

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

File No. DG (V) Val.Rev/52/2021

Dated 25th May, 2022

Order in Revision No. 44/2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1565/2021 Dated: 17-11-2021

M/s Pakistan Association of Automotive Parts
and Accessories & Manufacturers

PETITIONER

VERSUS

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

10-03-2022

For the Petitioners

Barrister Hassaan Akhtar

For the Respondent

Mr. Iqbal Hussain Kalyar, Principal Appraiser

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1565/2021, dated 17.11.2021, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

1. That this Review Petition is being filed against Valuation Ruling No.1565/2021 dated 17.11.2021 (the "Impugned Ruling") issued by the Director of Customs Valuation in terms of Section 25A of the Customs Act, 1969.

2. That, stated briefly, the relevant facts are that customs values of tractors parts were determined during the beginning of the calendar year 2021 through Valuation Ruling No.1507/2021 dated 04.01.2021. Subsequently, in September, 2021, the Lahore Chamber of Commerce & Industry filed a representation requesting that customs values of tractor parts be determined afresh. In pursuance of the representation, a fresh valuation exercise was undertaken and customs values of tractor parts were re-determined through Valuation Ruling No.1562/2021 dated 15.11.2021 which significantly reduced customs values of all tractor parts. Then, just two days later, i.e., on 17.11.2021, for some inexplicable reasons, Valuation Ruling No.1562/2021 dated 15.11.2021 was rescinded and the Impugned Ruling was issued which reduced the applicable customs values of tractors parts even further.

3. That the Impugned Ruling is illegal, improper, incorrect and not representative of the actual value of the items in question on account of the following:-

GROUND

A. That the Impugned Ruling was issued just two days after the issuance of the previous valuation ruling, i.e., Valuation Ruling No.1562/2021 dated 15.11.2021. However, the Impugned Ruling does not disclose the reasons for issuance of a new valuation ruling in such haste or the factors which necessitated the issuance of a new valuation ruling so soon after issuance of Valuation Ruling No.1562/2021 dated 15.11.2021. The customs values determined through the Impugned Ruling are, for the most part, lower than the customs values determined through Valuation Ruling No.1562/2021 dated 15.11.2021 even though it is axiomatic that international market prices of tractor parts could not have possibly changed to such a degree in just a matter of two days. For example, the percentage decrease

between the customs value determined through the Impugned Ruling and Valuation Ruling No.1562/2021 dated 15.11.2021 for Cylinder/Engine Block (4 Cylinders) of Massey Brand is 5.3%. It is submitted that the international market price of the said item did not, as a matter of record, decrease by 5.3% during the 48 hours between 15.11.2021 and 17.11.2021. The Impugned Ruling is therefore illegal and does not reflect the true market prices of the items mentioned therein.

B. That the Impugned Ruling has purportedly been issued under Section 25(7) of the Customs Act, 1969, however, it is completely silent on: (i) whether it is based on the provisions of clause (a), (b) or (c) of sub-Section (7) of Section 25; (ii) what inquiry, if any, was conducted and which importers' sales were analyzed for the purpose of arriving at the customs values; (iii) how were the deductions provided under sub-Clauses (i), (ii), (iii) and (iv) of clause (a) of Section 25(7) applied; and/or (iv) whether, and how, the provisions of rule 119 of the Customs Rules, 2001 were complied with.

C. That the Impugned Ruling neither provides any reasons for the customs values determined therein nor provides any information on how the powers under Section 25(7) were exercised, the provisions of rule 119 of the Customs Rules, 2001 were complied with, or the decision as regards valuation was reached. As such, it has been issued in a highly non-transparent manner and is against the principles of natural justice and fair play. The Impugned Ruling is therefore illegal and a nullity in the eyes of the law. Reliance in this regard is placed on, inter alia, judgments reported as 2020 PTD 582, 2020 PTD 877, 2020 PTD 172, 2019 PTD 1562, 2019 PTD 1786, 2019 PTD 1242, 2019 PTD 1129, 2018 PTD 1480, 2018 PTD 854, 2018 PTD 69, 2018 PTD 2282 and 2017 PTD 244.

D. That the Impugned Ruling is contrary to section 24A of the General Clauses Act, 1897 which provides that any person conferred with the power to make any order or give any direction under any law shall exercise such power reasonably, fairly, justly and shall also give reasons for making the order or issuing the direction. Reliance in this regard is placed on judgments reported as 2007 SCMR 1759, PLD 1970 SC 158, PLD 1970 SC 173 and 2009 SCMR 1407.

