

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/27/2019 /2800

9th January, 2020

Order in Revision No. 03 /2020 Under Section 25-D of the Customs Act, 1969 against
Valuation Ruling No. 1394/2019 dated 17-10-2019

- 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. M.M. Traders & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

04-12-2019, 20-12-2019

For the Petitioners

Mr. Murad, Mr. Shahzad, Mr. Asad Ali,
Mr. Bilal Zahid, Mr. Abid Nisar

For the Respondent

Mr. Hamood-ur- Rehman P.A

This revision petition was filed under Section 25-D of the Customs Act, 1969 against Customs Value determined vide Valuation Ruling No. 1394/2019, dated 17-10-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. We are engaged in the business of paper, paperboard and related products and are one of the major stakeholders associated in this business in Pakistan.
3. Being aggrieved by and dissatisfied with the impugned valuation Ruling No.1394/2019 Dated 17-10-2019 being order in "rem" issued by the Director, Directorate General of Customs Valuation, Karachi which is void ab initio, unjust, arbitrary, illegal to the extent of determination of Customs values of in the Table-A and Table-B of Ruling No. 1394/2019 below :-



S.#	Description	Specificati on	PCT Heading	PCT for WEOC	Origin	Customs Value (C&F) US\$/Kg
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Non-Carbon Releasing Paper Coated Front & Back	In sheet	4809.2000	4809.2000.1000	China	1.420
				4809.2000.1100		
2	Non-Carbon Releasing Paper Coated Back	In sheet		4809.2000.1200	China	1.400
3	Non-Carbon Releasing Paper Coated Front	In sheet		4809.2000.1300	China	1.400

(Art Card/Card Board/Paper and Light Weight Coated Papers)

S #	Description	PCT Heading	PCT for WEOC	Origin	Customs Value (C&F) US\$/Kg
(1)	(2)	(4)	(5)	(6)	(7)
1	One/both side Coated Art Card/Board with Kaolin (China Clay) or other inorganic substances or any other kind of coated.	4810.1990 4810.9900	4810.1990.1000 4810.9990.1000 4810.1990.1200 4810.1990.1200 4810.1990.1300 4810.9900.1300 4810.1990.1400 4810.9900.1400 4810.1990.1500 4810.9900.1500	China Korea Japan Europe Others	0.770 0.790 0.770 0.850 0.790
2	Coated Art Paper In Sheets both side with Kaolin (China Clay) or other inorganic substances or any other kind of coated paper	4810.1310 4810.1390	4810.1310.1200 4810.1390.1200 4810.1310.1300 4810.1390.1300 4810.1310.1400 4810.1390.1400 4810.1310.1500 4810.1390.1500	Korea Japan Europe Others	0.760 0.740 0.820 0.760
3	Lightweight Coated Papers	4810.2200	4810.2200.1000	All Origins	0.760
4	Other	4810.2900	4810.2900.1000	All Origins	0.770

4. We being affected would like to file this revision petition and prayed that this authority would be pleased to call for the records & Proceeding of the learned Respondent in exercise of revision powers provided u/s 25-D and set aside the impugned Valuation Ruling for determination of



customs values of impugned subject goods after examining the legality, property and correctness of the same, on the following:

5. Impugned goods having description "Non Carbon Release Paper" under PCT Headings 4809.2000 of China Origin, "Coated Art Card/Board" under PCT Headings 4810.1990, 4810.9900 of China, Korea, Japan and Others origins and "Coated Art Paper" under PCT Headings 4810.1310, 4810.1390 and 4810.2900 of Japan, Korean, Europe and Others Origin who are declaring actual transactional values of subject goods while filing goods declaration under Section 79 of the Act, 1969 since long as per record which were even on higher side many times as compared to prevailing valuation Ruling.

6. That the previous valuation Ruling No.1205/2017 Dated 29-08-2017 is more than 700 days old was issued u/s 25A by the Respondent wherein the customs values of impugned goods were determined under valuation method provided in sub-section (7) of section 25 of the Customs Act, 1969.

