

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/28/2018

13008

19th

March, 2020

Order in Revision No. 11 /2020 Under Section 25-D of the Customs Act, 1969 against
Valuation Ruling No. 1300/2018 dated 04-05-2018

- 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. Lucky Traders & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

18.07.2018, 09.08.2018, 15.08.2018,
03.10.2018 and 17.03.2020

For the Petitioners

Mr. Imran Ali,

For the Respondent

Mr. Anees Rahman, Valuation Officer,
Mr. Tauseef Ahmad, Valuation Officer,

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs Values determined vide Valuation Ruling No. 1300/2018, dated 04-05-2018, issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being highly aggrieved and dissatisfied with Valuation Ruling No. 1300/2018 dated 04.05.2018, through which the respondent determined the values of different sizes of Bicycle Non Geared/Geared (low end brands) exorbitantly in comparison to the prices in the country of export i.e. China, and in deviation of the data maintained by the PRAL of identical/similar goods under Rule 113 of the period given in Rule 107(a) of Chapter IX of Customs Rules, 2001. The applicant preferred the instant revision application under the provision of Section 25-D of the Customs Act, 1969, for decision after consideration of the fact and grounds enumerated here-in-below:

3. **FACTS**

- 1) The applicant is a commercial importer and stockiest and whole seller of Bicycle Non Geared/Geared (low end brands) of China origin and works and operates under the name and style of M/s. Lucky Trader, at 5 Ratan Chand Road, Lahore and in the said capacity is registered with FBR and Regional Tax Office vide NTN 4234198-1 & STRN. 0300423419814.
- 2) That the applicant imports Bicycle Non Geared/Geared (low end brands) of China origin against firm contract or 90 days credit on different value based on sizes, for which Electronic Import Forms (EIF) were issued by the Bank Al-Falah Ltd, conforming invoiced value to be remitted to the shipper. Theareafter, documents were delivered to clearing agent for filing of Goods Declaration through WeBOC regime with the respective clearance collectorate and as mandated deposited upfront duty and taxes leviable on the declared value.
- 3) The competent officer of the clearance collectorate upon receipt of Goods Declaration after completion of necessary formalities of Examination. If so desired, under the provision of Section 198 of the Customs Act, 1969, and Rule 435 of Sub Chapter III of Chapter XXI of Rule 2001, ought to pass the assessment orders with the application of identical similar value of the goods as expressed in sub-Section (5) and (6) of Section 25 of the Customs Act, 1969, data maintained by PRAL: under Rule 113 of the period given in Rule 107(a) of Customs Rules, 2001 i.e. US\$ 1/Inch.
- 4) That despite of the fact there exists no need of determination of value of the subject goods, the respondent under took exercise said to be on the reference of MCC Appraisement West, contents of which has not been elaborated in the ruling with the exception of mentioning its number and date, wherein as incorporated in the 1st para of the ruling that the trend of import shows that the importer of the said goods are under declaring the value, therefore, a ruling for the said item could be issued.
- 5) The respondent in compliance of the order of the Collector of Customs, Appraisement-West, under took the exercise for determination of value of bicycle and conveyed multiple meetings, as stated in para 3 of the ruling wherein as per his version, he discussed the current international prices of the subject goods with the importers/stakeholders and in the same para he requested the importers to submit corresponding documents, for the confirmation that the prices of bicycle are in accordance with their declared value. The demand of the respondent was complied with by the applicant and he submitted (i) certification of the Chinese companies in regards to unit value (ii) copies of Goods Declaration of China Customs for confirmation of the export value and so the declared value with Pakistan Customs & (iii) Sales Tax Invoices, issued by applicant under Section 23 of the Sales Tax Act, 1990, which are available on the case file. Regretfully, those were not considered by the respondent, by virtue of the fact he has to validate the prices communicated by the Collector of Customs, Appraisement-West.
- 6) The respondent on 04.05.2018, issued the valuation ruling No. 1300/2018 through which he determined the prices of Bicycle Non Geared/Geared (low end brands) of different origin i.e. Korea, UAE, Hong Kong, Singapore and China on the basis of sizes of the each bicycle in inches, said to be under the provision of sub-Section (7) of Section 25 of the Customs Act, 1969.



