

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

File No. DG (V) Val.Rev/50/2021 /187.

Dated 18th February, 2022

**Order in Revision No. 16/2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1573/2021 Dated: 29-11-2021**

M/s. A.M. Corporation & Others

.....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

10-02-2022

For the Petitioners

Mr Ali Afzal
Malik Naseem

For the Respondent

Mr. Nadeem Shaikh, Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1573/2021, dated 29.11.2021, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"Being aggrieved and dissatisfied with the Valuation Ruling No. 1573/2021 dated 29-11-2021 issued by the Respondent under Section 25-A of the Customs Act, 1969 the petitioner prefers to file Revision Petition under Section 25-D of the Customs Act 1969 against the impugned Valuation Ruling before the Director General Directorate General of Customs Valuation Karachi on the following facts and grounds:

FACTS

- 1) That the Directorate General while conducting exercise in identifying tariff-line prone to under-invoicing received from FBR Letter No. 103/KHI/CUS/2021 dated 23-09-2021 along with representation of M/s A.M Corporation herein after petitioner the playing cards of various materials were being cleared at lower values. In addition to that representation were also received from Collectorate of Customs Appraisement (East) vide Letter No. SI/MISC/75/KAPE/2021-VIII dated 06-10-2021 regarding the same issue.
- 2) That due to lack of uniformity of assessments at different Collectorates, the Directorate General was requested to determine its customs value under Section 25A of the Customs Act, 1969.
- 3) That the exercise was initiated by the Directorate General of Valuation and meeting with stakeholders were held on 10-11-2021. The petitioner submitted proposal letter dated 03-11-2021 but the respondent ignored the letter and in Para No. 4 submitted misstatement that none of the importers submitted any documents required in support of their contention.
- 4) That finally custom values of Playing Cards were determined under Section 25(9) of the Customs Act, 1969 after the information gathered were utilized and analyzed from examination through




clearance data, raw material prices, international prices and internet although the source and verification of it are silent.

5) That the customs values mentioned in the Table below is reproduced for your kind information

S.No.	Description of Goods	PCT Code	Proposed PCT for WeBOC	Origin	Customs Value (C&F) US\$/deck of 54 Cards
(1)	(2)	(3)	(4)	(5)	(6)
1	Playing Card (Made of Paper)	9504.4000	9504.4000.1000	China/Taiwan	0.16
			9504.4000.1100	USA	0.20
2	Playing Card (Made of Paper with Plastic Coating)		9504.4000.1200	China/Taiwan	0.20
			9504.4000.1300	USA	0.24
3	Playing Card (Made of Plastic)		9504.4000.1400	China/Taiwan	0.50
			9504.4000.1500	USA	0.60

GROUND

A. That the petitioner submitted before the respondent that the transaction values of Playing Cards are:



Brand	Origin	Material	Actual Transaction Value	Price in Local Market	Current Clearance Data
ROYAL – ROCKET	TAIWAN	Plastic (Prime)	1\$ Per Deck	Rs. 530 Per Deck	0.15\$ Per Deck
USA ROYAL – REGAL – EMPEROR	CHINA	Plastic (Recycle)	0.195\$ Per Deck	Rs. 56 Per Deck	0.045\$ Per Deck
BONUS	USA	Paper (Prime)	0.83\$ Per Deck	Rs. 190 Per Deck	0.045\$ Per Deck
ANGEL – OK LION – CHINESE BRAND	CHINA	Paper (Recycle)	0.09\$ Per Deck	Rs. 28 Per Deck	0.035\$ Per Deck

