

**GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH**

File No. DG (V)/Val.Rev/30/2019

04th March, 2020

**Order in Revision No. 07 /2020 Under Section 25-D of the Customs Act, 1969 against
Valuation Ruling No. 1406/2019 dated 01-11-2019**

- 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. Z. R. K Industries and others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

25-02-2020

For the Petitioners

M/s. Z. R. K Industries Pvt Ltd,

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. 1406/2019, dated 01-11-2019 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. 1406 of 2019 dated 01.11.2019, 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 applicant is manufacturer of Medium Density Fiber Board (MDF) falling under PCT Heading 4411.1200, 4412.1300, 4412.1400 and 4412.9390 having manufacturing unit located at I.E Jamrud Road, Peshawar. The jurisdiction of this honorable forum is being invoked against the subject valuation ruling as the applicant being local manufacturer is aggrieved of the ruling that brought Customs values of the imported MDF board to the lowest ebb viz-a-viz value of the locally manufactured MDF. It is settled by the superior judiciary that valuation ruling can be issued on the request of any person who can be individual firm, company or any other local manufacturer.

Therefore, the applicant being stakeholder in the matter invokes the jurisdiction of this worthy forum.

2. That the primary duty of customs is to control the inflow and outflow of goods and to regulate tariffs, keeping in view the overall economic condition of the country including protection of local industry, curbing smuggling and to regulate the market force with regard to pricing of commodities. Customs duties are assessed by many countries according to the Brussels Definition of Value (BVD). Under this method, a normal market price, defined as "the price that a good would fetch in an open market between a buyer and seller independent of each other," is determined for each product, according to which the duty is assessed. Factual deviations from this price were only fully taken into account where the declared value was higher than the listed value. However, section 25 read with section 25-A of the Customs Act, 1969, provides for determination of value in Pakistan. Directorate General of Valuation has been created under the said law to take into account the interest of the country in importation and exportation that affect the economics of the country as well as the adverse impact on the revenue.

3. That contrary to the purposes of creation of Directorate General of Valuation, the Director Valuation passed Valuation Ruling No. 1309/2018 whereby customs values of Medium Density Fiber Board (MDF) were determined under section 25-A of the Customs Act 1969. The applicant is aggrieved of the determination of values of MDF and holds that the said valuation ruling was not in conformity with the legal provisions and killer of the local MDF industry on the following grounds.

4. That revision petition was filed against Ruling 1309/2018 before this office i.e. Director General of Valuation Karachi wherein all the lapses and international prices were highlighted but instead of determination of Customs Value on the factual position, the matter was referred to Director Customs Valuation Karachi vide Office Note No. DG (V)/Misc./1/2018 dated 23/07/2018 to revisit the Valuation of MDF Board meeting out fair treatment to all stakeholders and engaging the applicant as well as Federation's representative in the meeting. Neither action whatsoever has been taken nor any compliance of the DG's order was made.

5. That the matter was hectically perused in the office of the Director General but to no avail. To sheer surprise of the applicant, Valuation Ruling No. 1406/2019 was issued whereby the already determined values were further considerably reduced. The Statement showing reduction in customs value of different thicknesses of MDF is annexed for ready reference. The applicant being stakeholder was completely ignored. The meetings referred to in the impugned Valuation Ruling pertained to the dispute raised by the applicant on valuation ruling No. 38/2018.



6. That the impugned ruling is in violation of the law, therefore, illegal on the following grounds.

4. **GROUND**S

A. That while finalizing the impugned ruling the Directorate of Valuation committed grave mistake for determination of value of MDF. Admittedly, the unit of measurement was substituted to be cubic meter instead of kg. It is admitted fact that the density of MDF has not been taken into account as the quality of MDF depends upon the density. For brevity, if one of the thicknesses i.e. 16mm is considered for assessment, then the universally approved density ranging from i.e. 690 - 740 kg/m³ shall be considered for determination of value under the Customs Act. The applicant has annexed the data sheet available on the website of various MDF manufacturers pertaining to density which clearly contemplate the density ranging as stated above. For better understanding the following calculations shall bring more clarity regarding the glaring mistake and loss to the exchequer;

Thickness	Valuation Ruling 1309/2018			VR 1406/2019	Difference Price/m ³ USD	Loss to Exchequer in duties & taxes (PKR)
	Density	ITP Price/kg	Price/m ³ (USD)	Price/m ³ (USD)		
16 mm	700	0.304	212.8	195	(18)	(1,684)

B. The Director General Valuation referred the matter of the applicant to Director, Customs Valuation, Karachi vide Office Note No. DG (V)/Misc./1/2018 dated 23/07/2018. The DG Valuation ordered as follows: -

“Revisit the valuation of MDF Board, meeting out fair treatment to all stakeholders and engaging M/s Peshawar Particleboard as well as the Federation’s representatives in the meetings. The DR has informed this office that prompt action has been initiated in compliance of the cited directions dated 23/07/2018 and the matter is under review. This Revision Petition is therefore, disposed of with the directions to the Director, Customs Valuation, Karachi to conclude the initiated exercise within two weeks, decide the disputed values in accordance with law and notify the same under Section 25-A of the Customs Act, 1969 after hearing the stakeholders including the petitioner. The petition is disposed of accordingly.”

