

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG(V)Val-Rev/07/2020

3025
13

20th

April, 2020

**Order in Revision No. /2020 Under Section 25-D of the Customs Act, 1969, against
Valuation Ruling No. 1442/2020 Dated: 05-03-2020**

- 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. JOFA International & Others

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

13-04-2020

For the Petitioners

Mr. Zubair Ali Khan , Mr. M. Imran Yousaf, Mr. M. Asim Jofa, Mr. Akhtar Ali, Mr. Salman Aziz,

For the Respondent

Mr. Anees-ur-Rehman, Principal Appraiser,
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. 1442/2020, dated 05.03.2020, 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. 1442/2020, dated 05.03.2020, 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**

Valuation Ruling No. 1442/2020 dated 05.03.2020 has been issued under Section 25-A of the Customs Act, 1969, whereby the customs values of ice creams of various brands have been determined. The petitioner wishes to challenge the Valuation Ruling on the following grounds:-

- i. The petitioner has entered into an arrangement with Haagen-Dazs international shoppe company, inc. for the import of Haagen-Dazs ice cream in Pakistan in bulk. The origin

of the ice cream to be imported by the petitioner is France. The Valuation Ruling has set the customs value of Haagen-Dazs ice cream at US\$ 14.40 per kg. The Valuation Ruling states that a discount of 10% may be afforded to ice cream imported in bulk which is unrealistically low and against well established market practices.

- ii. The Valuation ruling has fixed a single value for all origin of Haagen-Dazs ice cream, which is against the spirit of Customs valuation law and in violation of the judgment of hon'ble Sindh High Court in the case of Sadia Jabbar reported as PTCL 2014 CL 537. The judgment held that a valuation ruling must pertain to a specific country. Fixing values for specific region or all origin is not tenable under the law. The petitioner's imports shall originate from France. A valuation ruling on the petitioner's import of Haagen-Dazs ice cream can therefore only apply on the petitioner if such ruling specifies that it shall apply on ice cream originating from France after necessary verifications have taken place.
- iii. The customs value determined for HAAGEN-DAZS ice cream under the Valuation Ruling is much higher than the actual value at which the goods are being imported and the price payable for such goods under Section 25(1) of the Customs Act, 1969. The consignor of the petitioner's imports is Haagen-Dazs international shoppe company, inc ("Supplier"), which makes and manufactures Haagen-DazS ice cream. The Supplier has issued a price list to the petitioner (attached as Annex-A) for all flavors of Haagen-Dazs ice cream. As per the price-list, the price of a single container of bulk ice-cream of 9.46 Liter is US\$ 45. The weight of each flavor of ice cream in a single container varies due to differences in ingredients and their density. For the sake of clarity, the weight of each flavor of bulk packaging of ice cream is annexed as Annex-B. The average weight of imports of Haagen-Dazs ice cream in bulk to be imported by the petitioner is 9 KGs. As such the price of each liter of ice cream to be imported by the petitioner comes to USD 5 which is considerably lower than the price notified for Haagen-Dazs ice cream through the Valuation Ruling. The Valuation Ruling is liable to be set aside on this basis.
- iv. The Valuation Ruling has been issued without affording the petitioner an opportunity of a hearing which is against the spirit of Article 10A of the Constitution of Pakistan and in violation of various pronouncements of the superior courts of Pakistan;
- v. The subject Valuation Ruling has been issued under sub-section (7) of Section-25 of the Customs Act, 1969; however, no data has been shared or discussed in the Ruling to arrive at these values which renders this Valuation Ruling void and without lawful authority.
- vi. The customs value for Haagen-Dazs ice cream has been set through the valuation ruling by employing the deductive method under Section 25(7) of the Customs Act, 1969. There is no evidence to suggest nor has any data or evidence been mentioned in the Valuation Ruling that a market inquiry was conducted on Haagen-Dazs ice cream which has been imported in bulk directly from the manufacturers of Haagen-Dazs ice cream, as in the petitioner's case. The market inquiry which is the basis of the Valuation Ruling can therefore not be applied on bulk imports of the petitioner.
- vii. The relevant data pertaining to transaction values of subject goods does not support the values determined through the impugned Valuation Ruling.



- viii. The Valuation Ruling to the extent of Haagen-Dazs ice cream is not based on "the price paid or payable" in terms of Section 25 of the Customs Act.
- ix. The Petitioner wishes to raise additional grounds at the time of hearing.

4. **PRAYER**

In view of the foregoing factual and legal position, it is requested that impugned Valuation Ruling may be withdrawn for being not maintainable under the law.

5. 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

BACK GROUND OF THE CASE

The Valuation Ruling No.1263, dated 21-02-2018, had issued which has been revised and issued Valuation Ruling No.1442, dated 05-03-2020, due to fluctuation in the international market price trend with the passage of time. During analysis of import data, it was noticed that the current market values of subject goods have changed significantly. Therefore, in order to rationalize the import values of subject goods, an exercise was undertaken by the Directorate General of Customs Valuation to determine the customs values of subject goods in terms of Section 25-A of the Customs Act, 1969. It is further noticed that ruling dated 21-02-2018 has making revenue loses to the national exchequer due to non fluctuation of international prices.

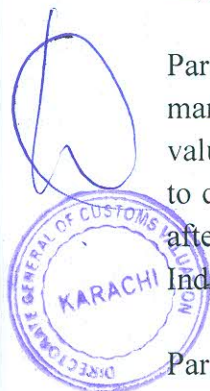
The Director General Customs Valuation initiated exercise under Section 25-A of the Customs Act, 1969, to determine the customs values of the subject goods. Meeting was scheduled on 13-02-2020 with the stakeholders including Federation. Finally the valuation ruling No. 1442, dated 05-03-2020, was issued.

