

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/80/2017

1190

10th March 2021

Order in Revision No. 09 /2021 under section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1089/2017 dated 17-03-2017

- 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. Rock Mars Industries (Pvt) Ltd
M/s MRM Traders

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

25-05-2017 & 08-09-2020

For the Petitioners

Ms Rafia Maniar - Franklin Law Associates

For the Respondent

Mr. Iqbal Ali Principal Appraiser

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No. 1089/2017 dated 17-03-2017 issued under section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. That we act for and on behalf of M/s. MRM Traders, Karachi and M/s. Rock Mars Industries (Pvt) Ltd and have been instructed to address you as under:
3. That the petitioners are engaged in the business of import of LED Televisions Sets and their onward marketing in the local market for the past several years. The clients are an income tax payee and enjoy credibility in the commercial circle in general and in the circle of importers in particular.
4. That the petitioners being active importer have been importing LED Televisions Sets continuously without any hindrance and or any allegation of under invoicing and mis-declaration.

5. That the Director Valuation has issued Valuation Ruling No. 1089/2017, dated 17.03.2017, superseding Valuation Ruling No. 675/2014, ostensibly under Section 25A of the Customs Act, 1969, illegally and in violation of Section 25A and superior Courts Judgements pronounced in a number of cases.

6. That the Director Valuation has miserably failed to appreciate that values of LED Televisions Sets have gone down drastically and currently are much lesser than the values determined vide Valuation Ruling No. 675/2014 dated 02.05.2014. It was further contended by our clients and other stakeholders in the interest of justice a level playing field should be provided between manufacture and commercial importer. It was also contended that the government had already issued exemption notifications for local manufacturers, whereas the importers were paying higher values in the Valuation Ruling No.675/2014, dated 02.05.2014, which with passage of time has become irrelevant to the market realities. Resultantly the difference between the present international prices and the values determined vide valuation ruling No.675/2014, dated 02.05.2014 is increasing everyday and the VR values of LED Televisions Sets have no relevance with actual prevailing international prices. It was further contended that owing to this situation, the legal import was shifting towards smuggling.

7. That during the hearing all the requisite documents were supplied to the office Director Valuation. But to the dismay of the petitioners, the Director Valuation has miserably failed to appreciate the impact of new technology like 3D, Smart TVs, 4K, UHD TVs, Curved TVs on old based LED Televisions Sets.

8. That the Director Valuation has issued valuation ruling 1089/2017, dated 17.03.2017 illegally and in violation of Section 25A and superior Courts Judgements pronounced in a number of cases. Hence the impugned VR 1089/2017 dated 17.03.2017 is not acceptable to the petitioners, specially the value given from serial No. 44 to 67. These values are based on conjecturers and surmises; hence, the same must be revised downward, which reflect the / actual market price of the LED Televisions Sets.

9. That the Director has completed the exercise of issuance of impugned VR hurriedly without appreciating the evidence properly. Whereas, the determination is a multi-step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the Ruling should contain sufficient details to show that Section 25A has been properly applied as interpreted in Sadia Jabar case.

10. If the petitioners perused the impugned Valuation Ruling, it will be transpired that the order is stereotype order and almost the same wording is used in every Valuation Ruling. It appears that the Director has issued impugned VR ostensibly under 25(9) of the Customs Act, 1969, which is a Fall Back Method, but he has completely failed to appreciate that how the preceded methods given under section 25 of the Customs Act, 1969, were not applicable. The impugned Valuation Ruling appears to have been issued on the basis of international prices gathered from internet sources, which is in utter violation of under Sec. 25 and 25A of the

Customs Act, 1969, and Customs Rules, 2001, and superior Courts Judgements pronounced in a number of cases.

11. According to Section 25A of the Customs Act, 1969, the concerned Officer may issue a valuation Ruling but he is required to determine the customs value and not to fix the value. The determination is a multi-step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the Ruling should contain sufficient details to show that Section 25A has been properly applied. And without visible exercise reflected on record, a Valuation Ruling cannot be said to have issued legally as provided in Sec 25A and interpreted by Higher Judiciary.

12. In this regard some of the judgements of the Higher Judiciary are quoted herein below for ready reference:

SADIA JABAR CASE AT PARA 17 PAGE 13

"Therefore, on its proper interpretation, the change made to subsec. (10) has only a limited ambit. It is only on rare occasions, and in exceptional circumstances and/or for compelling reasons that the appropriate customs officer may deviate from the principle of sequential application. Otherwise, the invariable practice must be to adhere to the said principle in the strict sense described in para 12 supra. Secondly, and perhaps more importantly, even if the Customs officer is now to be regarded as having some discretion in the matter, it is difficult to see that he would be able to exercise it. The reason is that, as noted above, each of subsection (5), (6), (7), (8) and (9) expressly opens with words that make it applicable only if "the Customs value of the imported goods cannot be determined under" the preceding applicable subsection. These words lock-in the principle of sequential application into the very structure of section 25..... In our view, therefore, the changes made to subsection (10) have made no substantive change, and the principle of sequential application continues, as before, to apply to section 25 in full rigour.

