

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

File No. DG (V)/Val.Rev/03/2019

Dated 08 August, 2019

**Order in Revision No. 09 /2019 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1360/2019 dated 04-04-2019**

- 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

25/06/2019, 02/07/2019 and 16/07/2019

For the Petitioners

Mr. Haroon Potiawala
Mr Latif ur Rehman Kazmi
Syed Aijaz Ahmed PSMA
Mr. Zafar Mahmood PSMA
Mr. Uzair Qadir Shoro Adv.
Mr. Farman Ullah M/s Khyber Traders
Mr. M. Anwar M/s Zaki Ind.
Mr. S. Anwer Razvi M/s Colgate Palm.
Mr. Mudassar Hussain M/s ZIL Ltd.

Mr. Iqbal Hussain Principal Appraiser



For the Respondent

This revision petition was filed under Section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.1360/2019 dated 04-04-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being aggrieved by and dissatisfied with Valuation Ruling No.1360/2019, the petitioner prefers this Revision Petition under Section 25-D of the Customs Act, 1969, before this learned Authority on the following facts and grounds, namely;

3. **FACTS**

1. That the petitioner is engaged in the import and commercial trade of various kinds of Toilet Soap. As relevant for the present purposes, the petitioner regularly undertakes the import of Toilet Soap. The petitioner, through decades of hard work, dedication and commitment to professional excellence and quality, has earned an unimpeachable reputation, trust and confidence of satisfied customers all over the country.

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, without making a determination, and on an ex-parte basis fixed the values of Toilet Soap vide Valuation Ruling No. 1360/2019 (hereinafter 'the impugned Valuation Ruling'). The Respondent Director has acted in grave violation and excess of the powers conferred thereupon. Such actions are causing serious harm and irreparable loss to the petitioner.

3. That the petitioner is seriously aggrieved and prejudiced by the acts of the Respondent, whereby the Respondent Director, in spite of its obligations under the law, has unlawfully, arbitrarily, and in dire contradiction and violation of Section 25A of the Customs Act, 1969, and the Customs Rules, 2001, framed there under, purportedly 'determined' / fixed the values of Toilet Soap vide the impugned valuation ruling. The Respondent Director has acted in violation and excess of the powers conferred thereupon under the Customs Act, 1969, and the issuance of the impugned Ruling has resulted in serious harm and loss to the petitioner as well as other stakeholders in the local market of Toilet Soap. The actual price paid / payable for the impugned goods remains significantly lower than the value unlawfully fixed through the impugned Valuation Ruling, however, despite the patent illegalities therein, the Respondent Director has deemed the impugned Ruling fit for the purposes of Assessment of imported consignments of Toilet Soap. The petitioner submits a brief background to the issue as follows.

4. That in due course of its business, the Petitioner conducts imports of Toilet Soap which are available for purchase at significantly lower values than those fixed by the Respondent Director vide the impugned Valuation Ruling.

5. That, as such, the price paid / payable for Toilet Soap purchased for import into Pakistan by the petitioner at present remain considerable lower than the value assigned thereto vide the impugned valuation ruling, which has not been determined in terms of Section 25A and 25 of the Act, 1969. The price paid / payable for the said Toilet Soap at the time of import into Pakistan remains significantly lower than the value so assigned through the impugned valuation ruling.

6. That, whereas, under the scheme of the Customs Act, 1969 (hereinafter 'the Act, 1969'), the Assessment / Valuation of imported goods is carried out either under Section 25 of the Act, 1969, or under Section 25A r/w Section 25 of the Act, 1969. Assessment / Valuation is carried out under Section 25A of the Act, 1969, whereby Customs / Assessable values of imported goods are determined in advance by the Respondent Director or the Collector of Customs, as the case may be, through the issuance of a valuation ruling issued after strict adherence to the methods of valuation laid down in Section 25 of the Act, 1969. Due to the scheme of the Act, 1969, values properly determined under Section 25A of the Act, 1969, with adherence to Section 25 thereof shall be at or about the actual price paid / payable for the goods at the time of import into Pakistan.

7. That it is pertinent to note that although such assessment was in vogue, assessed goods declarations reflect that the actual price paid / payable for the said Toilet Soap was being declared diligently and strictly in accordance with the law by the various importers engaged in such import.

