

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACH

File No. DG(V)Val.Rev/03/2020 /256.

Dated 31st March, 2021

Order in Revision No. 15 /2021 under Section 25-D of the Customs Act, 1969,
against Valuation Ruling No. 1440/2020 Dated: 25-02-2020

- 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. Light Concern & Others

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PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

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RESPONDENT

Date(s) of hearing

16-10-2020 and 16-03-2021

For the Petitioners

Mr. Arshad Mahmood for
M/s Hayat Autos, M/s Hadia Impex
& M/s Amna Enterprises
Mr. Hassan Inam Kayani for M/s Solo International.

For the Respondent

Mr. Faisal Jokhio, Valuation Officer

This revision petition was filed under Section 25-D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1440/2020, dated 25-02-2020, issued under Section 25-A of the Customs Act, 1969, inter alia, on the following grounds:

2. This ruling is lacking solid grounds and has number of flaws in determining the value of the said item. We hereby file a review application under Section 25D of the Customs Act, 1969.

Basis for Appeal

- 1) Firstly the method opted for calculating the value of LED Bulb Parts is not in accordance with rules and regulations.
- 2) The formula used in calculating their pricing of LED Parts including the Driver, Metal Clad PCB, Housing and Shell cover is totally unacceptable because the values used in this process is according with prices of LED Bulb Parts in 2017.

- 3) Since this Valuation is issued in the year February,2020, so the Valuation Department must make sure to take the current prices of China as of Year 2020 not as of 2017 prices because in last 3 years the prices have decreased by 45-50% in China because the technology is very common now.
 - 4) The Valuation Department has used LED Bulb 12W as sample model to derive the values of the Driver and LED PCB, Housing Shell, Cover and Base Cap. The Valuation Department is fixing the driver value as 0.168/Pc and LED PCB as 0.192/Pc only these 2 Parts are making the value 0.36/Pc whereas now in China complete LED Bulb including all the cost of production is 0.32/Pc.
 - 5) Therefore, the method opted to calculate fair values is totally lacking from this Ruling and requires more comprehensive and fair methods to calculate the realistic value of LED Bulb Parts.
 - 6) The valuation method adopted negates logic as a variety of LED Bulbs with differing powers are imported and different parts are being used. Basing the valuation upon a 12W LED Bulb and valuating on weight and value proportion is against reason and judgment. Even with this method, the said Valuation Ruling does not encompass all the necessary factors of valuation such costs attached to packaging, assembling and warranty.
3. On the above mentioned grounds, it is clear that the said ruling is flawed and needs to be thoroughly reviewed. We hereby file a revision appeal under Section 25D of the Customs Act, 1969, and plead that the said ruling dated 25.02.2020 be suspended and the old values of the said product be restored until the fair revision of the determination of values.
4. It is our humble request that all the stakeholders must be given equal rights and we hereby commit to produce valid documentary evidences for ascertainment of the fair value. Any other provision under law that suits to this scenario be also allowed to us.
5. We sincerely hope that an immediate action will be taken on this review request and further hearing will be ensued at its earliest.
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

FACTS OF THE CASE

Customs values of LED Bulb Parts were earlier determined in terms of Section 25-A of the Customs Act, 1969, through Valuation Ruling No.1365/2019 dated 29-04-2019. Review Applications were filed under Section 25D of the Customs Act, 1969, read with Chapter IX of Customs Rules, 2001, and the Director General Customs Valuation, Karachi, while upholding the above Valuation Ruling observed, vide Order-In-Revision No.16/2019 dated 21-10-2019, that the Director Customs Valuation may initiate working to determine the values of each parts and components in consultation with the stakeholders including the petitioners. Keeping in view the above facts, an exercise was initiated to re-determine the customs values of the subject goods under Section 25A of the Customs Act, 1969. Meetings were held with stakeholders on 11-12-2019 and 17-12-2019. After exhausting all the valuation

methods, customs values were determined in terms of sub-Section (7) of Section 25 of the Customs Act, 1969, and notified vide Valuation Ruling No.1440/2020 dated 25-02-2020 under Section 25A of the Customs Act, 1969, accordingly for uniform assessment all over the country.