FACO TRADING CASE (2013 PTD 825) PARA 12 (FROM LINE 10)

"Presently, the valuation Officer may adopt any of the method provided in section 25 of the Customs Act, 1969, however, it does not mean that valuation officer has unfettered powers to adopt any method on the basis if pick and choose. In fact the valuation officer has to keep in view the interest of the importer as well. He has discretion to, follow any method provided in subsections (1), (5), (6), (7) or (8). However, the method adopted must not be to the detriment of the importers and for that purpose for excluding the other methods, reasons must be given. Similarly, the reasons for adopting a particular method are also required to given, so it becomes clear to the importer that the order is in the public interest and not to the detriment of the importer."

REHAN UMAR (2006 PTD 909) PARA 18



"For the foregoing reasons it is held that different methods of valuation provided in Section 25 of the Customs Act, 1969 and the Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to subsection (5) and likewise without similar exercise under subsection (5) no resort can be made to subsection (16). In the same manner without an exercise in writing on record under subsection (6) no resort can be made to subsection (7) and similarly to subsections (8) & (9) this exercise is to be made in each case separately."

13. Again at para 7 of the impugned Valuation Ruling an illegality has been committed which renders the same to nullity in the eyes of law. It purports to apply the invoice value (i.e transaction value) if it is higher than the value determined in the ruling. This is impermissible under Section 25A. Here again by the judgement in the case of Sadia Jabar (relevant paras 24, 25 26). This aspect is also considered in M/s. Goodwill Traders (2014 PTD 176) in para 13 (from line 4) in the following words:

"We conclude that the valuation ruling is ultra vires Section 25A.

One obvious reason for this is that it states, at the end, that "if the declared/invoice value is higher the same shall be applied". In other words, the values determined by the valuation ruling are minimum Custom Values. This is flatly contrary to Rule 110(iv) and hence of Sub-section (9) of Section 25".

14. In view of above, you are therefore, requested to revise the impugned valuation ruling specially the value given from serial No. 44 to 67. These values are based on conjectures and surmises, hence the same must be revised downward, which reflect, the actual market price of the LED Televisions Sets, and issue the fresh valuation ruling and till then release consignments of our clients at the declare value.

15. The respondent department was asked to furnish comments on the petitions in the case. Comments on the petitions are given as under:-

COMMENTS BY THE RESPONDENT DEPARTMENT

Brief facts of the case

Being old Valuation Ruling No.675/2014 dated 17-03-2014 which did not reflect current international price trends due to latest technology i.e. 3D, Smart TVs, 4K, UHD T.Vs, Curved T.Vs etc. so this Directorate General had initiated exercise for revision of old one. However, Valuation Ruling No.1089/2017 dated 17-03-2017 has now been issued which represent current international price trend. The impugned Valuation Ruling has been issued after consultation with stakeholders including Federation of Pakistan Chamber of Commerce and Industry who is main representing body of trade. As far as methodology adopted it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) (7) and (8) were examined for applicability to the valuation issue in the instant case which provided some

reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Finally customs values were determined under Section 25(9) of the Customs Act, 1969.

It is pertinent to mention that majority of importer are importing outrightly their consignments according to current Valuation Ruling No.1089/2017 dated 17-03-2017. No documents were submitted in this Directorate General on or even before the said scheduled meetings. During the course of the meeting, the stakeholders claimed that the values of LED Television have actually reduced in the international market as compared to the values determined in the existing valuation ruling; therefore, the values need to be revisited downwards accordingly. They were requested to submit import invoices, sales tax invoices, literature, evidences and other relevant requisite import documents in support of their contentions. But they did not provide any documents or evidence to substantiate their contentions. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

It is transpired during the market survey that values of LED Television was on higher side than the values of same item from Saddar market due to the reason that after sales service and other allurements i.e. purchase one and get two. At the time of import of the goods there is no allurements thing, so the values are on higher side at their outlet. Customs Values of the goods were determined after survey from Saddar markets and minimum values were taken into accounts.

PARAWISE COMMENTS

Para 1. Need no comments being related to appellant introduction.

Para 2. Need no comments being related to clearance Collectorate.

Para 3. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All



information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

- Para 4. Being old Valuation Ruling No. 675/2014 dated 17-03-2017 which did not reflect current international price trend. On other hand deprived the national exchequer with their legal revenue. So, this Directorate General had initiated exercise for revision of old one. However, Valuation Ruling No.1089/2017 dated 17-03-2017 has now been issued which reflect current international price trend.
- Para 5. Denied. Need Being old Valuation Ruling No.675/2014 dated 17-03-2017 which did not reflect current international price trend due to latest technology i.e. 3D, Smart TVs, 4K, UHD T.Vs, Curved T.Vs etc. so this Directorate General had initiated exercise for revision of old one. On the other side the petitioners have neither furnish any corroboratory documents i.e. copies of Sales Tax Invoices in support of their transaction value at the time of determination of customs value under section 25-A of the Customs Act, 1969 nor with this instant review application.
- Para 6. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.
- Para 7. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The



computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

Para 8. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

Para 9. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

Para 10. Denied. The Director Customs Valuation issued Valuation Ruling No.1089/2017 dated 17-03-2017 under Section 25 of the Customs Act, 1969. As far as methodology adopted for issuance of Valuation Ruling No.1089/2017 dated 17-03-



2017, it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of LED Television have been determined under Section 25(9) of the Customs Act, 1969.

