

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG(V)Val.Rev/29/2020 /145.

26th February, 2021

**Order in Revision No. 04 /2021 under Section 25-D of the Customs Act, 1969,
against Valuation Ruling No. 1472/2020 Dated 16-09-2020**

- 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

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

10-12-2020

For the Petitioners

Mr Suneel Ali Memon Advocate
Mr Asif Khaliq Shar Advocate
Mr Zubair Ali Khan

For the Respondent

Mr. Umer Baloch, Principal Appraiser

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1472/2020, dated 16.09.2020, issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. Being aggrieved and dissatisfied with the Valuation Ruling No. 1472/2020 dated 16.09.2020 issued by the Director of Customs Valuation in terms of Section 25A of the Customs Act, 1969,

3. That the applicant is running business since 2003 in the name of M/s. Jofa International and is the sole importer and distributor of "Movenpick Ice Cream" and imports average three to four shipments every year, against which all payments are made through banking channel. The applicant being aggrieved with the above Valuation Ruling and hereby prefer instant review petition and humbly state as under:-

4. That the applicant is one of the importers of the said item and contributes substantial amount of revenue in respect of duty and taxes to the exchequer. The impugned Valuation Ruling being a malafide

act of the Valuation Department has been issued with hands in gloves with the manufacturer / competitors of the applicant / importers and has been issued without satisfying the factual controversy.

5. That before issuance of impugned Ruling the prices were being assessed by the Collectorates on the basis of Valuation Ruling No.1263/2018 dated 21-02-2018, issued under Section 25A of the Customs Act, 1969 @ US\$ 2.81 to US\$ 5.42/Kg.

6. That since the valuation ruling issued is patently illegal, without any justification, arbitrary, discriminatory, completely against the law and in violation of the mandatory provisions of the Customs Act, 1969, and the directions/interpretations of the Honorable Courts from time to time and hence the applicant prefer this review application without prejudice to their right to contest the same before any other forum available in law, on the following grounds:

7. **GROUND**

1) That it is submitted that the learned Director (Valuation), while issuing the impugned Valuation Ruling has violated the principle of natural Justice "Audi Alterm Partem", as the applicant being importers and related with the same business class has been condemned un-heard to the extent of facts and actual figures, as neither any facts and figures was considered nor a chance of personal hearing for clarification was accorded, in order to controvert, reply and to be part of any survey conducted, if any by the department, hence the Ruling is malafidely issued and is liable to be set-aside.

2) That at the outset it is submitted that the values determined by the Respondent vide the impugned Ruling in terms of Section 25A of the Customs Act, 1969, are wrongly applied on the importation of the consignments, being imported regularly by the Applicant, are illegal, arbitrary, unjust, malafide and without justification as Valuation Ruling has been issued by the Valuation department on the basis of deductive value method under Section 25 (7) of the Customs Act, 1969, and purported market survey which was never carried out and for the sake of argument if carried out same has been done without any notice to the applicant, hence the same is illegal and cannot be sustained.

3) That it is pivotal to mention here, that the landed value of the items would be US\$ 2.81/Kg for 5L, US\$ 3.2/Kg for 2.4L, US\$ 3.65 for 900ml & US\$ 5.34 for 100ml and the values of the subject items have been malafidely raised at single average rate of US\$ 6.65/Kg resulting in an increase of 77% against an average of US\$ 3.75/Kg, without assigning any justified reason.

4) That the stance of the department to avoid transaction value of the applicant is not supported with any cogent evidence, however, valuation department is habitual of fixing exorbitant values as such the valuation department has no leg to stand to jump over next valuation method.

5) That valuation department have never discussed about data of bulk group or any quantity in respect of any specific importer or association making such imports at higher rates hence once again the Respondent has ignored sub-Section (5) and (6) to Section 25 of the Customs Act, 1969. As such the values foisted upon the applicant and other importers are no sustainable hence liable to be brushed aside.

6) That the Respondent failed to conduct any proper market enquiry and specially no person from importers or applicant side was ever associated to reach and just and fair valuation prices for different



items mentioned in the impugned valuation ruling, as such Respondent had no occasion to fall on sub-Section (7) of Section 25 of the Act *ibid*.

7) That in view of the above submissions coupled with the fact the Valuation Ruling impugned herein is liable to be set-aside. That the applicant craves leave of this Honourable forum to raise any further grounds at the time of hearing of this application.