8. That, as evident from the foregoing, the actual price paid / payable for the Toilet Soap at the time of import into Pakistan remains considerably lower than the list of values fixed by the Respondent vide the impugned Valuation Ruling, through which no determination whatsoever has been carried out and has been issued in a manner directly contradictory and ultra vires the Act, 1969.

9. That, in addition to the foregoing failings evident from the impugned Ruling, the Respondent has even otherwise gravely erred in applying the provisions of Section 25A and 25 of the Act, 1969. The Respondent has purportedly issued the impugned Ruling under sub-Section (7) of Section 25 of the Act, 1969, whereas the Respondent has failed to provide any lawful and or cogent reasons for failing to adhere to the preceding sub-Sections of Section 25.

10. That while 'determining' values under the impugned Ruling, the Respondent ignored the sequential methods of valuation contained in Section 25 of the Act, 1969, and, in a patently arbitrary and whimsical manner, chose Section 25(7) of the Act, 1969. It is submitted that the Respondent has utterly failed to adhere to not applying / following the methods of valuation preceding sub-Section (7) of Section 25 the Act, 1969.

11. That, without prejudice to the foregoing, it is submitted that the Respondent has even failed to properly follow the dictates of Section 25(7) of the Act, 1969, and has misused the provisions thereof in an attempt to justify unlawful fixation of values of the said Toilet Soap of. The Respondent has, in fact, used sub-Section (7) of Section 25 of the act, 1969, in order to issue a list of values which is neither reflective of the actual transaction values at which Toilet Soap are available in the international market, nor is permissible under the law in such a manner.

12. That, in addition to the above, the Respondent has arbitrarily and without assigning any lawful or cogent reason there to refused to carry out a proper determination of values under Section 25(1), (5) and (6) of the Act, 1969. This is so despite the fact that Respondent had undeniable evidences before it, including documents submitted by the stakeholders, certifying that the price actually paid / payable for Toilet Soap in fact much lower than the values fixed by through the impugned valuation ruling.

13. That the actions of the Respondent in respect of fixation of values for Toilet Soap in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the petitioner as enshrined in the Constitution of Pakistan, 1973, including Articles 6, 8, 10A, 18 and 25A, thereof.

14. That, in light of the preceding narration, the Petitioner prefers the instant petition on, inter alia, the following grounds, namely:

4. **GROUND**S

- A. That the impugned Valuation Ruling is illegal, arbitrary, unjust, ex-parte and without any lawful authority and, as such, is liable to be set aside with immediate effect.
- B. That the Respondent Director has not carried out any determination whatsoever through the impugned Valuation Ruling in respect of Toilet Soap.
- C. That the Respondent Director has issued the impugned valuation ruling on misconceived, unlawful and arbitrary grounds, and has failed to provide any opportunity of participation to the petitioner.



- D. That the Respondent Director has not given any lawful reasons for imposing the listed values for Assessment of Toilet Soap the time of import into Pakistan.
- E. That the Respondent Director has wrongly applied the provisions of Section 25 of the Act, 1969, and has invoked sub-Seciton (7) only for the purposes of justifying fixation of value which is otherwise impermissible under the Act, 1969, and is indeed alien tot eh scheme thereof. Detailed reasons there for have been elicited herein above.
- F. That, as to the market survey purportedly relied upon, the Hon'ble Sindh Court which deciding the Constitutional Petition No. 1483/2005 (2006 PTD 909) at Para 19 has ruled that if market survey is conducted in terms of sub-Section (7) of Section 25, the importer must be associated. Para 19 is reproduced as under:-

"19. Coming to the second question we find that in the Standing Operative Procedure ol of 2005, dated 13.09.2005, dated 13.09.2005, it is specifically provided that the importer or his representative shall be associated with the working committeeif deductive method of valuation under Section 25(7) is to be restored, No lengthy discussion is threfore, required and it is held that no assessment can be made on the baiss of working of a committee continues for the purpose of determing the deductive valuation under Section 25(7) without associating importer or his representative in each case."

- G. That in addition to the foregoing, under sub-Section (7) of Section 25 of the Act, 1969, a market survey has to be restricted to the sales of imported items at the same commercial level after import, which, by no means, is the retail market.
- H. That, furthermore, it is also pertinent to draw the attention of this learned Authority to paragraph 6 of the impugned Valuation Ruling, whereby the learned 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."

