

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG (V) Val.Rev/16/2020

1150

01-03-2021

**Order in Revision No. 05 /2021 under Section 25-D of the Customs Act, 1969,
against Valuation Ruling No. 1452/2020 Dated: 24-06-2020**

- 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 Memon Fabrics & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

21-12-2020 & 22-02-2021

For the Petitioners

Mr. Ilyas Ahsan Khan, Consultant
Mr. Ahmed Akram

For the Respondent

Mr. Muhammad Sohail Ismail, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No.1452/2020, dated 24.06.2020, issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

1. That the above-named Petitioners / Applicants are aggrieved and dissatisfied with the Valuation Ruling No. 1452/2020 dated: 24-06-2020 (impugned / Subject VR), issued under the signature of Director of the Directorate General of Valuation, on the ground that the customs values of the "Fleece Fabrics", i.e. the subject goods, were previously determined vide Valuation Ruling No. 1326/2018 dated: 18-09-2018, which according to the Director were old and allegedly did not represent the prevailing value of the subject goods.
2. That the impugned Valuation Ruling No. 1452/2020 dated: 24-06-2020, which brushed aside the previous Valuation Ruling No. 1326/2018 dated: 18-09-2018, was formed, prima facie, after only one (01) meeting with the stakeholders that was too held on 6th February, 2020, and the impugned Valuation Ruling was issued after more than four (04) months from the date of meeting, on 24th June, 2020. At the outset it is submitted that keeping in view the spirit of the provisions of Rule 107 of the Customs Rules, 2001, and the dictum settled by the Hon'ble Courts in number of judgments, it is patently unlawful that an exercise



for the determination of Customs value cannot be taken into consideration. Thus, the subject / impugned Valuation Ruling cannot stand for its legal applicability.

3. That the time lapse of four (04) month between the date of meeting and issuance date of the VR has a lot of significance because of what the world has faced in the last four (04) or five (05) months. Since the start of 2020, the whole world is under the grip of Covid-19, which was declared as a pandemic disease by the World Health Organization (WHO) in March 2020. Since then the whole world, including Pakistan, is either under full or partial lockdown, with minimal or no business activities. The lockdown has caused a global recession and as predicted by many that the same would be more severe than the one that hit the world in 2008.
4. That right after global lockdown crude oil prices in the world crashed and indeed at one point in time prices went negative. Since March 2020, the crash of global of crude oil prices have not recovered to its normal level. Polymer being one of basic raw material of polyester and it is one of the by-product of crude oil and because of the fall in crude oil prices, global prices of polyester is also all time low with no or minimal sign of recovery.
5. That fall in polyester prices was coupled by an immense fall in global demand of polyester products whether being finished, semi-finished or raw material, because of no or minimal business activities during the lockdown. Even in Pakistan from mid-March 2020, markets, shopping malls were ordered to remain close until Supreme Court intervened and ordered opening of the economy in last days of May 2020. Fall in global demand has increased the inventory of the polyester producers to an unbearable level that consequently forced prices further down. Consequently, the Covid-19 pandemic has changed the global economic outlook and if not in long-term, short-term prices of many goods including polyester goods are trading at very cheap rates in the market. Moreover, minimal level of business activities around the world has decreased the demand, inter alia, for cotton, sherpa and polyester fabric further.
6. That the goods, i.e. "Fleece Fabrics", are now trading at price levels which are even much lower than the customs values determined under previous Valuation Ruling No. 1326/2018 dated: 18-09-2018, therefore, to the Applicant's utter surprise, unbelievable increase in the determined customs values of Valuation Ruling No. 1452/2020 dated: 24-06-2020 is contrary to the prevailing market prices, hence, illegal as per the provisions of Sections 25 & 25A of the Customs Act 1969, and in fact, prima facie, there was / is "no exercise", as prescribed in Section 25 of the Act, read with Chapter – IX of the Customs Rules, 2001, and the directions given by the Hon'ble Courts in number of Judgements, including in the cases of Rehan Umer v/s. FOP and others (2006 PTD 909) and Sadia Jabbar v/s. FOP and others (PTCL 2014 CL 537).
7. That in the impugned Valuation Ruling it is stated that the department in exercise of the procedure given under Section 25(7) of the Customs Act 1969, conducted market inquiries to determine the true customs value as other previous methods of true transitional value, and identical and similar goods valuation methods were inapplicable. However, it is pertinent to mention here that the said market inquiries were neither discussed during the meeting held on 06-02-2020 nor released to the stakeholder, therefore, no opportunity was given to the stakeholder including the Applicant to present his/her arguments for or against the so-called exercise market inquiries.
8. That, prima facie, it seems that no lawful exercise / market inquiries were ever conducted by the department and the customs values under the impugned Valuation Ruling were determined arbitrarily and without any background reasoning. For illustration during August 2018 / September 2018, when the previous Valuation Ruling No. 1326/2018, was issued, the international market price of the crude oil was at average @ US\$ 72/- per Barrel and during May / June 2020, the international market price is / was at average @US\$ 30/- per Barrel. This massive falls in essential fuel (and raw material in the case of polyester and Sherpa fleece fabric) is not represented by the impugned Valuation Ruling.
9. That the Respondent No. 1 has on average increased the customs values by almost 50% of all types of the subject goods, covered by the impugned Valuation Ruling. The increase is not substantiated by any cogent evidence or reason of price increase in the global market, however, in fact during the current