- B. That the respondent without the application of mind determined the Playing Card (Made of Plastic) of China/Taiwan origin at US\$ 0.50 per deck despite there is big difference in quality and price from both countries.
- C. That the petitioner is ready to surrender to the customs department the Playing Card (Made of Plastic) of China origin at US\$ 0.50 per deck as the original cost is US\$ 0.195 per deck.
- D. That the act of respondent by determining the Playing Card (Made of Plastic) of Taiwan origin at 0.50\$ per deck gives the clear indication that there is involvement in the practice of neglect, inattention, delay, incompetence, inefficiency and ineptitude as the original cost is US\$ 1.48 per deck.
- E. That the petitioner is also ready to surrender to the customs department the Playing Card (Made of Paper) of China origin at US\$ 0.16 & US\$ 0.20 per deck as the original cost is US\$ 0.09 per deck.
- F. That from perusal of above-mentioned Valuation Rulings it appears that while issuing the above Valuation Rulings the provisions of Section 25 (1) of the Customs Act, 1969, i.e., "Transactional Value" were completely ignored and arbitrarily fixed the value of the Playing Cards.
- G. That there appears to have been an application of mind by the respondent to the various methods in the proper sequential order, although the reference to the transaction value is not relevant for reasons stated supra.
- H. That reasons of one sort or another are given in respect to each method as to why that method is inapplicable, and ultimately the fallback method (sub-Section (9) is purportedly applied. However, when the ruling is examined in more detail, it is clearly ultra vires Section 25A. Setting minimum values is prohibited both under the Valuation Agreement (Article 7, which corresponds to the fallback method) and Rule 110 of Chapter IX of the Rules.
- I. That is well settled law that the Valuation Ruling must therefore ordinarily be regarded as valid for a period of ninety days from the date of issuance," and "any aggrieved importer has the right to approach the concerned officer after the ninety day period mentioned above, and he would then have to give reasons why the ruling has not been revised or rescinded but for reasons best known to the respondent in para-8 the respondent mentioned it will be applicable until and unless it is rescinded or revised by the competent authority.
- J. That the Respondent overlooked landmark judgment dated 28-02-2011 passed by the Honorable High Court of Sindh in CP No. D-2673/2009 (Sadia Jabbar v/s. FOP and others) (PTCL 2014 CL 586) for methods to follow for issuance of fresh valuation ruling under Section 25 of the Customs Act, 1969. There are number of other judgments of the Superior Courts confirming the law laid down in the above-mentioned case including 2014 PTD 176 (Goodwill Traders vs. Federation of Pakistan and Others).
- K. The Honorable Supreme Court of Pakistan in a Judgment dated 14-05-2019 passed in Civil Appeal No.251/2015 (Collector of Customs V/s. M/s. Faisal Enterprises) observed that when the goods without any difficulty can be assessed on the basis of the transaction value under sub-section 1 of Section 25 i.e., the price actually paid or payable for the goods sold for export to Pakistan then the question of invoking sub-section 5 of section 25 does not arise at all.
- L. The Honorable Supreme Court in case of reported as (2001 CLC 1579) hold that where a statute requires a thing to be done in a particular way, it must, be done by the Authority in the manner as prescribed by the statute, else departure from the Rules would invalidate the thing done in the manner other than prescribed by the Rules. Moreover, if the law had prescribed method for a doing a thing in particular manner, such provisions of law is to be followed in letter and spirit or not at all. Reliance can be place upon case reported in (2006 SCMR 129) & (2008 SCMR 1148).

