

GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V) Val.Rev/48/2020 /35.

Dated 18th January, 2022

**Order in Revision No. 05 /2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1497/2020 Dated 08-12-2020**

M/s. Diamond Impex Corporation & Others

.....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

17-03-2021, 25-03-2021 and 28-10-2021

For the Petitioners

Mr. Waqas
Mr. Omer Khalid
Mr. Ahmed
Mr. Adnan Moton Advocate
Mr. Maaz Dada
Mr. Akhter Pervaiz

For the Respondent

Mr. Altaf Hussain Mangi Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No.1497/2020 dated 08.12.2020, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"Being highly aggrieved and dis-satisfied with the issuance of Valuation Ruling No 1497/20, dated 08.12.2020, passed by the Director, Directorate General of Custom Valuation, Custom House, Karachi (Annex-A), the Petitioner above named begs to submit this petition on the following facts and ground: -

FACTS

That the petitioner is a regular importer of Canned Food Items from around the world since last over a decade and clearance is obtained against fair declaration with a respectable reputation and record of law abiding and tax compliant company.

That the petitioner has imported a consignment recently at value of US\$0.50/kg which was assessed by the customs authority @ US\$0.50/kg (Copy of GD/Invoice attached).

That on 08-12-2020 the learned Director Customs Valuation has issued impugned valuation ruling and fixed the values for the Tomato Paste in bulk @ 0.75/kg to 0.90/kg for different origins and for Tomato Paste in Tin / Pouches and other packing for All origins @ 1.40/Kg falling under heading 2002.9010 at an arbitrarily adjudged presumptive and totally ignoring the standard of transaction values, hypothetically, in violation of section 25 of the Customs Act 1969 and Customs Rules 2001 made there under.

That the items imported by the applicant have already been kept under the maximum rate of duty & taxes. Whereas question of value of the imported goods is concerned, it is divulged that the price, depicted on the commercial invoice, is inclusive of the freight till its destination and the applicant is working at minor profit margin. In order to bring it to the notice of this reputed authority that certain complications and further expenses are faced by the applicant / importer in selling the questioned items to the consumers, it humbly submitted that:

The applicant purchases the Canned Tomato Paste directly from the producer at China and depicts the true rate / price at the commercial invoice, which is actually paid to the seller / exporter at the country of origin.

The price shown in the commercial invoice also included the freight charges and accordingly it is mentioned at the respective bill of lading.

The confectionery items are almost basic need of the persons of all profiles of the society and accordingly it is supplied to all the shops and the neighborhood stores in addition to the departmental stores and super market etc.

Whereas distribution is concerned, the distribution channel starts from the importer, who engages a local transporter. The local transporter conveys the items to the distributor; the distributor further sells it to the wholesalers. The distributor manages salesman/representatives and deliveryman and accordingly the item reaches to its destination i.e. the consumer.

Sufficient amount is paid to the said distribution channel, break-up of which is as under:

Importer	:	15%
Local Transporter	:	6%
Distributor	:	15%
Wholesaler	:	10%
Retailer	:	20% to 25%
Miscellaneous Expenses	:	10%

The expenses of local transporter have recently been added due to the present condition of the country, when facility of cheaper transportation in shape of Pakistan Railways has almost been finished, comparatively low rated CNG Transport had also become impossible due to shortage / load shedding of gas and finally due to day by day increasing price of petroleum.

Promotion, advertisement and marketing of any product is order of the day and in order to meet the hygienic standard, the importers has to be extra careful about expiry of the importer item in addition to the damage caused during transportation / storage.

Although it is not required by the customs department but in order to meet the international standards, the importer offers his items regularly to Pakistan Standard Quality Control Authority for certification and due to these factors, the importer can hardly arrange the miscellaneous expenses within 10% of the trade price.

In order to meet the business requirements and to establish his market, the importer had to incur major part of his gains to develop his brand.

That it would be significant to bring it to the notice of this reputed authority that the questioned items as well as about every item is being already smuggled and this unbearable increase in the value shall further encourage the smuggling through Iran-Pakistan border. It is categorically contended that the act of the enhancing the value shall cause irreparable loss, whereas the lawful import at less price is continuously contributing a countable share to the national exchequer, which could not be considered by the respondent while issuing the impugned ruling. The smuggled canned food items are openly sold.