- The directions of DG Valuation were not complied with.
- Market survey was not conducted to determine the value on deductive method.

- iii. What were the reasons of omission of the conditions as existed earlier with regard to density of MDF as assessment on the basis of cubic meter is uniform whether imported in higher or lesser density.

C. That more or less the same lapses and violation of law can be observed in the recent valuation ruling No. 1406/2019 which are summarized as follows: -

a) Density of MDF has been ignored in the impugned ruling.

The assessment of MDF for the purposes of customs duties and taxes is dependent upon the weight of the goods. The Director Valuation admits that the stakeholders i.e. importers representatives from Karachi timber merchant group and officers from field formation were invited in a number of meetings but the impugned ruling is silent about the comparison of density of MDF, taken by the officers of customs for assessment of weight at the time of clearance of MDF Board and the actual density declared by the manufacturers of imported MDF Board. The comparison shown in the below table clearly speaks for favour of the commercial importers that shall not only cause damage to the exchequer by way of short payment of revenue but also shall have a devastating effect on local MDF Industry in term of fair market competition. The Director Valuation did not ask the officers of customs with regard to such damage to the exchequer and local MDF industry being stakeholder in the matter.

Comparison of Density for Assessment of Customs and Declaration by the Manufacturer.

	2.2.mm	3.2 mm	7 mm	10 mm	16 mm	18.0m m	24.0m m
Density being taken by the customs for assessment	763.650	763.65	672.00	672.00	651.00	651.00	700.00
Density (as per foreign manufacturer declaration)	770-800	770-800	730-760	730-760	690-720	690-720	680-710

The difference in density culminates into shortage of weight of imported goods and thus and thus lesser quantity of good is assessed to levy of duty and taxes resultantly causing short realization of revenue. The valuation ruling therefore, is not sustainable in law.

b) Actual current value of MDF not correctly ascertained.

As per the impugned ruling, the Director Valuation determined the value of MDF Board on the basis of section 25 (7) of the Customs Act, 1969 that suggests for determination of the actual customs value of the imported MDF based on unit price at which the imported MDF is so sold in the greatest aggregate quantity. However, to the dismay of the applicant, no communication was made



to the applicant for participation in any meeting of the stakeholders. Only the commercial importers who had interest in reducing the customs value, may have been invited in meeting and the Director Valuation solely relied upon the verbal information provided by the commercial importers i.e. Karachi Timber Merchants Groups and passed the impugned ruling. The bias of the Director Valuation is evident from the fact that only the verbal arguments of commercial importers were considered and the other stakeholders i.e. representatives of local MDF manufacturers were not even invited for participation in the meetings. This is admitted fact that the relief of incidence of so called reduction in price in the international market and the incidence of reduction in duty and taxes in terms of the impugned ruling, has not been passed on to the ultimate consumer which falls within the ambit of unlawful enrichment as held by the superior judiciary in the matter of Facto Belarus.

c) Principles for determination of value violated

It has been held by the Sindh High Court at Karachi in a case reported as PTCL 2008 CL 401 while dilating upon such issue that: -

"For the reason of some wrong doers the policy of law or the principles for determination of value prescribed under the law cannot be compromised. It is true that the law as are framed to recover revenue and thus the prime interest is that of the revenue however the rules of interpretation which have now the approval of the courts with special reference to fiscal statutes been known, there is no question of penalizing those who may be few a number but are doing business as per law rules".

Therefore, the pith and substance of the impugned ruling has facilitated certain commercial importers of MDF, sending valuable foreign exchange to the foreign manufacturers as against the local industry providing jobs, saving foreign exchange and making value addition, more so doing business as per law and rules. The impugned valuation is therefore, not sustainable in law.

d) Impugned valuation ruling passed in a slip shod manner.

It would be relevant to reproduce para 4 of the impugned ruling which itself shall reveal that valuation ruling has been passed in a slip shod manner facilitating the commercial importers as against the local MDF industry. The mandatory documentary evidences for determination of value of MDF were deliberately not furnished although the same was demanded as evident from the impugned ruling. Para 4 of the impugned ruling read as follows: -

"The representatives of M/s Karachi Timber Merchant Group were of the view that the determined values are so high that they can't compete in the market. In this regard, they also submitted their proposals for determination of custom values of MDF board of different origins, specifications and the methods to convert the units of measurement as per CGO.

