

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/21/2019

12886

14th, February, 2020

**Order in Revision No. 05 /2020 Under Section 25-D of the Customs Act, 1969 against
Valuation Ruling No. 1381/2019 dated 12-07-2019**

- 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. Evolve Food & Beverages & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

30-01-2020

For the Petitioners

Mr. Zahid Farooq, Mr. Yameen

For the Respondent

Mr. Nadeem Sheikh Valuation Officer,

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs Values determined vide Valuation Ruling No. 1381/2019, dated 12-07-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being aggrieved by and dissatisfied with the Valuation Ruling No. 1381 of 2019 dated 12.07.2019(Annex A), 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 an industrial unit engaged in the manufacturing of various drinks i.e. Apple, orange and mango juices etc. The petitioner is also engaged in the import of raw-materials, including but not limited to Aseptic Packaging Material. As relevant for the present purposes, the petitioner regularly undertakes the import of Aseptic Packaging material from, inter alia, China. 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, fixed the values of Aseptic Packaging Material vide Valuation Ruling No. 1381/2019 dated 12.07.2019 (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 Aseptic Packaging Material, inter alia, Chinese origin at the rate of US\$ 2.86 per kg 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. 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 Aseptic Packaging material. The Petitioner submits a brief background to the issue as follows.

4) That in due course of its business, the petitioner conducts imports of Aseptic Packaging material manufactured in China which is 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 Aseptic Packaging Material purchased for import into Pakistan from China by the petitioner at present remains considerable lower than the value assigned thereto vide the impugned Valuation Ruling, which has not been determined in terms of Sections 25A and 25 of the Act, 1969. The price paid / payable for the said Aseptic Packaging Material at the time of import into Pakistan from China 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. Copies of

import documents, letter of credits, commercial invoices and packing lists are attached as (Annex-B).

7) That as such, prior to the issuance of the unlawful and highly illegal impugned Valuation Ruling, the assessment of imported Aseptic Packaging Material was carried out in accordance with the previous valuation ruling No. 516/2012 dated 27.12.2012.

8) 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 Aseptic Packaging Material was being declared diligently and strictly in accordance with the law by the various importers engaged in such import. As such, the attention of this learned Authority is drawn to previous imports which show that while the assessment values were strictly in accordance with the declared values for the imported Aseptic Packaging Material have remained at considerably lower values than those determined by the respondent Director.

9) That, as evident from the foregoing, the actual price paid / payable for the Aseptic Packaging material at the time of import into Pakistan remains considerably lower than the value 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.

10) That, in addition to the above, the respondent has arbitrarily and without assigning any lawful or cogent reason thereto 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 the Respondent had undeniable evidences before it, including documents submitted by the stakeholders, certifying that the price actually paid / payable for Aseptic Packaging Material is in fact much lower than the values fixed by through the impugned Valuation Ruling.

11) That the actions of the respondent in respect of fixation of values for Aseptic Packaging Material are 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 4, 8, 10A, 18, and 25A, thereof. That, in light of the preceding narration, the Petitioner prefers the instant petition on, inter alia, the following grounds, namely:

4. GROUNDS

A. That the impugned Valuation Ruling is illegal, arbitrary and unjust 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 Aseptic Packaging Material.

C. That the respondent Director has issued the impugned Valuation Ruling on misconceived, unlawful and arbitrary grounds, and has failed to follow any particular method provided under Section 25 of the Customs Act, 1969.

D. That the respondent Director has not given any lawful reasons for imposing the listed values for assessment of Aseptic Packaging Material at 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-section (5) and (6) only for the purposes of justifying fixation of value, which is otherwise impermissible under the Act, 1969, and is indeed alien to the scheme thereof. Detailed reasons there for have been elicited herein above.

F. That, furthermore, it is also pertinent to draw the attention of this learned Authority to paragraph 7 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."

G. 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. 1381 of 2019 dated 12.07.2019 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 No. 1381 of 2019 dated 12.07.2019 being violative of the methods set out in Section 25 of the Customs Act, 1969, and Rules made there-under.
- c. Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1381 of 2019 dated 12.07.2019 till the final disposal of this review petition.
- d. 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.
- e. Grant any other relief deemed just and appropriate in the circumstances of the case.

5. The respondent department was 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

Para-(1) : Need no comments being introduction of petitioners.

Para-(2): Not agreed. It is submitted that the said Valuation Ruling was issued after thorough investigation and all aspects were considered. In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1381/2019, dated 12-07-2019 for level playing field and for uniform assessment all over the customs stations of the country. Provisions of Section 25(1) to 25(9) were duly exhausted while issuing the said Valuation Ruling. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Section 25(5) & 25(6) of the Customs Act, 1969, vide above referred Valuation Ruling. As such the respondent has acted lawfully while issuing the said Valuation Ruling.

Para-(3&4): Not Agreed. It is submitted that the petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. Moreover, it is to point out here that concept of "fixation" of value no more exist in the Customs Act, 1969, rather customs values are being determined in terms of Section 25A of the Customs Act, 1969, by the Director of Customs Valuation.

Para-(5): It is submitted that the meeting with the stakeholders was held on 15-05-2018, 05-07-2018, 05-09-2018, 25-09-2018, 20-12-2018, 08-01-2019, and 28-03-2019. It was attended by commercial importers as well as local manufacturers of chemical industries and official bearers / representatives of relevant Association. The participants as well as the Association were requested to provide documents like copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meeting. Again during the meeting the participants were requested to submit the following import related documents;

- i. Invoices of imports made during last three months showing factual values.
- 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 value of item in question.
- iv. Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was passed on to the local buyers.

