

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/560/2016

Dated: 14th September, 2016

**Order in Revision No. 255/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.849/2016 dated 06-05-2016**

- 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. Hansika Enterprises & Others

....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

....

RESPONDENT

Date(s) of hearing 11-07-2016 & 25-07-2016

For the Petitioners

Mr. Abid Nizar
Mr. Zahid Farooq

For the Respondent

Mr. Abdul Majeed, Assistant Director
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.849/2016 dated 06-05-2016 issued under section 25-A of the Customs Act, 1969, inter alia on the following grounds:

2. That the applicant is a sole proprietor of M/s Hansika Enterprises and is engaged in the business of import of merchandize of varied nature and their onward marketing in the local market for the past several years. The applicant is an income tax payee and enjoys credibility in the commercial circle in general and in the circle of importers in particular.

3. That the applicant being active importer has been importing shampoos of various brands from China, UAE and other countries continuously without any hindrance and or any allegation of under invoicing and mis-declaration.

4. That the Director Valuation has issued valuation ruling No. 849/2016 dated 06.05.2016, superseding valuation ruling No. 814/2016, ostensibly under Section 25A of the Customs Act, 1969, illegally and in violation of Section 25A and superior courts judgments pronounced in a

number of cases.

5. That the impugned valuation ruling has enhanced the values of shampoos unilaterally and illegally. To the dismay of the applicant, the impugned valuation ruling has fixed the customs values at US\$ 1.1 per kg illegally and unilaterally. It is pertinent to mention here that as per the superseded valuation ruling No.814/2016, the value of the shampoos imported by the applicant was determined at US\$ 0.9 per kg and the determination of the value was made after giving hearing to all the stakeholders and the same was accepted to all stakeholders including the local manufacturers. However, the impugned valuation ruling No.849/2016 dated 06.05.2016 has been issued in violation of Section 25A of the 1969 Act and it was issued unilaterally and without hearing the stakeholders. The method adopted in determining the impugned VR is in utter violation of under Section 25 and 25A of the Customs Act, 1969, and as interpreted in Sadia Jabar case as well as in Goodwill Traders case reported in 2014 PTD 176.

6. That it is evident from a bare perusal of the impugned valuation ruling that the Director has fixed the value of the shampoos without determining the same in terms of section 25 of the Customs Act, 1969. Without appreciating the ground realities and the correct legal position the customs values of shampoos has been fixed according to their brands, however, the most crucial fact that the variance in country of origin makes a marked difference in the actual cost of an item has been conveniently been ignored. How could it be ignored that prices of the shampoos imported from UAE or China and those imported from European countries could be the same. Obviously the shampoos imported by the Applicant from UAE or China are lower in value than those shampoos which are imported from European countries. But thanks to the impugned valuation ruling, the aspect has been completely ignored. Therefore, the impugned valuation ruling on the face of it is invalid, vague and unreasonable.

7. That after the issuance of impugned valuation ruling, there has been a considerable decline in the import of shampoos. This would result in rampant increase in smuggling of perfumes to Pakistan from various routes.

8. If we perused the impugned valuation ruling, it will be transpired that the order is stereotype order and almost the same wording is used in every valuation ruling. It appears that the Director has issued impugned VR ostensibly under 25(9) of the Customs Act, which is a Fall Back Method, But he has completely failed to appreciate that how the preceded method given under section 25 of the 1969 Act were not applicable. The impugned valuation ruling appears to have been issued on the basis of international prices gathered from internet sources, which is in utter violation of under Section 25 and 25A of the Customs Act, 1969 and Customs Rules, 2001 and superior courts judgments pronounced in a number of cases.

9. 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.

10. In this regard some of the judgments' of the Higher Judiciary are quoted herein below for ready reference:

SADIA JABAR CASE AT PARA 17 PAGE 13



"Therefore, on its proper interpretation, the change made to sub-section (10) has only a limited ambit. It is only on rare occasions, and in exceptional circumstances and/or for compelling reasons that the appropriate customs officer may deviate from the principle preceding of sequential application. Otherwise, the invariable practice must be to adhere to the said principle in the strict sense described in para 12 supra. Secondly, and perhaps more importantly, even if the customs officer is now to be regarded as having some discretion in the matter, it is difficult to see how he would be able to exercise it. The reason is that, as noted above, each of subsection '5), (6), (7), (8) and (9) expressly opens with words that make it applicable only if "the customs value of the imported goods cannot be determined under" the preceding applicable subsection. These words lock-in the principle of sequential application into the very structure of section 25 In our view, therefore, the changes made to subsection (10) 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 In 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 well. He has discretion to follow any method provided in subsections (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, reasons must be given. Similarly, the reasons for adopting a particular method are also required to be given, so it becomes clear to the importer that the order is In the public interest and not to the detriment of the Importer."

REHAN UMAR (2006 PTD 909) PARA 18

"For the foregoing reasons it is held that different methods of valuation provided in section 25 of the Customs Act, 1969 and the Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to subsection (5) and likewise without similar exercise under subsection (5) no resort can be made to subsection (6). In the same manner without an exercise in writing on record under subsection (6) no resort can be made to subsection (7) and similarly to subsections (8) & (9). This exercise is to be made in each case separately."

