1.900/kg	25.02.2016
Turkey	US\$ 1.400/kg	08.03.2016
Germany	US\$ 1.970/kg	31.03.2016
USA	US\$ 1.835/kg	05.04.2016
Germany	US\$ 1.930/kg	03.05.2016
USA	US\$ 1.835/kg	05.05.2016
Turkey	US\$ 1.460/kg	21.05.2016

10. That, in fact, certain exporting countries have also attested the fact that Milk Powder is available at considerably lower values than those improperly and unlawfully fixed / purportedly determined through the impugned Valuation Ruling.
- 11.
12. That it is also submitted that, being concerned with the effect of the previous Valuation Ruling No.708 of 2015 on the exchange of goods between the Republic of Turkey and Pakistan by way of mutual imports and exports, the Commercial Attaché of the Consulate General of the Republic of Turkey wrote to the Respondent Director vide letter dated 1.12.15. Therein, the Commercial Attaché highlighted the fact the values of Milk Powder had considerably decreased and that the previous Valuation Ruling, having determined much higher values, was causing unfair treatment to the Turkish exporters.
13. That the Respondent Director, while considering whether or not revise the values of Milk Powder contained in the previous Valuation Ruling No.708 of 2015, had accepted that the prices of Milk Powder had decreased considerably as compared to the values contained in the VR No.708 of 2015. However, while going against the explicit dictates of section 25A of the Customs Act, 1969, and while causing immense prejudice and harm to the Petitioner as well as the other importers of Milk Powder, the Respondent Director, without any application of mind and in a fashion patently contrary to the law, issued the impugned Valuation Ruling No.780 of 2015 without any determination of the values and merely copied the values contained in the VR No.708 of 2015. It is pertinent to note at the outset that the Respondent Director has, at paragraph 5 of the impugned Valuation Ruling, rejected the methods of valuation enshrined in section 25 of the Act, 1969.
14. That over and above the cogent and conclusive evidences provided, the importers also provided information, including names and contact details, of a variety of exporters/sellers of Milk Powder so that the Respondent Director may satisfy himself of the price at which Milk Powder is being bought by the importers thereof. However, such an exercise was also not conducted by the Respondent prior to issuance of the impugned Valuation Ruling.
15. That, instead, the Respondent Director issued the impugned Valuation Ruling No. 843 of 2016 dated 2.05.16, whereby the values as listed above at paragraph 3 were purportedly determined. The basis of such purported determination was Section 25(7) of the Customs Act, 1969. It is submitted that such determination is in direct contradiction to the dictates of Section 25 and 25A of the Act, 1969, as well as the judgments of the superior courts thereon.

16. That the Respondent Director has arbitrarily and without assigning any lawful or even cogent reason thereto rejected the values of Milk Powder presented before it by the Petitioner, as well as other stakeholders, on the pretext that “it is generally known to all that majority of invoices produced at the import stage are manipulated / fabricated”. It is submitted that such a statement by the Respondent Director is not only unlawful and highly illegal, it is also against all norms of trade and business. In fact, such a claim if accepted to be true as presented by the Respondet would entirely defeat the provisions of Section 25 of the Act, 1969, and leave the Petitioner as well as all other importers at the personal whims of the Respondent.
17. That from the preceding it is evident that the Respondent Director/ it’s officers rejected the actual transaction value of the importers of Milk Powder, including the Petitioner, on patently unlawful, arbitrary and motivated grounds.
18. That from the foregoing it is abundantly clear that the Respondent Director has failed to determine the values and issue the impugned Valuation Ruling in accordance with the law and has failed to make any lawful and independent application of it’s mind. Paragraph 3 of the impugned Valuation Ruling clearly shows that the Respondent Director has also failed to elucidate any lawful and legally sustainable reasons for disregarding the values presented by the Petitioner, as well as other importers, which are otherwise the prices paid or payable to the exporters / sellers in their respective countries at the time of import into Pakistan. At the same time, the Respondent Director has also failed to provide any lawful reason for determining values in the manner present in the impugned Valuation Ruling.
19. That the values unlawfully determined vide the impugned Valuation Ruling are unreflective of the actual transaction values, as is also apparent from the values reflected in the lawful imports of the Petitioner as above, and have been determined in violation of the law.
20. That it is also pertinent to note that, prior to the issuance of the impugned Valuation Ruling, the Petitioner had undertaken imports of multiple consignments of Skimmed Milk Powder. These consignments were released on a provisional basis under section 81 of the Customs Act, 1969, by securing differential amounts of duties and taxes. The Petitioner now apprehends that the determination under section 81 may be finalized by the relevant Authorities on the basis of the illegal, unlawful and prejudicial Valuation Ruling No.843 of 2016. It is prayed that this Hon’ble Authority restrain encashment of the securities deposited with the Customs Authorities.
21. That, in light of the preceding factual narration, the Petitioner prefers this petition on, inter alia, the following grounds, namely