- I. That the Respondent Director has attempted to justify the unlawful fixation of values through an arbitrary application of the provisions of Section 25(7) of the Act, 1969. Even corresponding Rule 119 has been completed discarded which provides a co mprehensive procedure as to how the market inquiry is to be carried out and how various deductions are to be made. It is submitted that a market survey conducted without the association of any independent party and / or the stakeholders is a nulity in the eyes of the law. Even otherwise, the values so fixed do not reflect outcome of a fair survey.
- J. That the market survey has been purportedly conducted in violation of the principles of natural justice and equity, as well as the Act, 1969, and the Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in the "greatest aggregate quantity" is to taken into account. Sub-section (7) further stipulates that aggregate quantities has to be at least at apr with the quantities of sale of the petitioner, as



well as other importers, dealing on a wholesale basis. Whereas, the Respondent Director has failed to produce any evidence in support of its contention that a lawful market survey was conducted and the aggregate quantities were taken into account and all deductions were properly made.

- K. That the phrase "greatest aggregate quantity" has been further exposted in Rule 119 of the Rules, 2001, wherein it has been stated that such quantity, in addition to being the greatest aggregate, also needs to be the greatest number in units sold at the first commercial stage after importation. Further, the provisions of Rule 119(3) also necessitate the involvement of the importers including the petitioner, in the process of market survey and determination in consequence thereof. However, entire process has been floated to fix higher value of Directorate's own choice.
- L. That the Pakistan Soap Manufacturers Association represents the local manufacturers of the Soap in Pakistan (Copy of evidence along with import documents are attached as Annex-B), the act of the respondent Director is against the Principle laid down by the Hon'ble Sindh High Court in the case of Director General Customs Valuation and another V/s M/s. Al-Amin Cera in SCRA 744 of 2016, dated 19-03-2018 reported as 2018 PTCL 636.

"13. In our view, the local manufacturers have no standing to ask for a determination and / or enhancement of the Customs value of any goods under Section 25A or Section 25D and for this purpose to file an application or petition under either Section or intervene or be allowed or asked to participate in any pending proceedings or be made a party thereto, whether as "stakeholders", or otherwise. The interest of the local manufacturers is to have the value set at as high a level as possible on the ground that the transaction value or the value set in the Valuation Ruling (as the case may be) is otherwise too low and is causing them injury. As correctly submitted by learned counsel for the importers, this matter is exclusively in the domain of the Anti-Dumping Duties Act, 2015 ("ADD Act"). A Division Bench of this Court (of which one of us was a member) has recently had occasion to consider the ADD Act in judgment dated 19-02-2018 in CP D-4780/2017 and other, and whatever is said here should be read and understood in the light of that decision. The ADD Act has been enacted to give effect in our municipal law to a WTO agreement, the Agreement on the implementation of Article VI of the General Agreement on Tariffs and Trade, 1994, just as several years ago Section 25 of the Customs Act was substituted and cast in a wholly new form to give effect to the WTO Agreement on Valuation. Section 25 and the agreement last mentioned, along with Section 25A have been considered in detail by a Division Bench of this Court in Saadia Jabbar v/s Federation of Pakistan and others PTCL 2014 CL. 537 ("Saadia Jabbar") Briefly put (and at the risk of some over simplification), under the ADD Act, a local manufacturer (or rather, the domestic industry) is entitled to have an anti dumping duty imposed on imported goods if the export price is less than the normal value and there is inquiry within the meaning of the ADD Act. Both these conditions must apply. If so, then a dumping margin is calculated and anti dumping duty imposed accordingly. The authority that has jurisdiction to act in this regard is only the National Tariff Commission (itself a statutory body). The question of whether there is any injury caused to a local manufacturer is wholly beyond the scope of the Customs Act and the jurisdiction of the Officers and Authorities acting under this statute. What the local manufacturers are, in reality, complaining of is dumping and that is exclusively the domain of the ADD Act, as held in the aforesaid judgment (see, inter alia, para 14 thereof). It is to be noted that in the order of the Director General involved in SCRA 744/2016, there is an express reference to "dumping". In our view, neither the Director Valuation nor the Collector of Customs nor the Director General has any jurisdiction in this regard. The local



manufacturers cannot be allowed to circumvent and evade the requirements of the ADD Act, by asking for a Customs valued under Section 25A or any enhancement therein or being involved in the determination of the same. The position is likewise in relation to Section 25D. Any ruling or order determining or enhancing a Customs value under these Sections on such basis or with such involvement must be regarded as fatally and irremediably tainted with illegality and cannot be allowed to stand Question No.4 stands answered accordingly.