Instead of furnishing any documentary evidence about downfall in prices in international market, they relied upon their rhetoric of decline in international market prices. They were repeatedly requested to furnish sales tax invoices along with monthly sales tax return filed with Inland Revenue Department as sales tax invoices are authentic document to ascertain local market price and as the Customs has authority in terms of Sub-Section (11) of Section 25 of the Customs Act, 1969, to call any documents to satisfy themselves about the truthfulness or accuracy of any information or declaration made to Customs for valuation purpose. None of them submitted sales tax invoices along with monthly sales tax return, on one excuse or the other. Since the matter was lingering on, it was decided to proceed on merits in the light of available record.

Para-(6): In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1381/2019, dated 12-07-2019 for level playing field and for uniform assessment all over the Customs Stations of the country. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Section 25(5)&(6) of the Customs, Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened several meetings for the determination of Aseptic Packaging Material for Liquid Food/ Beverages, and all stakeholders were invited but they did not produce relevant import documents.

Para-(7&8): It is submitted that the petitioners, on the other hand, did not submit requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No. 450(I)/2001, dated 18-06-2001 (Chapter-IX), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers / applicants. Moreover, the customs values were determined after properly following and exhausting all the valuation methods in sequential manner and giving reasons for rejection therein and finally the values were determined in terms of Section 25(5) & 25(6) of the Customs Act, 1969, for uniform assessment purposes.

Para-(9): In this regard it is submitted that the determined customs values are not on higher side as the same have been determined after carefully consulting last 90 days import data of clearances made at the Collectorates. As such the customs values in the said Valuation Ruling have correctly and lawfully been determined in terms of Section 25(5)&(6) of the Customs Act, 1969.

Para-(10): Not Agreed. In this regard it is submitted that the said Valuation Ruling No.1381/2019, dated 12-07-2019 was issued after properly following all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Para-(4) of the said ruling clearly states whole the process adopted for the determination of customs values of under reference goods. However, after exhausting all the valuation methods from Sub-Section (1) to (9) and finally customs values were determined and notified in terms of Sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country.

Para-(11&12): In this regard it is submitted that the importers were adamant not to submit any documents especially Sales Tax Invoices along with their monthly sales tax returns to ascertain truthfulness and accuracy of their contention regarding decline in prices in the international market. They were informed that onus was upon them to prove their contention of decline in prices through documentary evidences. They were also told that maintenance of Sales Tax Invoices and monthly returns was mandatory under the Sales Tax Law on each taxpayer, therefore, they should not be hesitant to submit them to the Customs Department as the Customs has authority in terms of Sub-section (11) of Section 25 of the Customs Act, 1969, to call any documents to satisfy about the truthfulness of accuracy of any information or declaration made to Customs for Valuation purpose. Moreover, they were informed that Sales Tax Invoices were authentic documents to show the price on which the goods are traded and a document for working out the actual C&F price with work-back method in case determination of value is done under Sub-Section (5)&(6) of Section 25 of the Customs Act, 1969. Since they were not forthcoming to furnish the complete documents including Sales Tax documents on one excuse or the other and the matter was lingering on, it, was decided to proceed on merit in the light of available record.

GROUND

Para-(A&B): In this regard it is submitted that the determined customs values are not on higher side as the same have been determined after carefully consulting last 90 days import data of clearances made at the Collectorates. As such the customs values in the said Valuation Ruling have correctly and lawfully been determined in terms of Section 25(5)&(6) of the Customs Act, 1969.

Para-(C&D): Not Agreed. In this regard it is submitted that the said Valuation Ruling No.1381/2019, dated 12-07-2019 was issued after properly following all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. Para-(4) of the said ruling clearly states whole the process adopted for the determination of customs values of under reference goods. However, after exhausting all the valuation methods from Sub-Section (1) to (9) and finally customs values were determined and notified in terms of Sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country.

Para-(E&F): Not Agreed. It is submitted that the under reference Valuation Ruling was lawfully and correctly issued after exhausting all the valuation methods and after holding meetings with different stakeholders; considering all the factors and elements surrounding the import for uniform assessment all over the country. As such the same is applicable on the relevant imports for assessment purposes. Moreover, it is to point out here that concept of "fixation" of value no more exist in the Customs Act, 1969, rather customs values are being determined in terms of Section 25A of the Customs Act, 1969, by the Director of Customs Valuation.

Para-(G): Relates to the time of hearing before the Director General (Valuation)

PRAYER

In view of above, it is prayed that the said Valuation Ruling may be allowed to hold field for assessment being lawful and valid. Further, transaction value cannot be accepted in absence of any tangible import documents. As such no relief is warranted to be given to the petitioners and under reference revision application filed being not maintainable may be rejected accordingly.

ORDER

6. Hearing was held on 30-01-2020 to decide the case in accordance with the Honorable High Court's order dated 06-12-2019 vide C.P No. D-5978/2019. The petitioners were asked to provide any legal grounds for their contentions. However, they could not provide any documents to substantiate their contentions. Thereafter, the VR was scrutinized from factual angle, and the various calculations made including margins of profit, duty/taxes and charges. They were all found to be correct and the determined value corresponded to the calculated value. In view of the above facts, I have concluded that the petition has no merits and is accordingly dismissed.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

M/s. Evolve Food & Beverage,
Plot No.145/2A, Road No. L-7, Gadoon Amazai, District Swabi, KPK.

M/s. Badar Enterprises,
Plot No. 193/1-F, 193/2, Road No.7, Industrial Estate Gadoon Amazai, Swabi, KPK.

M/s. Trepak International,
DOHS House No.290, Phase-1, Street No.1, Gujranwala Cantt.

Copy to:

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