8. **PRAYER**

a. It is therefore, prayed by the applicant above named that the Honorable Director General Valuation by virtue of powers vested under Section 25D of the Customs Act 1969 may be pleased to pass orders as follows: -

b. Declare that the act of valuation department by issuing the subject Valuation Ruling No. 1472/20 dated 16.09.2020 in terms of Section 25A of the Customs Act 1969 is illegal and hereby set aside to the extent of the applicant and the values of the applicant of these items are to be determined in terms of Section 25(1) of the Customs Act 1969 being true and correct transactional values; and valuation may be suspended forthwith.

c. Declare that the act of valuation department by issuing the subject Valuation Ruling impugned herein issued in terms of Section 25A of the Customs Act, 1969, and its applicability on the applicant's consignments is illegal, unlawful and is alien to the provisions of Section 25 of the Customs Act 1969 and hence liable to be set aside.

d. Declare that the action of Valuation Department by resorting to assessment in terms of sub-Section (7) of Section 25 of the Customs Act, 1969, directly without first exhausting the methods of assessment provided under sub-Section (1), (5), (6), of Section 25 of the Customs Act 1969, is illegal and liable to be set aside;

e. Direct the Department to assess the goods of the applicant strictly in terms of Section 25(1) of the Customs Act, 1969, and pending finalization of this review application direct the Collectorate concerned to assess the future consignments in terms of Section 81 of the Act by depositing of postdated cheques / Pay order / Bank Guarantee for the differential amount;

f. Grant such other relief(s) as this Honourable forum may deem just and proper in the circumstances of the case.

9. 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 related to introduction of the importer & the product.

Para (2) Denied. All methods of Valuation as laid down in Section 25 of the Customs Act, 1969 i.e. 25(1) (5) (6) & (7), were exhausted and finally Customs Values were determined under Section 25(9) of the Customs Act, 1969. Moreover, importers including FPCCI & KCCI and Pakistan Kiryana

Merchants Associations were also associated while determining the Customs values of the subject goods. Hence, the subject Valuation Ruling was issued as per law.

Para (3) To determine the true value of 'Ice Cream' in light of current prevailing prices in the international market, an exercise to determine the customs values of subject goods was undertaken and Valuation Ruling No. 1472/2020 dated 16-09-2020 is issued under Section 25A of the Customs Act, 1969, and the customs value determined therein shall be applicable on all imports in terms of sub-Section (2) of the Customs Act, 1969 for uniform assessment.

Para (4) In line with the statutory sequential order of Section 25, 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, evaluated and after gathering all information, the customs values have been determined in terms of Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling. This office then conducted a market enquiry using Deductive Value Method under sub-Section (7) of the Section 25 of the Customs Act, 1969 but gathered information could not be exclusively relied on. Computed Value Method as provided in Section 25(8) of the Customs Act, 1969 could not be applied for valuation of the aforementioned goods as the cost of raw material under clause (a) and amount of profit and general expenses under (b) of Section 25(8) of the Act, in the country of export, could not be ascertained. On line values were also checked. All the information was analyzed and evaluated and sub-Section (9) of Section 25 of the Customs Act, 1969, was applied to arrive at assessable Customs values of Ice Cream.

GROUND

Para (1) In order to ensure proper assessment of goods, the values of Ice Cream was determined in accordance with law, after taking all the stakeholders on board. The values so determined were notified under Section 25A of the Customs Act, 1969 for uniform implementation across the country and is applicable unless revised or rescinded in terms of 25A(4) of Customs Act, 1969. The Director Customs Valuation has to perform his duty within his jurisdiction to determine Customs values on genuine ground.

Para (2to5) The Transaction value method as provided in sub-Section (1) of Section 25 of the Customs Act, 1969 was found inapplicable because no substantial documents were provided by the stakeholders to prove the declared values were true transactional values. Moreover, different values were declared by different importers for same product according to their brand of Ice Cream from different origins. Identical/similar goods value methods provided in Section 25(5) & (6) ibid were examined for applicability to determine customs values of subject goods. The data provided some references, however, it was found that same could not be solely relied upon due absence of absolute demonstrable evidence of qualities and quantities of commercial level etc. information available hence found inappropriate. In line with statutory sequential order of Section 25, this office conducted market enquiries using Deductive Value Method under sub-Section (7) of the Section 25 of the Customs Act, 1969. As the prices of ice cream of different brands and origin in the market varied significantly, therefore, a number of surveys were conducted to arrive at customs values. However, it was found that determination of customs values could not be based solely upon this method either as method of selling either through franchise or through whole sellers is different. Therefore, valuation method provided in Section 25(8) of the Customs Act, 1969 was examined for valuation but the same also could not be applied as the conversion cost from the constituent material and allied expenses, at the country of export were

not available for manufacturing of ice cream. Finally, clearance data, market survey information and international prices through internet were examined thoroughly and the information so gathered were utilized and analyzed for determination of Customs values of Ice Cream under Section (9) of Section 25 of the Customs Act, 1969.

Para (6) Denied and vehemently contested. This is merely a false statement, based on ignorance of law and procedure. The learned Director Customs Valuation has acted within his powers conferred under Customs Act, 1969. The Valuation Ruling No. 1472/2020 dated 16-09-2018 was determined as per law and in accordance of the provisions of Section 25A read with Section 25 of the Customs Act, 1969. Meeting held with stake holders, market enquiry conducted sub-Section (7) of 25 of the Act *ibid*. However, Customs values of Ice Cream determined under Section (9) of Section 25 of the Customs Act, 1969.

Para (7) It is humbly requested to reject the revision petitions being devoid of merits.

Para (8) Needs no comments being related to future grounds at the time of hearing.