E. That the Impugned Ruling has significantly decreased customs values of tractors parts in comparison with the customs values determined through the previous valuation ruling, that is, Valuation Ruling No.1507/2021 dated 04.01.2021 despite the fact that international market prices of raw materials of these tractor parts (i.e. iron and steel scrap, etc.) have increased considerably during the current calendar year (data relating to price changes during current calendar year available on London Metal Exchange (LME) attached). A comparison between the customs values determined through the previous Valuation Ruling dated 04.01.2021 and the Impugned Ruling is attached. As can be seen, in some cases, the Impugned Ruling has decreased the customs values determined through the previous Valuation Ruling dated 04.01.2021 by as much as 93%.

F. That the increase in the international market prices of raw materials used in the manufacture of tractor parts can also be verified by comparing the prices of alloy steel bars of grade SAE 8620, SAE 8622, SAE 5105, SAE 1045 & SAE 1050 produced by M/s Peoples Steel Mills (Pvt) Ltd, Karachi, one of the largest manufacturers of steel products in Pakistan, at different times during the last 12 months. The product price list effective from 07.12.2020 published by M/s Peoples Steel Mills (Pvt) Ltd, Karachi is attached as and the product price list effective from 25.10.2021 is attached as for comparison.

PRAYER

In view of the foregoing, it is prayed that the Impugned Ruling may kindly be held to be illegal, void ab initio, and may immediately be suspended, and a fresh determination of customs values of the items may kindly be made after taking into account the arguments and evidences provided by the Petitioner and after consulting with the Petitioner and all other stakeholders as required by law.

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

"BRIEF OF THE CASE"

Brief of the case that Earlier the custom value of tractor parts were determined under section 25A of the Customs Act, 1969 vide Valuation Ruling 1507/2021 dated 04.01.2021. Being aggrieved by this valuation ruling, revision petition was filed by various importers' traders under section 25D of the Customs Act, 1969 before Director General of Customs Valuation. The competent authority vide Order-in-Revision No. 13/2021 dated 24.03.2021, upheld the valuation ruling and revision petitions were rejected accordingly. However, on September 4, 2021 representation was received from Lahore Chamber of Commerce & Industry on the request of importers, wherein they have submitted that the values in the previous Valuation Ruling were calculated on "average weight", whereas the same should be calculated on the "actual weight" of the cylinders. Accordingly, an exercise was initiated to re-determine the customs values of tractor parts under Section 25A of the Customs Act, 1969.

Meeting with all stakeholders, trade bodies including representatives of clearance Collectorates were held in this Directorate General on 22-09-2021. 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 import during last three months showing factual values
- 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 / LC's opened during the last three months showing the value of item in question.
- iv) Copies of Sales Tax Invoices issued during last four months showing the difference in price (excluding duty and taxes) to substantiate that the benefit of difference in price is passed on to the local buyers.

The importers during the meeting were of the view of that the prices of the subject commodity have not increased in the international market. However, importers did not submit import invoices/sales tax invoices, representative samples, evidences and other relevant requisite import documents in support of their contentions. They requested that they may be allowed some time to furnish evidences and other documents in support of their contentions but later abstained from submitting any such documents. However, M/s. Baluchistan Wheels Limited submitted relevant documents in respect Non-Alloy wheel rims which were examined in the light of prevailing trend in the local market.

The meeting was attended by importers and stakeholders and their point of view were heard in detail to arrive at custom values of subject goods. The stakeholders claimed that their declared values were true transactional values and may be accepted as such. The stakeholders also submitted their proposal regarding values of tractor parts but failed to substantiate said values with documentary evidences. Moreover, they also suggested valuing their product on the actual weight after deducting tare weight of packaging. A market survey was recorded and weightment of items and packaging was done accordingly. The importers also referred to para 17th of impugned Order-in-Revision No. 13/2021 dated 24.03.2021 that "a caveat check has been put in place in the impugned valuation ruling so that manipulation in weight may be curbed and revenue of the state be secured by all possible means" which was claimed on the basis of an uncorroborated assertion made by the D.R during the review proceedings of which no evidence was presented against the importers. Therefore, this caveat check being inappropriate and unfounded may be excluded/adjusted and Valuation Ruling may reflect the tariff units of measurement i.e. per piece basis after ascertaining actual weight of each items vide Valuation Ruling No.1565/2021 dated 17-11-2021.

