GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/18/2019/2275 Dated 8th August, 2019

Order in Revision No. 10 /2019 under Section 25-D of the Customs Act, 1969 against Valuation Ruling No. 1386/2019 dated 24-07-2019

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 Noman Enterprises & Others ..... PETITIONERS

VERSUS

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

Date of hearing 08-08-2019

For the Petitioners
Mr. Naeem Qureshi
Mr. Sher Zaman Khan, M/s NSB Bearing
Mr. Zaheer Uddin Babar, M/s Noman Ent.
Mr. Umer Safdar, M/s SNR Company

For the Respondent
Mr. Abdul Hameed, Principal Appraiser
Mr. Shankar Lal, Valuation Officer

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs value determined vide Valuation Ruling No.1386/2019 dated 24-07-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being aggrieved and dissatisfied with the Valuation Ruling No. 1386/2019 dated: 24.07.2019 (hereinafter the impugned Valuation Ruling), pertaining to all kinds of Bearings (Ball, Taper Roller, Spherical Roller, Cylindrical Roller, Needle Roller etc.), as issued by the respondent herein, the petitioners prefer this petition in the terms set out here-in-below:

1. Without prejudice to the contentions appearing here-in-below, it is submitted that the impugned Valuation Ruling is outright illegal being contrary to the principles laid down in the honourable Sindh High Court's Judgments in the cases of *Rehan Umer* (2006 PTD 909), *Sadia Jabbar* (PTCL 2014 CL 537) and *Goodwill Traders* (2014 PTD 176) insofar as the values appearing to have been arrived at therein are the result of "fixation" and not "determination" as have been attempted to be portrayed therein. The impugned Valuation Ruling is also, on the issue of Brand Categorization, against the dictum laid down by the

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learned Customs Appellate Tribunal's Judgment dated: 28.03.2017 (hereinafter the Tribunal's 2017 Judgment), whereby a previous Valuation Ruling as to Ball Bearings (being 953/2016 dated: 14.10.2016) was set-aside.

2. The fact that an attempt has been made in the impugned Valuation Ruling to pay lip-service to the sequential methods and methodology under Section 25 of the Customs Act is glaringly obvious from a mere statement that the method under Section 25(7) was resorted to without any cogent and relevant explanation as to why the preceding methods, in terms of preceding sub-Sections, were not applied. It will be appreciated that a statement as to market enquiry having been conducted cannot be taken at its face value and, accordingly, the petitioners herein seek evidence and proofs of such market enquiry to have been carried out, if any and if at all.

3. That the aforementioned issue becomes glaringly obvious when Paragraph 2 of the impugned Valuation Ruling is perused wherein the findings of the honourable Customs Appellate Tribunal, as contained in their Judgment dated: 18.08.2018 (hereinafter the Tribunal's 2018 Judgment), are recorded and it is basically contended that under the Appellate forum's directions certain brands (about 30 in number), which did not match the quality of other brands in Category-B and of being "low quality", were to be assessed at lower values. In the first instance, it is submitted the no "low quality" bearings could be allowed to be imported in view of the clear prohibition as to importation of sub-standard quality, among others, goods into the country in terms of Serial No. 7 of the Appendix-A to the Import Policy Order 2016, however, the respondent, in the garb of creation of Category-C in the impugned Valuation Ruling has virtually issued a license to sub-standard and low quality bearings to be imported into the country effectively killing the competition offered by better available options without any heed and/or consideration to the risk and danger such bearings pose to the person and property on account of their use in the industry and vehicles.