- M. That the learned Director has issued impugned Valuation Ruling under sub-Section (7) of Section 25 (Deductive value method). Sub-section (7) provides a complete mechanism as how the market inquiry to be made and how various deductions are to be allowed. For ease of reference sub-Section (7) (a) is reproduced as under:-

“(7) **Deductive Value:** If the Customs value of the imported goods cannot be determined under sub-Section (6), it shall, subject to rules, be determined as follows:

(a) If the imported goods or identical or similar imported goods are sold in Pakistan in the condition as imported, the Customs value of the imported goods shall be based on the unit price at which the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being values, to persons who are not related to the persons from whom they buy such goods, subject to the deductions for the following:-

(i) either the commissions usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Pakistan of imported goods of the same class or kind;

(ii) the usual costs of transport and insurance and associated costs incurred within Pakistan; [and]

(iii) Omitted.

(iv) the Customs duties and other taxes payable in Pakistan by reason of the importation or sale of the goods.”

- N. That from the foregoing extract of sub-Section (7) of Section 25, it is very clear that while adopting sub-Section (7), the learned Director, in the first instance, is bound to apply corresponding Rule 119 to sub-Section (7). However, from perusal of the impugned Valuation Ruling. It is not difficult to ascertain that the learned Director has neither followed the Rules nor sub-Sections of Section 25 of the Customs Act, 1969 in its letter and spirit. For example, Rule 119 itself stipulates that value of imported goods determined under Section 25 (7) of the Customs Act shall, be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity. Sub-rule (1) of rule 119 of the Customs Rules, 2001 is re-produced for kind perusal:-

119. **Deductive Value Method.**

“For the purposes of this Rule, the expression “unit price at which goods are sold in the greatest aggregate quantity” means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sale takes place.”



- O. That it is respectfully submitted that the defective market surveys being conducted by the Directorate in the retail markets are resulting into issuances of illegal and unlawful valuation rulings. Infact, sub-Section (7) of Section 25 and corresponding Rule 119 do not speak of retail market surveys but it clearly stipulates that the unit price of the greatest aggregate quantity will be taken into account which is carried out at the first commercial level after importation. Neither the sub-Sections of Section 25 nor the Rules provide to apply 10% profit at three stages i.e. (i). Importer (ii). Whole seller (iii). Retailer. The Customs Act, Sales Tax Act or the Income Tax ordinance does not bind a business entity to sell his goods at a fixed ratio of profit. Every retail outlet spread over the whole of Pakistan has its own level of running expenditures which fix the ultimate price & profit ratio on each sale. It is not possible for the Directorate to survey the retailers of whole Pakistan and thereafter determine the value of imported goods. That is why Section 25 and the Rules have restricted the Customs Authorities to remain within the scope of first commercial sale after importation in greatest aggregate quantity. However, this aspect is totally ignored by the learned Director and his subordinates while conducting surveys.
- P. That the petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments.

5. PRAYER

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

- a. Declare that the impugned valuation ruling No. 1360/2019 dated 04-04-2019 issued by the Respondent Director is ultra vires of the Constitution of Pakistan, 1973, the Customs Act, 1969, the Customs Rules, 2001, and the same is arbitrary, illegal and mala fide.
- b. Set aside the impugned Valuation Ruling 1360/2019 dated 04-04-2019 being violative of the methods set out in Section 25 of the Customs Act, 1969, and Rules made there- under.
- c. Set aside the impugned valuation ruling no. 1360/2019 being violative of the methods set out in Section 25(7) of the Customs Act, 1969 and Rules made there under.
- d. Declare that the assessment of the Soap in packing is to be carried out on the basis of the net content weight i.e. without including the weight of the packaging, as envisaged under Section 25 (2) (b) (iii) of the Customs Act, 1969.
- e. Declare that the assessment on the basis of gross weight i.e. by including the weight of the packaging, is unlawful, illegal and mala fide, and ultra vires the Custom Act, 1969, and the Consitution of Pakistan, 1973.
- f. Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1360/2019 till the final disposal of this review petition.
- g. 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.
- h. Grant any other relief deemed just and appropriate in the circumstances of the case.



i. Grant cost of the petition.