Para (1) It is submitted that the contents of Para (1) are denied to the extent declared value of the consignment is not reliable and not acceptable in terms of Section 25 (1) of the Customs Act, 1969, in presence of Valuation Ruling available under Section 25-A of the Customs Act, 1969. The Valuation Ruling is exhaustive which is always taken for assessment purpose in cases where the declared value is on lower side. The Valuation Ruling has been issued under Section 25-A of the Customs Act, 1969, which always prevails upon the declared value, which in turn is not proof of exact transactional value. Customs values in the under reference have been determined in terms of sub-Section (7) of Section 25 of the Customs Act, 1969, after exhausting all the Valuation methods and giving reasons for rejection of previous sub-Sections i.e. Sub-Sections (1) to (6) of Section 25 of the Customs Act, 1969. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved.

Para (2) Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and viewpoints of all the stakeholders. The record of the previous Valuation Ruling No.1365/2019, dated 29-04-2019 and arguments put forward by the Appellants and Respondents were considered. The Appellants were asked to furnish relevant documents so as to enable that forum to verify the truth and accuracy of their contentions but no corroboratory import documents were provided by any of them. No evidence was placed on record to indicate any deviation from the existing laws / provisions as envisaged in Section 25 read with Section 25-A of the Customs Act, 1969, has been occurred. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention.

Para (3) Denied. It is submitted declared values were examined which were found under-invoiced, therefore, Valuation Ruling No.1440, dated 25-02-2020 as issued. It is submitted that while issuing the Valuation Ruling for any imported commodity under Section 25-A, the Director of Customs Valuation has been empowered to exhaust all the valuation methods i.e. Sub-Sections (1), (5), (6), (7), (8) and (9) of Section 25 of the Customs Act, 1969, sequentially. It is submitted that customs values for issuance of Valuation Rulings are properly determined in terms of sub-Sections (1) to (9) of Section 25 of the Customs Act, 1969, sequentially. However, the word "whichever is applicable" as used in sub-Section(1) of Section 25A gives discretion to the competent authority to adopt the method as suited to the determination of value under Section 25-A of the Act, which may or may not be applied in a sequential manner. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences.

Para (4&5) Denied. It is respectfully submitted that the customs value of under reference goods had been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioners, on the other hand, did not submit the requisite corroboratory 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 the of transaction value shifts to the importers / applicants. As such the same is not against the principles of laws rather the same is based on factual ground realities of the case. It is further submitted that the meetings with the stakeholders were held on 11-12-2019 & 17-12-2019. The participants were requested to provide the documents like

copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meetings. Again during the meetings the participants were requested to submit: -

- (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.

Para (6) Denied. It is respectfully submitted that the said Valuation Ruling No.1440 / 2020 dated 25-02-2020, 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 vide Valuation Ruling No.1440 / 2020, dated 25-02-2020 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(7) of the Customs Act, 1969, vide above referred Valuation Ruling.

PRAYER

a. 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.1440 / 2020 dated 25-02-2020. The Respondent have acted lawfully and the Valuation Ruling No.1440 / 2020, dated 25-02-2020 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 25A 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.

b. 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.

c. 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

07. Hearing in this case was fixed for 16-10-2020 at Directorate of Customs Valuation ,Lahore, wherein Mr. Arshad Mahmood on behalf of M/s Hayat Autos, M/s Hadia Impex & M/s Amna Enterprises and Mr. Hassan Inam Kayani for M/s Solo International appeared for hearing. No other petitioner appeared for hearing. Another hearing was fixed at Directorate General of Customs Valuation Karachi on 16-03-2021 but no one appeared for hearing.

08. The main contention of Mr. Arshad Mahmood, in addition to arguments advanced in revision petitions, was that their clients were not heard at the time of determination of customs values under Section 25A of the Customs Act, 1969. No market survey was conducted in this regard and favour was given to local manufacturers and customs values determined for item No.01 & 02 have not been clearly specified according to Watts. Mr. Arshad Mahmood added that in international market the exporters/suppliers have been selling the impugned goods on Watt basis and the plastic material (housing/shell cover) is available with cheaper value in international market. The petitioners, therefore, pleaded that the valuation ruling should be revised by the department after conducting proper survey of these items. Moreover, the petitioners pleaded that the valuation method adopted by the department is not consistent with the procedures followed around the world and the ground realities of the market. The petitioners agitated that 12W LED bulb cannot be set as a base and valuation cannot be carried on according to weight and value proportion since LED bulbs have numerous variants differing in power and the parts being used in them. A blanket valuation, therefore, based on 12W bulb, is flawed.

09. The petitioners further submitted that 90% imports of LED bulbs and parts in Pakistan is from China and manufacturers offer competitive prices due to increased demand. The petitioners argued that the valuation method needed to have a more comprehensive look at the products and the prices fixation should have been done by considering the cost of warranty, assembling cost, cost of packing material since LED technology has now become internationally famous which has caused price competition between manufacturers. Resultantly, prices have come down especially for daily use lighting.

