

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

File No. DG (V)/Val.Rev/01/2020/3020.

18th APRIL, 2020

**Order in Revision No. 12 /2020 Under Section 25-D of the Customs Act, 1969, against
Valuation Ruling No. 1435/2019 dated 13-12-2019**

- 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. Good Luck Traders & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

11-02-2020, 09-03-2020

For the Petitioners

Muhammad Daud, Khwaja Tanveer,
Sh. Amjad Yaqoob,

For the Respondent

Mr. Abdul Hameed, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs Value determined vide Valuation Ruling No. 1435/2019, dated 13-12-2019 issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

We are one of the leading commercial importers of subject item namely Gum Base since a considerable period of time and are importing gum base covered under HS Code 3824.9910 from China. We shall bring it on record that whenever we desire to import the said product from china, we perform many correspondences and also attend different meeting with supplier and local buyers and then our supplier agree to supply the product at different values less than the value as determined in the impugned valuation ruling as referred to above.

3. FACTS

- (1) That the respondent namely Director of Customs Valuation has bluntly refused to accept the transaction value other than the above referred valuation ruling despite of the fact that there

are substantive evidences of value of the goods which act on the part of the respondent and which is absolutely against the norms of natural justice and so also against the true spirit of provision Section 25(1) of the Customs Act, 1969, and Rule 13 of the Customs Rules, 2001.

- (2) That our transaction value is absolutely in accordance with law, fair, just, proper and covering all that aspects of the goods and even the same cannot affect the government revenue.
- (3) That it is pertinent to mention here that the impugned valuation ruling as referred above have been determined without consideration of present market situation and without giving any opportunity of meeting of stakeholders and as such have been determined without our suggestions being the importer and the same are liable to be reviewed forthwith in the great interest of justice particularly keeping in view the legitimate revenue of national exchequer, hence this review application is filed, inter alia on the following grounds amongst others:-

4. GROUNDS

- (i) That the impugned Valuation Ruling as referred above does not cover the present fluctuation of prices of international market, which have been reduced to about half of the prices and our product is completely based on international prices.
- (ii) That the provisions of Section 25 of the Custom Act, 1969, are to be followed in sequential manner bearing exceptional cases where massive group under invoicing is rampant. It is not possible without exhausting and unfettered indicated in section 25(13) (a) does not give unbridled and unfettered authority to Customs administration to play havoc with the trade at large. Discretions has to be exercised within limits based on reason, rationale and fair play which is specifically provided by the legislature in sub-section (10) of Section 25 of the Customs Act, 1969, sub-section (1) (5) (7) & (8) on the importer's request if so agreed by the Collector of Custom as held in various judgments.
- (iii) That the shipping freight also decreases accordingly, which directly has as impact on product price.
- (iv) That for the sake of arguments without conceding that the determination made in the impugned ruling is legal, the applicant state is a nullity to the fact and expression and procedure given in the relevant provisions of the Custom Act, 1969 and this is validated from the working of the valuation for determination of applicant to import Gum Base from China by deducting the different margins of respective heads which the applicant has to bear prior to selling the goods rendering the contracted price as transactional value within the meaning of Section 25(1) of the Customs Act, 1969.
- (v) The applicant sells the entire goods prior to clearance and at many times the prices of the goods increase prior to clearance and the importer has to bargain the difference of prices at his own.
- (vi) The applicant craves to leave further grounds for the time of hearing besides placing valid incriminating documents with the permission of your revision appellate authority.



5. **PRAYER**

It is therefore, humbly prayed that this appellate authority may be pleased to allow the review petition by declaring/order that:

- (i) That the impugned valuation ruling No.1435/2019 dated 13.12.2019 has been issued on forced construction of section 25 of Customs Act, 1969, hence ab-initio null and void and is liable to be withdrawn forthwith.
- (ii) That the transaction/declared value of the applicant to the imported goods is deemed to be fair and answer to the expression of Section 25(1) of the Customs Act, 1969, in Rule 113 of Chapter of the Customs Rule 2001.
- (iii) That the values determined by the department were not in line with market.
- (iv) That the import of goods has decreased due to high Custom Values and resultant heavy burden of duty and taxes, and on the other hand these goods are being regularly smuggled into Pakistan.
- (v) In the existing impugned valuation ruling, the Custom values of the subject goods were increased despite the fact that the prices of oil, iron and steel and other raw materials were declining in international markets.
- (vi) The applicant's main contention is for accepting their declared values as correct transaction 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-(I) : Denied. It is submitted that this Directorate General examined the clearance data of Gum Base (PCT: 3824.9910) and observed variations in declared transactional values at various Customs stations despite having same origin etc. Further, representations were received in this office that values of under reference goods are higher than the values declared by different importers. Therefore, an exercise was undertaken to determine the fresh customs values of Gum Base and the said Valuation Ruling was issued in terms of Section 25-A of the Customs Act, 1969, for uniform assessment purposes accordingly.