PRAYER

- a) The Valuation Ruling No. 1472/2020 dated 16-09-2020 of imported of Ice Cream issued under Section 25-A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform application, there exists no justification to accept the transaction value for assessment.
- b) It is respectfully prayed that the Customs values of subject goods were determined after associating all the possible relevant stakeholders and following the valuation methods as laid down in Section 25 of Customs Act, 1969 and finally Customs values were determined under Section 25(9) of Customs Act, 1969 after detail investigation.
- c) Denied. The values determined are not contradictory, unreflective, illegal and unlawful. The same are determined well within the parameters as laid down under Section 25 of the Customs Act 1969, as per law.
- d) The Valuation Ruling No. 1472/2020 dated 16-09-2020, has correctly and lawfully been issued in terms of Section 25-A of the Customs Act, 1969 as per law. The consignments are liable to be assessed as per Ruling No. 1472/2020 dated 16-09-2020.
- e) The subject consignment is liable to be assessed as per Valuation Ruling No. 1472/2020, dated 16-09-2020 which is determined under Section 25-A of Customs Act, 1969.
- f) It is therefore prayed in the light of above explained position that the ruling may be allowed to hold in field in the interest of justice and to safeguard the Government exchequer.



ORDER

10. Hearing was held on 10-12-2020. The counsel of the petitioners contended that the landed value of the items is US\$ 2.81/kg for 5L, US\$ 3.2/kg for 2.4L, US\$ 3.65/kg for 900ml & US\$ 5.34/kg for 100ml and the values of the subject items have been exorbitantly raised at single average rate of US\$ 6.65/kg resulting in an increase of 77% against an average of US\$ 3.75/kg without assigning any justified reason. The petitioners further stated that the respondent has failed to conduct any proper

market enquiry of the different items mentioned in the impugned valuation ruling. They also contended that the business practices are misunderstood and overlooked by the department while issuing the impugned valuation ruling. They stated that discounts given to the importers are very low as their goods are specific refrigerated transportation / cold supply chain. The petitioners agitated that the department has given very low profit margin to the retailers.

11. The counsel of M/s Jofa International raised the question that in the impugned Valuation Ruling No.1472/2020 dated 16-09-2020 at serial No.01 customs values of their brand "Mövenpick" (Ice Cream) have been arbitrarily enhanced and no sufficient discounts were made to the importers as per international business of this commodity. The petitioners pleaded that the department while issuing the impugned Valuation Ruling has violated the principle of natural justice "Audi Alterm Partem". The counsel stated that they have been condemned unheard to the extent of facts and actual figures, as neither any facts and figures were considered, nor a chance of personal hearing for clarification was accorded to them in order to controvert, reply and to be part of any survey conducted by the department.


12. The counsel added that that are as per the distribution agreement with Nestle Suisse, S.A, M/s Jofa International is appointed as its exclusive distributor for the marketing and resale of ice-cream products manufactured and sold by M/s Neslte under the trademark of "Movenpick". The counsel stated that they order the goods directly from the manufacture and payment in this regards are made by electronic transfer of funds to Nestle bank accounts. Hence, there is no question of under-invoicing. The counsel therefore pleaded that the impugned ruling may be set-aside.

13. In reply to the question/objections raised by the counsel of the petitioners, the departmental representative (DR) stated that the meeting was held on 27-04-2020 with the stakeholder of the subject goods. Thus, the petitioners were given due opportunity to plead their case and they were not condemned unheard. The DR further added that market survey for the subject goods was conducted and it was found that a single scoop of Mövenpick ice cream that weighted 70.87 grams costed @ Rs.450/scoop. Previously, Valuation Ruling No.1442/2020 dated 05-03-2020 was issued for the subject goods by applying the work-back method @ US\$ 15.85/kg accordingly. Subsequently, the revision petitions were filed by the importers and the case was remanded back vide Order-in-Revision No.13/2020 dated 20-04-2020 to the Director Customs Valuation for the re-determination of customs values under Section 25A of the Customs Act, 1969. Hence, an exercise was again conducted by the department for the re-determination of values. Multiple detail meetings were conducted with the stakeholders and keeping in view of the documents submitted, their expenditures and the perishable nature of the goods, the values were re-determined at US\$ 6.65/kg (at serial No.1) for the subject goods vide impugned VR No.1472/2020 dated 16-09-2020 by taking into account their administrative overheads as they explained during several meetings. Values of all other brands were also re-determined on the same criteria after allowing for due discounts. The DR further explained and submitted the working regarding percentage of increase of values vis-à-vis previous valuation rulings.

14. After listening to the discussion/arguments of the counsels, 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 in their sequential order. The petitioners were given 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. In view of the foregoing, the valuation ruling is upheld and revision petitions are hereby rejected accordingly.

15. Being identical on facts and law point, this order shall apply mutatis mutandis to the revision petition filed by M/s. Interlink Corporation, Karachi.


(Zulfikar Ali Chaudhary)
Director General

Registered copy to:

M/s. Jofa International,
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Near Dawood Centre, Karachi.

M/s. Interlink Corporation,
C/o Zahid Farooq Advocate,
Suit No.18, First Floor, Burhani Terrace, Opposite to Custom House, Karachi.

Copy to:

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