7. The pursuant to the Para 21 of the judgment of Sindh High Court passed in case of Sadia Jabbar v/s Federation reported in PTCL 2014 CL.537 revision proceedings were initiated by the respondent u/s 25A wherein the petitioners were called for hearing who have made their submissions and submitted certain documents establishing that values of impugned goods have been consistently declined to minimum as mentioned below:

Declining Prices (Non Carbon Releasing Papers)

S #	Description	PCT Heading	PCT for WEOC	Origin	Customs Value (C&F) US\$/Kg
(1)	(2)	(4)	(5)	(6)	(7)
1	Non-Carbon Releasing Paper Coated Front & Back	4809.2000	4809.2000.1000	China	1.180
			4809.2000.1100		
2	Non-Carbon Releasing Paper Coated Back		4809.2000.1200	China	1.140
3	Non-Carbon Releasing Paper Coated Front		4809.2000.1300	China	1.110

Declining Prices (Art Card/Card Board/Paper and Light Weight Coated Papers)

S #	Description	PCT Heading	PCT for WEOC	Origin	Customs Value (C&F) US\$/Kg
(1)	(2)	(4)	(5)	(6)	(7)
1	One/both side Coated Art Card/Board with Kaolin (China Clay) or other inorganic substances or any	4810.1990	4810.1990.1000	China	0.710
		4810.9900	4810.9990.1000		
			4810.1990.1200	Korea	0.680
			4810.1990.1200		

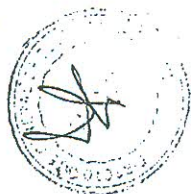
	other kind of coated.		4810.1990.1300 4810.9900.1300	Japan	0.700
			4810.1990.1400 4810.9900.1400	Europe	0.730
			4810.1990.1500 4810.9900.1500	Others	0.730
2	Coated Art Paper In Sheets both side with Kaolin (China Clay) or other inorganic substances or any other kind of coated paper	4810.1310 4810.1390	4810.1310.1200 4810.1390.1200	Korea	0.680
			4810.1310.1300 4810.1390.1300	Japan	0.680
			4810.1310.1400 4810.1390.1400	Europe	0.700
			4810.1310.1500 4810.1390.1500	Others	0.700
3	Lightweight Coated Papers	4810.2200	4810.2200.1000	All Origins	0.690
4	Other	4810.2900	4810.2900.1000	All Origins	0.700

8. That the submissions submitted by our company has been rejected without being confronted and without disclosing reasons of their rejections by the Respondent while making determination of impugned customs values of impugned goods under section 25 (9) of the customs Act, 1969. Vide impugned valuation Ruling No 1394/2019 dated 17-10-2019 in violation of Section 25 of the Act, 1969 and in defiance of judgments of Sindh High Court passed in case of Goodwill Traders vs Federation reported in 2014 PTD 176 as well as in case of Sadia Jabbar v/s federation reported in PTCL 2014 CL.537.

9. That the valuation method provided under Section 25 (9) of the customs Act, 1969. Has been illegally and arbitrarily applied by the respondent without disclosing valid reasons in details for non-application of methods contained in sub-sections (1), (5), (6) and (8) of section 25 which is contravention of law and guide lines given by the Honorable High Court of Sindh, Karachi in its judgments reported as PTCL 2014 CL.537 Sadia Jabbar vs FOP and 2014 PTD 176 Goodwill Trader vs FOP.

10. That under Section (7) of Section 25 the value must be determined on a basis fair market enquires which has not been done while determination of impugned value, as such, contents or findings of so called market enquires reports have neither been incorporated not disclosed by the Respondent in the impugned Valuation Ruling.

11. The Hon 'able High Court of Sindh, Karachi in it's hall mark judgment reported in 2014 PTD 176 passed in case of Goodwill Trader Vs FOP has held that sub-section (9) envisage that value should be drive on the basis of any one of the other valuation methods, flexibly apply or a suitable binding of elements from two or more of the other valuation methods, on the contrary the impugned customs values of impugned goods have been determined arbitrarily and illegally without disclosing what were the values found in the so called market enquiries from which the impugned customs values have been derived.