Hence, this petition on the following ground namely:

GROUND

- A) That the petitioner is a regular importer of canned Tomato Paste and was satisfied with the value assessed by the concerned assessing officer/authority. But the custom value determined by learned Respondent under Section 25A is unacceptable being unrealistic and apparently based upon the perception of some finding of in-explicable enquiry.
- B) That the impugned valuation ruling has been issued by violating the mandates of Section 25 of the Customs Act, 1969, whereas the enabling Section 25A of the Act explicitly provides that Director of Customs Valuation may determine the custom value of any goods after following the methods laid down in Section 2.
- C) Although the said Valuation Ruling is issued in such haste and unusual manner that we and major stakeholders were not invited for meeting in valuation ruling and not involved in any exercises, without giving any opportunity and taking view point of major stakeholders, such determination is totally unjustified and unlawful as such the respondent has acted in violation of the universally recommended maxim AUDI ALTERAM PARTEM.
- D) That the responded jumped to sub-Section 9 of Section 25 of the Customs Act, 1969 while ignoring the methods provided under sub-Section 1 to 8 as such has failed to adopt the sequential method.
- E) Although it has been mentioned to have applied the deductive value method read with sub-Section 9 i.e. the (Fall Back Method) but the said two sub-Sections have not been applied with true spirit and the respondent loaded the actual value of US\$ 0.50 /Kg by 180%.
- F) That the respondent, having been empowered under Section 25A of the Customs Act, 1969 is required to exercise her powers in accordance with the provisions of Section 24-A of the General Clauses Act but the absence of any evidence to support her contention clearly establishes a willful violation of the mandates of Section 24-A of the General Clauses Act.
- G) That the respondent has not followed the rules provided in chapter IX of the Customs Rules, 2001, while preparing the impugned valuation ruling as such the intention of the legislature has intentionally been rejected, who empowered the Board to make rules for carrying on the purposes of the Act, 1969.
- H) That unless it is proved by the customs department making requisite exercise provided under the relevant provision of law and prescribed rules for the purpose, that the transactional value of the consignment based on false documents or is the result of relationship between the buyer and the seller, the customs authorities are under legal obligation to accept transactional value under Section 25(1) of the Act.
- I) That it is an established principle of interpretations of the tax law that plain language of the law is to be applied so the respondent, while exercising the entrusted powers is required to act in accordance with the principles laid down by Hon'ble Superior Judiciary, which are equally mandatory to the subordinate judicial officer and the executive officers. Plain language of the law is provided under Section 25 of the Act.
- J) That the respondent, while exercising her powers, is required to be well acquainted and aware of the laws of land as well as the principles laid down by Hon'ble superior judiciary regarding exercise of powers by an executive officer and specially for issuance of the valuation ruling is evident that neither



diligence exercise has been made nor a prudent mind has been exercised and it is consequence of the sheer violation of the principles laid down by Hon'ble Superior Courts.

K) *That the respondent is custodian of the powers, which are meant to be exercised to extend facilitation to the public but act of the respondent as explained above is in violation of this philosophy of law.*

L) *That in addition to suppressing her working, the respondent did not consider the working of the applicant, which was produced before her and is also annexed as annexure J to this review petition.*

M) *That the respondent failed to give prudent approach to the sale of smuggled Canned Tomato Paste as well as the argument of the applicant that the enhanced price shall give further rise to smuggling.*

N) *Without prejudice to the above described violation, the misuse of powers at the hands of respondent is further evident from perusal of the following few points, which explicitly give rise to the inference that the impugned valuation ruling has been prepared, while keeping in view some ulterior motives:*

O) *That a clear contradiction and exercise of self accord is further evident from the fact that the department has been assessing the consignments in past differently to the declared values as such is required to prove strict proof for sudden enhancement to the tune of 180% .*

P) *That the learned Respondent has not given lawful ground to discard the transaction value and/or value assessed by the concerned assessing officer. The learned Director has not shown any plausible reason as to why the value of identical and similar goods has been ignored and as to why sub-Section (5) and sub-Section (6) of Section 25 have not been applied Therefore, without showing legal excuse the learned Director is not empowered to directly apply sub-Section (7) of Section 25 of the Customs Act, 1969. As such the impugned valuation ruling becomes ultra verse sub-Section (1), sub-Section (5) and sub-Section (6) of Section 25 of the Customs Act, 1969. Such a value fixation is totally illegal, un-lawful and beyond the scope of sub-Section (9) of Section 25 of the Customs Act, 1969.*

Q) *That impugned valuation ruling is unfair, Harsh and against the principles of natural justice in so much so that no opportunity of hearing was given by the Respondent before deciding the impugned one-sided values. The decision was held at the back of the petitioner and therefore such a condemnation is nullity in the eyes of law and not maintainable.*

R) *As reported in PTCL 2008 CL 457, the Honorable High Court has held that; "..... where the customs authorities have given valuation ruling without reasoning, without mentioning as to how they reached that conclusion and with giving opportunity of being heard, the ruling cannot be sustained."*

S) *That the petitioner respectfully requests your honor to admit this petition for grant of hearing and call upon the relevant record for due consideration and seek herewith to add, alter, argue or modify any or additional ground at the time of hearing.*

PRAYER

In view of above stated submissions, it is respectfully prayed that impugned valuation ruling No 1497/2020 dated 08-12-2020 may graciously be declared illegal and un-lawful and issue directions to allow assessment of imported goods in accordance with the provisions of Section 25 of the Customs Act, 1969."

