



GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS (VALUATION)
CUSTOM HOUSE, KARACHI.

File No. DG (V)/Val.Rev/17/2018/735.

Dated: 21st September 2021

**Order in Revision No. 28 /2021 under Section 25-D of the Customs Act, 1969
against Valuation Ruling No. 1280/2018 dated 05-04-2018**

- 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. Fotile Kitchen & Home Appliances Pvt. Ltd.

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

05-08-2021 & 08-09-2021

For the Petitioners

Ms. Anam Ramzan Advocate

For the Respondent

Mr. Iqbal Ali, Principal Appraiser

Briefly, the instant revision petition was filed in terms of Section 25-D of the Customs Act, 1969 against Customs values determined vide Valuation Ruling No.1280/2018 dated 05-04-2018 issued under Section 25-A of the Customs Act, 1969. The grounds on the basis of which the review jurisdiction has been invited are inter alia, are as follows:

FACTS

- 1) *That the petitioner company is engaged in the import of Cooking Hood/Range Hood/Chimney mainly from China. The petitioner possesses excellent track record of tax compliance in all aspects.*
- 2) *That, on 05.04.2018, the Director of Customs Valuation has determined the Customs value of Cooking Hood/Range Hood /Chimney through impugned Valuation Ruling No. 1280/2018 dated 05.04.2018 under Section 25A of the Customs Act 1969 without careful application of mind in determining the value, type, reputation, quality, life, raw material and origin of said goods imported from China, European countries, USA, and UK. The values and classes determined in chart appearing in the impugned Valuation Ruling are highly unjustified, illegal and unlawful.*
- 3) *That, it is pointed out that the learned Director Customs Valuation has issued impugned Valuation Ruling for Cooking Hood/ Range Hood/ Chimney without any basis, purportedly, under sub-Section (7) of Section 25 of the Custom Act, 1969 totally ignoring the transaction values, FTA*



Certificates, the Customs own assessment data and International/ National Sale prices, Hypothetically, in sheer violation of methodology contained in various sub-Section of Section 25 and rules made there-under. The petitioner has been seriously prejudiced by the impugned values. The petitioner, therefore, prefers this petition on the following grounds namely:-

GROUND

A. A careful analysis of the impugned ruling shows that it has been issued without associating the stakeholders, in particular the petitioner. It further shows that a so called meeting has been conducted on 24.01.2018. Interestingly the impugned ruling does not show when the so called and purported market inquiry was conducted and who had participated from the importers side. Surprisingly the ruling is hopelessly silent about the number of units purchased or kept in view and which area of the Karachi market was explored. These important facts were necessary to incorporate in the impugned ruling for the reasons; (i) according to Rule 107 the relevant period of transaction should be within 90 days (ii) the deductive value method's first and prime condition is "maximum units sold" (iii) the SOP prescribed for market inquiry (SOP-01/2005) envisages that representative of trade shall accompany the valuation officers during the process of market inquiry. However, the learned Director totally ignored these fundamental parameters necessarily to be kept in view at the time of determination of Customs value. The learned Director had to keep in mind rights of the importers and should have issued a lawful and flexible ruling without affecting the constitutional rights enshrined in the Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.

B. That the value determined through the impugned ruling need to be analyzed carefully by this honorable revision authority. The stated disparity of prices in impugned ruling clearly demonstrates that the learned Director Valuation has acted hypothetically, on the basis of hearsay or has been miserably mis-guided. Similarly neither the Customs Act nor the valuation rules authorize the learned Director to fix arbitrary, artificial, bogus and illegal Valuation Rulings. The learned Director was under legal obligation to demonstrate reasonableness and was required to indicate wholesale market in Pakistan where such an expanded range is being sold.

C. That the impugned Valuation Ruling has been issued in violation of sub-Section (1), (4), (5), (6) and (7) of Section 25 of the Customs Act, 1969 for the following reasons:-

(a) Sub-Section (1) of Section 25 clearly stipulates that the Customs value of the imported goods, subject to the provisions of Section 25 and rules, shall be transaction value, that the price actually paid or payable for the goods when sold for export to Pakistan. However, while issuing impugned ruling the concept of transaction value has totally been ignored without lawful excuse. The learned Director while discarding transaction value did not give plausible reason except stating, "Transaction value method provided in sub-Section (1) of Section 25 *ibid* was found in-applicable because the requisite information as per law was not available". This observation is baseless and of no substance. The learned Director should have clearly disclosed which information is missing. The Director had the right to call for any further information from the importers. This is not sufficient to skip the whole system of transaction value.