- M. The settled principles of interpretation of a fiscal statute interrelated in case of *Kissan Support Services PVT Ltd v/s Commissioner Inland Revenue* and another reported as (2019 PTD 1694) are that the provisions are required to be interpreted literally and equity or presumption are alien thereto: of a provision of a taxing statute can have two reasonable explanations then one which is favorable to the taxpayer has to be accepted; any ambiguity is required to be resolved in favor of the tax payer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. That statute has to be read as a whole and intention of the legislature has to be discovered by paying attention to what has been said.
- N. The decision rendered by the Honorable Supreme Court in the case of Justice Khurshid Anwar Bhinder v/s. Fed. of Pakistan (PLD 2010 SC 483) has held as under "Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of this Article and is binding on all courts in Pakistan. It cannot be treated as mere obiter dictum. Even obiter dictum of the Supreme Court due to high place which the court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite express of the Court's view on a legal principle or the meaning of law."
- O. That in the case of *Muhammad Salman V/s Naveed Anjum and others* (2021 SCMR 1675), in which the doctrine of "ex debi to justitiae" was discussed in the minority view. It was held that the law provides definition of the legal maxim "Ex Debito Justitiae" (Latin) "as a matter of right or what a person is entitled to as of right". This maxim applies to the remedies that the court is bound to give when they are claimed as distinct from those that it has discretion to grant and no doubt the power of a court to act ex-debito justitiae is an inherent power of courts to fix the procedural errors if arising from courts own omission or oversight which resulted violation of the principle of natural justice or due process.
- P. That the arbitrary and whimsical issuance of this impugned valuation will affect the adverse upon economy which result in blocking of import of goods through legal channel and would only culminate in encouraging the smugglers and abusers of Afghan Transit Trade (ATT.) facility. The Government exchequer is already losing in billions of rupees as result of rigid and unfair policies of various government organizations.
- Q. That the petitioner craves leave of the Director General of Customs Valuation to adduce and raise further grounds at the time of hearing.

PRAYER

In view of the above it is most humbly prayed that this Honorable Forum considering the above-mentioned facts and grounds:

- Set aside the Valuation Ruling No. 1573/2021 dated 29-11-2021 and declare it illegal
- Direct the Director Valuation for determination afresh under Section 25A (1) of the Customs Act, 1969.
- In the meanwhile, future consignment is either lying at port or in pipe line, same may kindly be released provisionally under Section 81 of the Customs Act 1969 by securing differential amount of Custom duties & other levy able taxes in light of case law defined in Const. P. (D) 6918/2015 *Danish Jahangir VS Fed. of Pakistan* and Ors by Honorable High Court of Sindh and in the interest of justice and principles of equity till finalization of valuation aspects."

2. 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:-

"FACTS OF THE CASE"

The Directorate General while conducting exercise in identifying tariff-lines prone to under invoicing received from FBR letter No.1038/KHI/CUS/2021 dated 23-09-2021, alongwith representation of M/s.A.M. Corporation that the playing cards of various materials were being cleared at lower values. Representations were also received from Collectorate of Customs Appraisement (East), Karachi vide letter No.SI/MISC/75/KAPE/2021-VIII dated 06-10-2021 regarding the same issue. Due to lack of uniformity of assessments at different Collectorates, this Directorate General was requested to determine its customs values under Section 25A of the Customs Act, 1969. An exercise was initiated in this Directorate General to determine customs values of subject goods in term of Section 25A of the Customs Act, 1969. Meetings with all stakeholders, trade bodies including representatives of clearance Collectorates were held in this Directorate General on 10-11-2021. The importers / stakeholders were requested to submit their proposals / suggestions as well as following documents before or during the course of stakeholders' meeting so that Customs values could be determined :-

- (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 (excluding duty & taxes) to substantiate their contentions.



The meeting was attended by stakeholders and their points of view were heard in detail to arrive at customs value of subject goods. None of the importers submitted any documents required in support of their contention. M/s. S.K. & Company stressed that customs values may be fixed by keeping in view the element of freight, import prices of raw materials and the values prevailing in the local and international market.

However, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, and evaluating / analyzing whole the information so gathered, Customs values of under reference goods were determined in terms of Section 25(9) of the Customs Act, 1969, for uniform assessment at all customs stations of the country.

PARAWISE COMMENTS

- Para-(1) : Need no comments.
- Para-(2) : Need no comments.
- Para-(3) : Not Agreed. It is submitted that transaction value could not be accepted being on lower side and there was found wide variation in declared values of under reference goods. Moreover, the petitioners, on the other hand, did not submit requisite 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 law rather the same is based on factual ground realities of the case.