12. That in the impugned Valuation Ruling it has not been disclosed that how and on what reasons and material the Respondent has concluded his finding under which the impugned Customs values of impugned goods of both Art Card and Art Paper respectively have been determined under Section 25(9) of the Customs Act, 1969 which is violation of Section 24A of General Clauses Act, 1897.

13. That in consequences of the impugned Valuation Ruling the actual transactional value of the goods exported to Pakistan are being not accepted and being enhanced for assessment of duties & taxes which is violation of valuation agreement and implementation of Article VII of the General Agreement on Tariffs and Trade 1994 under WTO valuation system.

14. That the contentions, material and evidences submitted by our company have been discarded by the Respondent without disclosing valid reasons of their discard rendered the impugned Valuation Ruling as non-speaking order violative of Section 24A of the General Clauses Act, 1897 and contravention of law and guide lines given by the Hon'able High court of Sindh, Karachi in its judgments reported as PTCL 2014 CL. 537 Sadia Jabbar vs FOP and 2014 PTD 176 Goodwill Trader vs FOP.

15. That the valuation Method contained in sub-Section (7) of Section 25 has been arbitrarily chosen which is only applicable if the methods contained in sub-Sections (1) (5) and (6) of Section 25 are not applicable and valid reasons are required for their non-applicability which are absent in the instant case which establishes that whole determination is arbitrary and illegal being based on fishing and roving enquiries.

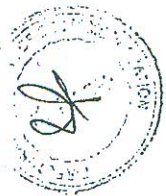
16. That the impugned Valuation Ruling is violative of valuation agreement made under WTO valuation system and its Articles particularly the Article VII of the General Agreement on Tariffs and Trade 1994.

17. That methodology adopted in the impugned Valuation Ruling in contrary to the law and provision of Section 25 and against the guidelines given by the Hon'able High Court of Sindh Karachi in its judgments reported as PTCL 2014 CL.537 Sadia Jabbar vs FOP and 2014 PTD 176 Goodwill Trader vs FOP Therefore, impugned Ruling and determination is arbitrary, void, illegal and without jurisdiction and of no legal effect having following defects and illegalities:-

- i) That the Respondent has not disclosed that what requisite information of transactional value was required to adopt method provided u/s 25(1) but not available with the Respondent and why any effort has not been made to make , it available to exercise proper jurisdiction of determination under Section 25A of the Act, 1969;
- ii) That the Respondent has not disclosed the reason of non-determination of value of method provided under Section 25(5) when it is apparent on Customs record/data that transactional value of identical goods sold for export to Pakistan and exported at or about the same time as goods being valued were available with the Respondent and provided by Petitioner;

18. That under the law Section 25A cannot be used for the wholesale determination of customs values which transform the "Determination" permissible under Section 25A to an impermissible "fixation" of value. In the instant matter, the Respondent in contrary to the provision of section 25A





d. Grant any other relief deemed fit in the circumstances.

23. 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

In reply to the contents of the instant Petition, parawise comments on behalf of Respondent are submitted as under :-

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

Para-(2) : Need no comments being mention of previous valuation ruling.

Para-(3) : Denied. It is submitted that Para-(2) to(5) of the impugned Valuation Ruling No.1394/2019, dated 17-10-2019 itself are speaking which clearly reveals that all primary methods of valuation were exhausted and finally customs values were determined under Section 25 (9) of the Customs Act, 1969. Moreover, all stakeholders were also associated by conveying meetings on the issue. As such the said valuation Ruling has lawfully and justifiably been issued by the Respondent in terms of Section 25A of the Customs Act, 1969.

Para-(4) : Not Agreed. It is submitted that the said Customs values in Valuation Ruling No.1394/2019, dated 17-10-2019, were based ground realities as the same were determined after exercises i.e. examining 90 days import data, local market enquiry and after holding meetings with all stakeholders on 08-10-2019 after following all valuation methods in sequential manner. As such the same were legally applicable on imports of under reference goods across the country for uniform assessment purposes.