(b) The learned Director in the same fashion brushed aside two very important valuation methods enshrined under sub-Section (5) and (6), catering with transaction value of identical goods and transaction value of similar goods, with a single stroke of his pen, just saying "identical and similar goods valuation methods provided in sub-Section (5) and (6) of section 25 of the Customs Act, 1969 provided some reference values but due to wide variations in the declarations the same could not be relied upon exclusively." In fact the learned Director did not bother to go through the Customs own data of identical/similar data? However, he did not offer logical reasoning covered by legal principles to reject the official record. This has caused determination of illegal value and loss to importers of "Cooking Hood / Range Hood / Chimney".

(c) Sub-Section (7) of Section 25 has been mis-used to fix higher values of "Cooking Hood/ Range Hood/ chimney" surrounding learned Director's own choice. The opening sentence of sub-Section (7) lays very stringent condition that if the Customs values of the imported goods cannot be determined under sub-Section (6), it shall subject to rules, be determined following parameters given in Clause (a), (b) and (c) of sub-Section (7) of Section 25. When provisions of sub-Section (7) are invited under any circumstances, the officer exercising powers, is obliged to incorporate



details and calculation arising during the application of conditions laid down in Clause (a), (b) and (c) of sub-Section (7) of Section 25 of the Act not only to show fairness but because the ruling issued under Section 25A is appealable in terms of Section 25D *ibid*. However, the whole ruling is devoid of such details. Therefore, the Customs value determined in the present matter, purportedly, under sub-Section (7) does not sustain test of law.

(d) The learned Director in the zeal of excitement also ignored next two sub-Sections (8) and (9) and did not visit to these sub-Sections to arrive at just and correct Customs value. Sub-Section (13) also carries very vital substance in its seven sub-Clauses spread in Clause (a) to (g). Resultantly, deeply infected Valuation Ruling has been issued by enhancing Customs own assessed values. Hence, the impugned ruling is a classic example of mis-use of executive powers which has been issued crossing all limits of injustice.

D. That a careful analysis of so-called values determined by the learned Director in the impugned ruling has revealed that learned Director has acted not only against the valuation law but no care has been shown while fixing Customs value of said goods of various specifications overlapping each other. This position is totally against the pricing parameters, market trends, input output ratio, logic and provisions of section 25 *ibid*. If the impugned ruling is allowed to remain in field the import of said goods through legal channel will certainly drift towards other illegal channels. This Honorable authority is vehemently requested to save the legal business from complete disaster and set aside the impugned ruling without delay.

E. That the Honorable Lahore High Court while disposing Writ Petition No. 16065 of 2005 (PTCL 2007 CL 598), squarely applicable in this case, has laid down that;

"A Valuation Ruling is at best evidentiary and to possess any sanctity it must reflect the material on which it is based. It would also be necessary that the price materials from the market used to arrive at a valuation should satisfy the test *con temporancity* embedded in Section 25 of the Act and the Valuation Rules, 2004. Failing such validating measures demonstrating substantive adherence to the statutory requirements, a valuation ruling would derogate the specific terms Of Section 25 of the Act and be illegal. The impugned valuation ruling that is devoid of the foregoing attributes and is therefore declared to be without lawful authority."

F. The Honorable Sindh High Court while deciding C.P. No. 2673/09 and other connected petitions has widely discussed application of Section (25) and 25(A) and has not appreciated use of Section 25(A) for the whole sale determination of Customs values. The Honorable Court at para-22 of the Order has observed as under:-

"Before concluding with Section 25(A), one general observation must also be made. Section 25(A) is only an enabling Section. It permits, but does not mandatorily require, a predetermination of Customs value in terms of explained above. The principal method of determining Customs value is, and must remain, Section (25), section 25(A) is not intended to be a substitute for Section 25, nor can it be resorted to in such manner and with such frequency that it marginalizes the later provision. It is merely an adjunct to Section (25), to be resorted to in appropriate circumstances and for an appropriate period. In our view, in enacting Section 25(4), the legislative intent was not, nor could be for the reasons state above, to create a statutory bypass to the Valuation Agreement. While the issuance of Valuation Rulings under Section 25(A) cannot be regarded as limited only to those cases where the Department concludes that there is group under-invoicing, the section also cannot be used for the wholesale determination of Customs values. Such an approach would, in effect, transform the "determination" permissible under Section 25(A) to an impermissible 'fixation' of value. This is an important point which must be kept in mind, and may be relevant in appropriate cases, when considering the vires of a valuation ruling."

G. The Honorable Sindh High Court at para-4 PTCL 2008 CL 457 has observed as under:-

"After hearing the learned counsel, we observe that through the comments filed in the petition by the respondent that they have made up their mind to avail the department ruling given in the document, dated 27.12.2006, therefore, no useful purpose will be served if the cases are finally examined under Section 81 as the petitioner's request, as has been made here, will not be entertained by the Customs Authority. We have also



observed that the language of Section 25 of the Customs Act 1969 is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if there is no result of transaction value, provided that conditions provided in sub-Section (1) (a) of the Act to be followed. Here in the case, the Customs authorities have not given the ruling without any reasoning nor has it been mentioned as to how they have reached that conclusion or do they have evidence of other imports on more value nor the affected persons have been given any opportunity to be heard.