6. The respondent department was asked to furnish comments to the arguments submitted by the petitioners in the case. Department comments on the petitions are given as under:-

PARAWISE COMMENTS BY THE DEPARTMENT

Earlier customs values of Toilet Soaps were determined vide Valuation Ruling No. 863/2016 dated 02-06-2016. Aggrieved with the Valuation Ruling, certain importers filed Revision Petitions before the Directorate General of Customs Valuation under section 25-D of the Customs Act, 1969. The revision petitions were decided and customs values of toilet soaps were notified afresh vide Order-in-Revision No.217/2016 dated 02-08-2016. The Order-in-Revision was also challenged before the Appellate Tribunal, meanwhile, many importers filed Constitutional Petitions before the Honorable High Court of Sind at Karachi and Interim relief in shape of provisional assessment on the basis of difference between the declared value and value as per Valuation Ruling No. 863/2016 was granted. The Appellate Tribunal set aside the impugned Valuation Ruling and Order-in-Revision. The Honorable High Court of Sind at Karachi vide judgment dated 29-05-2017 in SCRA 744 of 2016 and other linked SCRA's and CPs, dismissed Order-in-Revision No. 217/2016 and also revoked the powers of Director General Customs Valuation to determine values through order-in-revision. Several representations were received in this Directorate General wherein it was stated that some unscrupulous elements resort to under-invoicing. In view of above, this Directorate General initiated an exercise for re-determination of the Customs Values of toilet soaps in terms of Section 25-A of the Customs Act, 1969.

Several meetings with stakeholders including importers, representatives from Karachi Chamber of Commerce and Industry, Pakistan Soap Manufacturers Association and representatives from field formations were held in this Directorate General to discuss the current international prices of the subject goods. The importers / stakeholders were requested to submit the following documents before or during the course of stakeholders meetings so that customs values could be determined:

- i) Invoices of imports during last three months showing customs value.
- ii) Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
- iii) Copies of Contracts made / LCs opened during the last three months showing the value of item in question.
- iv) Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions.

4. Although the importers had contested the customs values determined earlier but they did not produce any corroborative documentary evidences to substantiate their submissions. The Pakistan Soap Manufacturers Association informed that the values of Toilet Soaps need to be revised in accordance with the price prevailing in the international markets. The Pakistan Soap Manufacturers Association pointed out that reputed importers declare the actual prices but some unscrupulous elements resort to under-invoicing. Furthermore, the price of its raw material i.e. Soap Noodles TFM 78% and above at US\$ 700/MT and US\$ 630/MT for TFM 72% and below. Therefore, after adding the cost of perfumes and overheads, the minimum value of any brand of toilet soap should be revised upward, whereas, the importers contended that the customs values may be re-determined in the light of price trend prevailing in the international markets according to the brands. They contended that any unnecessary increase in the values of toilet soaps would result in increase in smuggling of the item into Pakistan from various routes. After detailed deliberations, the participants during the last



leg of consultations agreed that values of toilet soaps need to be rationalized and representatives of the importers and associations also submitted their recommendations. The view point of all participants was heard in detail and considered to arrive at Customs values of the subject goods.

Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive at customs values of subject goods. The transaction value method as provided in Sub-Section (1) of Section 25 of the Customs Act, 1969 was found inapplicable due to wide variations of values displayed in the import data. Thereafter, identical / similar goods value method as provided in Sub-Sections (5) & (6) of Section 25 ibid were examined for applicability to the valuation issue in the instant case. The wide variations in declarations were observed. Information available was hence, found inappropriate. In line with the statutory sequential order of Section 25, this office conducted market inquiries under Sub-Section (7) of Section 25 of the Customs Act, 1969. Resultantly, Customs values of toilet soaps have been determined under section 25 (7) of the Customs Act, 1969 accordingly.

PARAWISE COMMENTS-1

M/s Hansika Enterprises and M/s U&M Marketing Network

In reply to the contents of the instant Revision Petitions, parawise comments on behalf of the respondent are submitted as under:-

Facts:

1: Need no comments being related to introduction as importer of various kinds of toilet soaps.

2 to 8: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.