PARAWISE COMMENTS

In reply to the contents of the instant Revision Petition, parawise comments on behalf of Respondent are submitted as under:-

Facts

Para (1) Needs no comments being related to the impugned Valuation Ruling

Para (2) The representations were received from the Lahore Chamber of Commerce & Industry Lahore on the request of importers i.e. M/s. PASPIDA, Lahore on 05.04.2021 and 06.05.2021 and 04.09.2021, wherein they have submitted that the values in the previous Valuation Ruling were calculated on "average weight", whereas the same should be calculated on the "actual weight" of the cylinder. Based on the agitation a meeting notice was issued on 08.09.2021 by fixing meeting on 22.09.2021 and was attended by different stakeholders including importers, M/s. PASPIDA and others. It has been informed by the Directorate that Pakistan Association of Automotive Parts & Accessories Manufacturers (PAPAAM), M/s. Pakistan Automobile Manufacturers Association (PAMA), M/s. Millat Manufacturers (PAPAAM), M/s. Pakistan Automobile Manufacturers Association (PAMA), M/s. Millat Equipment Limited, and M/s. Millat Tractors Ltd, were also invited to attend the above said meeting. However, they neither attended the hearing nor submitted any proposal on the matter.

b) During the course of re-determination of customs values of the subject goods, the anomalies were observed. Therefore, an extensive exercise was undertaken to re-determine the values of tractor replacement parts, considering true market values, raw material prices (LME of CRC) and actual weight of different parts, cylinder, size and brand for which all photos and videos are available in record of the Directorate.

c) The new Valuation Ruling No. 1565/2021 dated 17-11-2021 which has 28 items, had the following changes as compared to the old Valuation Ruling:

- (i) All items divided brand wise into 3 and 4 cylinders.
- (ii) Actual weight (without actual packaging) of all items (brand-cylinder wise) was used instead of merely "average weight" and price determined per piece per brand (record available in the Directorate).
- (iii) Since, "actual weights" were used, along with actual work back values, the column of "the overall assessed value of items should not be less than prices mentioned in this column US\$/Kg (with essential packing)" was omitted as it earlier created confusion, distortion and duplication of assessment criteria.
- (iv) Values determined under Section 25 (7) of the Customs Act, 1969, has been done after local market inquiry findings and same has also been determined to reflect the latest international prices of the finish products as well as its raw materials prices.
- (v) Moreover, an imported tractor is cleared at \$ 3.00/Kg, whereas, these replacement parts in the Current VR are only some engine and transmission parts and represent not more than 20 to 40 percent of a total tractor and comes to an average of \$2.75.kg which is also 300 percent higher than the LME of CRC.
- (vi) Some items of certain brands were being assessed at a value based on substantially higher weight.

d) As regards the issuance of the Valuation Ruling No.1562/2021 dated 15.11.2021 being replaced by valuation ruling No.1565/2021 dated 17.11.2021, the Directorate General submits that due to clerical errors in the Microsoft Excel sheet the column depicting Turkish and Other Origins Tractor parts, the values of 6 items were increased and corrected upwards, some remained constant and some were corrected downwards. It may be noted that the values of Chinese origin, which serves as a base value for calculation of other origins showed no errors and hence remained unchanged.

e) In view of the above stated position, there appears no infirmity of law, procedure or method while re-determining the values of Tractor replacement parts vide Valuation Ruling 1565/2021 dated 17-11-2021. The Customs Appellate Tribunal upon issuance of said Valuation Ruling has now discharged the case as the anomalies agitated in the previous Valuation Ruling have been adequately addressed by the Directorate.

3) Denied. The petitioner have neither explained nor substantiated the illegality of the impugned valuation ruling. They also neither suggested the custom values with or without any corroboratory documents in support of their contention.

GROUND

A) Denied. During the course of re-determination of customs values of the subject goods, the anomalies were observed. Therefore, an extensive exercise was undertaken to re-determine the values of tractor replacement parts, considering true market values, raw material prices (LME of CRC) and actual weight of different parts, cylinder, size and brand for which all photos and videos are available in record of the Directorate.

c) The new Valuation Ruling No. 1565/2021 dated 17-11-2021 which has 28 items, had the following changes as compared to the old Valuation Ruling:

- (i) All items divided brand wise into 3 and 4 cylinders.
- (ii) Actual weight (without actual packaging) of all items (brand-cylinder wise) was used instead of merely "average weight" and price determined per piece per brand (record available in the Directorate).