GROUND

- A. That the Respondent Director has acted in excess of the powers conferred upon it while issuing the impugned Valuation Ruling and, as such, the impugned Valuation Ruling is liable to be set aside.
- B. That the power to issue Valuation Rulings is subject to the following of the methods contained in section 25 of the Act, 1969, by the Respondent Director, who has

otherwise transgressed such authority by declaring all invoices to be “manipulated / fabricated” without assigning any cogent or even otherwise lawful reason thereto.

- C. That the Hon’ble Sindh High Court, in the case of *Sadia Jabbar v/s Federation of Pakistan* (reported at PTCL 2014 CL 537), at paragraph 19, has held that

“19. [...] Section 25A has not of course, been cut loose from the Valuation Agreement. It still remains expressly tethered to it. In determining the customs value under subsection (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.”

- D. That, without prejudice to the foregoing, the Respondent Director, in light of the substantial amount of evidence presented before it during the stakeholder meetings, could not have fixed values as done through the impugned Valuation Ruling.
- E. That the values determined through the impugned Valuation Ruling are effectively values found in VR 780/15 and 708/15 after nominal and arbitrary discounts, which is in direct contradiction to the dictates of Section 25A of the Act, 1969, which requires actual determination in light of Section 25 and does not permit reliance on previous VRs, as well as the factual position which is apparent from the foregoing.
- F. That, even otherwise, the Respondent Director failed to ascertain whether the values contained in the impugned Valuation Ruling had any application / relation to the present market value on which the goods are being regularly bought by the Petitioner as well as other importers. Therefore, it is submitted that the impugned Valuation Ruling is not reflective of the actual transaction values at which the Petitioner, as well as other importers of Milk Powder, are purchasing the goods.
- G. That the Respondent Director has gravely erred in law by basing the entirety of the impugned Valuation Ruling on the notion that there is manipulation in the import records, which is not a maintainable allegation, especially in the absence of any determination thereof. It is respectfully submitted that such considerations fall outside the domain of the Respondent Director, especially while exercising powers conferred by section 25A of the Act, 1969. The sole purpose of the activity of determination of customs values is to ascertain as to what is the value of the goods under question.
- H. That, 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 actually paid or payable for the goods when sold for export to Pakistan”. As per sub-section (5), 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 valued”.
- I. That the Act, 1969, also defines the phrase “customs value of imported goods” as being the ‘value of goods [...]’. The Respondent Director has, however, without undertaking any exercise for the determination of the goods, has ignored this important facet of law.