9 & 10: Denied. Paragraph-5 of the impugned valuation ruling is itself a speaking one clearly reveals for rejecting the proceedings of Sub-Sections of Section 25 of the Customs Act, 1969, i.e. Sub-Section (1) to (6) of Section 25 of the Customs Act. Finally, the Customs Values were determined under Section 25 (7) of the Customs Act, 1969, after conducting market inquiries.

9 to 11: Denied. Paragraph-5 of the impugned valuation ruling is itself a speaking one clearly reveals for rejecting the proceedings of Sub-Sections of Section 25 of the Customs Act, 1969, i.e. Sub-Section (1) to (6) of Section 25 of the Customs Act. Finally, the Customs Values were determined under Section 25 (7) of the Customs Act, 1969, after conducting market inquiries.

12: Denied. The petitioners have not furnished any documents certifying that the price actually paid/payable for toilet soap is much lower than the values determined through the impugned valuation ruling and they have not furnished copy acknowledgment receipt of their documents.



13: Denied. The customs values of the subject goods have been determined after associating all stakeholders as well as after following the valuation methods laid down in Section 25 of the Customs Act, 1969.

14: This para relates to the following grounds.

GROUND

A to C: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.

D & E: Denied. The paragraph-5, of the impugned valuation ruling is clearly reveals that this office had conducted market inquiries under Section 25 (7) of the Customs Act, 1969, after obtaining the local market prices and after deduction of all profit margins of importer/whole seller and retailer and other duty/taxes under the law.

F: Denied. There exists no order or instruction prescribed in the law that the importer shall be associated while conducting market inquiries.

G: Denied. Section 25 (7) of the Customs Act, 1969, itself allow to conduct market inquiries.

H: Denied. The transaction value of higher side of the importer given by any importer cannot be rejected as the same represent the price actually paid or payable by the respective importer.

I: Denied. There exist no law to associate any stakeholder while conducting market inquiries.

J to O: Denied. The paragraph-5, of the impugned valuation ruling is clearly reveals that this office had conducted market inquiries under Section 25 (7) of the Customs Act, 1969, after obtaining the local market prices and after deduction of all profit margins of importer/whole seller and retailer and other duty/taxes under the law.

P: This para relates to further grounds at the time arguments.

PARAWISE COMMENTS-2

- 1) M/s. Lark Consumer Care (Pvt.) Ltd., Lahore.
- 2) M/s. K.S Enterprises, Sukkur.
- 3) M/s. Noor Traders, Karachi.
- 4) M/s. Zaki Industries Corporation, Karachi.
- 5) M/s. Shazak Multinational, Karachi.
- 6) M/s. PIVA International, Karachi.
- 7) M/s. ARG Enterprises, Karachi.
- 8) M/s. Mariam Enterprises, Karachi/.
- 9) M/s. Fahad Enterprises, Karachi.



- 10) M/s. FAMS Enterprises, Karachi.
- 11) M/s. Abdullah & Co. Karachi.

In reply to the contents of the instant Revision Petitions, parawise comments on behalf of the respondent are submitted as under : -

Facts:

- 1: Need no comments being related to introduction as importer of various kinds of toilet soaps.
- 2: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.
- 3: Denied. The customs values of the subject goods depend upon its brands. The direct import from country of origin is ever cheaper than the import from other country of shipment. Accordingly, the customs values of the subject goods were determined after taking into account this element and adjustment.
- 4: Denied. The customs values of the subject goods were determined after following all primary methods of valuation and finally customs values were determined under Section 25 (7) of the Customs Act, 1969, which means to obtain the local market prices and then apply work back method after deductions of profit margins and other duty/taxes.
- 5: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.
- 6 & 7: Denied. The customs values of the subject goods had not been determined by the respondent in the light format given by the Petitioner.
- 8 to 11: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price



(excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.

12: This para relates to the following grounds.

GROUND

A to e: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable.

f & g: Denied. The customs values of the subject goods depend upon its brands. The direct import from country of origin is ever cheaper than the import from other country of shipment. Accordingly, the customs values of the subject goods were determined after taking into account this element and adjustment.

h: It is submitted that due to the importers convenience and smooth fully clearance of the subject goods, a category of other brands were found.

i to m: Denied. The Petitioner has not furnished any documentary evidence in support of their contention that the determination of customs value is unlawful and arbitrary. The fact is that customs values of the subject goods had been determined after associating all stakeholders including the petitioner as well as after following all valuation methods of section 25 of the Customs Act, 1969. Consequently, the customs values were determined under Section 25 (7) of the Customs Act, 1969. Moreover, neither the petitioner nor any stakeholder furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions that their transaction values represent the price actually paid or payable. The local manufacturers were associated not for their proposal of value but only to the extent of their views/input only.

n: This para relates to further grounds at the time oral hearing.