4. That the respondent herein appears to be oblivious to the Tribunal's 2017 Judgment wherein it was held that the brand-wise categorization of Bearings was outright illegal and outside the purview of Article VII of the WTO, the respondent department has persisted with the same in the impugned Valuation Ruling without dilating upon any reason or need for the same. Without prejudice to the foregoing contention, it is submitted that even in perpetrating and perpetuating the illegal action of brand-wise categorization, the respondent has done nothing more than preparing a list of various brands of the Bearings and then placing them in one of the three categories without offering any justification whatsoever as to creation of the third category, thus creating the following untenable situation:-

i. The honourable Tribunal had decided the appeal in the matter of 30 specific brands, however, only 13 of such brands are included in Category-C and remaining 17 brand names are not those mentioned in the Tribunal's Judgment;

ii. No explanation is given for not including the remaining 17 brand names from the Tribunal's Judgment and at the same time no criteria is stated for including 17 brand names, which had not even been before the Appellate Tribunal;

iii. That KG brand, in respect of which no appeal had been filed before the Appellate Tribunal, has been moved from Category-A to Category-C, without any explanation being available on record for such purpose thus giving rise to suspicions as to existence of extraneous considerations in the matter;

iv. Major brands such as Timken, FAG, INA etc. are not mentioned in either of the categories;

v. Low-end Chinese brand ZWZ is mentioned alongside the high-end SKF, NTN etc. brands in Category-A; and

vi. The comparatively lower value Japanese brands will be assessed at higher value than the most-expensive SKF brand on account of its "other" origin.

5. That the impugned Valuation Ruling has been drawn and issued without the application of mind as is evident from: **(i)** different kinds of Bearings of the same brand will be valued under different category thus rendering the categorization highly questionable; **(ii)** "other origin" and Indian bearings – mentioned variously in the impugned Valuation Ruling – and not categorized in terms of brands at all. Accordingly, the bizarre and absurd "Brand Categorization" gives rise to the following questions: -

i. Which Japanese brand is covered under Categories B and C?

ii. Which Indian brand is covered under Categories A, B and C?

iii. Which brand from "other" origin is covered under Categories A, B and C?

Without a cavil the answer to each of the above questions has to be "none", which raises the basic question as to how their values have been determined in the impugned Valuation Ruling? This clearly indicates towards arbitrariness unheard of under Valuation related Customs Legislation.

6. It is submitted that the creation of fresh Category-C, which not only allows importability of "low quality" and "sub-standard" Bearings in the country otherwise prohibited under the Import Policy Order, it also places the reliable brands at a particular disadvantage thus clearly giving undue benefit to the importers of Category-C Bearings' importers thus being aimed at destroying the lawful trade and livelihood of the upright and honest importers, on account of whose business bread and butter are provided to thousands of people connect with the trade. This, it will be appreciated, is bound to result, as has happened in the past, in encouraging the smugglers and abusers of Afghan Transit Trade (ATT) facility at the expense of those for whom it has become a major effort to earn their families up-keep through honest means.

7. Without prejudice to the foregoing, it is further submitted that it was directed by the respondent in the Meeting dated: 26.11.2018 to the representative to submit a joint proposal as to valuation of Bearings and such proposal was duly submitted under cover of the Letter dated: 14.12.2018, which bears the signatures of at least four such importers whose imported Brands stand moved from Category-B to Category-C. It will be appreciated that it is well neigh impossible to place brands under lower values than those required by the importers. This also renders the impugned Valuation Ruling highly dubious and questionable and thus liable to be struck-down.

The petitioners crave leave to adduce and raise further grounds at the time of hearing.

PRAYER

In view of the foregoing, therefore, it is prayed that the impugned Valuation Ruling No. 1386/2019 dated: 24.07.2019 – being violative of the Customs Act and Chapter IX of the Customs Rules, but also of the principles as laid down and the law as settled by the superior

courts – may kindly be set-aside and the values of all kinds of Bearings (Ball, Taper Roller, Spherical Roller, Cylindrical Roller, Needle Roller etc.) may accordingly be revised strictly following the methods and methodology under Section 25 of the Customs Act, 1969, in the interests of justice and equity.