11. Again at para 6 of the impugned Valuation Ruling an illegality has been committed which renders the same to nullity in the eyes of law. It purports to apply the invoice value (i.e, transaction value) if it is higher than the value determined in the ruling. This is impermissible under Section 25A. Here again the petitioners are fortified by the judgment in the case of Sadia Jabar (relevant paras 24, 25, 26,). This aspect is also considered in M/S Goodwill Traders (2014 PTD 176) in para 13 (from line 4) in the following words:

"We conclude that the Valuation Ruling is ultra vires section 25A. One obvious reason for this is that it states, at the end, that "if the declared/invoice value is higher the same shall be applied". In other words, the values determined by the Valuation Ruling are minimum customs values. This is flatly contrary to Rule 110 (iv) and hence to subsection (9) of section 25."

12. In view of above, you are therefore, requested to revise the impugned valuation ruling keeping in view above characteristics and issue the fresh valuation ruling and release our consignment at the declare value.

ORDER

13. The case record and written as well as verbal submissions of the petitioners were examined in detail. The petitioner in their review application dated 30.6.2016 under Section 25-D of the Customs Act 1969, stated that they are aggrieved with the customs value determined for shampoos of various brands at US\$1.10/Kg, under C-Category Brands vide Valuation Ruling 849/2016 dated 06.05.2016. They also objected the revision of previous Valuation Ruling 814/2016 dated 28.01.2016 and termed the act of revision of the valuation ruling as illegal and in violation of provisions of section 25-A of the Customs Act 1969.

14. As regards the legality of the process of revision of Valuation Ruling 814/2016 is concerned it is noted that there were number of review petitions filed by importers against the said valuation ruling. Moreover, the honorable High Court of Sindh at Karachi vide orders dated 10-11-2015 in constitutional petition No. D-6918/2015 directed that in cases where the valuation ruling is more than 90 days old and an importer has approached Director Valuation in terms of Para 21 of the Judgment in the case of Sadia Jabbar supra, fresh consignments of such importers shall be allowed provisional release in terms of Section 81 of the Customs Act, 1969. Since 90 days were passed to Valuation Ruling 813/2016 and a number of representations were received from commercial importers and multi-national companies regarding values determined in the valuation ruling, hence an exercise was initiated to re-determine the customs value of the items under reference. Hence question of illegality or violation of law does not arise at all.

15. With reference to their grievance for customs value determined for shampoos at US\$1.10/Kg respectively, under C-Category Brands vide Valuation Ruling 849/2016 dated 06.05.2016, perusal of the said ruling reflects that custom value of the items were determined in three categories i.e. High price brands in A-Category, Medium price brands in B- Category and low end brands in C- Category. The petitioner's brands are already placed in low end brands. The applications of customs Values so determined are not restricted to the petitioner only but are applicable to all imports throughout Pakistan without any exception.

16. I have deliberated on the case record as well as verbal and written arguments put forth by the petitioners and the respondent department. The respondent department submitted that the valuation ruling was correctly and lawfully revised after giving hearing opportunity to all stake holders/ importers. The inputs during meeting from the participants to determine the customs value and place the goods/brands in accordance to their value i.e. high value, medium value and low end brands were taken into consideration. The department further stated that all valuation methods from sub- Section (1) to (8) were properly exhausted sequentially to address the valuation issue in hand and reasons for rejection of the same have also been clearly mentioned in the ruling. Consequently, the impugned valuation ruling was issued under Section 25(9) of the Customs Act, 1969 after examining the import data, on line prices from international websites and by analyzing all the gathered information.

17. In view of above, I have inferred that customs values have been determined on reasonable and sound basis after giving fair opportunity to the stake holders, in accordance with the law. The Valuation Ruling 849/2016 dated 06.05.2016, is therefore upheld and revision petition is rejected.

18. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (06) petitions.

S#	Petitioners' Name	File No.
1	M/s Astor International	DG(V)Val.Rev/561/2016
2	M/s Haseeb Traders	DG(V)Val.Rev/595/2016

3	M/s Sky Corporation,	DG(V)Val.Rev/594/2016
4	M/s AG International	DG(V)Val.Rev/550/2016
5	M/s M.B. Traders	DG(V)Val.Rev/562/2016
6	M/s Shah Brothers	DG(V)Val.Rev/534/2016


(Syed Tanvir Ahmad)
Director General

Registered copy to:

- 1) M/s. Hansika Enterprises,
House No. 530/1, Mari Road, Feroze Pura,
Rawalpindi
- 2) M/s. Astor International,
10-C, Bukhari Commercial Lane 3, DHA Phase-VI,
Karachi.
- 3) M/s. Haseeb Traders,
Shop No. 10, 1st Floor, Center, Shah Alam Market,
Lahore.
- 4) M/s. Sky Corporation,
Plot No. LY, 6/1, Flat No. 122, Shah Wali Ullah Road, Khadda,
Karachi.
- 5) M/s. AG International,
30-BM, Makki Madni Centre, Dhal Mahallah, Lahore.
- 6) M/s. M.B. Traders,
Shop No. 3, 1st Floor, Pak Market, Lahore.
- 7) M/s. Shah Brothers,
Flat No. C-4/5, Iqbal Centre, M.A. Jinnah Road, Karachi.

Copy to:

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