

GOVERNMENT OF PAKISTAN  
DIRECTORATE GENERAL OF CUSTOMS VALUATION  
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/36/2019

Dated: 07<sup>th</sup> January, 2020

**Order in Revision No. 01 /2019 Under Section 25-D of the Customs Act, 1969 against Valuation Ruling No. 1400/2019 dated 30-10-2019**

- 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. Kohinoor Traders & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

19-12-2019

For the Petitioners

Mr. Naseem H. Zaidi, Mr. Moin Razak,  
Mr. Danial Mehmood, Mr. Khalid Mehmood,  
Mr. M. Altaf, Mr. Adnan Iqbal, Mr. Madan Lal,  
Mr. Ilyas Ahsan Khan, Mr. Shahanshah Hasnain,  
Mr. Umer Khan, Mr. Faraz, Mr. Amir,  
Mr. Khalid Sharif, Mr. Wasim Ahmed.

For the Respondent

Mr. Hamood Ur Rehman, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1400/2019 dated 30-10-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being aggrieved and dissatisfied with Valuation Ruling No. 1400/2019 dated 30-10-2019 passed by the respondent in respect of the aforesaid valuation ruling, the petitioner prefers to file revision petition under section 25-D of the Customs Act, 1969, before the Director General Customs Valuation Karachi on the following facts and grounds.
3. That the petitioner is regular importer of the "Replacement Auto Parts" for use in various automobile vehicles imported from China, Thailand, Japan, Malaysia and other countries. Factually





in previous valuation ruling, the revision petitions were filed by various importers against the valuation ruling No. 1286/2018 dated 17-4-2018 for the revision of values in terms of Section 25D of the Customs Act, 1969. The Director General of Customs Valuation remanded the case to the Director for re-determination of the Customs values afresh as the referred valuation ruling was more than 18 months in terms of Order-In-Revision No. 13/2019 dated 18-09-2019. Consequently, the Director of Customs Valuation issued a valuation ruling No. 1400/2019 dated 30-10-2019 thereby, determining the Customs values under Section 25(7) of the Customs Act, 1969, to determine Customs values of Cam Shaft, crank shaft, Spark Plug, Lamp Light Lenses, Sealed Beam, Rubber Parts, Radiator Hose (Replacement Auto parts).

4. That the respondent abruptly enhanced the values comparing with the previous valuation ruling No. 1286/2018 without disclosing any basis of enhancement of values. Whereas the values of other parts i.e: Cam Shaft, crank shafts, Spark Plug, Lamp Light Lenses, Sealed Beam, Rubber Parts, and Radiator hose vide valuation ruling No. 1286/2018 dated 17-04-2018. However, the identical and similar goods valuation method provided in sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, were not examined by the respondent, but the same had been discarded and no method of the calculation has been provided in order to arrive at the actual customs values and finally the respondent has exercised the provision of Section 25(7) of the Customs Act, 1969, however, no detail working was incorporated in said valuation ruling. However, no valuation method from rule number 113 to 121 of Custom Rules 2001 as notified vide SRO 450(I)/2001 dated 16-6-2001 was applied. The use of such breathtakingly contradictory expressions by the respondent in the impugned valuation ruling is tantamount to malafide and ulterior motives which render the impugned VR liable to be set aside out rightly.

5. It is submitted that the contents of impugned valuation ruling do not establish that the actual local market inquiry had indeed been carried out by customs functionary as suggested, no calculation method incorporated in impugned VR in order to show that cost-profit ratio the sale/purchase by importers/whole seller/dealers/retailers after proper application by work back method right from point of sale at the retailers end up to the point of purchase at the importer end.

6. The local manufacturers produce limited range of parts exclusively for use of local assemblers and supply as "OEM Parts" covering limited number of vehicles supplying to the OEM local assemblers and usually they sale at higher prices in market, therefore, poor socio-economic class group/user of old make vehicles cannot afford these parts manufactured by local manufacturers which are beyond their reach, resultantly impugned VR is irrational, not logical and the same has been issued in violation of the Rehan Umer case (2006 PTD 909) , wherein it was observed by the Honorable High Court that an exercise of market inquiry cannot be termed as legal without accommodating the view of majority of stockholders. Since the majority of users are using "Replacement Parts" therefore, the impugned valuation ruling is not applicable on the strength of judgment of Apex court.

