

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V)/Val.Rev/33/2019/8085.

29th April, 2020

Order in Revision No. 16 /2020 Under Section 25-D of the Customs Act, 1969, against
Valuation Ruling No. 1422/2019 dated 02-11-2019

- 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. N.J. Auto Industries (Pvt) Ltd & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

18-03-2020,

For the Petitioners

Mr. Liaqat Ali Shaikh, Mr. Sohail Usman,
Mr. Khurram Riaz,

For the Respondent

Mr. Anees-ur-Rehman, Valuation Officer,
Mr. Tauseef Ahmad, Valuation Officer,

This revision petition was filed under Section 25-D of the Customs Act, 1969, against customs value determined vide Valuation Ruling No. 1422/2019, dated 02-11-2019 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. 1422/2019 issued vide No. C.No.Reg.misc/31/2007-VII/2547 dated 02.11.2019 respectively by the respondent (hereinafter referred to as the impugned ruling), the applicant begs to prefer this petition inter-alia on the following facts and grounds:-

3. FACTS

1. That the applicant is a manufacturer/assembler of "Motorcycles" and for that purpose imports Motorcycle Parts on regular basis. The applicant/manufacturer-cum-importer is aggrieved of the Valuation Ruling, bearing No.1422/2019 dated November 02, 2019 (hereinafter referred as "impugned ruling").

2. That in the impugned ruling, the respondent had determined the custom value of China origin assorted "motorcycle parts" at different whimsically determined customs values for different items. From the outset, it has been gathered that no "evidence" valid within the meaning of Section 25 of the Customs Act, 1969, or even no corroborative document has been provided to substantiate the assumption of "increased price trend" has been provided by the respondent. This fact is quite obvious from the contents of paragraph 5 of the impugned ruling.
3. That the impugned ruling is even totally against the previous valuation rulings. It is pertinent to mention here that the previous rulings were issued after arriving at a consensus between all the stakeholders, including local manufacturers, commercial importers, trade bodies, etc., which covers all the major motorcycle parts and the said valuation ruling was smoothly applied by the assessing officers all over Pakistan and there was no complaint from any side. If comparison is made with the previous rulings, the customs values are not practicable / applicable due to arbitrary enhancement and disparity for levy of duties & taxes on OEM importers and the commercial importers. According to the impugned ruling, the commercial importers are very much at advantageous position.
4. The impugned ruling has been issued against the provisions of Section 25 i.e. without exhausting the sequential order as required as per law.
5. The values determined in challenged valuation ruling are arbitrary values which are prohibited under clause (iii) of rule 110 of Custom Rules, 2001, and basis of which has not been produced in the impugned ruling.
6. The respondent has not considered the transactional values at which the goods are being imported in the market under Section 25(1) of the Customs Act, 1969, and has determined the value of the goods as per valuation ruling.
7. The valuation ruling must reflect the reasons why the particular chosen method was applied under Section 25 of the Customs Act, 1969, and why the preceding applicable method was discarded.
8. That the respondent has totally ignored the sequential order prescribed in section 25 of the Customs Act, 1969, and acted in excess of jurisdiction vested in them and overstepped the power conferred upon by law. The methods of valuation to be applied in sequential manner and parameters have not been applied as required in FBR letter No C No 4/9/ VAL & Audit/2008 dated 29-01-2009.
9. That it has been mentioned in the impugned ruling that market enquiry was carried out but it was neither shown or discussed in our meetings nor produced in the impugned ruling.
10. A meeting was called with reference to CGO 17 to convert the weights into unit of measurement; we offered our cooperation and sent the list of required items in the CGO 17 to the department which were never considered and 30% addition made on the said list which is unjustified and without any reason and calculation.
11. As mentioned in the ruling that stakeholders suggested that there is no change or increase in prices in China because our importers gave the reason that RMB or Chinese Yuan declined in the value for last one year which can easily be checked with the record of Bank of China Website.