- J. That it is clear that the law does not permit the Respondent 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 Respondent Director to determine the value of the Milk Powder strictly in light of the provisions of section 25 of the Act, 1969.
- K. That the Respondent Director failed to appreciate that the transaction values under sub-section 1 of section 25, i.e. the actual transaction value, as well as sub-section 5 of section 25, i.e. values of identical goods, show that the value of Milk Powder has significantly decreased since the issuance of the previous Valuation Ruling, and that the values of Skimmed Milk Powder are significantly lower.
- L. That the Respondent Director was in possession of undeniable evidences in the form of Commercial Invoices, Letters of Credit and Goods Declarations (to the extent of declarations made by the importers) which clearly show that the values of imported Milk Powder are drastically lower and are determinable as per the price actually paid / payable by the Petitioner and other importers with respect to Skimmed Milk Powder (in bulk packaging) of respective origins. Therefore, the Respondent Director, by virtue of the provisions of Section 25 and 25A of the Act, 1969, was bound by the law to determine the customs value of Skimmed Milk Powder downwards in light of the cogent evidence available on record.
- M. That the Respondent Director has also been in possession of contact details, including easily verifiable websites, of leading suppliers of Skimmed Milk Powder across the globe. The Respondent Director had the opportunity to contact any of the suppliers and verify whether the prices put forth by the Petitioner as well as the other importers are valid or not. However, the Respondent Director, while undertaking its unconstitutional, unlawful and extremely prejudicial crusade, failed to do so and relied on unsustainable grounds while issuing the impugned Valuation Ruling.
- N. That the impugned Valuation Ruling has been issued in complete ignorance of the methods of valuation contained in section 25 of the Act, 1969. Section 25 of the Act, 1969, provides a set of comprehensive and sequential methods of determining customs values. These methods are to be strictly followed/ utilized for the purposes of determining values under section 25A of the Act, 1969, as has also been held in the landmark judgment of the Hon'ble Sindh High Court in the case of *Sadia Jabbar v/s Federation of Pakistan*. The impugned Valuation Ruling, not having been issued in accordance with the law, is liable to be immediately set aside and vacated.
- O. That it is pertinent to draw the attention of this Hon'ble Authority to paragraph 6 of the impugned Valuation Ruling, whereby the Respondent Director has attempted to direct the field formations to apply the transaction value under sub-section (1) of section 25 of the Act, 1969, wherever the said value is higher than the value fixed in the impugned Valuation Ruling. It is submitted that the inclusion of such a paragraph in a Valuation Ruling is ultra vires of the provisions of section 25 and 25A of the Act, 1969. This has also been held by the Hon'ble Sindh High Court in the case of *Sadia Jabbar* (supra), at paragraph 25, as follows,

“25. [...] Finally, it also purports to apply the “invoice value” (i.e. the transaction value) if it is “higher” than the value determined in the ruling. This ruling is therefore, also *ultra vires* section 25A.”

P. That the Respondent Director has also erred in law by grouping together Skimmed Milk Powder of multiple origins. This is in direct contradiction to the provisions of section 25(13)(e) as well as in spite of the fact that the costs of production in each country are distinctly separate, and that fixation of value as such is highly deprecated by the higher judicial fora. In this regard, attention is also drawn to paragraph 26 of the case of *Sadia Jabbar* (supra), wherein it has been held that

“26. [...] The prices prevailing in any other country are not relevant. Thus, subsection 13(e) of section 25 expressly provides that “goods shall not be regarded as ‘identical goods’ or ‘similar goods’ unless they were produced in the same country as the goods being valued”.”

That the Petitioner craves leave of this Hon’ble Authority to prefer further grounds at the time of arguments.

PRAYER

In light of the preceding narrations, the Petitioner prays of this Hon’ble Authority that this petition may be allowed, and

- i.** Declare that the impugned Valuation Ruling 843 of 2016 dated 2.05.2016 issued by the Respondent Director is ultra vires of the Constitution of Pakistan, 1973 and the same is arbitrary, illegal and mala fide.
- ii.** Set aside the impugned Valuation Ruling 843 of 2016 dated 2.05.2016 being violative of the methods set out in Section 25 of the Customs Act, 1969 and Rules made there-under.
- iii.** Direct that the imports of Skimmed Milk Powder (In Bulk Packing) by the Petitioner be assessed as per the actual transaction value.
- iv.** Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling 843 of 2016 dated 2.05.2016 till the final disposal of this review petition.
- v.** Restrain the encashment of the securities deposited by the Petitioner of the differential amounts of duties and taxes in the consignments provisionally assessed under section 81 of the Customs Act, 1969.
- vi.** That, in the meanwhile, the pending and impending imports of the Petitioner be allowed to be provisionally released in terms of Section 81 of the Customs Act, 1969.
- vii.** Grant any other relief deemed just and appropriate in the circumstances of the case.
- viii.** Grant cost of the petition.