7. From above it is clear that enhancement has been made in an arbitrary fashion without following and applying the sequential methodology of Section 25-A of the Customs Act, 1969. The fact that "replacement of new value" against previous value clearly reflects that the value have not been arrived at by means of "determination" & by means of "fixation", this unlawful act of valuation department is violation of the valuation method as stated in the provision mentioned supra.





Needless to mention this point alone that renders the impugned valuation ruling a nullity in eyes of law in view of judgment dated 28-02-2011 in CP No. D-2673/2009 (Sadia Traders v/s Federation of Pakistan & others). The Honorable High Court of Sindh had in respect of section 25-A of the Customs Act, 1969, whereby seven valuation rulings issued by respondent were set-aside.

8. That the arbitrary and whimsical issuance of this impugned valuation ruling would most certainly and necessarily result in blocking of import of goods through legal channels and would only culminate in encouraging the smugglers and abusers of Afghan Transit Trade (ATT) facility. The government exchequer is already losing billion of rupees as result of rigid and unfair policies of various government organizations.

9. The petitioner craves leave of the Directorate General of Custom valuation to adduce and raise further grounds at the time of hearing.

### **PRAYER**

In view of foregoing facts, it is prayed that Valuation Ruling No. 1400/2019 dated 30-10-2019 being violation of the Customs Act and Chapter IX of the Customs Rules but also against the principles as laid down and the law as settled by Superior Courts. As such the public cannot be compelled to purchase replacement parts for vehicles at higher values which also violate the fundamental rights of the person as enshrined in the Constitution of Pakistan. Therefore impugned valuation ruling may kindly be set-aside and revised in the interest of justice & equity.

10. The respondents were asked to furnish comments to the arguments submitted by the petitioners in the case. Para-wise comments on the petition are given as under:-

### **PARAWISE COMMENTS**

Para-(1): Denied. It is submitted that Para-(2) to (5) of the impugned valuation ruling No.1400/2019 dated 30-10-2019 itself are speaking one which clearly reveals that all primary methods of valuation were exhausted and finally customs values were determined under Section 25(7) of the Customs Act, 1969. Moreover, all the 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 25-A of the Customs Act, 1969. Moreover, FBR vide CGO No.15/2019 dated 13-09-2019 & CGO No.17/2019 dated 19-09-2019 has directed to adopt UoM on per piece basis instead of kilogram under recommendations of W.T.O. As such Customs values have been determined and arrived at on the basis of per piece basis in the under reference valuation ruling.

Para-(2): However, it is submitted that the said Customs values in valuation ruling No.1400/2019, dated 30-10-2019, were based on ground realities as the same were determined after extensive exercises i.e. examining 90 days import data, local market inquiry and after holding meetings with all stakeholders on 10-10-2019 and 17-10-2019 in terms of provisions of Section 25 of the Customs Act, 1969. As such the same were legally applicable on imports of under reference goods across the country for uniform assessment purposes.

Para-(3): 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 requisite 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 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 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(7) of the Customs Act, 1969.

Para-(4): Denied. It is submitted that the valuation ruling No.1400/2019 dated 30-10-2019 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. Further, the concept of "fixation of value" no more exists in the Customs Act, 1969; rather Customs values are now being determined in terms of Section 25-A of the Customs Act, 1969. These values 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, and local market enquiry etc. in terms of Section 25 (7) 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-(5): Not Agreed. It is submitted that the valuation ruling No.1400/2019 dated 30-10-2019 itself is a self speaking document which has lawfully been issued by the respondent under Section 25-A 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 (7) 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 while determining the Customs values in the said ruling.





Para-(6): It is submitted that the customs values have been determined in terms of Section 25-A of the Customs Act, 1969, after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the said valuation ruling has lawfully been issued and may hold field for assessment purposes. As such the respondent has acted in accordance with law and under powers vested upon him under the law.