Para-(5) : Denied. It is submitted that all the participants of meeting were requested to provide following documents to substantiate their declared transactional values but no one provided the import documents :-

- (i) Invoices of imports made during last three months showing factual 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 value of item in question and ;
- (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 alongwith 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



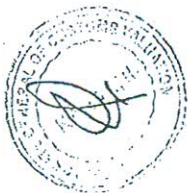
invoices alongwith monthly sales tax return, on one excuse or the other. Since the matter was lingering on, it was decided to proceed on merits in the light of available record as well as local market enquiry conducted by the Department. Moreover, it is submitted that the said customs values were determined in terms of provisions of Section 25 by following all Sub-Sections (1) to (9) sequentially. Consequently, the customs values were determined in terms of Section 25(9) of the Customs Act, 1969.

Para-(6) & (7) : Not Agreed. It is submitted that the Valuation No.1394/2019, dated 17-10-2019 itself is a speaking one which clearly reveals that the Customs values were determined strictly as per valuation methods as laid down in Section 25 of the Customs Act, 1969. These customs values in the impugned Valuation Ruling were determined after analyzing and evaluating whole the information so gathered and all factors surrounding the import i.e. consulting import data of last three months, online prices, and local market enquiry etc. in terms of Section 25(9) of the Customs Act, 1969. 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 S.R.O. 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.

Para-(8) : It is submitted that the Valuation Ruling No.1394/2019, & (9) dated 17-10-2019 itself is a self speaking document which has lawfully been issued by the Respondent under Section 25A of the Customs Act, 1969, after exhausting all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. It is further submitted that no valuation method was abandoned as stated by the Petitioner rather all valuation methods from Sub-Section (1) to Sub-Section (9) of Section 25 of the Customs Act, 1969, were exhausted while determining the customs values of under reference goods by giving reasons for rejection of previous methods and after evaluating and analyzing all valuation methods, customs values were determined in terms of Sub-Section (9) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country. These values are not arbitrary or unlawful as the same have been determined after properly analyzing and evaluating so gathered from different sources. Therefore, no violation of any rules has occurred determining the Customs values in the said ruling.

Para-(10) & (11) : It is submitted that the customs values have been determined in terms of Section 25A of the Customs Act, 1969, after exercises and holding meetings with relevant stakeholders of said goods. As such the said Valuation Ruling has lawfully been issued and may hold field for assessment purposes.

Para-(12) & (13) : Denied. In this regard it is to be submitted that had correctly and lawfully issued Valuation Ruling in terms of Section 25A and the same was based on factual grounds of the case. It is further submitted that the said Valuation Ruling was issued after thorough investigation and all aspects were considered.



Moreover, this Directorate General has determined minimum customs values in the Valuation Ruling No.1394/2019 dated 17-10-2019, 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling.

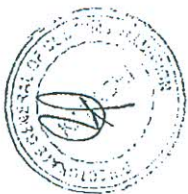
Para-(14) & (15) : Not agreed. It is submitted that it is not mandatory for Customs to accept each and every transaction value declared by the importers. It is submitted that the Petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support 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, the concept of "fixation of value" no more exist in the Customs Act, 1969, rather the customs values are now being determined in terms of Section 25-A of the Customs Act, 1969.

Para-(16) & (17) : It is submitted that that the Director, Customs Valuation has been legally empowered to determine customs value of any imported goods in terms of Section 25A of the Customs Act, 1969, following sub-Sections (1) to (9) of Section 25 of Customs Act, 1969. Further, this Directorate General has determined the minimum customs values in the Valuation Ruling No.1394/2019, dated 17-10-2019, 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened meetings for the determination of under reference goods and all stakeholders were duly invited participate and present their point of view and related import documents / evidence etc. in support of their contention. 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.

Para-(18) : Relates to the time of hearing before the Honourable Director General (Valuation).

