

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

File No.DG(V)Val.Rev/31/2020

Dated 18th February, 2022

Order in Revision No. 13 /2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1474/2020 Dated:25-09-2020

M/s. Goodluck Traders& Others

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

24-12-2020, 24-11-2021, 23-12-2021 and
10-02-2022

For the Petitioners

Mr. Kashif

For the Respondent

Mr. Iqbal Ali, Principal Appraiser

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No.1474/2020 dated 25-09-2020 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"That we are one of the leading commercial Importer of subject item namely Gum Base since a considerable period of time and importing Gum Base Item covered under HS Code 3824.9910 from China, We shall bring it on record that whenever we desire to import the said product from China we have many correspondence and also attend different meeting with the supplier and local buyers and then our supplier have agreed to supply the product at different value very less than the value as determined in the impugned valuation ruling as referred to above.

PRELIMINARY SUBMISSIONS:

That the respondent namely Director of Customs Valuations have bluntly refused to accept the transaction value other than the above referred valuation ruling despite of the fact that there are substantive evidences of value of the goods which act on the part of the Respondent and which absolutely against norms of natural justice and so also against the true spirit of provision Section 25(1) of the Customs Act, 1969 and Rule 13 of the Custom rules 2001

That our transaction is absolutely in accordance with law, fair just proper and covering all the aspects of the goods and even the same cannot affect the government revenue.

That it is pertinent to mention here that the impugned valuation ruling as referred above have been determined without consideration of present market situation and without giving any opportunity of meeting of stakeholders and as such have been determined without on our back being the Importer and the same are liable to be reviewed forthwith in the great interest of Justice particularly keeping view the legitimate revenue of national exchequer, hence this review application, inter alia on the following grounds amongst others:

GROUND

That the Impugned Valuation Ruling as referred above does not cover the present fluctuations of prices of international market, which have been reduced to about half of the prices and our product is completely based on international prices.

That the provisions of Section 25 of the Customs Act, 1969 are to be followed in sequential manner barring exceptional cases where massive group under invoicing is rampant. It is not possible without exhausting and unfettered indicated in Section 25(13) (a) does not give unbridles and unfettered authority to Customs Administration to play havoc with the trade at large. Discretions has exercised within limits based on reason, rationale and fair play which is specifically provided by the legislature in subsection (10) of Section 25 of the Customs Act, 1969 sub-section (1) (5) (7) & (8) the Importers request if so agreed by the Collector of Customs as held in various judgments.

That the shipping freight also decreases accordingly, which directly has an impact on product price. That for the sake of arguments without conceding that the determination made in the impugned ruling is legal, the applicant state is a nullity to the fact and expression and procedure given in the relevant provisions of the Customs Act, 1969 and this is validated from the working of the valuation for determination of applicant to import Gun Base from China by deducting the different margins of respective heads which the applicant has to bear prior to selling the goods rendering the contracted price as transactional value within the meaning of Section 25(1) of the Customs Act, 1969, The Applicant sells the entire goods prior to clearance and at many times the prices of the goods have increased prior to clearance and the importer has to bargain the difference of prices from his own.

The Applicant craves to leave further grounds at the time of hearing besides placing valid incriminating documents with the permission of your Revisional appellate authority.

PRAYER

It is therefore, humbly prayed that this Revisional Appellate Authority may be please to allow the review petition by declaring/ order that:

- i. That the impugned valuation ruling No. 1435/2019 dated 13.12.2019 have been issued on forced construction of Section 25 of the Customs Act, 1969 hence ab-initio, null and void and is liable to be withdrawn forthwith.
- ii. That the transaction/ declared value of the applicant to the imported goods is deemed to be fair and answer to the expression of Section 25(1) of the Customs Act, 1969 in Rule 1113 of Chapter of the Customs Rule 2001.
- iii. The values determined by the department were not in line with market.
- iv. The Import of goods has decreased due to high Customs Values and resultant heavy burden of duty and taxes, and on the other hand these goods are being regularly smuggled into Pakistan.
- v. In the existing impugned valuation ruling the Customs Values of the subject goods were increased pite the fact that the prices of oil, iron and steel and other raw materials were declining in national markets.
- vi. Applicant main contention is for accepting their declared values as correct transaction values."

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

"PARAWISE COMMENTS

Para-(i): Not agreed. It is submitted that the said Valuation Ruling 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 in the Valuation

Ruling No.1474 / 2020, dated 25-09-2020 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(9) of the Customs Act, 1969, vide above referred Valuation Ruling.

Para-(ii): Not Agreed. It is submitted that the Petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc.