Para-(7): Relates to the time of hearing before the Honorable Director General (Valuation).

### **PRAYER**

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.1400/2019 dated 30-10-2019. The Respondent have acted lawfully and the Valuation Ruling No.1400/2019, dated 30-10-2019 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 25-A and meetings, the petitioner did not provide requisite import documents to the respondent in support to justify their contention which is 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 be 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**

11. Hearing was held on 19.12.2019 regarding V.R. No. 1400/2019. During the proceedings, the representative of the petitioner pointed a number of anomalies in the VR. At serial No. 08, where the value of different kinds of bearings is mentioned, the same is recorded on "per piece" basis, whereas the same is imported and sold as "sets". On query, the DR admitted that the market inquiry had been made on "set" basis, but it got erroneously mentioned as "per piece".

12. The petitioner also pointed out that compared to values determined on weight basis, the "per piece" values are 400% to 700% higher.

13. The DR acknowledged that some errors had crept into the VR, as very large number of VRs had to be re-issued due to change of UoM.

14. In view of the above, the ruling is remanded to the Director Valuation for review, in consultation with the stakeholders, and removal of anomalies & errors.

  
(Mukarram Jah Ansari)  
Director General

**Registered copy to:**

M/s. Miraj Autos, M/s. The Pakistan Automobile, M/s. Urooj Autos, M/s. Pakistan Motors,  
M/s. Kohinoor Traders, M/s. Al-Wasi Trading, M/s. Urooj Autos, M/s. Hilal Motors.  
M/s. Hi-Tech Automotive Product, M/s. MZA Enterprises, M/s. Umer Traders, M/s. Basit Brothers.  
M/s. Khyber Autos, M/s. Global Trading

**C/o Shaikh & Madan Law Associates (Advocates / Consultants)**

Suit No. 404A, 4<sup>th</sup> Floor, Japan Plaza, M.A. Jinnah Road, Karachi.

M/s. Zahid Impex, M/s. Naqi Sons, M/s. Ultima Automotive Parts Company,  
M/s. Taqi Autos, M/s. Al-Qamar Motors, M/s. Moon Light Autos, M/s. Noorzaid Traders.  
M/s. Super Autos, M/s. Abdullah Yaseen Traders, M/s. Shahzad Auto Store / Imran Agencies,

**C/o Ilyas Ahsan Khan (Legal Consultant)**

3<sup>rd</sup> Floor, 17-C, 4<sup>th</sup> Lane, Main Zamzama, Boulevard, DHA, Phase-V, Karachi.

M/s. Danial Enterprise,  
101, Al-Noor Market, Preedy Street, Saddar, Karachi.

M/s. Indus Automobile (Pvt) Ltd,  
17, Al-Noor Market Plaza Square, M.A. Jinnah Road, Karachi.

M/s. Akram Autos,  
Shop No.222-223, Prince Centre, Preedy Street, Saddar, Karachi.

M/s. Akram & Co,  
313, Saba Avenue, Phase-5, Kh-e-Mujahid, DHA, Karachi.

M/s. Anas Agencies,  
122, Prince Centre, Preedy Street, Saddar, Karachi.

M/s. Tabarak Traders,  
4/1, Office Tower, Rimpa Plaza, M.A. Jinnah Road, Karachi.

M/s. Arsalan & Company,  
124, Prince Centre, Preedy Street, Saddar, Karachi.

M/s. M. Anwer Brothers,  
Office No.123, Prince Centre, Preedy Street, Saddar, Karachi.

M/s. Ali & Company,  
3/3, Saba Avenue, Phase-5, Khaban-e-Mujahid, Ext, DHA, Karachi.

M/s. Hamza Trading,  
House -3/1, Street No.32, Saba Avenue, Phase-V, DHA, Karachi.

M/s. S. Naeem Int. (Pvt). Limited,  
C/o M. Adnan Moton Advocate,  
H. No. 13-B, 6<sup>th</sup> Street, Zamzama, Clifton, 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.