

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

File No.DG(V)Val.Rev/27/2022/970.

Dated 20th September, 2022

Order in Revision No. 79-1/2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1622/2022 Dated 31-03-2022

- i. This copy is granted free of charge for the private use of the person to whom it is issued.
- ii. An appeal against this Order-in-Revision lies to the Appellate Tribunal, Customs having jurisdiction, under section 194-A of the Customs Act, 1969, within stipulated period as prescribed under the law. An appeal should bear a court fee stamp of Rs. 1000/- (Rupees one thousand) only as prescribed under schedule-II item 22 of the Court Fee Act, 1870 and must be accompanied by a copy of this Order.
- iii. An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.
- iv. If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.

M/s Jalal Brothers
M/s 5G Industries

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

18-08-2022 and 13-09-2022

For the Petitioners

Mr. Wasim for M/s 5G Industries

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. 1622/2022, dated 31.03.2022, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:



"Being highly aggrieved and dissatisfied with the Valuation Ruling No. 1622/2022 dated 31.03.2022 through which Respondent determined the value of PVC Floor/ Door Mats by categorizing them in categories. Since the ruling in question is detrimental for the business activities of the applicant. He challenges the vires of these through the instant revision application under the provision of Section 25D of the Customs Act, 1969 before the Hon'ble Revisional Authority for decision after consideration of the fact and grounds enumerated here-in-below:

FACTS

- a) The applicant is a renowned Importer of PVC Floor/ Door Mats and operates under the name and style of Pak International, situated at Shop n. 18, Mezzanine Floor, Gul Plaza, M.A Jinnah Road, Karachi and in the said capacity is registered with the FBR and RTO.
- b) The applicant during the course of his business activities has to face stiff competition from the importers who import PVC Floor/ Door Mats in commercial/ Non-Commercial quantity, which

is allowed clearance of the value determined by the respondent through the instant valuation ruling.

GROUND

- (i) That an application for determination was received by M/s 5G Industries by the directorate for determination of PVC Floor/ Door Mats by the Directorate General of Valuation accordingly an exercise was conducted to determine the value of the goods mentioned above. It is pertinent to mention that M/s 5G Industries cannot be found either on the portal of FBR nor has a record for importing PVC Floor/ Door Mats hence the statement that an exercise was conducted on his request is itself fictitious. Therefore the department is requested through this revision petition to first supply records of import of PVC Floor/Door Mats of M/s 5G Industries for the stakeholders to first examine how an industry who doesnot even manufacture the goods mentioned above can request for determination of value. Being said that the respondent while determining values of PVC Floor/ Door Mats was bound to call upon the applicant importer for meeting before determining values of imported PVC Floor/ Door Mats to the contrary the respondent failed to provide opportunity of being heard to the applicant importer the respondents failed to appreciate that the applicant is one of the importers to whom it was mandated upon the respondent to serve notice as contemplated in Section 215 of the Customs Act, 1969. Serving of notice is mandatory as per law laid down in reported judgment **2005 PTD 152 Ch. Muhammad Hussain and others versus Commissioner of Income Tax** that "notice is mandatory despite non availability of the provision in the statute". To the contrary, applicant was not called for in the meeting, he was condemned unheard as against well known maxim of audialterm partem, rendering the Valuation Ruling nullity to the extent of determined value in the eyes of the law. Even otherwise in Para 3 of the impugned Ruling the respondent has mentioned that a meeting was held on 18.01.2022 which was attended by all stake holders. Surprisingly no stakeholder was called upon neither notices were issued of calling of a meeting by the Directorate while determining and devising the impugned valuation ruling.
- (ii) That irrespective of the illegality it is imperative to state that the respondent was not empowered to determine the value of the PVC Floor/ Door Mats unless he proved that the value declared by the applicant in the Good Declaration is fake or tainted through incriminating evidence mandated to be supplied as directed in Para 78 of CGO 12/2002 dated 15.06.2002. In the absence of that no question can be asked for the declared value and the same has to be accepted for levy of duty and taxes. The Respondent in Para 3 of the impugned ruling has stated that documents including Invoices of import, copies of LCs and copies of Sales tax invoice was requested to be put on record while determining the impugned valuation ruling. Since the applicant importer was not part of the meeting was not able to share the documents required at that stage but feels appropriate to share the documents required at this revision stage which are annexed along this revision petition. Those documents include B/ls, Invoices, FTA's, GDs filed at the port of discharge i.e Pakistan and Shipping Bills i.e filed at the port of loading which reflects that the goods were imported at the declared value.
- (iii) That in Para 5 of the ruling, the respondent have stated that the transaction value method as provided in Section 25(1) of the Custom Act 1969 was followed, which is in fact not and this stood validated from second and third line of Para 2, wherein it has being stated that transaction value method as provided in sub-section (1) of Section 25 was found inapplicable and reasoning for that in being given that the required information in not available. The applicant has now provided documents which prove that transactional Value under Section 25(1) can be relied upon while determining Values of PVC Floor/Door Mats. Even otherwise non applicability of Transactional value and jumping to Sub Sections of Section 25 to determine values of the impugned goods is total absurdity as the data maintained by the Collectorate under Rule 110 of the period given in Rule 107 (a) of Chapter IX of Custom Rules, 2001 contains even the slightest information of the imported goods. Likewise the provision of sub-section (5) and (6) has been brushed aside on the plea that it is based on considerable variation. This is the duty of



the transaction value because all prices are based on the quality and quantity of the goods and these cannot be of same value, the excuse of ignoring sub-section (5) & (6) is without any substance and in negation to the spirit of Section 25 *ibid*.