The respondent department was asked to furnish comments to the arguments submitted by the petitioner in the case. Parawise comments on the petition are given as under:

The Customs Values of Skimmed Milk Powder and Instant Milk Powder with vegetable fat were determined under Section 25-A of the Customs Act, 1969 vide Valuation Ruling No. 780/2015 dated 09-12-2015. References were received from some importers for revision of valuation ruling as they claimed that international prices of Skimmed Milk Powder and Instant Milk Powder with vegetable fat were declining. According to determine the true value of Skimmed Milk Powder and Instant Milk Powder with vegetable fat in light of current prevailing prices in the international market, an exercise to determine the Customs values of subject goods was 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 Skimmed Milk Powder and Instant Milk Powder with vegetable fat. Meeting with stakeholders including importers, and representatives of trade bodies was held on 25.04.2016 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 customs values and Valuation Ruling No 843/2015 dated 02-05-2016 is issued on downward trend.

Parawise Comments

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

Para (1): Need No comments.

Para (2) & (3): The Director valuation has to perform his duty within his jurisdiction to determine Customs Values on Genuine grounds. The Valuation Ruling 843/2016 is determined in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. This Directorate General conducted market enquiry. It will be noteworthy to place on record that determination of Customs values through market inquiry is in accordance with law.

Para (2) : This Directorate General have requested each importer to bring the aforementioned documents along with him and furnish the same at the time of the meeting. On the scheduled meeting a large number of importers appeared and attended it, however none of them submitted the bills showing selling price in the local market on the ground that the Directorate has no authority to call and see the local selling price through bills. It was informed to them that although there might be decline in the price in the international market but to confirm the same them same and see whether the benefit of the same is transferred to the end consumer, bills were required to judge its effect on

common man as Customs Act, 1969, provides method under Section 25(7) of the Customs Act, 1969, to conduct market inquiry and checking market price through bills is an authentic tool. The participants however, declined to submit the bills to prove their contention that the difference in prices has been passed on to the consumers and the prices have gone down in the local market also.

Para (4)&(5): Denied and vehemently contested. This is merely a false statement, based on ignorance of law and procedure. The Valuation Ruling 780/2015 is determined in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. In fact by asking the importers to submit Sales Invoices/Stamped Bills the department gave a golden opportunity to them to present documentary evidence of correct market prices. This tantamount to market inquiry "Conducted by the importers themselves". But by failing to submit the same, the petitioner actually proved the claim of the Department that prices of Skimmed milk had not gone down in the local market. It will be noteworthy to place on record that determination of Customs values through market inquiry is quite in accordance with law.

Para (6) &(10):During the determination of old valuation Ruling they did not submit the required documents i.e. the bills showing selling price in the local market but they did not provide the same to prove their contention that market price is going downward the international market but to confirm the same them same and see whether the benefit of the same is transferred to the end consumer, bills were required to judge its effect on common man as Customs Act, 1969, provides method under Section 25(7) of the Customs Act, 1969, to conduct market inquiry and checking market price through bills is an authentic tool. The participants however, declined to submit the bills to prove their contention that the difference in prices has been passed on to the consumers and the prices have gone down in the local market. Old Valuation Ruling No.780/2015 was issued on 09-12-2015 of imported Skimmed Milk Powder under Section 25A of the Customs Act, 1969, was issued after giving due opportunity of meeting to all the stakeholders including importers' Association. During the course of this scrutiny it was observed that prices as available in the local market now very closely match with the values as obtained at the time when the valuation ruling No. 708/2015 dated January 23, 2015 was issued. In the circumstances as narrated above, it was deemed appropriate to maintain the existing values as notified vide valuation ruling 708/2015 and, customs values were re-notified under subsection 9 of section 25 of the Customs Act, 1969 vide Valuation Ruling No 780/2015 dated December 09, 2015. However the petitioner filed appeal under section 25 D of the Customs Act, 1969, before the Director General of Customs Valuation which was rejected vide Order –in Revision No. 164/2016 dated 09-02-2016. After issuance of said Order-in-Revision, the petitioner has filed Appeal before the Customs Appellate Tribunal, Karachi. The appeal has been reserved for judgment by the Tribunal.

Para (11): Need no comments.

Para (12): As no sufficient information was presented by the importers to ascertain the truthfulness about the price and hence the prices already notified vide Valuation Ruling No. 708/2015 dated 23-01-2015 were maintained by

Director Valuation by exercising of powers conferred under Sub-Section (10) of Section 25 of the Customs Act, 1969 and the values were determined under Sub-Section (9) of the Customs Act, 1969, to save the public exchequer from any loss of revenue. The end consumer was being put to huge disadvantage by handful of importers, by not only pocketing more profit but they were also trying to inflict the national exchequer in terms of demanding for lesser duty/taxes. Customs values were re-notified under subsection 9 of section 25 of the Customs Act, 1969 vide Valuation Ruling No 780/2015 dated December 09, 2015 (Old Ruling).