4. **GROUND**

- A. That despite of the fact that the respondent is only empowered to determine "Customs Value" for the levy of Customs duty under the provision of Section 25A of the Customs Act, 1969, which every ruling inscribes. However, the respondents intentionally failed to inscribe in the ruling that the value determined by him is only for levy of Customs duty not for taxes and the said fact stands validated from the rulings inclusive of the impugned. Resultantly, he also determined the value for levy of sales tax, which in case of need has to be determined by the Valuation Committee comprising of representative of Trade and Inland Revenue constituted by the Codmissioner as defined in clause (e) of sub-Section (46) of Section (2) of the Sales Tax Act, 1990. Resultant, determination of value for levy of Sales Tax at import stage by the respondent is without lawful authority/jurisdiction. Hence, it is mandated upon him to state prominently in the ruling issued under the provision of Section 25A (I) of the Customs Act, 1969, that the value so fixed is only for levy of Customs duty not for sales tax collected at import stage.
- B. That similarly, respondent is also not empowered to determine value for levy of income tax at import stage. In terms of section 148 of the Income tax ordinance, 2001, the officer of Customs is empowered to determine the value under the provision of section 25 of the Customs Act, 1969. By laying hand on the domain of the officer of Customs the respondent usurped the power not vested with him , rendering the determination of value through the impugned valuation ruling without power/jurisdiction in regards to fixation of value for levy of sales tax and income tax at import stage, therefore, is null and void ab-initio, hence, coram non judice as held in reported judgments Major Syed Walayat Shah V/s Muzaffar Khan and 2 others (P.L.D 1971 S.C. 184), Omer & Company V/s Controller of Customs (Valuation) (1992 A.L.D 449(1) Karachi AAA Steel Mills Ltd V/s Collector of Sales Tax and Central Excise Collectorate of Sales Tax (2004 PTD 624), PLD 2004 Supreme Court 600 All Pakistan Newspaper Society and others V/s FOP, PLD 2005 Supreme Court 514 Ali Muhammad V/s Hussain Buksh & Others V/s Sarfaraz Khan & Others, PTCL 2007 CL. 78 Pak Suzuki Motors Company Ltd, Karachi V/s Collector of Customs, Karachi, 2009 PTD (Trib) 1996 & 2010 PTD (Trib) 832.



- C. Notwithstanding, in case the Board is desirous of determining the value for levy of sales tax on the imported goods for collection under Section 6 of the Sales Tax Act, 1990, it issues a notification in terms of 1st proviso sub-Section (g) of Section 46 of the Sales Tax Act, 1990, which is reproduced for the cease of reference.

"Provided that, where the Board deems it necessary, it may by notification in the official gazette fix the value of any imported goods or taxable supplies or class of supplies and for that purpose fix different values for different classes or description of such type of imported goods or supplies."

- D. That the determination of value for collection of Income Tax under the provision of Section 148 Income Tax Ordinance 2001 on the imported goods have to be determined as per the expression of Section 25 of the Customs Act, 1969, in terms of sub-section (6) of section 148 of the Income Tax Ordinance, 2001 by the authorities expressed in Sub Section (9) *ibid.*,

which are Collector of Customs, Additional Collector of Customs, Deputy Collector of Customs, Assistant Collector of Customs, or an Officer of Customs appointed under Section 3 ibid, respondent figures nowhere.

E. That in terms of above proviso, the respondent is not empowered to fix/determine the value of imported goods through valuation ruling in exercise of power vested under Section 25A (1) of the Customs Act, 1969. It is for the board to issue a notification. Similarly, determination of value for levy/collection of Income Tax at import stage. The respondent is also not empowered as evident from the expression of sub-section (9) of section 148 of the income tax ordinance, 2001, rendering the determination of value for levy of sales tax and income tax under the provision of Section 25A (1) of the Customs Act, 1969 without power/jurisdiction, rendering, the determination of value for sales tax and income tax negated as the same is being in derogation of 1st proviso of sub-Section (g) of section 46 of the sales tax act, 1990, and sub section 9 of section 148 of the Income Tax Ordinance 2001. Hence, ruling No. 1289/2018 dated 19.04.2018 is void and ab-initio and as such coram non judice as held in reported judgments Major Sped Walapat Shah V/s Muzaffar Khan and 2 others (P.L.D, 1971 S.O 184), Omer & Company V/s Controller of Customs, (Valuation): (1992 A.L.D. 449 (I) Karachi AAA Steel Mills Ltd V/s Collector of Sales Tax and Central Excise Collectorate of Sales Tax (2004 PT) 624), PLD 2004 Supreme Court 600 All Pakistan Newspaper Society and others v FOP, PLD 2005 Supreme Court 842 Khyber Tractor (Pvt) Ltd V/s FOP, MD 1976 Supreme court 514 Ali Muhammad v/s Hussain Buksh & others and PLD 2001 Supreme Court 514 Land Acquisition Collector, Noshehra & others rts Surf raz. Khan & Others, PTCL 2007 CL. 78 Suzuki Motors Company Ltd, Karachi V/s Collector of Customs, Karachi, 2009 PT]) (Trib) 1996 & 2010 PTIN Trib) 832.