Para-(4-5) : Denied. It is respectfully submitted that the said Valuation Ruling No.1573 /

2021 dated 29-11-2021, 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.1573 / 2021, dated 29-11-2021 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling. Further, it is submitted that Paras-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(5) states that the said ruling has been issued in terms of Sub-Section (9) by exhausting and following all the provisions of Section 25, for the purpose of determination of Customs values. The petitioners, on the other hand, did not submit requisite 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 correctness of transaction value shifts to the importers / applicants.

GROUND S

Para-(A-B):

It is submitted that the contention of the petitioners is based on presumptions as in support of the claim no tangible documents have been submitted as required under Para-(108) of the Customs Rules, 2001. A declaration disclosing full and accurate details relating to the value of imported goods as claimed by the petitioner. Further, customs value have been determined after all the information so gathered was evaluated and analyzed in flexible manner applying the provisions of Section 25(9) of the Customs Act, 1969. Contrary to above, the petitioner has even not disclosed the import data or local selling prices of imported goods neither submitted any import documents supporting their contention.

Para-(C & D)

Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and view point of all the stakeholders. The record of the all previous Valuation Rulings and arguments put forward by the Appellants and Respondents were considered during process of issuance of Valuation Ruling. 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 readwith 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-(E-F):

Not Agreed. It is respectfully submitted that said Valuation Ruling has correctly been issued in terms of Section 25A of the Customs Act, 1969 and is based on ground realities of the case. It is further submitted that the said Valuation Ruling No.1573/2021 dated 29-11-2021 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.1573 / 2021, dated 29-11-2021 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(9) of the Customs Act,

with law and under powers vested upon him under the law.

Para-(Q): *Relates to the time of hearing before the competent authority.*

PRAYER

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.1573 / 2021 dated 29-11-2021. The Respondent have acted lawfully and the Valuation Ruling No.1573 / 2021, dated 29-11-2021 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.

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 be made as per said Valuation Ruling and the under reference petition being not maintainable is liable to be dismissed and rejected accordingly.

ORDER

3. Hearing in this case was held on 10-02-2022. The petitioners attended the hearing on Zoom and presented their contentions. The main contention of the petitioners was that the respondent department had determined same prices of Playing Cards imported from China and Taiwan despite the known difference in quality and price of both these countries. Moreover, Section 25 has not been applied sequentially, as per law, and instead values have been fixed arbitrarily under the Fall Back Method i.e. 25(9). Further, it was contended that the input given by the petitioners was ignored during the meeting conducted under Section 25A of the Customs Act, 1969 for determination of the Customs values of the Playing Cards. The petitioners further stated that the playing cards being imported by them are made of recycled grade PVC Material which is about US\$ 480/MT whereas the other quality of playing cards are made of recycled paper material which is about US\$ 600/MT in international market.


4. On the other hand, the department representative (D.R.) stated that their exercise had been carried out under Section 25A of the Customs Act, 1969, and by following the sequential methodology specified in Section 25 ibid. The D.R. also contended that the petitioners failed to substantiate their claim through any supporting evidence.

5. After listening to the detailed discussion/ arguments of both the parties and perusal of the case record, it is apparent that the respondent department did not take into consideration the differences in values on account of the quality of the input raw material i.e. whether the PVC used was recycled granules or otherwise as this has a distinct impact on the Customs values of playing cards. The D.R. was requested to clarify this aspect, but was unable to controvert this claim of the petitioners. On account of the foregoing discussion, Valuation Ruling No.1573/2021 dated 29-11-2021 is hereby set aside with the directions to the Director Customs (Valuation) to determine afresh the Custom values of playing cards, keeping in view the prices in the international market of the actual raw material used in manufacturing of the impugned goods. In addition it would be appropriate to segregate values of goods

originating from China and Taiwan separately. The exercise is to be completed as per law and after giving a fair opportunity of hearing to the petitioner(s)/stakeholders. The instant revision petitions, filed in terms of Section 25D of the Customs Act, 1969, are disposed off accordingly.

6. Being identical on facts and law point, this order shall apply mutatis mutandis to the following (11) revision petitions.