Para-(II) : 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 minimum customs values in the Valuation Ruling No.1435/2019, dated 13-12-2019 for level playing field and for uniform assessment all over the Customs stations of the country. Provisions of Section 25(1) to 25(9) were duly exhausted while issuing the said Valuation Ruling. Import data of previous 90 days was analyzed and evaluated and after gathering all



information, the customs values have been determined in terms of Section 25(5) & (6) of the Customs Act, 1969, vide above referred Valuation Ruling.

Para-(III) : Not agreed. It is submitted that meetings with stakeholders was held on 21-11-2019, wherein all stakeholders were requested to produce the following documents but no one submitted substantial documents/evidence to help in determination of Customs values of subject items despite lapse of considerable time;

- (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.

G R O U N D S

Para-(i) : Not agreed. It is submitted that it is not mandatory for Customs to accept each and every transaction value declared by the importers. It is submitted that the petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc.

Para-(ii) : Not Agreed. It is submitted that the Director, Customs Valuation has been legally empowered to determine customs value of any imported goods in terms of Section 25-A of the Customs Act, 1969, by following sub-Sections (1) to (9) of Section 25 of the Customs Act, 1969. In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1435/2019, dated 13-12-2019 for level playing field and for uniform assessment all over the Customs stations of the country. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Section 25(5) & (6) of the Customs Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened meeting on 21-11-2019 for

the determination of Gum Base and all stakeholders were duly invited to participate and present their point of view and related import documents/evidence etc. in support of their contention but no importer submitted the said documents.

Para-(iii)&(iv): Not Agreed. In this regard it is submitted that the respondent has legally acted and has followed provisions of Section 25 of the Customs Act, 1969, sequentially such as Sub-Section (1) to (9) and finally Customs values were determined in terms of Section 25(5) & (6) of the Customs Act, 1969. However, importers were requested to provide documents like copies of contracts made/LCs, sales tax paid invoices to substantiate their contention of decrease in market prices through documentary evidence. But yet they did not provide required documents before meetings. Again during the meeting the participants were requested to submit the following 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.

Para-(v): 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 transactional 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 finally the values were determined in terms of Section 25(5)&(6) of the Customs Act, 1969, for uniform assessment purposes all over the country.

Para-(vi): Relates to the time of hearing of the case.

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.1435/2019 dated 13-12-2019. The respondent has acted lawfully and the Valuation Ruling has correctly and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. On the other side, the petitioner failed to furnish the requisite documents particularly copies of sales tax paid invoices issued during the last four months showing the values of suppliers

(excluding duty & taxes) to substantiate their contentions. Moreover, at the time of exercise of Section 25-A 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.

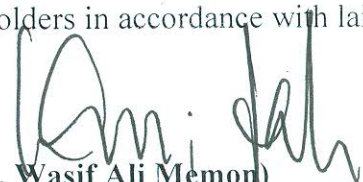
In the light of above submissions and factual position, the under reference petition being not maintainable is liable to be dismissed and rejected accordingly.

ORDER

7. Hearings were held on 11.02.2020 and 09.03.2020 regarding valuation ruling 1435/2019 dated 13.12.2019.

8. The valuation ruling was reviewed extensively during the hearing proceedings. One of the petitioners contended that the values for Chinese origin gum base were fixed higher than those of values fixed for Belgian and Turkish origin although the quality of Belgian and Turkish origin gum base is higher than Chinese origin gum base. Another petitioner, on the other hand, also objected that Belgium origin is separated from European origin. However, values from Brazil, Turkey and Belgium are much less than the evidential data. It was stressed that under the valuation ruling imports from Belgium have been separated from European Union. Belgium is a member of EU and as such should be treated accordingly under the ruling. The departmental representative stated that the values were arrived after consulting all stakeholders and after fulfilling all requirements as laid down under the law.

9. However, it is observed that the values fixed for Chinese origin gum base are placed higher than those fixed for Belgian and Turkish origin although the quality of Chinese origin gum base is apparently low as compared to the quality of gum base imported from Belgium and Turkey. The Belgian origin goods are listed as a separate entity and its prices are kept lower than European origin that has created an anomaly. Therefore, the valuation ruling is remanded back to Director Valuation for re-determination and rationalization of customs value of gum base keeping in view the prices of the item in international market after consulting all the stakeholders in accordance with laid down procedures.


(Dr. Wasif Ali Memon)
Director General

Registered copy to:

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1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/
3. (North) Islamabad / (Central) Lahore.
4. The Collector, MCC Appraisement (East) / Appraisement (West) /Port M. Bin Qasim/
5. Preventive, Karachi.
6. The Collector, MCC Appraisement/Preventive, AIIA, Lahore/Quetta/Peshawar/Faisalabad/
7. Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
8. The Directorate General of Intelligence & Investigation (Customs), Islamabad /Lahore /Peshawar / Multan / Hyderabad / Gawadar / Quetta.
9. The Director, Customs Valuation, Karachi/Lahore.
10. The Deputy Director (HQ), Directorate General of Customs Valuation, Karachi for
11. Uploading in One Customs and WeBOC Database.
12. Deputy Director (Revision), Directorate General of Customs Valuation, Karachi.
13. All Deputy/Assistant Directors (Valuation).
14. Guard File.