ORDER

3. Hearing was conducted on 08-08-2019. The petitioners submitted that during consultations with the department prior to issuance of the impugned Valuation Ruling (VR), the Bearings Trade Group had submitted proposed prices in writing vide their letter dated 14-12-2018. This letter had been signed by five parties and the lowest value proposed was US$ 2.60/kg. The signatories to the letter including the importers of the brands KYK, Vetor, Euro Power, PSA, Excel, KFK and Supersonic. However, it is surprising to note that these very brands have been included in Category-C with value of US$ 2.30/kg. Therefore, this is a questionable categorization at a value below the proposal voluntarily provided by the importers of respective brands.

4. The petitioners also stated that some brands including Vetor and SIL had been imported recently at value of US$ 2.90/kg. In support they provided GD No.KAPW-HC-172232 dated 03-06-2019 filed by M/s Novelty Enterprises with declared value of Vetor brand @ US$ 2.90/kg. Another GD No.KAPW-HC-144900 dated 06-04-2019 filed by M/s Bearicon Enterprises showing declared value of US$ 2.90/kg for SIL brand was also provided. The departmental representative (DR) was asked to calculate the value from the GD and its supportive documents to confirm whether the statement of the petitioner was correct, which was affirmed by the DR. As these two brands had been included in Category-C, it raises question mark about the mechanism adopted for determination of value. In response, the DR submitted that the value of US$ 2.30/kg had been worked out on the basis of market survey. Accordingly the record available with the DR was examined and the so called market survey report was found to consist of a plain paper with hand written values of a large numbers of different brands without any indication as to where these prices were obtained from and who carried out the market survey. Further probe and questioning revealed was that neither any cash memo was obtained nor any quotations were solicited, nor any price was recorded on name cards of the shops. There was a bunch of cards of different shops available in the file but without any connection linkage to brand prices. Moreover, even the prices reportedly obtained from different shops were not recorded separately during the market inquiry. Rather the DR stated that after survey, an average of different prices from different shops was recorded on a piece of paper. Even these could have been given some weightage, had the surveyor associated the representative of association/importers and got their signatures on the calculation sheet. However, in the absence of any mechanism of showing what price was provided by which shop and to which person, the entire exercise of market survey fails to meet the level of official proceedings. As such the working carried out by the department in terms of Section 25(7) of the Customs Act, 1969, is deemed to be defective.

5. The petitioners also submitted that KG brand had been included in Category-A in the previous VR No.1188/2017 dated 23-06-2017 when value had been determined at US$ 3.40/kg. Moreover, the importers of KG brand did not file petition in the Customs Appellate Tribunal and therefore no order regarding KG brand being 'low-end' had been passed by the Customs Appellate Tribunal. Nevertheless, in the impugned VR this brand has been shifted from Category-A to Category-C. On being confronted with this, the DR admitted that the KG brand has not been

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mentioned in the order of the Tribunal as they had not filed any petition. As regards its sharp downward revision, the DR contended that the same had been on the basis of market survey. When the record of so called market survey was examined, it was found that to suffer from the same lapses as have been mentioned in the preceding paras.

6. The importers also pointed out that certain top quality brands of bearings such as SKF/FAG are being manufactured in many countries. In case these are imported from Europe, the value will be assessed at US$ 10/kg in accordance with the VR. However, if the same brand (having the same quality) is imported from other origin, its value shall be assessed @ US$ 6.11/kg in accordance with the VR. They submitted that this makes the impugned VR defective for the brand being manufactured in multiple countries.

7. I have gone through the record of the case and heard the arguments of both the sides. A wide range of issues pointed out by the petitioners have been established through scrutiny of record and discussion conducted during the hearing. It is apparent that a large number of errors, inconsistencies and discrepancies are present in impugned VR No.1386 dated 24-07-2019. These errors of omission and commission would cause grave damage to government exchequer as well as render a number of importing firms unfairly incompetitive. Thus the very reasons for which valuation rulings are issued i.e. to protect legitimate revenue and to provide fairness in assessment to all importing firms, would be undermined if this VR is allowed to continue holding field.

