

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/598/2016

Dated: 03 August 2016

**Order in Revision No.219/2016 under section 25-D of the Customs Act, 1969
against Valuation Ruling No.856/2016 dated 23-05-2016**

- This copy is granted free of charge for the private use of the person to whom it is issued.*
- 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.*
- An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.*
- If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.*

M/s Flavaro Pak & Others

VERSUS

PETITIONERS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

23-03-2016

For the Petitioner

Mr. Wahid Bux, Consultant M/s Flavaro Pak

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.856/2016 dated 23-05-2016 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds.

2. The petitioner is an importer of canned pine apple and fruit cocktail from Singapore having origin of Thailand, Philippine and other countries. The petitioners being aggrieved and dis-satisfied with the Valuation Ruling No. 856/2016 DATED 23-5-2016 issued by the respondent in respect of items serial No. 2(1) Pineapple (Full Slice) Hosen brand all origin US\$ 1.00 per kg less than 2800 grams serial No.2 (ii) above 2801 gram upto 5000 grams Hosen brand all origin US\$ 0.98 per kg, serial No.3 (1) Pineapple (broken slice) less than 2801 grams Hosen brand all origin US\$ 0.97 per kg, 3(u) above 2801 gram above 5000 grams Hosen brand all origin US\$ 0.96, serial No.4(1) Fruit Cocktail less than 2801 gram Hosen brand all origin US\$ 0.85/per kg 4 (ii) Fruit Cocktail above 2801 gram upto 5000 grams Hosen brand all origin US\$ 0.82 per kg issued in an un-lawful and malafide manner, the petitioner above named prefer to file revision petition on the following terms.



456/2012 dated 24.4.2012, now same got revised at US\$ 0.65/kg (3%) as per superseding impugned Valuation Ruling. Whereas in the instant case the customs determined value of Fruit Cocktail Hosen Brand is at US\$ 0.85/kg against the declared value/transactional value as US\$ 0.54/kg (57%). No reason of enhancement of value has been given in the impugned valuation ruling.

7. It is respectfully, submitted that Respondent No I had not considered the transactional value of the product which is being regularly imported against DP. The subsequent remittances which further strengthens the facts that the transactional value is absolutely correct in terms of section 25(1) of the Customs Act, 1969. They also failed to consider sales tax return, sales register import. Therefore, the maximum benefit may kindly be considered in the interest of Public at large. The exorbitant customs value vide impugned VR is irrational, not logical same has been issued in violation of the Rehan Umer Case (2006 PTD 909) , where in it was observed by the Honorable High Court that an exercise of market enquiry cannot be termed as legal without accommodating the view of relevant stakeholders.

8. That there is no justification for determination of the customs values at higher value, ignoring the transactional value and other sequential method given vide section 25 of the Customs Act, 1969.

9. It is submitted that Importer Profit 20% miscellaneous expenses about 15% (1% Landing charges 1% Insurance, 1% shipping charges, 3% warehouse charges, 3% clearing charges 3%, security expenses charges about 2%) and whole sale profit 10% is required to be allowed.

10. The petitioner craves leave of the Directorate General of Custom Valuation to adduce and raise further grounds at the time of hearing.

PRAYER

10. In view of above forgoing facts it is prayed that valuation ruling No.856/2016 dated 23-5-2016 being violative of the Customs Act, 1969 and Chapter IX of the Customs Rules but also against the principles as laid down and the law as settled by superior courts. As such the petitioner is correctly importing the consignments at true transactional value in terms of section 25(1) of the Customs Act 1969, same is liable to be accepted, as such the declared value/transactional value of Pine Apple (Full Slice) Hosen Brand @US\$ 0.49/ per kg less than 2800 grams, against US\$ 1.00 per kg as Customs Value determined vide Serial No 2(i) and Fruit Cocktail 825 grams and 836 grams @ US\$ 0.54/ per kg against the US\$ 0.85 per kg vide Serial No.4(1) as per valuation ruling and Fruit Cocktail 3060 grams @US\$ 0.50 per kg instead of US\$ 0.82 per kg against Serial No.4(u) of valuation ruling are liable to be accepted. The customs value may kindly be revised in terms of section 25-D of the Customs Act, 1969 in the interest of justice & equity. Meanwhile three consignments in pipeline, where one consignment is lying at port incurring heavy demurrages and detention charges, same may kindly be released



provisionally under section 81 of the Customs Act 1969 securing differential amount of duty and taxes in the shape of bank guarantee/pay-order pending determination of the customs value.

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

12. The customs values of Sweet Corn, Canned Pineapple & Fruit Cocktail were determined under Section 25-A of the Customs Act, 1969 vide Valuation Ruling No.456/2012 dated 24-04-2012. Importer of Sweet Corn, Canned Pineapple & Fruit Cocktail has submitted a reference where in they requested for revision of the valuation ruling. They informed that excising Valuation Ruling does not include the customs values of Fruit Cocktail at serial 04 of the ruling from origins other than Philippines. Importers requested for re-determination of customs values of Fruit Cocktail Accordingly to determine the true value of Sweet Corn, Canned Pineapple & Fruit Cocktail in line of current prevailing prices in the international market, all 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 (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 is found that the same could not be solely relied upon due to absence of absolute demonstrable 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 but the gathered information could not be exclusively relied on. Computed value method as provided in section 25(8) of the Customs Act, 1969 could not be applied for valuation of the aforementioned goods as the cost of raw material under clause (a) and amount of profit and general expenses under (b) of section 25(8) of the Act, in country of export, could not be ascertained. Oil values were also checked. All the information were analyzed and evaluated and sub-section (9) of section 25 of the Customs Act, 1969, was applied to arrive at assessable customs values of Sweet Corn, Canned Pineapple & Fruit Cocktail. The difference in customs values determined in previous valuation ruling No.456/2012 dated 24-04-2012 was observed from 12.51 to 47% was irrational. The department tried to determine rational customs values of Sweet Corn, Canned Pineapple & Fruit Cocktail by minimizing the difference between the identical item from 2.59 to 21.53% Meeting with stakeholders including importers, and representatives of trade bodies was held on 09.05.2016 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 customs value of Sweet Corn, Canned Pineapple & Fruit Cocktail and valuation ruling No.856/2016 dated 23-05-2016 was issued.