- (iv) That the respondent was not empowered to determine the value under sub-section (7) of Section 25 of Customs Act 1969 directly without exhausting the method given in section 25(1), (2), (5) & (6) in sequential manner resort to subsequent method is not permissible without exhausting the sequence indicated in Section 25 as it would annihilate and terminate the spirit and essence of the transaction value which in the first instance has to be established as colorable and tainted. Section 25(13)(a) does not give unbridled and unfettered authority to customs administrations to play havoc with the provision of Section 25 *ibid*., thereby making them in-effective and redundant. Discretion has to be exercised within limits based on reason, rationale and fair play. It is specifically provided by the legislature in Sub-Section (10) of Section 25 that Sub-Sections (1) (5)(6)(7)(8)(9) define how the customs value of the imported goods is to be determined by the customs. The method of custom valuation are normally required to be applied in a sequential order except reversal of the order of Sub Section (7) (8) at the importers, request, if so agreed by the Collector of Customs as held in judgments **PTCL 2008 CL 409 M/s. Toyo International Motorcycle v Federation of Pakistan and 3 others. , C.P. No. 2673 of 2009of Sadia Traders v/s FOP the Hon'ble High Court of Sindh , W.P. No. 756/2010 M/s. Faco Trading & 45 others v Member Customs , FBR etc.**
- (v) That the respondent while determining values of Chine Origin PVC Floor/ Door Mats (Cut to Piece) and PVC Floor/Door Mats (Coils and rolls) have failed to acknowledge that the fact that the Applicants goods are still available on a lower price tag than the value determined by the respondents in the impugned valuation ruling then the value determined through the impugned valuation ruling.
- (vi) That even otherwise the valuation ruling has more than one discrepancy when it comes to determination of values of PVC Floor/ Door Mats. The applicant importer is an importer of PVC Floor/ Door Mats which is always imported in KG basis from the exporting country. The goods are bought in KG basis as evident for the evidences produced herewith the revision application. The Respondents have created a uniformity of all kinds of PVC Floor/ Door mats while determining the values in the impugned valuation ruling. Therefore it would be prudent to add that the Applicant Importer PVC Floor/Door Mats are not of a superior quality and are of 1.8KGs if weighted in a square meter whereas some PVC Floor/Door Mats are 4 KGs in weight. The respondent while determining the value of PVC Floor/ Door mats have lost the sight that the values should have been determined by ascertaining the quality of the goods i.e on the amount of PVC used the amount of weight they carry and the durability of the PVC Floor/Door Mat. Therefore in the light of above adumbration the determination of PVC Floor/ Door Mats have been done in a hastily manner without accounting for any of the reasons mentioned above.
- (vii) The applicant carves his right to add any fresh grounds at the time of hearing beside placing any valid incriminating evidence/documents



PRAYER

It is therefore prayed to the Revisional Authority to allow the review application by declaring/ordering that:

- i) The Valuation Ruling No. 1622/2022 dated 31.03.2022 is being issued on forced construction of Section 25 of the Customs Act, 1969 to the extent PVC Floor/ Door Mats of China Origin, hence, ab-initio, null and void and is cancelled being of no legal effect.
- ii) Any other relief may deem fit and adequate"

3. 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:-

"BRIEF OF THE CASE"

A representation from M/s. Sakhi Usman Law Chambers on behalf of M/s. 5G Industries was received in this Directorate General regarding the determination of customs values of PVC Door / Floor Mats. Accordingly, an exercise was undertaken by this Directorate General to determine the customs values of subject goods. Meeting with the stakeholders, trade bodies including representatives of clearance Collectorate was held in this Directorate General on 18-01-2022. 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 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 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 meeting was attended by the stakeholders including importers and local manufacturers and their views were heard in detail to arrive at customs values of subject goods. During the meeting the local manufacturer contended that the subject goods one being under-invoiced and requested for the determination of customs values in accordance with current price trend and enhanced freight in the international market. The view of the stakeholders were heard in detail and they were requested to submit the relevant import documents and evidences in order to substantiate their contention and to arrive at fair customs values of the subject goods.

Valuation methods given 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 their declared values were true transactional values. Moreover, different values were declared by different importers for same product according to different origins. Identical and similar goods valuation methods in Sub-Section (5) & (6) of Section 25 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 was hence, found inappropriate. In line with statutory sequential order of Section 25, this office conducted a number of market enquiries from various markets. Finally, reliance had to be made on Sub-Section (7) of Section 25 of the Customs Act, 1969, to determine customs values of PVC Floor / Door Mats to arrive at the assessable customs values and notified vide Valuation Ruling No.1622 / 2022 dated 31-03-2022 for uniform assessment all over the country.