Since, "actual weights" were used, along with actual work back values, the column of "the overall assessed value of items should not be less than prices mentioned in this column US\$/Kg (with essential packing)" was omitted as it earlier created confusion, distortion and duplication of assessment criteria. It is further submitted that as per agreed formula with stakeholders, the values of Turkish / Other origins are ever higher by 6% and 11% respectively while determination of customs values under Section 25A of the Customs Act, 1969. This formula was adopted in Valuation Ruling No.1507/04.01.2021. However, inadvertently, due to Microsoft excel error the percentage of the said percentage i.e. 6% & 11% could not be correctly applied. Accordingly, to maintain the formula invoke and its percentage, there was a requirement to correct/adjust the customs values of Turkish/Other origins as occurring in Valuation Ruling No.1562/15.11.2021. Therefore, afresh customs values of the subject goods had to be determined through Valuation Ruling No.1565/17.11.2021.

B) Denied. It is to be submitted that paragraph-5, of the impugned Valuation Ruling is itself speaking one clearly reveals that sub-Section (1) to (6) of Section 25 of the Customs Act, were duly applied in their regular sequential order to arrive at customs values of the subject goods. This shows that neither the transaction value nor import data of identical/similar goods were adopted. Finally, customs values of the subject goods had to be determined under provisions of clause a, b, c of sub-Section (7) of the Customs Act, 1969.

C&D) Denied. It is submitted that an extensive exercise with regards to the weights and market survey were carried out and shared along with those who attended the meeting. The petitioners, in spite of being invited chose not to attend the meeting and subsequent workings to be abreast of the department's working. Moreover, extensive workings are present in the department's record as to how values were determined. This includes work back on basis of raw material prices, market values, weights/minimum \$/Kg etc, all which can be presented at any time. Under such circumstances, not only are these baseless allegations, but uninformed ones as well. All aspects and Sections of law after being fully adhered to. The valuation ruling was issued under Section 25 (7) of the Customs Act, 1969 as explained in the body of valuation ruling.

E) Denied. It is to be submitted that the customs values of the subject goods were determined under Section 25 (7) of the Customs Act, 1969, which refers the current local market inquiry findings. Hence, the referred old valuation ruling No 1507/2021 dated 04.01.2021 does not form the current basis of valuation as the referring ruling which is about 11 months old. As regards, the international market of raw material of Tractor Parts i.e. Iron & Steel prices etc, it is submitted that the local market prices



reflect the latest international prices of the finish products and prices are kept up to 300% more than the raw material prices. Proper and complete working readily available and such mis-statements only works to misguide this Honorable forum.

F) Denied. Firstly, most of the composition of Tractor is Cast Iron. Secondly, the Directorate has taken raw material prices of LME of CRC Steel which is much higher than cast iron. As mentioned the prices of parts are kept up to 300% more than raw material prices. LME prices are more reflective of international markets prices for imports and are used not only by Directorate of Valuation but Appraisement Collectorate country wide.

PRAYER

It is respectfully prayed that the impugned valuation ruling had been issued after exhausting all primary methods of valuation i.e. 25 (1) to 25 (6) under Section 25 of the Customs Act, 1969, in sequential order and consequently, the customs values of the subject goods were determined under Section 25 (7) of the Customs Act, 1969. The issuance of existing valuation ruling within two days from the previous ruling due to maintain the formula invoke and its percentage, using of actual weight instead of average weight due to avoid the mis-declaration, there was a requirement to correct/adjust the customs values of Turkish Other origins as mentioned in Valuation Ruling No.1507/2021, dated 04.01.2021. Moreover, the petitioner has not furnished any corroboratory documents in support the contents of their petition. Hence, the petition have not merits of consideration and liable to be rejected.