Para-(iii): Denied. It is 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 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-LX), 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. The said Valuation Ruling No.1474 / 2020, dated 25-09-2020 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.



G R O U N D S

Para-(i)&(ii): It is submitted that the meetings with the stakeholders were held on 18-08-2020 which was attended by different importers of under reference goods. The participants as well as the Association were requested to provide 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 meeting. Again during the meeting the participants were requested to submit : -

- i) Invoices of imports made during last three months showing factual value Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual Current value can be ascertained.
- ii) Copies of contracts made / LCs opened during the last three months showing value of item in question and ;
- iii) 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 alongwith 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 alongwith 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- (iii) & (iv): *In this regard it is submitted that this Directorate General has determined the minimum customs values in the Valuation Ruling No.1474 / 2020, dated : 25-09-2020 for level playing field and for uniform assessment all over the Customs Stations of the country. Import data of previous 90 days was analysed 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. It is submitted that this Directorate General convened meeting for the determination of Gum Base and all stakeholders were duly invited. As such the Respondent has acted according to law while issuing the said ruling.*

Para-(v): *Denied. In this regard it is to be submitted that Respondent had correctly and lawfully issued Valuation Ruling in terms of Section 25A and the same was based on factual grounds of the case. It is submitted that the said Valuation Ruling has lawfully been issued in terms of Section 25-A by the Respondent after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the Respondent has acted in accordance with law and under powers vested upon him under the law. Moreover, it is submitted that paras (2) to (4) clearly states whole the process of issuance of said Valuation Ruling. 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-LX), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers / applicants. Further, the customs values were determined after properly following and exhausting all the valuation methods in sequential manner and giving reasons for rejection therein and finally the values were determined in terms of Section 25(9) of the Customs Act, 1969, for uniform assessment purposes.*

Para-(vi): *Relates to the time of hearing before Honourable Director General.*

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.1474 / 2020 dated 25-09-2020. The Respondent have acted lawfully and the Valuation Ruling No.1474 / 2020, dated 25-09-2020 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.

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.

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

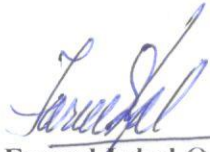
3. Hearings were conducted on 24-12-2020, 24-11-2021, 23-12-2021 and 10-02-2022 on which dates both the petitioners and respondent department were heard in detail. The main contention of the

petitioners was the disparity found in the values of gum base originating from China, Turkey and Brazil respectively. They further argued that the value of Gum base imported from China is higher than the values of Turkey and Brazil, although the quality of Gum base imported from Turkey and Brazil is of higher quality vis-à-vis that imported from China. The departmental representative stated that the values were arrived at after consulting all stakeholders and fulfilling the prescribed procedures as laid down under the law. The D.R. further stated that the Customs values were determined, by the Department, by following the methodology laid down in Section 25 of the Customs Act, 1969 in lawful exercise of its statutory role enshrined in Section 25-A of the Customs Act, 1969. Moreover, during the stakeholder consultations, held in terms of Section 25A, the petitioners did not provide requisite import documents to justify their contention vis-à-vis their declared transaction values which are essentially required to establish their bonafides.

4. After scrutiny of record, it is apparent that the higher value of gum base originating from China vis-à-vis Turkey and Brazil are incongruous concerning the quality and the respective origins of the said product. Therefore, the valuation ruling is hereby set aside with directions to the Director Customs (Valuation) to determine afresh the Custom values of gum base on its merits, keeping in view the values of the impugned item in international market and addressing the disparity in quality and prices especially from the aforementioned origins. This exercise is to be completed within 30 days, 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.

5. Being identical on facts and law points, this order shall apply, *mutatis mutandis*, to following (02) petitions.

- 1) M/s. S.M. Food Makers Limited.
- 2) M/s. Silver Lake Food Products Limited


(Dr. Fareed Iqbal Qureshi)
Director General

Registered Copy to:

M/s. Good Luck Traders,
Nizamani Manzil Akhund A Rehman Street, Jodia Bazar, Karachi.
Tel: 021-32429370

M/s. S.M. Food Makers Limited,
Office No. E-153-A, New Super Town, Walton Road, Lahore.
Email: info@smfoodmakers.com

M/s. Silver Lake Food Products Limited,
Plot No. 69, Phase-III, Industrial Estate Hattar, KPK, Pakistan.
Email: kimsproducts@gmail.com

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) All Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 19) Deputy Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 20) Deputy Director (Revision), Customs Valuation, Karachi
- 21) Guard File.