F. The assuming of jurisdiction is of great importance and power has to be exercised within the allotted sphere, acting contrary to that is incurable rather fatal for the health of the case and this has been countless time held by the Hon'ble Supreme Court of Pakistan that in case of assuming wrong jurisdiction, the structure built thereon ought to crumble down, reference is placed on the reported judgment 2001 SCMR 1822 Ali Muhammad V/s Chief Settlement Commissioner, wherein the Hon'ble Chief Justice of Pakistan Mr. Iftikhar Muhammad Choudhry presiding a bench in the capacity of Judge of Supreme Court held that :-

"Whenever order are passed by an Officer without caring whether jurisdiction vests in him or not, it is prima-facie reflect on his conduct as well as competency. It is also to be noted that whenever authority is exercise in such a manner then no other inference can be drawn except that the functionary has transgressed his jurisdiction for the consideration other than judicial one and the Courts seized with such orders may recommended any action against the said officer because neither the executive authorities nor judicial forum will pass a wrong order because the jurisdiction in both the capacities is conferred upon such authorities to discharge their function in accordance with law which has bestowed upon them to function in that capacity and if there is abuse of power by such officer then no hesitation should be felt in passing stringent stricture against officer keeping in view of norms of justice."

Their lordship also held in reported judgment PLD 2004 Supreme Court 600 All Pakistan Newspaper Society and others vs FOP & others that "determination of jurisdiction by Court



seized with the matters is one of the important element in administration of justice as if justice has been provided basing upon corum non judice order then same would have no legal sanction behind." And in PLD 2005 Supreme Court 842 Khyber Tractor (Pvt) Ltd vs Pakistan through Ministry of Finance, Revenue and Economic Affairs that "question of jurisdiction of a forum is always considered to be very important and any order passed by a court or a forum having no jurisdiction, even if it is found to be correct on merit is not sustainable. Jurisdiction of a court lays down a foundation stone for a judicial or a quasi judicial functionary to exercise its power/authority and no sooner the question of jurisdiction is determined in negative the whole edifice built on such defective proceeding, is bound to crumble down."

- G. That upon receipt of reference from the Collector of Customs, MCC of Appraisement-West, indicating under invoicing, it was mandated upon him to asked the learned Collector to substantiate his stance through tangible incriminating evidences, as it is upon the person leveling the allegation to prove that in terms of Article 117 & 121 of the Qanoon-e-Shahadat. In the absence of any evidence of under invoicing, determination of value of bicycles of (low end brands) was not warranted, as these are for the low earning public and are within their reach and this stand validated from para 1 which contain a sweeping statement based on presumption assumption and conjectures, on the basis of which respondent started rowing and fishing inquiries. In the garb of determination of value of bicycles of (low end brands), for pleasing the Collector of Customs, Appraisement-West and to squeeze additional amount of duty and taxes, not payable under law from the applicant, obviously which shall be shifted to the ultimate buyer (general public). This vital fact alone renders the Valuation Ruling as ab-initio void and as such of no legal effect / jurisdiction.
- H. Notwithstanding, to above adumbration, it is of vital importance for the applicant to state further that the provision of section 25 of the Customs Act, 1969, are to be followed in sequential manner baring certain exceptional cases where massive group under invoices is rampant . However, resort to subsequent method is not permissible without exhausting the sequence indicated in Section 25 as it would annihilate and terminate the spirit and essence of the transaction value which in the first instance has to be established as colorable and tainted. Section 25(13) (a) does not give unbridled and un fettered authority to respondent to play havoc with the provision of Section 25 ibid. Thereby making them ineffective and redundant. Discretion has to be exercised within limits based on reason, rationale and fair play. It is specifically provided by the legislature in sub-Section (10) of Section 25 that sub-Section (1) (5) (6) (7) (8) (9) define how the Customs value of the imported goods is to be determined by the Customs. The method of Custom valuation are normally required to be applied in a sequential order except reversal of the order of sub-Section (7) (8) at the importers, request, if so agreed by the Collector of Customs as held in itidgments PTCL 2008 CL 409 M/s. Toyo international Motorcycle V/s Federation of Pakistan and 3 others. , C.P. No. 2673 of 2009of Sadia Traders V/s FOP the Hon'ble High Court of Sindh, W.P. No. 756/2010 M/s. Faco Trading & 45 others V/s Member Customs, FBR & 2014 PTD 176 Goodwill Trader, Karachi V/s FOP etc.