H. The Honorable High Court vide 2008 PTD 2815 HAS observed as under:-

"For the foregoing reasons, the petition is allowed and it is declared that the action of respondents resorting to the assessment on the basis of valuation advice in pursuance of provisions contained in sub-Section (7) of Section 25 of the Customs Act 1969 without resort to sub-Sections (1) to (6) is illegal, without lawful authority and not sustainable in law. In the facts and circumstances of the case, the respondents are directed to accept the transaction value declared by the petitioner in terms of Section 25(1) of the Customs Act 1969. The respondents are further directed to return the excess amount of duty and taxes recovered from the petitioner in violation of the mandatory requirement of law within a period of two months from today. So far, the prayers for compensation for payment of wharfage, container and port charges are concerned, they cannot be allowed as it is a matter of evidence which cannot be resorted to in the proceedings in exercise of Writ Jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan." After hearing the learned advocates, the petition was allowed by short order.

I. In the end of my submissions, it is not out of context to mention here that the then Director General Valuation while deciding the review application No. 115/2008 dated 16.02.2009 on the very issue has laid down a golden principle based on the true spirit of GATT Code of Valuation in the following words:

"5. Rival parties have been heard and the case record examined. While provisionally assessing the value of the goods, the concerning Collectorate (s) have ignored the direction of the Honourable Supreme Court of Pakistan in the case of M/s. Zymotic Diagnostic International, Cp No. 434-K/2005, wherein it has clearly been held that invoice price of an importer should not be rejected as a matter of routine. The operative para of ruling of Supreme Court is as under:-

"Section 25 of the Customs Act, authorizes an officer of the Customs department to reject the declared value of a consignment imported in Pakistan and to assess the same. Section 25 lays down various modes in which the officials of the Customs department are required to proceed in determining or assessing the value of the consignment after rejecting the declared value. However, for rejecting or refusing to accept the value declared by a consignee in respect of imported goods the concerned officer is required to give cogent, plausible and satisfactory reasons. For non-acceptance of the declared value and rejection thereof this cannot proceed on the whims or desire of the officer of the Customs."

J. In another judgment the Honourable Sindh High Court (PTCL 2008 CL. 457) has observed that: "Language of Section 25 is mandatory and it requires the department to follow step by step for the purpose of determining value and if there is no result coming out than they may avail the remedy under Section 24-A. The language of Section 25 of the Customs Act is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if L)-A. As per language of the above Section the determination of the import value should be on the basis of transaction value, provided that conditions provided in sub-Section (1) (a) of Section 25 are not available. If an importer is crossing sub-Section (1) (a) then other sub-sections of Section 25 of the Act to be followed consignment imported in Pakistan and to assess the same. Section 25 lays down various modes in which the officials of the Customs department are required to proceed in determining or assessing the value of the consignment after rejecting the declared value. However, for rejecting or refusing to accept the value declared by a consignee in respect of imported goods the concerned



officer is required to given cogent plausible and satisfactory reasons. For nonacceptance of the declared value and rejection thereof this cannot proceed on the whims or desire of the officer of the Customs."

- K. Having said that the assessing officer i.e., Deputy Collector of Customs is directed to assess the goods at the petitioner's invoice value in terms of Section 25(1) of the Customs Act, 1969."
- L. Although about 17 years have been passed when GATT Code of Valuation System was introduced in Pakistan on 1st January 2000, but only to memorize the true letter and spirit of the system following few lines may please be considered before passing a judicious order on this review application:
- a) "Transaction value, nature and its rejection. Concept of valuation under GATT Code is entirely different from that of BDV."

In the GATT concept it is the transaction which has been protected unless evidence can substantiate a fraudulent transaction, in the GATT it is the post import investigation which is more important than passing a value judgment on assumption at the time of import. A transactional value cannot be rejected because there are some contemporaneous imports at higher price. It has to be shown that invoice price is not genuine and does not show the real price paid for the imports. An invoice price cannot be routinely discarded except on the strength of clear evidence that the invoice is not genuine and it does not show the real price as has been transacted between the importer and foreign supplier, and that something else has passed clandestinely between the importer and foreign supplier. The plea of enhancement is not tenable where no evidence has been produced to justify any enhancement of the invoice value of imported goods. No evidence to show that the disputed transaction is false or is an outcome of a fraudulent activity, has been produced by the customs, they have only relied upon a previous transactional value having no relationship with the changed scenario between the imports and exports, no evidence exists to reject the commercial documents represented by the petitioners, the impugned orders suffers from senior illegalities the same is therefore accordingly set aside, (PTCL 2003 CL. 180)".

b) "Rejection of declared value. - Rejection of declared value of goods and fixation of its enhanced value without disclosing adequate material or reason is arbitrary, whimsical, capricious and in complete disregard of Section 25. (PTCL 2008 CL. 103). In the absence of material on record and a consequential speaking order affirming the impugned version of price on the basis of evidentiary material, an importer ought not to be saddled with an attributed value to sustain liability. (PTCL 2008 CL. 177)".

c) "Enhancement of value without evidence. - The enhancement in value made on the recommendation of a Committee not supported with any evidence, cannot be accepted by a Judicial Forum. (PTCL 2005 CL. 76)".