8. I therefore order to set aside Valuation Ruling No.1386/2019 dated 24-07-2019 and direct the Director Customs Valuation to determine valuation of ball bearings afresh after consulting all stakeholders and through adopting transparent and fair mechanism.

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

S#	Petitioner	S#	Petitioner
1	M/s. A.Z. Corporation	11	M/s. Sarduddin & Sons
2	M/s. Khalid Traders.	12	M/s. Murtaza International Trading Co.
3	M/s. Qureshi Sons	13	M/s. NSB bearing (Pvt.) Ltd.
4	M/s. Saeed Enterprises	14	M/s. Sharif Enterprises
5	M/s. Sindh Bearing Agency	15	M/s. Amir Bearing Centre
6	M/s. SNR Company	16	M/s. Bearicon Enterprises
7	M/s. Anasco Traders	17	M/s. Ahmed Trading Co.
8	M/s. Bearing Sales Centre	18	M/s. Dilawar Enterprises
9	M/s. Zainab Automobiles		
10	M/s. Continental Bearing Impex		

(Mukarram Jah Ansari)
Director General

Registered copy to:

Mr. Zain A. Jatoi, Advocate Supreme Court
The Law Practice of Jatoi & Company,
603, 6th Floor, Al-Ameera Centre, Shahrah-e-Iraq, Saddar, Karachi

S#	Petitioners' Name	S#	Petitioners' Name
1	M/s. Noman Enterprises, 44, Manzoor Square, Plaza Square, Karachi.	11	M/s. Sarduddin & Sons, 22, Rasheed Building, Plaza Square, Karachi
2	M/s. Khalid Traders, 5/15, Rimpa Plaza, M.A. Jinnah Road, Karachi	12	M/s. Murtaza International Trading Co, Rehman Street-4, 51-Nishter Road, Lahore.
3	M/s. Qureshi Sons, Rehman Street-4, Nishter Road, Lahore.	13	M/s. NSB bearing (Pvt) Ltd, 90, Phase-11, Badami Bagh Centre, Lahore.
4	M/s. Saeed Enterprises, 6, 2nd Floor, 6-Meraj Gulshan, Circular Road, Lahore	14	M/s. Sharif Enterprises, 15, Dilkusha Auto Market, Plaza Square, Karachi.
5	M/s. Sindh Bearing Agency, 10, Green Terrace-2, Plaza Square, Karachi	15	M/s. Amir Bearing Centre, Rehman Street No.4, Nishter Road, Lahore.
6	M/s. SNR Company, 01, Rehman Street-4, Brandreth Road, Lahore.	16	M/s. Bearicon Enterprises, 15/A, First Floor, Dilkusha Chamber Plaza Quarter, Karachi.
7	M/s. Anasco Traders, Dilkusha Chamber, Noman Street Plaza Square, Karachi.	17	M/s. Ahmed Trading Co, M-12, Manzoor Square, Noman Street, Plaza Square, Karachi.
8	M/s. Bearing Sales Centre, 6116, Central Plaza Mall, Marston Road, Karachi.	18	M/s. Dilawar Enterprises, Railway Road, Sialkot.
9	M/s. Zainab Automobiles, Fikree Building, 36-Murad Khan Road, Garden, Karachi.	19	M/s. A.Z. Corporation, 105, Ahmed Block, New Garden Town, Lahore.
10	M/s. Continental Bearing Impex, General Bus Stand Badami Bagh, Lahore.		

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2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/ (North) Islamabad / (Central) Lahore.
3. Collector, MCC Appraisement (East)/ Appraisement (West)/Port M. Bin Qasim/ Preventive, Karachi.
4. The Collectors of Customs, MCC Appraisement (East / West)/ Port Qasim, Karachi, MCC Preventive, Karachi/Lahore/Quetta/Peshawar, MCC Appraisement 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.
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