Para (13) to (16): 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 Skimmed Milk Powder and Instant Milk Powder with vegetable fat. Meeting with stakeholders including importers, and representatives of trade bodies was held on 25.04.2016 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 customs values and Valuation Ruling No 843/2015 dated 02-05-2016 has been issued on downward trend.

Para (17)&(18): They did not submit the required documents i.e. the bills showing selling price in the local market but they did not provide the same to prove their contention that market price in going downward about 50% the international market but to confirm the same them same and see whether the benefit of the same is transferred to the end consumer, bills were required to judge its effect on common man as Customs Act, 1969, provides method under Section 25(7) of the Customs Act, 1969, to conduct market inquiry and checking market price through bills is an authentic tool. The participants however, declined to submit the bills to prove their contention that the difference in prices has been passed on to the consumers and the prices have gone down in the local market. Valuation Ruling No.843/2016 issued on 02-05-2016 of imported Skimmed Milk Powder under Section 25A of the Customs Act, 1969, was issued after giving due opportunity of meeting to all the stakeholders including importers' Association.

Para (19): The Valuation Ruling No. 843/2016 issued on 02-05-2016 of imported

Skimmed Milk Powder 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 application, there exist no justification to accept the transaction value for assessment.

Para (20): Need no comments.

FOUNDATIONS

The Director valuation has to perform his duty within his jurisdiction to determine Customs Values on Genuine grounds. The Valuation Ruling 843/2016 is determined in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. This Directorate General conducted market enquiry. It will be noteworthy to place on record that determination of Customs values through market inquiry is in accordance with law.

Para (A) Denied. In response to the under reference para it is submitted that the Valuation Ruling No.843/2016 issued on 02-05-2016, has correctly and lawfully been issued in terms of Section 25-A of the Customs Act, 1969. They did not submit the required documents or any prove that the international Market have been reduce to about 50 percent of the price.

Para (B)to(D) This Directorate General have requested each importer to bring the aforementioned documents along with him and furnish the same at the time of the meeting. On the scheduled meeting a large number of importers appeared and attended it, however none of them submitted the bills showing selling price in the local market. It was informed to them that although there might be decline in the price in the international market but to confirm the same and see whether the benefit of the same is transferred to the end consumer, bills were required to judge its effect on common man as Customs Act, 1969, provides method under Section 25(7) of the Customs Act, 1969, to conduct market inquiry and checking market price through bills is an authentic tool. The participants however, declined to submit the bills to prove their contention that the difference in prices has been passed on to the consumers and the prices have gone down in the local market also.

Para (E): The Valuation Ruling 843/2016 is determined in accordance with the provisions of Section 25A read with Section 25 of the Customs Act, 1969. This Directorate General conducted market enquiry. It will be noteworthy to place on record that determination of Customs values through market inquiry is in accordance with law.

Para (F): The Director valuation has to perform his duty within his jurisdiction to determine Customs Values on Genuine grounds.

Para (G) &(H):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 determined assessable customs values of Skimmed Milk Powder and Instant Milk Powder with vegetable fat. Meeting with stakeholders including importers, and representatives of trade bodies was held on 25.04.2016 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 customs values and Valuation Ruling No 843/2015 dated 02-05-2016

has been issued on downward trend.

Para (I): Denied. In order to ensure proper assessment of goods, the values of Skimmed Milk Powder was determined in accordance with law, after taking all the stakeholders on board. 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.

Para (J) to(L): Contested. As such all the Stakeholders were requested to substantiate corroboratory documents including bills in support of their claim whether the prevailing international market prices of Skimmed Milk Powder have come down or this is mere propaganda at the level of stakeholders. The applicants failed ultimately and could not provide any substantive documents including bills. It was informed to them that although there might be a decline in the price in the international market but to confirm the same them but see whether the benefit of the same is transferred to end consumers. Stamped Bills were required to judge its effect on common man as per Customs Act, 1969, provides method under section 25(7) *ibid*. However, due to non production of required documents, it proves that there was no decline in the prices of Skimmed Milk Powder/ Instant Milk Powder in International Market. Hence, the Customs values were determined vide Valuation Ruling No. 843/2016 dated 02-05-2016 on nominal downward trend.