12. Impugned valuation ruling cover only parts of Chinese origin whereas parts of other origins were not covered like covered in recent valuations numbers 1401, 1402 and 1403/2019 etc., issued for auto parts on October 30, 2019.
13. That the raw material prices were also not increasing in China for last two years which can also be seen at the data of Shanghai metal and minerals website.
14. It is very clearly seen the that local manufacturers of auto parts were consulted who always suggest increasing the import values so that they can increase the selling prices and make huge profit instead of passing the benefit of industry to the poor motorcyclist.
15. There will be no doubt with such increase in value of imported motorcycle parts will get a big setback in import and the smuggling will fill the gap and custom will lose the revenue and the documented economy will be plunged into abyss.
16. That, without prejudice to above, in the light of land mark judgment dated 28-02-2011, in the case of C.P.No.D-2673/2009, and other connected petitions, while quashing the valuation rulings of ball bearings, safety glass, motorcycle parts, etc., the Honorable High Court of Sindh, has devised a very transparent mode of determination of customs values for any item. Perusal of the impugned ruling clearly signifies that the guidelines provided by the Honorable High Court of Sindh in the aforesaid judgment have not been followed by the respondent.
17. That the respondent whilst passing the impugned ruling failed to make any reference to the criteria and the determining factors laid down in Section 25 read with Section 25-A(1) of the Act, and also had not made any adherence to the cautions & advices given by the Honorable High Court in the aforesaid judgment.
18. That the impugned ruling has been passed in total disregard of the provisions contained in Section 25 read with Section 25-A(1) of the Act, and the respondent has also flouted the directions of the Honorable High Court in its order dated 28-02-2011, hence, the instant review application is being filed in terms of Section 25-D of the Customs Act, 1969.
19. That as per Rule 112 of the Customs Rules, 2001, the respondent was obliged to give evidences of his belief and also provide an opportunity to the applicant to rebut those evidences. In para 3 of the impugned ruling, the respondent has stated that the supportive evidence was collected through market inquiry and was taken into consideration along with other evidences, however, as stated above not a single evidence has been discussed/mentioned in the impugned valuation ruling. The respondent has failed to submit any evidential invoice or GD where the subject goods were assessed/cleared as per Section 25(5) & 25(6) of the Act, read with Rules 117 & 118 of the Customs Rules, 2001, (hereinafter Rules), therefore, it is very much clear that the customs values mentioned in the impugned ruling were not determined under Section 25(5), 25(6) & 25(7) of the Act.
20. That while determining the customs value through the impugned ruling, the respondent has failed to make any reference to the guidelines issued by the Honorable High Court. The Honorable High Court in its order had specifically mentioned that the provisions of Section 25 of the Act are to be followed / construed strictly and in a sequential manner. The Honorable High Court has held that the officer, as per the provisions of Section 25 of the Act, cannot jump to a subsequent methods, prescribed in a particular sub-section of Section 25, while determining the customs values and cannot jump without explaining why the preceding sub-section and the methods enumerated therein was not applicable. It has been further held that all

customs values are to be determined initially on the basis of declared transaction value and in case the same cannot be determined, the appropriate officer shall apply the other methods as envisaged in Section 25, in sequential order.

21. That the impugned ruling of the respondent does not stand of judicial scrutiny. While determining the customs value of Motorcycle Parts in terms of Section 25-A of the Act, the respondent was obliged to follow the methods of determination of value laid down in Section 25 and further in line with the guidelines provided by the honorable High Court, Section 25 of the Customs Act, 1969, inter-alia prescribes:-