global recession the prices have been decreased immensely by the suppliers as they face decrease both in their cost and demand.

10. That without prejudice to the above that the survey that was allegedly conduct under Section 25(7) of the Customs Act 1969, was if truly conduct then since then the market condition has taken a tumble and prices of the goods covered in the impugned Valuation Ruling have hit rock bottom. Therefore, the alleged survey is also then outdated and can neither be used to represent the prevailing market condition nor be used to predict the future prices, thus, the impugned Valuation Ruling is not a suitable bidding reference point of assessment as per the provisions of Sections 25 & 25A of the Customs Act 1969.
11. That the impugned Valuation Ruling 1452/2020 dated: 24-06-2020, is issued arbitrarily, unlawfully without following the provisions of Sections 25 and 25A of the Customs Act 1969, hence, this revision petition / application on the following grounds:-

GROUND

- A. That the market inquiries if conduct under Section 25(7) of the Customs Act 1969, then the same were not disclosed to the stakeholders including the Applicant, therefore, the stakeholders including the Applicant were deprived of the opportunity to present their arguments with regards to the alleged market inquiries, thus, the impugned Valuation Ruling No. 1452/2020 dated: 24-06-2020 is illegal as issued in contrary to the due process of law.
- B. That there was a lapse of more than four (04) months between the meeting with the Respondent No. 1 (i.e. 06-02-2020) and date of issuance of the impugned Valuation Ruling (i.e. 24-06-2020), and in those four (04) months world has been in the grip of Covid-19 pandemic that has consequently caused global recession. Prices of all the products including raw-material such as polymer and polyester are all time low. Therefore, increase of almost 50% in the customs values determined under the impugned Valuation Ruling is not the representation of true prevailing transaction values in the market, thus, contrary to the provisions of Section 25 & 25A of the Customs Act 1969.
- C. That it is pertinent to mention here that the provisions of Section 25 of the Customs Act 1969, mandates that while determining customs value of any good by following some reference value procedure then that reference value should be taken "at or about the same time", which is defined as "ninety days prior to the importation or within ninety days after the importation of goods being valued" under Rule 107(a) of the Customs Rules 2001. Following the content of the impugned Valuation Ruling the alleged survey might have been conducted in February 2020, and the impugned Valuation Ruling was issued on 24-06-2020, therefore, reference values taken out of the alleged survey would have been outdated as per the provisions of Customs Act 1969 and Customs Rules 2001. Thus, the impugned Valuation Ruling is illegal and must be declared as void.
- D. That during these times of global recession the presumption of prices following upwards trend cannot be followed because suppliers are begging their customers to buy their goods as suppliers cannot no longer afford such high inventory cost.
- E. That such a high increase in the customs values, prima facie, shows that the Respondent No. 1 has the intention to kill the business. With recession in both the global and local economy it is very hard to do business. Customs values as determined under the impugned Valuation Ruling do not reflect the prevailing market prices and conditions. Prima facie, it seems that the Respondent No. 1 has determined such high customs values in order to illegitimately collect more and more revenue, however, it is informed with due respect that mandate of Directorate General of Valuation is to determine values that are actually true transactional values or near to true transactional values. Therefore, any customs value determined on the pretext of illegitimately securing more and more revenue is illegal as per the provisions of Section 25 & 25A of Customs Act 1969.