1. M/s. A.M Corporation,
2. M/s. T and A Enterprises,
3. M/s. Malik Traders,
4. M/s. S.K. & Co,
5. M/s. CA Traders,
6. M/s. M.K. Traders International,
7. M/s. Nasir Traders,
8. M/s. Mohammad Shoaib Universal,
9. M/s. Manam Traders,
10. M/s. Diplomat Traders,
11. M/s K.J Traders


(Dr. Fareed Iqbal Qureshi)
Director General

Registered copy to:

12. M/s. A.M Corporation,
Office No. 402, 4th Floor, Sharjah Trade Center, New Chaali, Sharah-e-Liaquat, Karachi.
13. M/s. T and A Enterprises,
88-D, G.T. Road, Baghbanpura, Lahore.
14. M/s. Malik Traders,
Havelly Parthra Near Bukan Khan Mosque, I/S Mochi Gate E-381, Shah Alam, Lahore.
15. M/s. S.K. & Co,
Office No. 201-202, 2nd Floor, Crystal Court, Block-5, Behind Clifton Centre,
Main Clifton Road, Karachi.
16. M/s. CA Traders,
W-517-12, Hamid Market, Ratta Road, Rawalpindi.
17. M/s. M.K. Traders International,
108, Mezzanine Floor, Zam Zam Mall, Block H-3, Johar Town, Lahore.
18. M/s. Nasir Traders,
House No. 6, Street No.31, Abdul Karim Road, Qilla Gujar Sindh, Lahore.
19. M/s. Mohammad Shoaib Universal,
House No. 312K, K-2, Wapda Town, Lahore.
20. M/s. Manam Traders,
Shop No.2, Ground Floor, Sharif Manzil, Rehman Gali No.3, Brandreth Road, Lahore.

21. M/s. Diplomate Traders,
Shop No.8, Malik Market, Shahalam Market, Lahore.

22. M/s K.J Traders,
F-815, Sattelite Town, Rawalpindi

Copy to:

- 1) The Member Customs (Policy/Operations), Federal Board of Revenue, Islamabad.
- 2) The Director General, Intelligence and Investigation (Customs)-FBR, Islamabad.
- 3) The Director General (Reforms & Automation), Custom House, Karachi.
- 4) The Director General, PCA& Internal Audit, Custom House, Karachi.
- 5) The Director General, IOCO, Custom House, Karachi.
- 6) The Director General, Transit Trade, Custom House, Karachi.
- 7) The Chief Collector of Customs (North), Custom House, Islamabad.
- 8) The Chief Collector of Customs Enforcement (Central), Custom House, Lahore.
- 9) The Chief Collector of Customs Appraisement, (Central), Custom House, Lahore.
- 10) The Chief Collector of Customs, Baluchistan, Custom House, Quetta.
- 11) The Chief Collector of Customs, Khyber Pakhtunkhwa, Custom House, Peshawar.
- 12) The Chief Collector of Customs, Appraisement (South), Custom House, Karachi.
- 13) The Chief Collector of Customs, Enforcement (South), Custom House, Karachi.
- 14) The Directors, Intelligence & Investigation, Karachi / Lahore / Islamabad / Quetta / Peshawar / Faisalabad.
- 15) The Director, Directorate of Customs Valuation, Lahore.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisement - West / Appraisement - East/
Appraisement - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad / (Appraisement /
Enforcement), Quetta / Gawadar / (Appraisement / Enforcement / AIIA), Lahore / Appraisement,
Faisalabad / Appraisement, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan /
(Appraisement / Enforcement), Peshawar / Enforcement, Dera Ismail Khan/ Exports (Port Muhammad Bin
Qasim / Custom House), Karachi.
- 17) The Secretary (Valuation & Audit), Federal Board of Revenue, Islamabad.
- 18) Deputy Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in
One Customs & WEBOC Database System.
- 19) Deputy Director (Revision), Customs Valuation, Karachi
- 20) All Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 21) Guard File.

