

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

File No. DG (V)/Val.Rev/42/2019

2615

February, 2020

**Order in Revision No. 06 /2020 Under Section 25-D of the Customs Act, 1969 against
Valuation Ruling No. 1420/2019 dated 04-11-2019**

- 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. Evolve Food & Beverages & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

13-02-2020

For the Petitioners

Mr. Atif Aziz Ahmed, Mr. Zahid Farooq (Advocate)
Mr. Ali Ahmed Pai, Mr. Rehan Ahmed,
Mr. Shahzad Anjum

For the Respondent

Mr. Imtiaz Hussian Khan, Principal Appraiser
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. 1420/2019, dated 04-11-2019 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. 1420 of 2019 dated 04.11.2019(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 a commercial importer and is engaged in the import of shoe polish and shoe brushes from China. The petitioner is duly authorized to conduct his business under valid

National Tax Number 2967993 and Sales Tax Registration No. 3277876132570 and possesses excellent track record of tax compliance. Copy of the NTN/ STRN is attached as Annex-B.

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 cleaning /washing /dusting/ and similar kind of brushes falling under PCT heading 9603.9000 of Chinese/Vietnam origin at the rate of US\$ 0.7/Unit against serial 4 and 5 of the impugned Valuation Ruling No. 1420 of 2019 dated 04.11.2019(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 Cleaning/Washing/Dusting/ and similar kind of Brushes(hereinafter "Shoe Brushes") inter alia, Chinese origin at the rate of US\$ 0.7 per Unit 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 Shoe Brushes. The petitioner submits a brief background to the issue as follows.

4. That in due course of its business, the petitioner conducts imports of Shoe Brushes manufactured in China which are available for purchase at significantly lower values than those fixed by the respondent Director vide the impugned Valuation Ruling. The petitioner imports wooden shoe brushes of assorted sizes and quality, the value of which range between US\$ 0.16 per unit to US\$ 0.35 per unit. However, the respondent Director has fixed the value of all kinds of brushes of Chinese/Vietnam origin at the rate of 0.70 per unit which is two and three times greater than the value of shoe brushes imported by the petitioner.

5. That, as such, the price paid / payable for Shoe Brushes 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 shoe brushes at the time of import into Pakistan from China remains significantly lower than the values 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 including GDs, commercial, invoices, packing lists and Bank payment receipts are attached as (Annex-C-1 to C-3).

7. That, as such, prior to the issuance of the unlawful and highly illegal impugned Valuation Ruling, the assessment of imported Brushes was carried out in accordance with the previous valuation Ruling No. 1147 of 2017 dated 05.03.2017 attached as (Annex-D). The values of cleaning/washing/dusting/ and similar kind of Brushes falling under PCT heading 9603.9000 of Chinese/Vietnam origin were determined at the rate of US\$ 2.5/Kg which was close to the values of the brushes imported by the Petitioner.

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 Shoe Brushes 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 shoe brushes 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 shoe brushes 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, being importer of the shoe brushes it was the right of the petitioner to be invited by the Respondent in the meeting purportedly to be held on 04.11.2019 for determination of the values thereof under Section 25A of the Customs Act, 1969. However, on the contrary, it has been alleged at Para-3 of the impugned Valuation Ruling No. 1420/2019 dated 04.11.2019 that "meeting with stakeholders was scheduled for 04.11.2019. However, neither any stake-holder appeared for hearing nor any reply received." This statement is an ample proof of the fact that the impugned Valuation Ruling has been issued not only in haste but also without knowing the material facts relating to the values of the items contained therein.

11. That the actions of the respondent in respect of fixation of values for shoe brushes 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.

12. That, in light of the preceding narration, the petitioner prefers the instant petition on, inter alia, the following grounds, namely:

4.

GROUND

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 impugned Valuation Ruling has been issued in haste and without inviting and knowing the viewpoints of the stakeholders including the petitioner. The impugned Valuation Ruling is liable to be struck down on this sole ground.

C. That the respondent Director has not carried out any determination whatsoever through the impugned Valuation Ruling in respect of shoe brushes.

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

E. That the respondent Director has not given any lawful reasons for imposing the listed values for assessment of all kinds of Brushes at the time of import into Pakistan.

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 they 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.”

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. 1420 of 2019 dated 04.11.2019 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. 1420 of 2019 dated 04.11.2019 to the extent of serial no. 4 and 5 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. 1420 of 2019 dated 04.11.2019 till the final disposal of this review petition.
- d. That, in the meanwhile, the pending and impending imports of the petitioner be allowed to 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.
- f. Grant cost of the petition.

6. 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): Custom values of cleaning/washing/sweeping/dusting and similar kind of brushes were earlier determined through Valuation Ruling No.1147/2017 dated 03.05.2017. 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 brushes was changed from Kilograms to Unit (Per Piece) 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): Meeting with stakeholders was scheduled for 04.11.2019. However, neither any stakeholder appeared for meeting nor any reply received. 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&4): 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.

Para-(5): 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.

7. **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.

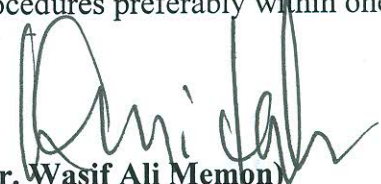
ORDER

7. Hearing was held on 13-02-2020 regarding Valuation Ruling 1420/2019 dated 04-11-2019 to decide revision petition in accordance with the Honorable High Court's order dated 23-12-2019 vide C.P No. D-8268/2019.

8. Custom values of cleaning/washing/sweeping/dusting and similar kind of brushes were earlier determined through Valuation Ruling No.1147/2017 dated 03.05.2017. 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) of a number of commodities including brushes were changed from Kilograms to Unit (Per Piece) for the purpose of assessment.

9. It transpires that some procedural requirements have not been fulfilled by the Department which the departmental representative could not rebut or justify. Moreover, market enquiry was not conducted properly as per procedure in vogue. The values determined after change of unit of measurement have created anomaly and distortion which are not commensurate with true values prevailing in market or transaction values which have created enough doubt in mind. Further, some of the more expensive types of hair brushes were not taken into account as well.

10. In view of the above facts, it is concluded that some errors and omissions have crept into the subject Valuation Ruling. I hereby remand it back to the Director Customs Valuation to redetermine the Customs values of the subject goods after fulfilling all requisite procedures preferably within one (01) month time.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

M/s 3A Pakistan,
C/o Mr. Zahid Farooq (Consultant/ Advocate),
Officer No. 18, First Floor, Burhani Terrace, Bohri Road, Opposite Custom House, Karachi.

M/s. NRMA Enterprises,
212, Industrial Town Plaza, Shahrah-e- Liaquat, Karachi-74000.

M/s MB. Traders,
Shop No. 03, 1st Floor, Pak Market, Shah Alam, Lahore.

M/s. Diplamate Traders,
Shop No. 08 Malik Market, New Alamgir Market, Shah Alam, Lahore.

M/s. Cleanmax,
House No. 14-6, New Ander Nagar, Behind Lyric Cinema, Multan Road, Lahore.

M/s. Madni Traders,
128/3, Karim Park, Ravi Road, Lahore.

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.