ORDER

3. Hearing was conducted on 10-03-2022 on which date the counsel of the petitioner and the respondent department were heard in detail. The petitioners contended that the impugned Valuation Ruling (VR) was issued just two days after issuance of the previous Valuation Ruling No.1562/2021 dated 15.11.2021, without disclosing any material/credible reason. It was further observed that for the most part, the customs values determined in the impugned V.R. are lower than those determined through Valuation Ruling No.1562/2021 dated 15.11.2021 in spite of the fact that international prices of Tractor Parts, could not have possibly witnessed such a changes in a mere two days (e.g. in impugned V.R. percentage decrease in the customs value vis-à-vis V.R date 15-11-2021 is 5.3% whereas the counsel's contention was that international market price of the said item did not, as a matter of record, decrease by 5.3% during the 48 hours between 15.11.2021 and 17.11.2021). The impugned Ruling is therefore illegal and does not reflect the true market prices of the items mentioned therein. It was observed by counsel that impugned VR has significantly decreased Customs values of Tractors Parts vis-à-vis customs values determined in V.R. No.1507/2021 dated 04.01.2021 despite the fact that international market prices of raw materials (of these tractor parts i.e. iron and steel scrap, etc.) had considerably increased during calendar year 2021. Further, the increase in the international market prices of raw materials used in the manufacture of tractor parts can also be verified by comparing the prices of alloy steel bars of grade SAE 8620, SAE 8622, SAE 5105, SAE 1045 & SAE 1050 produced by M/s Peoples Steel Mills (Pvt.) Ltd, Karachi, one of the largest manufacturers of steel products in Pakistan, at different times during the last 12 months.

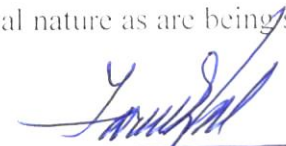
4. On the other hand, the departmental representative (D.R.) explained that the impugned valuation ruling had been issued after exhausting all primary methods of valuation i.e. 25 (1) to 25 (6) under Section 25 of the Customs Act, 1969, in sequential order and consequently, the customs values of the subject goods were determined under Section 25 (7) of the Customs Act, 1969. Regarding issuance of the impugned VR within two days of the previous ruling, he clarified that while the ruling was being

ded into the WeBOC system, it was noticed that the entries in Column 5 (of the table), pertaining prices of parts having "Turkey" and "other" origins were incorrect due to erroneous formulas (in the excel worksheet). Accordingly after rectifying the erroneous entries, the determined customs values were endorsed in the impugned V.R. and which accordingly, was re-issued. Hence the counsel's contention of mala fide are without basis. Moreover, the petitioner failed to submit any corroboratory documents in support thereof and hence the same did not merit consideration.

5. After listening to the discussion/arguments of the counsel, respondent and perusal of the case record, the following infirmities are observed:-

- i) Even though prices of the different grades of HRC & Alloy Steel were lower in the 90-days period preceding V.R. dated 04-01-2021 the values determined in the impugned V.R. are lower whereas prices of HRC steel and Alloy Steel were on higher side in the 90 days period preceding issuance of the impugned ruling.
- ii) The value was determined in terms of Section 25(7) of the Customs Act, 1969, which necessitated that the survey exercise should have been adequately reflective of the prices at which the impugned items are available in the domestic market. In this case the survey, on which the findings, were based was somewhat restrictive as it needed to be ascertained in a more broad-based exercise, in major markets where such similar or identical goods are sold and thereafter determine the customs values.
- iii) It is also observed that the Ruling needs to be made more comprehensive by inclusion of such tractor parts e.g. complete gear box (including constituent parts etc.) presently not provided for in the impugned V.R.

6. Accordingly V.R.No.1565/2021 dated 17-11-2021 is set aside and Director Valuation Karachi to issue a fresh ruling within 30 days based on the sequential methodology provided for in Section 25 of the Customs Act, 1969. In this exercise the Director Valuation (Lahore) is to provide requisite details/data of the market position in respect of goods of similar/identical nature as are being sold in the relevant local market(s) (with her jurisdiction).


(Dr. Farzed Iqbal Qureshi)
Director General

Registered copy to:

M/s. Pakistan Association of Automotive Parts and Accessories Manufacturers,
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Copy to:

- 1) The Member Customs (Operations/ Policy), 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, Sambreial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit - Baltistan / (Appraisement / Enforcement), Peshawar / Enforcement, Dera Ismail Khan/ Exports (Port Muhammad Bin Qasim / Custom House), Karachi.
- 17) All Additional Directors/Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 18) The Secretary (Valuation & Audit), Federal Board of Revenue, Islamabad.
- 19) Deputy Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WeBOC Database System.
- 20) Guard File.