- (i) The customs value shall be the transaction value, that is the price actually paid or payable for the goods when imported into Pakistan as per sub-section (1) of Section 25.
- (ii) Where the appropriate officer of customs is of the opinion that the declared price does not closely approximate to one of the test values, the officer shall inform the importer of his reservations in writing and give the importer an opportunity to justify the price difference, as per sub-section (4) of Section 25.
- (iii) The officer shall proceed further if the importer fails to justify the price difference and customs value shall be the value of identical goods sold for export to Pakistan at or about same time (within 90-days prior to the importation or within 90-days after the importation of goods being valued), as per sub-section (5) read with Rule 107(a) of the Rules.
- (iv) In case, the value is still not determined, the customs value shall be the value of similar goods sold for export to Pakistan at or about same time, as per sub-section (6) of Section 25.
- (v) If customs value cannot be determined through methods referred to above paras, it shall be deductive value, as per sub-section (7) of Section 25.
- (vi) If customs value cannot still be determined, it shall be the computed value, as per sub-section (8) of Section 25.
- (vii) If customs value cannot be determined through any of the above methods, it shall be determined on the basis of previously determined customs value of identical goods assessed within 90-days, as per fall back method prescribed in sub-section (9) of Section 25.

22. That while determining the values through the mechanism of market survey, the learned respondent preferred to apply method prescribed in sub-section (7) of Section 25 of the Act, and failed to observe that there was no ground or plausible reason to reject the transaction value of the applicant. Even otherwise, the results of market survey were never discussed with the applicant as was directed by the Honorable High Court. Furthermore, the Honorable High Court has very categorically ordered that while making such an inquiry, the information must be obtained from the producer of the goods. As being observed by the Honorable High Court for the previous ruling, it seems that no such exercise has been carried out for the impugned ruling also and once again the methods was applied essentially on the basis of purported information supplied by the local manufacturers.



23. That while determining the customs value of motorcycle parts in the instant case, the respondent has jumped directly to the method prescribed in sub-section (9) of Section 25 of the Act, and has preferred to determine the value through "deductive" method ignoring the methods prescribed in the preceding sub-section of Section 25. The respondent has failed to record any plausible reason for ignoring the methods prescribed in the preceding sub-sections. The respondent was obliged to apply methods in sequential order and the deductive methods cannot be used for determination of customs value of imported goods when there are no sufficient reasons to rebut or doubt the transaction value reflected in the contracts and the invoices submitted by the importers while clearing the goods. The respondent has failed to provide any logical reason to rebut the transaction value of the applicants.
24. That the learned respondent has also failed to appreciate the provisions pertaining to "prohibited method" contained in Rule 110 of the Rules, which prescribes that where the value of imported goods cannot be determined under sub-section (1), (5), (6), (7) & (8) of Section 25 of the Act, the customs value shall be determined on the basis of data of imports available with the customs department. The learned respondent was obliged to apply deductive method after exhausting the methods prescribed in preceding sub-sections. The learned respondent has fallen into error of law by directly applying the method prescribed in sub-section (9) rendering the whole exercise a nullity in the eyes of law.
25. That the learned respondent was well within his rights to satisfy himself as to the truth and accuracy of the documents submitted by the applicant but at the same time, he was also obliged to give solid/valid reasons for not accepting the values declared by the applicant. While determining the values, he has acted unjustly, unlawfully & unreasonably, thus, rendering the impugned ruling contrary to law and the guidelines and criteria advised by the Honorable High Court.
26. That owing to impugned valuation ruling, the commercial importers are at advantageous position because of the difference in rate of duty/value for them of goods produced almost same raw materials & components and it is very regretful to say that despite the Government's efforts to provide low cost vehicles/motorcycles to the poor people with a view to supply a cheap mode of transportation to the poor peoples of Pakistan, whereas contrary to this, to increase the cost, the respondent has issued the impugned ruling, which has even stopped the supply of motorcycles to the poor peoples. The referred valuation ruling also promotes the violation of SRO 656/1/2006 to purchase the goods by OEMs/vendors from Commercial importers which will result in heavy loss to the national exchequer.