Para 11 It is to state that for the purpose to enhance the government revenue it is absolutely necessary to assess the goods on transaction value where transactional values are higher than the determined values in the Valuation Rulings.

P R A Y E R

It is respectfully prayed that the customs values were determined vide Valuation Ruling No. 1089/2017 dated 17-03-2017, strictly in accordance with Valuation methods given in Section 25 of the Act, 1969. On the other side the appellant had neither furnished any corroboratory documents in support of their transaction value at the time of determination of customs value under section 25-A of the Customs Act, 1969 nor with this instant review application. Accordingly in the absence of corroboratory documents particularly copies of Sales Tax Invoices the appeal has no merit for consideration and is liable to be rejected.

O R D E R

16. Hearing was conducted on 08-09-2021. Ms Rafia Maniar from M/s Franklin Law Associates appeared on behalf of the petitioners and advanced the same arguments as mentioned in their written petitions. The counsel contested that the impugned Valuation Ruling (VR) No.1089/2017 dated 17.03.2017 is not acceptable to the petitioners, specially the values given from serial No. 44 to 67. The Advocate agitated that these values are based on conjecturers and surmises; hence, the same must be revised downward, which reflect the actual market price of the LED Televisions Sets. The counsel further stated that the Director has completed the exercise of issuance of impugned VR hurriedly without appreciating the evidence properly; whereas, the determination is a multi-step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the Ruling should contain sufficient details to show that Section 25A of the Customs Act, 1969, has been properly applied as interpreted in Sadia Jabar case.

17. The counsel added that if strictly perused the impugned Valuation Ruling, it will be transpired that the order is stereotype order and almost the same wording is used in every

Valuation Ruling. It appears that the Director has issued impugned VR ostensibly under 25(9) of the Customs Act, 1969, which is a Fall Back Method, but the Director has completely failed to appreciate that how the preceded methods given under section 25 of the 1969 Act were not applicable. The counsel further pleaded that the impugned Valuation Ruling appears to have been issued on the basis of international prices gathered from internet sources, which is in utter violation of under Section 25 and 25A of the Customs Act, 1969 and Customs Rules, 2001 and superior Courts Judgments pronounced in a number of cases.

18. On the other hand, the departmental representative (DR) explained that since the earlier Valuation Ruling No.675/2014 dated 17-03-2014 was quite old and did not reflect current international price trend due to introduction of latest technology i.e. 3D, Smart TVs, 4K, UHD T.Vs, Curved T.Vs etc. therefore, this Directorate General had initiated exercise for re-determination of the values of the valuation ruling. Subsequently, Valuation Ruling No.1089/2017 dated 17-03-2017 has been issued which fully represents current international price trend. The DR further added that the impugned Valuation Ruling has been issued after consultation with stakeholders including Federation of Pakistan Chamber of Commerce and Industry which is main representing body of trade.

19. The DR further explained that Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) (7) and (8) were examined for applicability which provided some reference values of the subject goods but the same could not be exclusively relied on due to complete information was not available to re-determination of customs values. Finally customs values were determined under Section 25(9) of the Customs Act, 1969.

20. After listening to the discussion/arguments of the petitioners and respondent and perusal of the case record, it is established that the Valuation Department had duly taken the stakeholders on board while issuing the impugned valuation ruling. The market surveys were properly conducted in accordance with the rules and the methods were duly followed in their sequential order. The petitioners were given ample opportunity to substantiate their contentions but they failed to provide any proof in support of their claims. Therefore, it is concluded that the valuation ruling has been issued in accordance with provisions of law and does not suffer from any legal or procedural infirmities. Thus, the valuation ruling is upheld and the revision petitions are rejected accordingly.

21. However, the valuation ruling is more than four years old, therefore, the Director Customs Valuation, Karachi, is advised to issue fresh valuation ruling in accordance of law and rules after conducting fresh market survey within two months.


(Zulfikar Ali Chaudhary) 9/3/2021
Director General

Registered copy to:

M/s. Rock Mars Industries (Pvt) Ltd,
M/s. MRM Traders,

C/o Faranklin Law Associates,

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3. The Director General of Intelligence & Investigation-FBR, Islamabad.
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5. The Collector, MCC Appraisalment & Facilitation, Lahore / Hyderabad/Faisalabad/Sambrial (Sialkot)/ Multan/ Islamabad/ Peshawar/ Gilgit-Baltistan/ Quetta /Gawadar/ Enforcement & Compliance, Allama Iqbal Int. Airport, Lahore.
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.