- F. That it is quite visible from the contents of the impugned Valuation Ruling No. 1452/2020, that no lawful exercise, as warranted in sequential manner in terms of Section 25 of the Customs Act, 1969, read with Chapter-IX of the Customs Rules, 2001, has been followed instead the impugned ruling has been issued in clear violation of the aforesaid provisions of law as well as against the law settled by the Hon'ble High Court of Sindh in the cases of Director General Customs Valuation and another V/s M/s. Al-Amin Cera (PTCL 2018 CL. 636), Saadia Jabbar (PTCL 2014 CL 537), Danish Jahangir (2016 PTD 702) and Rehan Umer (2006 PTD 909)
- G. That, without prejudice to the above, according to the paragraph No. 4 of the impugned Valuation Ruling No. 1452/2020 has been issued as per the method of Valuation as envisaged in sub-section (7) of Section 25 of the Act, (Deductive Value Method), however, the Respondent No. 1 has failed to explicitly define as to how he by-passed / crossed the path of sub-section (5) and (6) of Section 25 of the Customs Act, 1969, read with Rule 117 of the Customs Rules 2001, which asks for determination of Customs Value on the basis of the customs values, already determined in the last 90 days' data, on the basis of the transaction values' evidences of the relevant period and not of the assessed values. This position of the respondents also lead to the conclusion that the impugned Valuation Ruling has been issued in clear violation of law as well as facts, which prompts to determine the customs value at lower side than the previous Valuation Ruling No. 1326/2018 due to the recession global economy and the local economy.
- H. That for the sake of arguments without conceding that the determination made in the impugned ruling is unlawful and against dictums said by the Hon'ble High Court of Sindh in the aforesaid judgments, the applicants are even ready to surrender their imported consignments to the Customs as per the provisions of Section 25-C of the Customs Act, 1969.
- I. The applicant crave to leave further grounds at the time of hearing besides placing valid incriminating / documents with permission of your goods from.

PRAYERS

In view of the aforementioned facts and circumstances, it is prayed in the interest of justice that this Honorable Appellate forum may be pleased to:

1. Allow this Revision Petition / Application and set aside the impugned Valuation Ruling No. 1452/2020 dated: 24-06-2020, with the directions to the respondents to re-determine the customs values of the "Fleece Fabrics" in accordance with law as per the directions given by the Hon'ble Courts in the aforesaid judgments as well as in accordance with the market recession / down trend of pricing in the international market;
2. Declare that the impugned Valuation Ruling 1452/2020 dated: 24-06-2020, is not applicable on the consignments imported by the Applicants and are to be assessed as per the prevailing transaction values according to the provisions of Section 25(1) of the Customs Act, 1969, read with Chapter-IX of the Customs Rules, 2001 along-with following the mandate enshrined under Sections 25 of the Customs Act 1969;
3. Declare that it is illegal and illogical, particularly in the presence of market position, which is not suggesting to enhanced the customs values more than the previous Valuation Ruling No. 1326/2018 dated: 18-09-2018;

12. The respondents were asked to furnish comments to the arguments submitted by the petitioners in the case. Para-wise comments on the petition are given as under:-



13. **COMMENTS BY THE RESPONDENT DEPARTMENT**

- Para-1 Need no comments.
- Para-2 Denied. More than eighty importers/traders/stakeholders were called for the meeting which was held on 06-02-2020 and all the participants were requested to submit supporting documents as called vide this department's letter dated 21-01-2020. But none of them submitted any requested documents.
- Para-3 Not denied.
- Para-4&5 International and local market survey had not shown any down fall in the trade in the subject item. However, some traders internationally announced flash prices but in the subject item prices on the internet seem nominal.
- Para-6-7 Denied. Meeting conducted on 06-02-2020 and all the participants were informed regarding results of market surveys and some participants denied these market prices, so they were requested to submit evidential/supporting documents to support their claim but none of them submitted any requested documents to prove their stance.
- Para-8-10 As the VR No.1326-2018 was old and values of subject goods both in international and local market had shown varying trends. Moreover, EDE data of Chinese Export to Pakistan also indicated variations in value of Chinese Export values vis-à-vis Pakistani import values of Fleece Fabrics.
- Para-11 Denied.