PARAWISE COMMENTS-3

M/s. Khyber Traders, Lahore

1: Denied. The impugned valuation ruling is itself speaking one clearly reveals the reasons for not accepting the transactional values of toilet soap, after following methods of valuation, the customs values were determined after applying the deductive method of valuation i.e. Section 25 (7) of the Customs Act, 1969, after obtaining the local market prices and deductions of the profit margins and other taxes over the local market prices.

2 & 3: This para relates to previous Order-in-Revision which is not infield.



4: Denied. It is submitted that the petitioner's transactional value @US\$0.50/kg pertains to period of 2015, whereas the customs values determined @US\$0.75/kg pertains to valuation ruling 836/2016. However, the customs values determined @US\$1.40/kg is based on current local market prices for which there exists a valuation ruling No.1360/2019 dated 04-04-2019.

PRAYER

It is respectfully prayed that the customs values of the subject goods were determined after exhausting all primary methods of valuation. Since, the petitioner have not furnished the requisite documents particularly, copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes), so the reliance had to be made on Section 25 (7) of the Customs Act, 1969. In the absence of any requisite documents/ tangible evidences at time of exercising of determination of customs value, the appeal have not merit for consideration and liable to be rejected.

ORDER

7. Hearings in this case were fixed for 25-06-2019, 02-07-2019 and 16-07-2019. Petitioner M/s Khyber Traders, importers of 'Fa' brand toilet soap mentioned at Serial No.5 of the impugned Valuation Ruling No.1360/2019 dated 04-04-2019 challenged the determination of their customs values @ US\$ 1.40/kg. When the department was asked to provide the basis of the working leading to the determination of the customs values, it was found that no specific market enquiry had been conducted for the 'Fa' brand. Rather it was clubbed with similar brands including Imperial Leather, Lux, Ro yal Leather etc. In order to determine the accuracy of values provided in impugned VR, a team comprising departmental representative, representative of Pakistan Soap Manufacturers Association (PSMA) and the representative of the importer was constituted to carry out market survey. After conducting detailed working in terms of Section 25(7)(a) of the Customs Act, 1969, the C&F value worked out to US\$ 1.05/kg which is significantly below the value mentioned in the impugned VR. As such the revision petition of M/s Khyber Traders appears justified and it is ordered to re-determine the value of 'Fa' brand soap by the Director Customs' Valuation in terms of Section 25A ibid.

8. As regards the case of M/s Zaki Industries, importer of 'Silk' brand mentioned at Serial No.7 with Customs value determined @ US\$ 0.84/kg and M/s PIVA International, importer of 'Glo' brand mentioned at Serial No.8 with Customs value determined @ US\$ 0.75/kg, they have both challenged the increase in value from previous value determined at US\$ 0.66/kg. The petitioners have submitted that they have carried out clearances @ US\$ 0.35/kg under court orders, from UAE/Indonesia. In response, the department pleaded that importers of soap indulge in group underinvoicing and the price of toilet soap is being declared far below the prices of soap noodles which constitute 97.5% of the toilet soap. The representative of PSMA also submitted that there are three main ingredients of ordinary toilet soap which include soap noodles comprising about 98% of its weight, 1% ingredient is perfumery and other additives also constitute 1%. At the relevant period of issuance of the impugned VR, the FOB price of soap noodles as per international publications ICIS report dated 04-04-2019 was US\$ 575/MT and the sea freight was US\$ 50/MT resulting in C&F value of US\$ 625/MT. Similarly the C&F import value of perfume of local manufacturers in Pakistan came at about US\$ 14.7/kg while the packaging material cost @ US\$ 0.15/kg, therefore, the cost of raw materials and packaging material together came to US\$ 0.95/kg. Moreover, the



production of soap in terms of conversion costs and overhead costs amounted to about US\$ 0.25/kg. Therefore, in their opinion the ordinary toilet soap should have a minimum value of US\$ 1.20/kg. Moreover, in the case of designer brands, additional ingredients are also added which can significantly raise the cost.