Parawise Comments

13. Para (i): Need no comments being related to introduction of the importer.

14. Para (ii): Denied. All methods of valuation as laid down in section 25 of the Customs Act, 1969 i.e. 25(1) (5) (6) & (7), were exhausted and finally customs values were determined under section 25(9) of the Customs Act, 1969. Moreover importers including FPCCI & KCC&I and Pakistan Kiryana Merchants Associations were also associated while determining the customs values of the subject goods.

15. Para (iii): Market survey as provided under Section 25(7) of the Customs Act, 1969, was conducted. Input / feedback from different stakeholders were also gathered during the stakeholders meetings. After evaluating and analyzing information gathered from the above, customs values were determined under section 25(9) of the Customs Act, 1969, was applied to arrive at the assessable customs values and Valuation Ruling No. 858 /2016 issued on 23- 05-2016. The values were determined as per law for uniform application in all fields Collectorate.

16. Para (iv)to(vi): To determine the true value of Sweet Corn, Canned Pineapple & Fruit Cocktail 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 verities 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 but gathered information could not be exclusively relied on. Computed value method as provided in section 25(8) of the Customs Act, 1969 could not be applied for valuation of the aforementioned goods as the cost of raw material under clause (a) and amount of profit and general expenses under (b) of Section 25(8) of the Act, in the country of export, could not be ascertained, On line values were also checked. All the information was analyzed and evaluated and sub-section (9) of section 25 of the Customs Act, 1969, was applied to arrive at assessable customs values of Sweet Corn, Canned Pineapple & Fruit Cocktail.

17. Para (vii): Valuation Ruling No.856/2016 issued on 23-05-2016 under section 25A of the Customs Act, 1969, was issued after giving due opportunity of meeting to all the stakeholders including importers' Association. Moreover section 25(10) clearly states that section 25 may or may not be applied in sequential manner. The word "whichever is applicable" as used



in sub-section 25(10) of section 25A give discretion to the competent authority to adopt method as suited for the determination of customs value under section 25(A) of Customs Act, 1969.

18. Para (viii): It is submitted that the value market enquiry also conducted all reasonable discount was given in the work out value of the subject goods. The Director valuation has to perform his duty within his jurisdiction to determined customs values on genuine ground.

19. Para (xi): It is humbly requested to set-aside the petition being devoid of merits.

PRAYER

20. It is respectfully prayed that the customs values of subject goods were determined after associating all the relevant stakeholders and after following the valuation methods laid down in section 25 of the Customs Act, 1969. Finally the customs values were determined under section 25(9) of the Customs Act, 1969 after detail investigation. Accordingly the appeal has no merit for consideration and is liable to be rejected.

ORDER

21. The arguments of importers have been considered. Market inquiry was again conducted, which revealed that the values are slightly on lower side. Moreover, it was noted that the present values have been fixed on the basis of net contents. It seems odd that value has been fixed on the basis of net content weight whereas the goods are sold in cans or packing and never sold on the basis of net contents. Moreover, the values have been now fixed on the basis of weight. The market inquiry also verified the same fact.

22. In view of above, the values already fixed are confirmed with the amendment that these values shall include the weight of the essential packing also. The heading of column 8 of Valuation Ruling No.856/2016 shall be amended as under:

“Customs value C&F US\$ per kg”

23. The effect of above amendment shall be that all assessments shall be made on the basis of net weight basis i.e. inclusive of essential (can etc.) packing. This order shall take effect with immediate effect.

24. Being identical on facts and law points, this order shall apply mutatis mutandis to the following (05) petitions.

S.No.	Petitioner Name	File No.
1	M/s Shiraz Corporation	DG(V)Val.Rev/677/2016
2	M/s Easter Trading Corp	DG(V)Val.Rev/597/2016
3	M/s Int. Trading House	DG(V)Val.Rev/678/2016
4	M/s Diamond Impex Corp	DG(V)Val.Rev/568/2016
5	M/s General Food Corp.	DG(V)Val.Rev/605/2016



(Syed Tanvir Ahmad)
Director General

Registered copy to:

M/s Flavaro Pak
Through Shaikh Madan Law Associates
Suite No.404-A, 4th floor, Japan Plaza,
M. A. Jinnah Road, Karachi.

M/s Shiraz Corporation,
2-E, State Life Building No.4,
Shahrah-e-Liaquat, Karachi.

M/s Easter Trading Corporation,
1-Wali Centre, SB-6, Block-13-C, Gulshan-e-Iqbal,
Karachi.

M/s International Trading House,
Shop No.107, 1st floor, Raja Centre,
Gulberg-II, Lahore.

M/s Diamond Impex Corporation,
House No.152, G/1, Block-2,
Adjacent Khalid bin Waleed Road, Karachi.

M/s General Foods Corporation
305-306, Main Shahrah-e-Liaquat,
Al-Rehman Trade Centre, Karachi.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/
(North) Islamabad/(Central) Lahore.
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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 (WeBOC/Database), 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.