The customs values of Ice Cream are determined under sub Section (7) of Section 25 of the Customs Act, 1969.

Para i: No comments related to importer introduction. However, it is pointed out that the impugned valuation ruling was issued after taking all stakeholders on board. It has also decided in the impugned ruling that 10% discount on bulk quantity imports to be admissible.

Para ii. It is pointed out that during analysis of import data, it was noticed that the current market values of subject goods have change significantly. Therefore, in order to rationalize the import values of subject goods, an exercise was undertaken by the Directorate General of Customs Valuation to determine the customs values of subject goods in terms of Section 25A of the Customs Act, 1969, after consultation with the stakeholders including Federation of Pakistan Chamber of Commerce and Industry.

Para iii: It is pointed out that the Directorate issued valuation ruling on the basis of Kg as specified by the law and not on the basis of density and ingredients.



Para iv: It is further pointed out that impugned valuation ruling was issued after detailed discussions with stakeholders including Federation who is representative body of trade as well as Karachi Chamber of Commerce and Industry. Hence the question of affording the opportunity to the appellant is not arising.

Para v Valuation methods were sequentially applied i.e. transaction value method provided in sub section (1) of Section 25 was found inapplicable because majority of invoice produced at import stage are not found to be as per law and also because as per internationally prescribed regulations the actual supplier invoices are not found inside containers carrying the imported goods, hence, requisite information required under the law was not available to arrive at the correct transaction value. Identical / similar goods value methods provided in Sub-Section (5) and (6) of Section 25 ibid were examined for applicability to determine Customs value of subject goods, this data provided some reference, however, it was found that the same cannot be solely relied upon due to the absence of absolute demonstrable evidence of qualities and quantities of commercial level etc. Information available was, hence, found inappropriate. In line with the statutory sequential order of Section 25, this office then conducted a market inquiry using deductive value method under Sub-Section (7) of the Section 25 of the Customs Act, 1969, which was found to be appropriate and therefore was applied to arrive at assessable customs values of Ice Cream.

Para vi: Valuation methods were sequentially applied i.e. transaction value method provided in sub section (1) of Section 25 was found inapplicable because majority of invoice produced at import stage are not found to be as per law and also because as per internationally prescribed regulations the actual supplier invoices are not found inside containers carrying the imported goods, hence, requisite information required under the law was not available to arrive at the correct transaction value. Identical / similar goods value methods provided in Sub-Section (5) and (6) of Section 25 ibid were examined for applicability to determine Customs value of subject goods, this data provided some reference, however, it was found that the same cannot be solely relied upon due to the absence of absolute demonstrable evidence of qualities and quantities of commercial level etc. Information available was, hence, found inappropriate. In line with the statutory sequential order of Section 25, this office then conducted a market inquiry using deductive value method under Sub-Section (7) of the Section 25 of the Customs Act, 1969, which was found to be appropriate and therefore was applied to arrive at assessable customs values of Ice Cream.

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Para ix: No comments being related to further dialogue at the time of hearing before the Director General Customs Valuation.

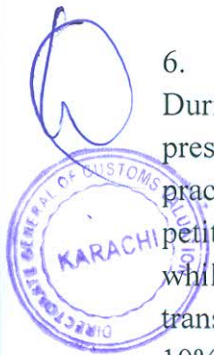
PRAYER

It is submitted that the customs values of Ice Cream were determined strictly keeping in view the valuation methods as envisaged under section 25 of the Customs Act, 1969. Consequently customs values were determined under Section 25(7) of the Customs Act, 1969. It is further stated that the Valuation Ruling No. 1442. dated 05-03-2020, was issued after meeting with stakeholders including Federation. The departmental representatives as well as Clearance Collectorate representatives stated that the prices of subject items are showing upward trend in the international markets, therefore, they contended that the customs values may be rationalize by revising upward in accordance with prices in international markets.

In view of above, the petitions have no merits for consideration and are liable to be rejected.

ORDER

6. Hearing was held on 13.04.2020 regarding valuation ruling 1442/2020 dated 05.03.2020. During the hearing proceedings, the valuation ruling was discussed thoroughly. The petitioners presented the arguments already mentioned in their petitions. They contended that the business practices are misunderstood and overlooked by the department while issuing the valuation ruling. The petitioner maintained that the miscellaneous charges were calculated at 5% only in the valuation ruling while their actual miscellaneous charges are approximately 69% due to specific refrigerated transportation, cold supply chain. They further asserted that the valuation department allotted only 10% profit to the retailers while the actual figures varies between 28% and 32% in this business. The component of sales tax under third schedule due to printing of retail price has not been taken into account. Further, the valuation ruling of February 2018 is not that old which has been enhanced



manifold in the current ruling. The Western Countries from where imports have mostly been taken place are not known for gross under invoicing like the UK, Switzerland and the USA.

7. It was also observed that the department issued single value for all modes of packing. In view of the foregoing, it transpires that some procedural discrepancies have crept into VR which needs to be rectified. The valuation ruling is, therefore, **remanded back** to the Director Valuation for re-determination of values afresh after consulting all stakeholders in accordance with laid down procedures and legal propriety besides judicial scrutiny of value differences of values at import stage and retail prices.


(Dr. Wasif Ali Memon)
Director General

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Capventures Pakistan Private Limited,
1st Floor, Centro 81, Block B2,
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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/
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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.