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: -

"PARAWISE COMMENTS"

After conducting detailed analysis of Pakistan's import for the year 2019-2020, the Directorate General of Customs Valuation, Karachi, was tasked by FBR to identify the items/goods where variation w.r.t. values in exporting countries viz-a-viz import values in Pakistan were observed. Accordingly, a special team was constituted in Directorate General of Customs Valuation, Karachi which identified the subject items as prone to under-invoicing as vast variations in declarations were observed. The Collector of Customs, MCC Appraisement and Facilitation Quetta had also requested the Directorate General to issue a Valuation Ruling for the subject items to bring uniformity in assessment and to safeguard the Government revenue. Accordingly, an exercise was initiated to determine the customs values of Tomato Paste under Section 25-A of the Customs Act, 1969 value of Tomato Paste and valuation Ruling No.1497/2020 issued on 08-12-2020.

REPLY OBJECTIONS

Para (1) Need no comments being related to introduction of the importer & his product. However, it is submitted that the subject ruling is not issued arbitrary, faulty and incorrect, the subject Valuation Ruling was issued after satisfying the factual controversy as per law.

Para (2) Need no Comments relates to importer previous import.

Para (3) Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive at customs values of subject goods. Finally, clearance data, market information and international prices through Internet were examined thoroughly and the information so gathered was utilized and analyzed for determination of Customs values of Tomato Paste under Section 25(9) of the Customs Act, 1969.

Para (4) Valuation methods provided in Section 25 of the Customs Act, 1969 were duly applied in their regular sequential order to arrive at customs value of subject goods. The Transaction value method as provided in sub-Section (1) of Section 25 of the Customs Act, 1969 was found inapplicable because no substantial documents were provided by the stakeholders to prove that declared values were true transactional values. Moreover, different values were declared by different importers for same product according to their brand of ice cream from different origins. Identical/similar goods value methods provided in Sections 25 (5) & (6) *ibid* were examined for applicability to determine customs values of subject goods. The data provided some references; however, it was found that the same could not be solely relied upon due to absence of absolute demonstrable evidence of qualities and quantities of commercial level etc. Information available hence found inappropriate. In line with statutory sequential order of section 25, this office conducted market inquiries under sub-Section (7) of Section 25 of the Customs Act, 1969. Due to industrial items openly not available in local market. Therefore, valuation method vide Section 25(8) of the Customs Act, 1969 was examined for valuation but the same also could not be applied as the conversion cost from the constituent material and allied expenses, at the country of export were not available for manufacturing of Tomato Paste. Finally, clearance data, market information and international prices through internet were examined thoroughly and the information so gathered were utilized and analyzed for determination of Customs Values Tomato Paste under Section 25(9) of the Customs Act 1969.

Para (5) In order to ensure proper assessment of goods, the values of Tomato Paste was determined in accordance with law, after taking all the stakeholders on board. The values so determined were notified under Section 25A of the Customs Act, 1969 for uniform implementation across the country and is applicable unless revised or rescinded in terms of 25A (4) of Customs Act, 1969. The Director valuation has to perform his duty within his jurisdiction to determined Customs Values on Genuine ground to save the national exchequer.



GROUND

Para A to E. As far as concern methodology adopted it is stated that "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of Tomato Paste have been determined under Section 25(9) of the Customs Act, 1969 as per law.

Para F & G. Denied. Valuation Ruling itself a speaking one clearly reveals that Section 25 of the Customs Act, 1969 for the purpose of determination of customs values have been exhausted in accordance with it spirits for determination of Customs value under Section 25A of the Customs Act, 1969.

Para H & I The impugned Valuation Ruling No.1497/2020 dated 08-12-2020 was issued duly under Section 25 A of the Customs Act, 1969 in transparent way. The stakeholders i.e. importers of the subject goods as well as Chamber of Commerce and Industries were invited in the meetings. "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in Section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of Sewing machines have been determined under Section 25(9) of the Customs Act, 1969.

Para J: Denied: All the stakeholders i.e. importers, Chamber of Commerce & Industry, Lahore, Karachi were invited to attend the scheduled meeting. Valuation Ruling 1497/2020 dated 08-12-2020 and issued the true customs values in accordance with international price trend.

Para K: Denied. Valuation Ruling itself a speaking one clearly reveals that section 25 of the Customs Act, 1969 for the purpose of determination of customs values have been exhausted in accordance with it spirits for determination of Customs value under Section 25A of the Customs Act, 1969.