Para (M)&(N) Denied. It is submitted that section 25A of the Customs Act, 1969 makes it absolutely clear that the methods laid down in section 25A of the Customs Act are to be followed but it is not essential to apply them in sequential order. The word “whichever is applicable” as used in sub-section 25(10) of section 25 gives discretion to the competent authority to adopt method as suited to the determination of customs value which may or may not be applied in the sequential order.

Para (O) The value so determined vide Valuation Ruling No.843/2016 dated 02-05-2016 is a minimum benchmark. In case values are higher than there mentioned in said Valuation Ruling the clearance Collectorate have been directed to apply the declared value wherever higher.

Para (P) Denied. Perusal of the Valuation Ruling No.780/2015 dated 09-12-2015 reveals that values of Skimmed Milk have been determined origin wise.

Prayer

The Valuation Ruling No.843/2016 issued on 02-05-2016 of imported Skimmed Milk Powder 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 application, there exists no justification to accept the transaction value for assessment.

In view of the above fact & legal position the review is not maintainable and is prayed to be dismissed.

ORDER

I have examined the record of the case as well as written and verbal arguments put forward by the petitioner and respondents. The petitioner contended that the prices of Skimmed Milk Powder

(in Bulk packing) have further been reduced in the international market and are presently available at considerable lower values than those improperly and unlawfully fixed purportedly determined through the impugned Valuation Ruling. The basis of such purported determination was section 25(7) of the Customs Act, 1969. Respondents have arbitrarily and without assigning any lawful or even cogent reason thereto, rejected the values of Milk Powder.

That the values unlawfully determined vide the impugned Valuation Ruling are unreflective of the actual transaction values.

That prior to the issuance of the impugned valuation ruling, the petitioner had undertaken imports of multiple consignments of Skimmed Milk Powder. These consignments were released on the provisional basis under section 81 of the Customs Act, 1969.

Mr. Asad Khan Advocate challenged the impugned valuation ruling S No.1, however, they stated that values have been increased to US\$ 1.80/Kg which are still lower than determined customs values. Local market value is Rs. 8200/MT after implementation of R.D, it ranges between Rs. 8000 – 8500/MT. they attached import invoices of different biggest importers like Engro, Nestle, Haleeb, Shakarganj, Imael Industries and Candy land and requested to verify from the supplier as well as high commission of Australia, New-Zealand and from Commercial Counselor also. They provided some websites:-

- i) Global dairy.com
- ii) Chicago mercantile exchange.
- iii) Fortnight values of.....

The department has not determined the values, rather decreased 10% straightway. The department; has made 3-categories, Europe for 50 countries same. Turkey has been put in other categories which is very cheap.

Respondent Department requested to all stakeholders to provide or bring some requisite documents including Sales Tax invoices or Sales bills but the participants however, declined to submit the bills to prove their contention and for knowing the correct market prices. On line prices were retrieved from Zaubax which were on higher side, market survey was conducted to know the factual values of the subject items which did not reflected any reduction in selling prices. Beside this, international market prices are also going upward. This factor has also accepted by the defense counsel. Despite this, the respondent department has considerably reviewed / re-determined the customs values vide prevailing Valuation Ruling No.843/2016 dated 02-05-2016.

In view of the above findings, the customs values appear to be fair and normal and issued after exhausting all the available provisions under the law, the same is therefore, upheld and revision petition is rejected.

Being identical on facts and law points, this order shall apply mutatis mutandis to the following (18) petitions.

(Syed Tanvir Ahmad)

Director General

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M/s. Asghar & Brothers,
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M/s. Shaikh Muhammad Ayaz & Co,
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M/s. Manan Impex,
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M/s. Shahdra Traders,
Near to Post Office GT Road, Lahore.

M/s. Shahid Brothers,
63-Circular Road, Lahore.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/
(North) Islamabad/ (Central) Lahore.
3. Collector, MCC Appraisement (East/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. Asstt. Director (Review), Karachi.
7. All Deputy/Assistant Directors (Valuation)
8. Guard File.