9. Keeping in view the discussions, detailed calculations and consultations regarding actual manufacturing process, I am of the opinion that the prices of soap can be appropriately determined under Section 25(8) especially for non-designer brands. For such toilet soap, the Director Customs Valuation may determine formulae for medium and low quality brands such as those mentioned at Serial No.5, 6, 7 & 8 of the impugned VR as well as those at serial No.11. The methodology of using Section 25(7) is inappropriate especially in view of the reports that smuggled toilet soap is widely available in the market. These reports are substantiated by the fact that the brands which have not been imported for many months are openly selling at all outlets in the market. Adopting methodology of Section 25(7) involves the deduction of duties and taxes paid at import stage whereas smuggled goods have not been subjected to any such levies. As against this, the mechanism as mentioned in Section 25(8) i.e. computed value method is more appropriate as the main constituent for soap is soap noodles whose value is openly available in international publications. The low quality soaps would utilize noodles with lower count of TFM and less expensive perfumery and packaging, whereas better quality soaps would utilize higher count TFM of soap noodles as well as more expensive perfumery and packaging. The Director Customs Valuation is accordingly required to examine the matter afresh especially in terms of serial Nos. 5 to 8 and 11 of the impugned valuation ruling for determination of values afresh in consultation with the stakeholders including the petitioners.

10. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (15) petitions.

S.No.	Petitioners' Name	File No.
1	M/s. Zaki Industries Corporation	DG (V) Val.Rev/ 03/2019
2	M/s. U & M Marketing Network	DG (V) Val.Rev/ 03/2019
3	M/s. Khyber Traders	DG (V) Val.Rev/ 03/2019
4	M/s. Lark Consumer Care Pvt. Ltd,	DG (V) Val.Rev/ 03/2019
5	M/s. K.S Enterprises	DG (V) Val.Rev/ 03/2019
6	M/s. Noor Traders	DG (V) Val.Rev/ 03/2019
7	M/s. Trading House	DG (V) Val.Rev/ 03/2019
8	M/s. Shazak Multinational	DG (V) Val.Rev/ 03/2019
9	M/s. PIVA International	DG (V) Val.Rev/ 03/2019
10	M/s. ARG Enterprises	DG (V) Val.Rev/ 03/2019
11	M/s. Mariam Enterprises	DG (V) Val.Rev/ 03/2019
12	M/s. Fahad Enterprises	DG (V) Val.Rev/ 03/2019
13	M/s. FAMS Enterprises	DG (V) Val.Rev/ 03/2019
14	M/s. Abdullah & Co.	DG (V) Val.Rev/ 03/2019
15	M/s Pakistan Soap Mfgr. Ass.	DG (V) Val.Rev/ 03/2019

(Mukkaram Jah Ansari)
Director General



Registered copy to:

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M/s. U & M Marketing Network,
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M/s. Khyber Traders,
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M/s. Lark Consumer Care Pvt Ltd,
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M/s. K.S Enterprises,
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M/s. Noor Traders,
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M/s. Zaki Industries Corporation,
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M/s. PIVA International,
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M/s. Abdullah & Co,
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M/s Pakistan Soap Manufacturers Association
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M/s. Trading House,
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Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisalment (South)/Enforcement, Karachi/
(North) Islamabad / (Central) Lahore.
3. Collector, MCC Appraisalment (East)/ Appraisalment (West)/Port M. Bin Qasim/
Preventive, Karachi.
4. The Collectors of Customs, MCC Appraisalment (East / West)/ Port Qasim, Karachi, MCC
Preventive, Karachi/Lahore/Quetta/Peshawar, MCC Appraisalment Lahore/ Quetta /
Peshawar/ Sambrial (Sialkot) / Faisalabad / Multan / Islamabad /Hyderabad/ Gawadar/
Gilgit-Baltistan.
5. Director, Customs Valuation, Karachi/Lahore.
6. Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for uploading
in One Customs and WeBOC Database.
7. Deputy Director (Revision), Karachi.
8. Assistant Registrar (Writ), Honourable High Court of Sindh, w/r CP No.D-2794/2019.
9. All Deputy/Assistant Directors (Valuation)
10. Guard File.