10. M/s Light Concern in their written petition has argued that the formula used in calculating the pricing of LED Parts including the Driver, Metal Clad PCB, Housing and Shell cover is totally unacceptable because the values used in this process are according to prices of LED Bulb Parts in 2017. The petitioners argued that since the impugned Valuation Ruling has been issued in February, 2020, so the Valuation Department must have made sure to take the current prices of China as of Year 2020 and not of prices of 2017 because in last 3 years the prices have decreased by 45-50% in China owing to the fact that technology is very common now. Further, M/s Elite Screener in their revision petition has mentioned that single side metal clad with its proper size and weight should have been mentioned in the Valuation Ruling since without exact description, actual size and weight the valuation ruling is being misused by the importers.

11. On the other hand, the Departmental Representative (DR) explained that Customs values of LED Bulb Parts were earlier determined in terms of Section 25-A of the Customs Act, 1969, through Valuation Ruling No.1365/2019 dated 29-04-2019. Review Applications were filed under Section 25D of the Customs Act, 1969, read with Chapter IX of Customs Rules, 2001, and the Director General Customs Valuation, Karachi, while upholding the above Valuation Ruling observed, vide Order-In-Revision No.16/2019 dated 21-10-2019, that the Director Customs Valuation may initiate working to determine the values of each parts and components in consultation with the stakeholders including the petitioners.

12. Keeping in view the above facts, an exercise was initiated to re-determine the customs values of the subject goods under Section 25A of the Customs Act, 1969. Meetings were held with stakeholders on 11-12-2019 and 17-12-2019. After exhausting all the valuation methods, customs values were determined in terms of sub-Section (7) of Section 25 of the Customs Act, 1969, and notified vide Valuation Ruling No.1440/2020 dated 25-02-2020 under Section 25A of the Customs Act, 1969, accordingly for uniform assessment all over the country.

13. The DR further submitted that the said Valuation Ruling No.1440 / 2020 dated 25-02-2020, was issued after thorough investigation and all aspects were considered. In this regard, the DR submitted that this Directorate General has determined the minimum customs values vide Valuation Ruling No.1440 / 2020, dated 25-02-2020 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(7) of the Customs Act, 1969.


14. The DR further submitted that instead of furnishing any documentary evidence about downfall in prices in international market, the stakeholders 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 stakeholders 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.

15. After listening to the discussion/arguments of the counsel of the petitioners and respondent and perusal of the case record, the undersigned has reached to the conclusion that the Valuation Department had duly taken all the stakeholders on board while issuing the impugned valuation ruling and valuation methods were properly followed. The petitioners were given ample opportunity to substantiate their contentions but they failed to provide any tangible proof in support of their contentions. Moreover, some of the petitioners did not appear for hearing fixed at Karachi on 16-03-2021 to plead their cases. 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.

16. However, since the valuation ruling is more than one year old, therefore, the Director Customs Valuation may issue a fresh valuation ruling in accordance with laid down procedures after providing sufficient hearing/meeting opportunities to all the stakeholders in three months.

17. Being identical on facts and law points, this order shall apply mutatis mutandis to following petitions.

M/s. Sona International, M/s. Hayat Autos, M/s. Al-Haram Traders, M/s. Elite Screener,
M/s Amna Enterprises, M/s. Mehrab Enterprises and M/s. Hadia Impex.


(Zulfikar Ali Chaudhary) 31-3-2021
Director General

Registered copy to:

M/s. Light Concern,
Electric Centre, Serai Road, Denso Hall, Karachi.

M/s. Sona International,
77, Allama Iqbal Road, Ghari Shahoo, Lahore.

M/s. Hayat Autos,
88-Al-Mubarak Market, General Bus Stand Badami Bagh, Lahore.

M/s. Al-Haram Traders,
P-270, Street No.5/6, Chak No.279, RB, Faisalabad.

M/s. Elite Screener,
Plot No. C-21 & C-22, AEECHS Block-9, Karachi.

M/s. Amna Enterprises,
Office No. M1-32, First Floor, China Shopping Mall, Add:1, SB-5, Abdullah Haroon Road,
Saddar, Karachi.

M/s. Mehrab Enterprises,
Office No.7-8/3, 3rd Floor, Sharjah Trade Centre, Shahrah-e-Liaquat, Karachi.

M/s. Hadia Impex,
Suit 808-809, 8th Floor, Uni Centre, I.I. Chundrigar Road, 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.