- I. The respondent has stated in Para 4 of the ruling that sub-section (1) of section 25 was found to be inapplicable due to wide variation in value displayed in import data. The said opinion of his is contrary to the fact as import prices are never one and the same, because it is dependent on the quality, quantity and rule 110 of Customs Rules, 2001, and rejecting declared value of the applicant and other importers, which have been verified by the manufacturer/supplier of these, operating in China through certification of the veracity of genuineness of the import/declared prices and from the China Customs export declaration forms validating the prices of import. In the presence of these vital facts and incriminating evidences, no occasion either was available with the officials of Clearance Collectorate or respondent to discard the transaction value as expressed in sub- Section (1) of Section 25(1) of the Customs Act, 1969.
- J. That with the submission of certification and GDs of the China Customs, the applicant discharged initial burden laid upon him under Rule (I) of Rule 109 of Chapter IX of Custom Rules, 2001, and prices declared by him deems to be transaction value without any exception within the contemplation of Section 25(1) of the Customs Act, 1969, and Rule 113 of Sub Chapter III of Chapter XIX Custom Rules, 2001. However, if the subordinate of Collector of Customs, Appraisement-West or respondent had any reasonable doubt about the truth and accuracy of the declared value and they are of the view that the value of the goods cannot be determined under Section 25(1) of the act, recourse to secondary method of valuation has to be adopted, they have to communicate to the applicant in writing about the decision and the grounds for forming opinion in regards to the value. No such exercise was undertaken by the respondent as evident from the ruling. Hence, he was not empowered to adopt the second method of valuation, i.e. sub-Section (5), (6) & (7) of Section 25 of the Customs Act.
- K. That despite of the fact that respondent was not within his right to discard preceding sub-Section of Section 25 of the Customs Act, 1969, he did purposely and for honouring the order of the Collector of Customs Appraisement-West, which the Collector could have himself determined after carrying out exercise as evident from the expression of Section 25A(1) of the Customs Act, 1969, jumped to the provision of sub-Section (7) of Section 25 of the Customs Act, 1969, for determining the value of bicycle, on the basis of sales price of the identical/similar goods. Ironically the ruling is completely silent in this regards that from where the prices of the bicycles were obtained and as whether those were for the low end brands or renowned brands. The recourse to sub-Section (7) of Section 25 is not permitted in the presence of earlier sub section, through which the determination of the value of the applicant goods could have been made as evident for the deliberation made in para supra and the annexed exhibits and so the sales tax invoices issued to the buyer by the applicant under the provision of Section 23 of the Sales Tax Act, 1990.
- L. The applicant craves his right to add any fresh grounds at the time of hearing besides placing any valid incriminating evidence/documents.

5. **PRAYER**

It is therefore prayed to the revision authority to allow the revision application by ordering that:-




- a. That the valuation rulings issued by the respondent is only to the extent of determination of Custom value for levy of Custom duty and does not correspond to the value for levy of sales tax and income tax on the imported goods.
 - b. The Valuation Ruling 1300/2018 issued by the respondent in derogation of the provision of Section 25 of the Customs Act, 1969, and Chapter IX of Customs Rules, 2001. Hence, ab-initio, null and void and is withdrawn with immediate effect, being of no legal effect.
 - c. The officials of clearance collectorate be directed to determined the price sof the bicycle for levy of duty and taxes under the provision of Section 25 of the Customs Act, 1969, and Chapter IX of Customs Rules, 2001.
 - d. The bicycle for levy of duty and taxes under the provison of Section 25 of the Customs Act, 1969, and Chapter IX of Customs Rules, 2001.
 - e. Any other relief may deem fit and adequate.
6. The respondents were asked to furnish comments to the arguments submitted by the petitioner in the case. Para-wise comments on the petition are given as under:-