It clearly reveals that the above reproduction is similar to that of valuation ruling No.1306/2018 and the part which was objected to in the previous revision petition was substituted with *"and the methods to convert the units of measurement as per CGO"*. This clearly reveals that the valuation ruling was passed on unilateral request and beneficiary to the said ruling are the request makers and not the stakeholders running local industries providing jobs and saving foreign exchange.



e) **VALUE OF FINISH PRODUCT IS DEPENDENT UPON VALUE OF RAW MATERIAL**

It is an admitted fact that the value of finish product is dependent upon the value of the raw material. The applicant deems it appropriate to put a comparison of prices of raw material that escalated during the period between **Valuation ruling No. 873/2016** dated 21/06/2018 and **Valuation Ruling No. 1309/2018** dated 05/07/2018.

S.NO.	Description	Price (2017)	Price (2018)	Price (2019)	Difference	Increase %
1.	Wood (rate/ton)	5,000	6,400	7,800	2,800	56.00%
2.	Urea Formaldehyde (rate/ton)	38,000	46,000	55,000	17,000	44.74%
3.	Power					
	Electricity (rate/KW)	14.0	14.60	22.27	8.27	59.07%
	Diesel (rate/liters)	81	104	128	47	58.02%
5.	Energy (coal/ton)	16,972	18,046	22,500	5,528	32.57%
6.	Methanol (rate/ton) Excl. Duties & Taxes	31,500	49,500	59,000	27,500	87.30%
7.	Minimum wages (employees)	14,000	15,000	17,500	3,500	25.00%
Average Increase in %age						52%

If the international pricing with regard to wood and other raw materials of MDF is on the upward trend as could be verified through various international indexes, therefore the impugned ruling is based on conjecture and factual position has not been taken into account while finalizing the impugned ruling.

The above comparison shows an average price hike of 52%. It is also an admitted fact that the local market prices have a strong nexus with the international market therefore, it is wrong to hold that the prices in the international market were decreased showing no evidence whatsoever for the issuance of valuation ruling. The applicant has serious reservation over the impugned ruling as despite an increase of prices of raw material in the international market, great variation is noticed in the valuation ruling with regard to values of various thicknesses. The applicant has prepared various

comparison sheets for the perusal of this honorable forum the unjustified decrease in value and the quantum of damage to the exchequer in terms of short payment of duty and taxes. Comparison of both the rulings for the year 2016-17 and 2019 is as follows.

S.NO.	Descriptions	VR 873/2016 Price USD/m3	VR 1406/19 Price USD/m3	Difference Price/M3 (USD)	Difference in %age
1	MDF 2.2 mm	244	230	14	5.74%
2.	MDF 3.2 mm	245	230	15	6.12%
3.	MDF 7.0 mm	230	205	25	10.87%
4.	MDF 8.0 mm	230	205	25	10.87%
5.	MDF 11 mm	225	200	25	11.11%
6.	MDF 16 mm	220	195	25	11.36%

The above figures based on the Valuation Rulings reveals abnormal variations in the determination of values of the same commodity with different thicknesses. For instance the thickness of **2.2mm** indicate reduction of value to the extent of (-5.74%) while **16mm** represents reduction of (-11.36%). This variation is beyond understanding and no justification whatsoever has been provided in the Impugned Valuation Ruling.

f) INCREASE IN FREIGHT CHARGES DUE TO INCREASE IN THE OIL PRICES.

The crude oil prices in July 2016 were **48.99 US\$** and the same increased during the period of **Valuation Ruling No. 873/2016** and Valuation Ruling No. **1309/2018, to 73.80US\$**. However, the same touched its highest **73.80US\$** which rests as on 01-11-2019 as **56.20 US\$**(reference: fedprimerate.com) obviously, the increase of 66.38% in oil prices affect the freight rate and such increase is added to the price of imported woods. On this score alone, the stance of the commercial importers seems to be baseless as the increase in the oil prices does affect the manufacturing, transportation and freight charges being an integral part of the price of goods, therefore without any evidence the decrease in valuation is in contrast to the law.

g) IMPORT FROM SRI LANKA UNDER FTA

The Free Trade Agreement has been inked between Pakistan & Sri Lanka and the import of MDF is subjected to Customs Duty @ 0%. **However the market price of MDF does not reflect any**

difference in price of MDF imported from Sri Lanka from those of other Far-East Nations meaning thereby the importers from Sri Lanka is not passing on the incidence of concession to the consumers. The judgment of the honorable Supreme Court in the matter of *Facto Belarus* is clear on the subject wherein unlawful enrichment has been condemned. It is therefore direly needed that the MDF imported from Sri Lanka should be classified separately than that of Far East Countries with a higher value for assessment.