M. That the petitioner craves leave to add, alter, argue or modify any other or additional grounds at the time of hearing of this petition before this Honorable authority.

PRAYER

In view of above submissions, it is respectfully prayed that impugned Valuation Ruling No.1280/2018 dated 05.04.2018 may graciously be declared illegal and un-lawful and issue directions to Clearance Collectorates to assess the "Cooking Hood/ Range Hood /Chimney" of China origin under Section 25 of the Customs Act, 1969'.

2. The respondent department was 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 The Customs values of Cooking Range Hood/Chimney were determined vide Valuation Ruling No.1170/2017 dated 25.05.2017. Importers were filled appeal under section 25D of C.A.

1969 which was rejected. A number of representations were received for revision of Valuation Ruling No. 1170/2017 dated 25.05.2017 as per current international price trend.

Para 2 Meeting of stakeholders was scheduled on 24.01.2018 in which (36) stakeholders including the appellant (M/s. Fotile) and representative of chamber were invited to attend the said meeting along with supporting documents. Meeting was held and Mr. Kamran representative of M/s. Fotile with other 10 participants was attended the same.

Para 3 Import data under Section 25(5) & (6) was examined, local market enquiry as envisage under section 25(7) of the Customs Act 1969 was conducted repeatedly at different places including the show room of appellant at Gizri, Karachi, prices were also obtained through internet enquiries, after gathering all information Valuation Ruling No.1280/2018 dated 05.04.2018 was issued under Section 25(7) of the Customs Act, 1969 as per law. It is further stated that the determined Customs values of cooking hood in existing Valuation Ruling were reduced as compared the old Valuation Ruling and a suitable discount was given on worked out values.

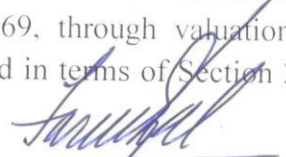
Para 4 It is requested that Valuation Ruling No. 1280/2018 dated 05.04.2018 issued u/s 25-A of the Customs Act, 1969 is within the four corners as per law and after a detailed enquiry, thus the appeal may be rejected.

ORDER

3. Hearings in the subject case were fixed for 05-08-2021 and 08-09-2021. The counsel of the petitioner attended the Zoom hearing and reiterated the same arguments as elaborated in their review petition. The main thrust of their arguments was that their brand i.e. 'Fotile', being Chinese in origin, had been incorrectly included in Category-A whereas, being an inferior quality product, it should be placed in Category-C. Moreover, they reiterated that since their declared values were the correct transaction values, the impugned ruling be accordingly set-aside. On the other hand, the Departmental Representative (DR) explained in detail the working/methodologies adopted to arrive at the Customs values determined vide impugned Ruling. Interestingly, the DR informed that the petitioners, who are also importers, have their own retail outlets where the sale price of the imported goods / items are significantly higher even after deduction of paid duty / taxes and related expenses including their gross profit indicating that the values declared to Customs, at price of import, are not the correct custom values. The DR also presented details of comprehensive market inquiry reports in support of the values determined by them as well as proof of attendance, by the petitioner, in the stakeholders (meetings) conducted in terms Section 25A of the Customs Act, 1969.

4. After listening to the detailed discussions / arguments of both the parties and perusal of the case record, it is evident that the Valuation Department has adopted the prescribed methodology in determination of the customs values and duly took the stakeholders on board while issuing the impugned Valuation Ruling. They were given sufficient time and opportunity to provide inputs including documentary proof/ evidence to substantiate their claim that their declared import values were, indeed, the true transaction value. Moreover, there is no doubt that 'Fotile' brand is a well-known international superior brand and has a healthy reputation in the market and hence correctly mentioned in the Category-A brands.

5. On account of the foregoing discussion, I, therefore, see no reason to interfere with the values determined under Section 25A of the Customs Act, 1969, through valuation ruling No.1280/2018 dated 05-04-2018. The instant Review petition, filed in terms of Section 25-D of the Customs Act, 1969, is, accordingly rejected.


(Dr. Fareed Iqbal Qureshi)
Director General

Registered copy to:

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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.