Para L to O "Transaction value method provided in Section 25(1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market enquiry as envisaged under Section 25(7) of the Customs Act, 1969, was conducted. The computed value method as provided in Section 25(8) of the Customs Act, 1969, could not be applied as the conversion costs from constituent material at the country of export were not available. On line values of subject goods were also obtained. All information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of Sewing machines have been determined under Section 25(9) of the Customs Act, 1969.



Para (P) Valuation Ruling was issued after gathered all information for the purpose of determination of customs values under Section 25(9) of the Customs Act, 1969.

Para (Q) Denied. The Valuation Ruling is not issued unfair. Hearing opportunity was provided to the importers & stakeholders. The Valuation Ruling itself a speaking one clearly reveals that section 25 of the Customs Act, 1969 for the purpose of determination of customs values have been exhausted in accordance with its spirits for determination of Customs value under Section 25A of the Customs Act, 1969.

Para (R) Needs no comments. It relates to further discussion with the Director General in the course of hearing.

PRAYER

The Valuation Ruling No. 1497/2020 dated 08-12-2020 of imported of Tomato Paste issued under Section 25-A of the Customs Act, 1969 is as per law. In presence of valid Valuation Ruling issued by the competent authority for uniform application, there exists no justification to accept the transaction value for assessment.

It is therefore prayed in the light of above explained position that the ruling may be allowed to hold in field in the interest of justice and to safeguard the Government exchequer."

ORDER

3. Hearings in this case were scheduled on 17-03-2021, 25-03-2021 and 28-10-2021 on which dates both the petitioners and the respondent department were heard in detail. The main contention shared by the petitioners was that Tomato Paste (packed in Tin and Pouches and other packing material) generally has a brix value of 22-24% and having the lowest concentration, its Customs value has conversely, been determined higher than other tomato paste variants having much higher brix values. The petitioners agitated that they were not given a fair opportunity of being heard and the methodology adopted to determine the value was not duly followed as prescribed by the Customs Act, 1969. They further shared their concern that the prices of their products, from China, are distinctly lower than the values determined in the impugned valuation ruling (VR).

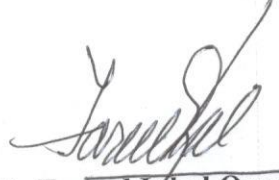
4. On the other hand, the departmental representative stated that all relevant stakeholders were issued notices for consultation under Section 25A wherein they were all requested to submit documentation in support of their declarations and claimed Customs values. However no importer/trader supplied any reliable document or other corroboratory evidences to substantiate their declared values. Accordingly in line with the statutory sequential order of Section 25, the respondent department, after conducting market inquiries, determined the Customs values in terms of sub-Section (7) of Section 25 of the Customs Act, 1969. Accordingly, the record available with the DR was examined which revealed that the market survey report was without any indication as to where from the prices were obtained and was also silent regarding nature of goods surveyed i.e. Brix value of Tomato Pastes. Moreover, there were no visiting card(s) available in the file and even the prices reportedly obtained from market outlets were not recorded separately during the market inquiry.

5. On account of the foregoing irregularities, the process of determination of values suffers from procedural impropriety whereas the arguments of the petitioners carry weight. Accordingly, the impugned Valuation Ruling No.1497/2020 dated 08.12.2020 is, hereby, ordered to be set aside and the Director, Customs (Valuation), Karachi is ordered to undertake fresh exercise, under Section 25A of the

Customs Act, 1969, to determine the Customs values of Tomato Paste especially with reference to the Brix specifications. This exercise is to be completed within 30 days in accordance with law, 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 points, this order shall apply, *mutatis mutandis*, to following (04) petitions.

1. M/s. Ahmed Agencies
2. M/s. Ayub Trading Company
3. M/s. Bismillah Store
4. M/s. Ekada Corporation


(Dr. Fareed Iqbal Qureshi)
Director General

Registered copy to:

M/s. Ahmed Agencies,
Afshar Road, Ali Chowk, Multan.

M/s. Ayub Trading Company,
Branch Office: 33, Gate-D, Street No. 10, Sector I/9/2, Islamabad.

M/s. Bismillah Store,
1st Floor, Shabbir Centre, Shahalam Market, Lahore.

M/s. Ekada Corporation,
173-G, Block-2, P.E.C.H.S., Karachi.

M/s. Diamond Impex Corporation,
House No. 152-G/1, Block-2, P.E.C.H.S., Adjacent to Khalid Bin Waleed Road, Karachi.

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 (Review), Customs Valuation, Karachi
- 20) All Deputy Directors/Assistant Directors, Customs Valuation, Karachi
- 21) Guard File.