5. **PRAYER**

The submissions contained in the above paragraphs clearly prove that impugned ruling does not stand the test of judicial scrutiny and is liable to be stuck down. It is, therefore, humbly prayed that:-

- (i) The same may be set aside forthwith;
- (ii) The value of motorcycle parts may kindly be reviewed and determined strictly in accordance with the provisions of the Act & Rules made there-under and also keeping in view the guidelines provided by the Honorable High Court in its judgment dated 28-02-2011;

- (ii) During the pendency of the instant application, the operation of impugned ruling of the learned respondent may also be suspended;
- (iv) The applicant may be allowed provisional release of the consignments of motorcycle parts on transaction values which are the true payable values.

6. The respondents were 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)-(3): 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 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(7) of the Customs Act, 1969, vide above referred valuation ruling. As such the said valuation ruling has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969, for uniform assessment all over the country.

Para-(4): Not Agreed. It is submitted that the said valuation ruling was issued after properly following all provisions of Section 25 of the Customs Act, 1969, i.e. from sub-Section (1) to (9). Finally the customs values of parts were determined in terms of Sub-Section (7) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country.

Para-(5)-(6): It is submitted that the participants of meeting held on 22-10-2019 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 documents to justify their contention;

- (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 documents 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.

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(7) of the Customs Act, 1969, for uniform assessment purposes.

Para-(9)-(10): Denied. It is submitted that Para-(2) to (5) of the impugned valuation ruling No.1422/2019, dated 02-11-2019, 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 25A of the Customs Act, 1969.

Para-(11)-(13): It is submitted that the valuation ruling No.1422 / 2019, dated 02-11-2019, 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 (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-(14)-(17): It is submitted that the customs values have been determined terms of Section 25A 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. Moreover, these values were lawfully been issued in terms of Section by the respondent after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the respondent has acted in accordance with law and under powers vested upon him under the law.

Para-(18)-(20): Denied. It is submitted that the said Customs values in valuation ruling No.1422/2019, dated 02-11-2019, were based on ground realities as the same were determined after extensive exercises i.e. examining 90 days import data, local market enquiry and after holding meeting with all stakeholders on 22-10-2019, 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-(21)-(23): 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-(24)-(26): It is submitted that the valuation ruling No.1422 / 2019, dated 02-11-2019, 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 (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.

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.1422/2019 dated 02-11-2019. The respondent has acted lawfully and the valuation ruling No.1422/2019, dated 02-11-2019, 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 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

7. Hearing was held on 18.03.2020 regarding valuation ruling 1422/2019 dated 02.11.2019. The petitioners appeared for hearings and reiterated the same arguments as already mentioned in their petitions. The main thrust of their arguments was that the valuation department did not follow the valuation methods properly, objected to the market inquiry conducted by the department and stated that the values determined vide impugned valuation ruling do not reflect the prevalent market prices. They insisted on declaring their declared values as correct transaction values. However, no relevant supportive documentary evidence was produced to substantiate their contentions. The whole argument was based on recessionary trends in business and local industry giving the same of motorcycle parts on cheaper rates, which is creating the distortion in market trends. They were unable to substantiate their import values and unable to point out any discrepancy in valuation ruling. The departmental representative stated that the valuation ruling was issued after consulting all stakeholders and after fulfilling all requirements as laid down under the law.

8. After listening to the petitioners and respondent, it is ascertained that the valuation ruling was issued after fulfilling all legal requirements and in accordance with laid down procedures. The petitioners were provided ample opportunity to give their inputs and documentary evidence to substantiate their transactional values. In view of foregoing, the valuation ruling is **upheld**.


(Dr. Wasif Ali Memon)
Director General

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Karachi.

M/s. United Motor Sales Company,

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M/s. Kalwala & Sons,
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Copy to:

1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/
(North) Islamabad / (Central) Lahore.
3. The Collector, MCC Appraisement (East) / Appraisement (West) /Port M. Bin Qasim/
Preventive, 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
/Peshawar / 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. Deputy Director (Revision), Directorate General of Customs Valuation, Karachi.
9. All Deputy/Assistant Directors (Valuation).
10. Guard File.