5. **PRAYER**

Keeping in view the above submissions, it is humbly prayed that the impugned ruling may kindly be set aside and our original grievances as reflected in Director General's order in revision No. 38/2018 dated 08-10-2018 may kindly be addressed and fresh valuation ruling be issued under the relevant provisions of customs Act, 1969.

PARAWISE COMMENTS

Para-(1): Custom values of Medium Density Fiber (MDF) Board were earlier determined through Valuation Ruling No.1406/2019 dated 01.11.2019. The Federal Board of Revenue issued CGO No.15/2019 & 17/2019 dated 13.09.2019 & 19.09.2019 respectively, whereas, unit of measurement (UOM) of a number of commodities including Medium Density Fiber (MDF) Board was changed from Kilograms to cubic meter (per cubic meter) for the purpose of assessment. Moreover, representations were received in this Directorate General that the values of subject goods need redetermination as existing valuation ruling was old. Keeping in view, the above facts an exercise was carried out to determine the customs values of the subject goods under Section 25-A of the Customs Act, 1969.

Para-(2): Meetings with stakeholders were convened on 25.02.2020, which was attended by importers, representatives from Karachi Timber Merchants Group and Officers from field formations. The stakeholders and importers were requested to submit the following documents before or during the meeting, so that customs values could be determined.

- i. Invoices of imports during last three months showing customs values.
- ii. Websites, names and E-mail address 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 the value of item in question.
- iv. Copies of Sales Tax Invoices issued during the last four months showing the difference in price (excluding duty and taxes) to substantiate their contentions.

Para-(3): Customs valuation methods given in Section 25 of the Customs Act, 1969, were applied in sequential order to address the valuation issue at hand. Transaction value method under Sub-Section (1) of Section 25 of the Act *ibid* was found inapplicable because requisite information under the law was not available. Identical and similar goods valuation methods provided in Sub-



Section (5) and (6) of Section 25 of the Customs Act, 1969, provided some reference values but due to wide variation and suppressed declarations, the same could not be relied upon. In the sequential order this office then resorted to conduct a market inquiry and, consequently, Deductive value method under Sub-Section (7) of Section 25 of the Customs Act, 1969, was applied to arrive at the assessable customs values of the subject goods being most appropriate for the purpose. All the information together was evaluated and analyzed for the purpose of determination of customs values.

6. **PRAYER**

Keeping in view on the foregoing facts stated above, it is prayed that the revision petition filed by the importer under Section 25D of the Customs Act, 1969, is baseless hence no merits and the same may be rejected..


ORDER

7. Hearing was held on 25-02-2020 regarding Valuation Ruling 1406/2019 dated 01-11-2019 to decide revision petition.

8. The Federal Board of Revenue issued CGO No.15/2019 dated 13.09.2019 and 17/2019 dated 19.09.2019, wherein unit of measurement (UOM) for Customs values of Medium Density Fiber (MDF) Board was changed from Kilograms to Cubic Meter (Per Cubic meter) for the purpose of assessment. Moreover, the petitioners contested the change of Unit of Measurement. The petitioners were informed that Directorate General of Customs Valuation is not the forum to contest about making changes in the Unit of Measurement of goods. Therefore, proper representation may be forwarded to the Board if any argument is to be made regarding the changing of Unit of Measurement. It is otherwise tenable and they admitted that the goods are transacted in terms of cubic meter in the market and they have filed a representation under section 7 of FBR Act, the reply of which is still awaited. The argument forwarded is therefore not sustainable.

9. As far as value of MDF Board is concerned the arguments forwarded on Appellate stage were never presented to Director Valuation who has conducted hearing for the Valuation Ruling. Further, the invoices submitted by M/s. Z. R. K Industries Pvt Ltd are also not relevant to Pakistan and therefore could not be made the part of supportive argument. It is also relevant to add that none of the other manufacturers has forwarded any argument or contested the appeal before this forum.

10. I therefore upheld the Valuation Ruling 1406/2019 dated 01-11-2019. However, if ninety days have passed, any of aggrieved party can apply to Director Customs Valuation for redetermining values of their products duly supported by evidential material. Further, Director Valuation may consider different categories of high gloss/matt PVC laminated MDF board and acrylic laminated MDF board separately along with Customs values of MDF Board.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

M/s. Z. R. K Industries Pvt Ltd,
Z.R.K industrial park, M-1 Motorway, Wali Khan Interchange,
Merathi, Mardan.

M/s. ZRK Particleboard Industries (Pvt) Ltd,
Plot No. W-16-17, Industrial Estate, Peshawar-25000.

M/s. Pearl Enterprises,
Plot No. JM-167, Fatima Heights, Soldier Bazar, Opposite Nishter Park,
Near Old Numaish, Karachi.

M/s. Karachi Timber Merchants Group,
Shahoowala Chamber, Siddiq Wahab Road, Old Haji Camp, Karachi.

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.