P R A Y E R

It is respectfully submitted that the customs values of the subject goods were determined as per valuation methods laid down in Section 25 of the Customs Act, 1969 vide Valuation Ruling No.1394/2019 dated 17-10-2019. The Respondent has acted lawfully and the Valuation Ruling has correctly and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. On the other side the petitioner failed to furnish the requisite documents particularly copies of Sales Tax Paid Invoices issued during the last four months showing the values of suppliers (excluding duty & taxes) to substantiate their contentions. Moreover, at the time of exercise of Section 25A and meetings, the petitioner did not provided requisite import documents to the Respondent in support to justify their contention which are essentially required for determination of customs values.



In view of above, it is respectfully 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 assessments are liable to made as per said Valuation Ruling. In the light of above submissions and factual position, the under reference petition being not maintainable is liable to be dismissed and rejected accordingly.

Order

24- Hearing was held on 20-12-2020.

25- The DR was asked to share the details of market inquiry conducted. He produced the record and the sample. When the calculations were scrutinized, it was found that the value determined in the impugned VR was about 30% higher than that in the calculation sheet (for the no-carbon two side paper).

26- During the discussion, the DR admitted that apparently certain errors and omissions had crept in the VR, as the Director as under tremendous pressure to issue very larger number of rulings in the context the change in the UOM in the wake of the issuance if CGO 15/2019.

27- In view if the admission by the DR regarding the errors & omissions in the current Valuations Ruling, I hereby order it to be set aside, and to reinstate the previous VR till the issuance of the new VR by the Director, in consultation with all the stakeholders.

-sd-

(Mukarram Jah Ansari)
Director General

Registered copy to:

M/s. Hamdam Paper Products (Pvt) Ltd, M/s. A. Wahab Traders, M/s. AB Saeed (Pvt) Ltd, M/s. Abbas Traders, M/s. Ajwa Industries (Pvt) Ltd, M/s. Al-Noor Traders, M/s. Ammar Brothers, M/s. Ammara Commercial Printers (Pvt) Ltd, M/s. Apple Paper Products (Pvt) Ltd, M/s. Deluxe Packages (Pvt) Ltd, M/s. Dupak Corrugators (Pvt) Ltd, M/s. Five Star Paper Merchant SMC (Pvt) Ltd, M/s. M. Kamil Sons (Pvt) Ltd, M/s. Zia-ul-Quran Publications, M/s. Salman Paper Products (Pvt) Ltd, M/s. Madni Paper Mart, M/s. Mark Grafix, M/s. Millenium Paper Products, M/s. MKJ Associates, M/s. PAK Company, M/s. Qudrattullah & Company, M/s. Quick Process, M/s. Sadaf Enterprises, M/s. Star Converters (Pvt) Ltd, M/s. The Dot Link (Pvt) Ltd, M/s. Unico Printers, M/s. Waqas Danish Brothers (Pvt) Ltd, M/s. Well Traders, M/s. Yaqeen Art Press (Pvt) Ltd, M/s. Younus & Sons (Pvt) Ltd, Mr. Iftikhan Ahmed, C/o Aqeel Ahmed Khan, (Advocate)

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M/s. M.M Traders,
M-3, Mezanine Floor, Burhani Garden, Haqqani Chowk, Karachi.

M/s. Dawn Paper Mart,
Shed No.1, Plot No.A/1, SITE, Karachi.



M/s. Dawn Convertec,
Shed No.1, Plot No.A/1, SITE, Karachi.

M/s. Trade International,
8-Zulqarnain Chamber, Ganpat Road, Shahrah-e-Millat, Lahore-54000.

M/s. AIM Alliance Associates,
Room No.210, 2nd Floor, Europe Centre, Hasrat Mohani Road, Karachi.

Copy to:

1. Member (Customs), FBR, Islamabad.
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. Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/
Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
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 (Review), Karachi.
8. All Deputy/Assistant Directors (Valuation).
9. Guard File.



(Amanullah Soomro)
Deputy Director (Revision)