PARAWISE COMMENTS

Brief facts of the case is that it was brought to the notice of this Directorate General that similar category of the low end brand bicycles being cleared at different prices in different formations. To address the issue, an exercise was initiated under Section 25-A of the Customs Act, 1969, in accordance with provisions of law. The field formations were also requested to provide their valuable inputs on the matter. During the proceedings, a reference No.SI/MISC/28/2018-VII dated 24.03.2018 was received from MCC Appraisement (West), Karachi, indicating under invoicing in bicycles with request to issue a ruling.

Numerous meetings with stakeholders including importers and representatives from field formations were scheduled on 25.01.2018, 06.03.2018, 29.03.2018 and 12.04.2018 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' meeting to help in determination of customs value:-

- 
- A. Invoices of imports during last three months showing factual value.
 - B. Websites, names and E-mail address of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
 - C. Copies of Contracts made/LCs opened during the last three months showing the value of item in question.
 - D. Copies of sales tax invoices issued during the last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions.

Bicycle association submitted some documents and requested not to issue a valuation ruling.

Valuation methods given in section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at customs value of the subject goods. Transaction value method provided in section 25(1) was found inapplicable due to wide variation of values displayed in import

data. Hence, requisite information required under law was not available to arrive at transaction values. Therefore, identical/similar goods value methods as provided in sub-section (5) and (6) of section 25 ibid were examined for applicability to the valuation issue in the instant case but due to wide variations in declarations this method could not be relied upon exclusively. In line with statutory sequential order of section 25, this office conducted market inquiries under sub-section 25(7) of the Customs Act, 1969. As there were certain differences in prices in different markets, therefore, a number of surveys were conducted to arrive at customs values. Finally, reliance had to be made on sub-section (7) of section 25 of the Customs Act, 1969, to determine customs value of bicycle non-gear/ged/geared (low end brands), which have been notified vide valuation ruling No. 1300/2018, dated 04.05.2018.

In reply to the contents of the instant revision petition, para-wise comments on behalf of respondent are submitted as under.

FACTS

1. Need no comment being related to introduction of the applicants as importers of all kinds of baby bicycle of China origin.
2. Denied. The applicants have not furnished any corroboratory documents, particularly copies of sales tax invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers. The customs values were determined after following all valuation methods as laid down in section 25 of the Customs Act, 1969. Consequently, the customs values were determined under section 25(7) of the Customs Act, 1969.
3. Denied. The background of the valuation issue is based on at different prices in different formations as per physical import data clearance. Moreover, the background is also based on a reference No.SI/MISC/28/2018-VII dated 24.03.2018, from MCC Appraisalment (West), Karachi, indicating under invoicing in bicycles with a request to issue valuation ruling.
4. Need no comments being related to stakeholders' meeting on different dates.
5. Denied. The contention of the applicants that meeting notice be withdraw/vacated and no valuation ruling be issued regarding complete bicycles tantamount unnecessary interference in the function/duties of this directorate. The customs values of the subject goods were determined on receipt of complaint of under invoicing and accordingly, the Director of Customs Valuation had exercised its powers under section 25-A of the Customs Act, 1969.
6. Need no comments being not related with customs values of the subject goods.
7. Need no comments being related to following the primary methods of the valuation and finally implementation of section 25 of the Customs Act, 1969, to determine the customs values of bicycles on non-gear/ged/geared low end brands.