GROUND

- A) Denied. Meeting conducted on 06-02-2020 and all the participants were informed regarding results of market surveys and some participants denied these market prices, so they were requested to submit evidential/supporting documents to support their claim but none of them submitted any requested documents to prove their stance.
- B) Not agreed. Survey of local markets and surfing of different websites, no downward trend in the prices was shown. However, EDE data of Chinese Export to Pakistan also indicated variations in value of Chinese Export values vis-à-vis Pakistani import values of Fleece Fabrics.
- (C,D,E,F) No comments.
- G&H) Para-4 of the impugned VR clearly and comprehensively explained in detail regarding methods adopted to determine customs values.

PRAYER

In view of all above, it is prayed that the petitions filed against the impugned VR No.1452/2020 may be rejected as the impugned VR had been issued in accordance with law. Moreover, the customs values determined vide impugned VR are the minimum values for assessment to duty and taxes.

ORDER

14. Hearing was scheduled on 21-12-2020 at Directorate of Customs Valuation Lahore but nobody appeared for hearing. Another hearing was scheduled on 22-02-2021 at Karachi which was attended by Mr. Ilyas Ahsan Khan, Consultant, on behalf of M/s Memon Fabrics, Karachi, and Mr. Ahmed Akram from M/s Tabba Impex, Karachi,.

15. Mr. Ilyas Ahsan Khan, Consultant, reiterated the arguments as mentioned revision petitions and in addition to that stated that from the start of 2020, the whole world is under the grip of Covid-19, which was declared as a "pandemic" by the World Health Organization (WHO) in March 2020. Since then the whole world, including Pakistan, is either under full or partial lockdown, with minimal or no business activities. The lockdown has caused a global recession. The counsel further stated that fall in global demand has increased the inventory of the polyester producers to an unbearable level that consequently forced prices further down. Consequently, the Covid-19 pandemic has changed the global economic outlook and if not in long-term, short-term prices of many goods including polyester goods are trading at very cheap rates in the market. Moreover, minimal level of business activities around the world has decreased the demand, inter alia, for Cotton, Sherpa and Polyester fabric even further. The counsel added that customs values as determined under the impugned Valuation Ruling do not reflect the prevailing market prices and conditions. Thus, the counsel pleaded that the values of items mentioned at serial numbers 1 and 2 of the impugned valuation ruling have been exorbitantly increased without taking into account the downfall of the prices of the said items in the international markets. Mr. Ahmed Akram from M/s Tabba Impex, Karachi, stated the items covered in the impugned valuation ruling are used in track suits and pajamas. The representative pleaded that many importers including M/s Tabba Impex are out of markets because of the abnormal high prices determined vide the impugned ruling. However, the representative did not provide valid and related import documents in support of their contention.


16. On the other hand, the departmental representative explained that more than eighty importers/traders/stakeholders were called for the meeting which was held on 06-02-2020 and all the participants were requested to submit supporting documents vide this department's letter dated 21-01-2020. However, none of stakeholders submitted any requested documents. The DR submitted that international and local market survey did not show any down fall in the prices of the subject item. Furthermore, since the VR No.1326-2018 was quite old and values of subject goods both in international and local market had shown varying trends and EDE data of Chinese Export to Pakistan also indicated variations in value of Chinese Export values vis-à-vis Pakistani import values of Fleece Fabrics. Moreover, all the participants were informed regarding results of market surveys and some participants denied these market prices, so they were requested to submit evidential/supporting documents to support their claim but none of them submitted any requested documents to prove their stance.

17. 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 and valuation methods were properly followed. The petitioners were given opportunity to substantiate their contentions but they failed to provide any such proof in support of their claims. During the course of revision proceedings, the Chinese Export Data (EDE) viz-a-viz Pakistan imports data was also scrutinized which showed massive under-invoicing in the import values of impugned goods as there is huge difference in value of export figures given by Chinese authorities when compared with declarations made by the importers in Pakistan regarding

import of the same goods. Therefore, the petitioners have failed to prove their case since the EDE Data provided by the Chinese Government under bilateral agreement in accordance with Section 25AA of the Customs Act, 1969, effectively nullifies their stance. Therefore, it is concluded that the valuation ruling has been issued in accordance with the provisions of law and does not suffer from any legal or procedural infirmities. In view of the foregoing, the valuation ruling is upheld and revision petitions are hereby rejected accordingly.

18. Being identical on facts and law points, this order shall apply mutatis mutandis to following (20) petitions.

M/s. Orient Enterprises, M/s. Haq Textile, M/s. SM Industries, M/s. AR Industries, M/s. Radium Silk Factory, M/s. Raz Textile, M/s. SKF Collection, M/s. Tabba Impex, M/s. Abdul Karim, M/s. Tabba Tex, M/s. Tawwakal Lining Store, M/s. Tawwakal Business International, M/s. Hamza Traders, M/s. Hamza Impex, M/s. Glacier International, M/s. Max Enterprises, M/s. Zohra Enterprises, M/s. First Trading Co, M/s. Zohra Traders and M/s. Moontex Sporting Goods.


(Zulfikar Ali Chaudhary) 28.2.2024
Director General

Registered copy to:

M/s. Memon Farbics
C/o Mr. Ilyas Ahsan Khan, Consultant,
49/2, Lane-22, Khayaban-e-Badban, Phase-7, DHA, Karachi.

M/s. Orient Enterprises,
H.No.697, Punjabi Colony F.C. Area, Liaquatabad Town, Karachi.

M/s. Haq Textile,
Plot R-85, A-2, Bufferzone North Karachi, Karachi.

M/s. SM Industries,
Plot No.8/4, (ST-5), S-12-C, Federal B.Area, Karachi.

M/s. AR Industries,
Plot No.L-18, Block-22, Federal B. Area, Karachi.

M/s. Radium Silk Factory,
Plot No. L-18/1/14, Block-22, F.B.Area, Karachi.

M/s. Raz Textile,
Plot No.L-33/C, Block-22, Federal B. Area, Karachi.

M/s. SKF Collection,
1st Floor, Office 124-125, Textile Plaza,
Near New Memon Masjid, M.A. Jinnah Road, Karachi.

M/s. Tabba Impex, M/s. Abdul Karim Hashim Sons,
15 New Memon Masjid, Karachi.

M/s. Tabba Tex,

Office No.113, Zahra Square, Karachi.

M/s. Tawwakkal Lining Store,
OT-5/12-13, Amin Manzil, Wadla Hall, Kagzi Bazar, Karachi.

M/s. Tawwakkal Business International,
H.No. 4, Plot No. 92, Aamil Colony, Nawa Bismail Khan Road, Jamshed Road, Karachi.

M/s. Hamza Traders, M/s. Hamza Impex,
Fazal Pura, Wazirabad Road, Sambrial, Sialkot.

M/s. Glacier International, Address: Taj Pura Dara Arian, MCB Street, Sialkot.

M/s. Max Enterprises, Address:
House No. 1, Muhammadi Street, Muradia Road, Model town, Sialkot.

M/s. Zohra Enterprises,
Opposite Shell Petrol Pump, Defence Road, Sialkot-51310.

M/s. First Trading Co,
Naseem Hayat Market No.1, Urdu Bazar, Sialkot.

M/s. Zohra Traders,
Near Maher CNG Station, Defence Road, S.I.E. Sialkot-51310.

M/s. Moontex Sporting Goods,
101-D, Yaqoob Street, Model Town, Sialkot.

Copy to:

1. The Member (Customs Policy/Operations), FBR, Islamabad.
2. The Chief Collectors Customs, Appraisement (South)/Enforcement, Karachi/
(Central) Lahore/ (North) Islamabad / Quetta.
3. The Director General of Intelligence & Investigation-FBR, Islamabad.
4. The Collector, MCC Appraisement and Facilitation (East/West) /Port M. Bin Qasim/
Enforcement & Compliance, JIAP, Karachi.
5. The Collector, MCC Appraisement & 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.