8. Denied. The applicants had the liberty to produce their relevant data by receiving the same in receipt and dispatch section. Moreover, valuation method as laid down in section 25(7) had been adopted properly, after obtaining the local market prices.
9. Denied. The assessment value @ US\$ 1.00 made by the collectorates previously is uniform value which was not in accordance with sizes of bicycles. This Directorate had obtained local market prices of different sizes for which there were different prices in local market. Accordingly, the customs values were determined under section 25(7) of the Customs Act, 1969.
10. Denied. The prices of the subject goods do vary in accordance with the size/length and accordingly, the higher size bicycle prices are higher than lower length/size.
- 11-12. Denied. The local market inquiries conducted do reveal that the prices of the geared bicycles are higher than the prices of the non-geared bicycles being in addition of system of gears.
13. Denied. Though the applicants have the commercial invoice @US\$ 1.00 inch but they have not furnished copies of sales tax invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.
- 14-15. Denied. It is to be submitted that valuation methods given in section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at customs value of the subject goods. Transaction value method provided in section 25 (1) was found inapplicable due to wide variation of values displayed in import data. Hence, requisite information required under law was not available to arrive at transaction values. Therefore, identical/similar goods value methods as provided in sub-sections (5) and (6) of section 25 ibid were examined for applicability to the valuation issue in the instant case but due to wide variations in declarations this method could not be relied upon exclusively. In line with statutory sequential order of section 25, this office conducted market inquiries under sub-section 25(7). As there were certain differences in prices in different markets, therefore, a number of surveys were conducted to arrive at customs values. Finally, reliance had to be made on sub-section (7) of section 25 of the Customs Act, 1969, to determine customs values of bicycle non-geared/geared (low end brands), which have been notified vide valuation ruling No. 1300/2018 dated 04.05.2018.



GROUNDS

1. Denied. Valuation methods given in section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at customs value of the subject goods. Transaction value method provided in section 25(1) was found inapplicable due to wide variation of values displayed in import data. Hence, requisite information required under law was not available to arrive at transaction values. Therefore, identical/similar goods value methods as provided in sub-section (5) and (6) of section 25 ibid were examined for applicability to the valuation issue in the instant case but due to wide variations in declarations this method could not be relied upon exclusively. In line with statutory sequential order of section 25, this office conducted market inquiries under sub-section 25(7) of the Customs Act, 1969. As there were certain differences in prices in different markets, therefore, a number of surveys

were conducted to arrive at customs values. Finally, reliance had to be made on sub-section (7) of section 25 of the Customs Act, 1969, to determine customs value of bicycle non-geared/geared (low end brands), which have been notified vide valuation ruling No. 1300/2018, dated 04.05.2018.

2. Denied. Numerous meetings with stakeholders including importers and representatives from field formations were scheduled on 25.01.2018, 06.03.2018, 29.03.2018 and 12.04.2018 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' meeting to help in determination of customs value:-
 - A. Invoices of imports during last three months showing factual value.
 - B. Websites, names and E-mail address of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
 - C. Copies of Contracts made/LCs opened during the last three months showing the value of item in question.
 - D. Copies of sales tax invoices issued during the last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions.
3. Denied. The rate of US\$ 1.00 per inch previously applicable since period of more than one decade is unjustified as the local market prices during this period are continuously increasing. Hence, there was a requirement to determine the customs value in the light of current trend which was also necessary to safeguard the government revenue.
4. Denied. The local market inquiries finding suggest that the quantum of difference amongst the different sizes of the bicycles represent different prices of the bicycles.
- 5-7. Denied. The local market inquiry conducted do reveal that the prices of the geared bicycles are higher than the prices of the non-geared bicycles being in addition of system of geared.
8. Denied. Deductive method as laid down in section 25(7) of the Customs Act, 1969, had been applied after obtaining the local market prices and deductions of duty/taxes, profit margins and miscellaneous expenses.
9. Denied. The rate of US\$ 1.00 per inch previously applicable since period of more than one decade is unjustified as the local market prices during this period are continuously increasing.
10. Denied. The increase of US\$ versus Pakistani currency is not related with the determination of customs value of the subject goods.
11. Need no comment being related to generating funds for the national exchequer.
- 12-13. Need no comment being not related to customs value.
14. Denied. While conducting the local market inquiries, the prices of low end brands were obtained and no prices were obtained for branded.
15. Need no comment being related to further ground including the evidential material at the time of hearing.



PRAYER

It is respectfully prayed that the customs values of the subject goods were determined under section 25(7) of the Customs Act, 1969, after obtaining the independent market inquiry prices. But on the other side, the applicant had never furnished copies of sales tax invoices neither at the time of exercising under section 25-A of the Customs Act, 1969, nor at this stage of review under section 25-D of the Customs Act, 1969, to substantiate that the benefit of difference in price is passed on to the local buyers. Accordingly, the revision petition has no merit for consideration and is liable to be rejected.

ORDER

7. Hearings in the subject case were held on 18.07.2018, 09.08.2018, 15.08.2018, 03.10.2018 and 17.03.2020. The petitioners appeared for hearings and reiterated the same arguments as already given in their petitions. The main thrust of their arguments was that the valuation department did not follow the valuation methods properly and also objected to the market inquiry conducted by the department and stated that the values determined vide impugned valuation ruling in respect of bicycle geared/non-geared do not reflect the prevalent market prices. The petitioner further stated that the market survey was carried out arbitrarily, from retailers. Work back from such retail values resulted in high import value. They insisted on declaring their declared values as correct transaction value; however, no relevant supportive documentary evidence was produced to substantiate their contentions.
8. The departmental representative shared data of trade map which shows that during calendar years 2014, 2015, 2016 and 2017, the extent of under-invoicing declined to about 40%, as VR was introduced in beginning of May 2018. Moreover, during Jan-March 2018, the comparison of PRAL data with EDE data showed under-invoicing to be at 34%, while in the second quarter (April-June 2014), it is recorded at 28%. Therefore, the contention of the petitioner does not seem to be supported by the official data of Chinese Government.
9. During discussions, it was also agreed that ITC data (Trademap) and EDE data from China can be used to cross check whether the assessment is being made on higher side or not.
10. Furthermore, the petitioners contended the jurisdiction issue for determining values for Sales Tax, Federal Excise and Income Tax. It is pertinent to mention here that the section 6 of the Sales Tax Act, 1990, and sub-section (2) of section 3 of Federal Excise Act, 2005, clearly stipulate that Sales Tax and FED in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if was a duty of customs payable under the Customs Act, 1969. The section 6 of the Sales Tax Act, 1990, is reproduced as under:
"The tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969 [and the provisions of the said Act [including section 31A thereof], shall, so far as they related to collection, payment and enforcement [including recovery] of tax under this Act on such goods where no specific provision exists in this Act, apply]."

The sub-section (2) of section 3 of Federal Excise Act, 2005 is reproduced as under:



"Duty in respect of goods imported into Pakistan shall be levied and collected in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969, and the provisions of the said Act including section 31A thereof shall apply."

11. After listening to the discussion/arguments of both the parties and perusal of the case record, it is evident that the valuation department had duly taken the stakeholders on board while issuing the impugned valuation ruling and valuation methods were properly followed. The petitioners were given sufficient time and opportunity to give their inputs including documentary proof/evidence to substantiate their transaction values but they failed to provide any such proof or fact in support of their declared values which were quite low. The DR further informed that the department is already working on fresh valuation ruling. Therefore, the petitioners are directed to plead their case with the Director Customs Valuation, Karachi. Meanwhile, the impugned valuation ruling is being upheld.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

M/s. Lucky Traders, M/s. One Ten Traders, C/o, Nadeem & Company
B-3, 2nd Floor, Pak Chamber, West Wharf, Karachi.

M/s. Noman Traders, M/s. Sheehan Enterprises, M/s. Light Corporation, M/s. Farooq Packages,
M/s Farooq Corporation, M/s. Siddiq Sons, M/s. Ahsan Traders, M/s. Ahmad & Sons,
M/s. Hamza International, M/s. Global Enterprises C/o M/s. Rafi Kamboh & Associates,
607, 608, 6th Floor, Trade Avenue, Hasrat Mohani Road, Off I.I. Chundrigar Road, Karachi.

Copy to:

1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/
3. (North) Islamabad / (Central) Lahore.
4. The Collector, MCC Appraisement (East) / Appraisement (West) /Port M. Bin Qasim/
5. Preventive, Karachi.
6. The Collector, MCC Appraisement/Preventive, AIIA, Lahore/Quetta/Peshawar/Faisalabad/
7. Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
8. The Directorate General of Intelligence & Investigation (Customs), Islamabad /Lahore /Peshawar / Multan / Hyderabad / Gawadar / Quetta.
9. The Director, Customs Valuation, Karachi/Lahore.
10. The Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for
11. Uploading in One Customs and WeBOC Database.
12. Deputy Director (Revision), Directorate General of Customs Valuation, Karachi.
13. All Deputy/Assistant Directors (Valuation).
14. Guard File.