PARAWISE COMMENTS ON FACTS

Para-(a): Need no comments being introduction of the petitioners and their imports.

Para-(b): It is submitted that the contents of under reference paras are denied to the extent that declared value of the consignment is not reliable and is not acceptable in terms of Section 25 (1) of the Customs Act, 1969, in presence of Valuation Ruling available under Section 25-A of the Customs Act, 1969. The Valuation Ruling is exhaustive which is always taken for assessment purpose in cases where the declared value is on lower side. The Valuation Ruling has been issued under Section 25-A of the Customs Act, 1969, which always prevails upon the declared value, which in turn is not

proof of exact transactional value. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved.

GROUND S

Para-(i)&(ii): 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 import of under reference goods and the arguments put forward by the Appellants and Respondents were considered during process of issuance of the Valuation Ruling by the Director of Customs Valuation. 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. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences had been provided by the Appellants to reject department's views and in support of their contention. As such Valuation Ruling No.1622/ 2022, dated 31-03-2022 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969.

Para-(iii)&(iv): Denied. It is respectfully 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 the requisite corroboratory 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 laws rather the same is based on factual ground realities. It is further submitted

that the Petitioners have 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 in presence of the clear Valuation Ruling in the field, transaction value cannot be accepted in absence of any relevant import evidences and documents etc. However, citation of court case in under reference para does not relate to the impugned valuation ruling being of different nature and circumstances surrounding the import.

Para-(v) : Not Agreed. It is submitted that while issuing the Valuation Ruling for any imported commodity under Section 25-A, the Director of Customs Valuation has been empowered to exhaust all the valuation methods i.e. Sub-Sections (1), (5), (6), (7), (8) & (9) of Section 25 of the Customs Act, 1969 sequentially. It is submitted that customs values for issuance of Valuation Rulings are properly determined in terms of Subsections (1) to (9) of Section 25 of the Customs Act, 1969, sequentially. However, the word "whichever is applicable" as used in Sub-Section (1) of Section 25A gives discretion to the competent authority to adopt the method as suited to the determination of value under Section 25-A of the Act, which may or may not be applied in a sequential manner. Moreover, it is submitted that it is not necessary that the transaction value of the petitioners must be accepted by the Customs authorities. According to the provisions of Section 25 of the Customs Act, 1969, the burden of proof that the declared transaction values are fair lies upon the importer who may justify their declarations through documentary evidences.

Para-(vi) : It is respectfully submitted that the said Valuation Ruling was issued after thorough investigation and all aspects were duly considered It is submitted that this Directorate General has determined the correct customs values vide Valuation Ruling No.1622/2022, dated 31-03-2022 for level playing field and 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(7) of the Customs Act, 1969, vide above referred Valuation Ruling for uniform assessment all over the country. It is further 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 in presence of the clear Valuation Ruling in the field, transaction value cannot be accepted in absence of any relevant import evidences and documents etc.

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

PRAYER

In view of above narrated facts, it is submitted that the petitioner is required to get clear the goods as per Valuation Ruling issued under Section 25-A of the Customs Act, 1969, which is legal and lawful. The Valuation Ruling No.1622/2022, dated 31-03-2022 had lawfully been issued after considering all the facts and figures and after following valuation methods sequentially. As such the same may be allowed to hold field for uniform assessment all over the country. The assessments made on the basis of Valuation Ruling are correct and petitioners are liable to pay duty / taxes as per Valuation Ruling. 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


4. Hearings in the case were scheduled on 18-08-2022 and 13-09-2022 where the petitioner and respondent department were heard in detail. The representative of M/s 5G Industries, Lahore appeared for hearing on 13-09-2022 and claimed that they are pioneers in local manufacturing, in Pakistan, of PVC Door Mats/Floor Mats, PVC Coil Mats in Rolls and PVC Flexible Carpets etc. since, 2020. The petitioner stated that the values determined vide impugned Valuation Ruling are on lower side which may be enhanced to 15% to compete the market by them.

5. On the other hand, the petitioners M/s Jalal Brothers, Karachi did not appear for hearing and submitted their petition, through their counsel, that the prices, quoted to them by their international suppliers were less than the value as determined in the impugned Valuation Ruling (VR) and was unacceptable to them. They stated that their transactional values are absolutely in accordance with law, whereas, the impugned Valuation Ruling was issued without consideration of the prevailing situation in the international market. It was contested, that while prices of the impugned items are going downward, the respondent department issued the impugned VR without conducting proper market inquiry.

6. On the other hand, the departmental representative (DR) explained in detail the valuation methodologies adopted by them to arrive at the customs values determined vide the impugned VR. In

support of department's contention, the DR presented various details of the valuation exercise/working using the sequential methodology prescribed in Section 25 of the Act *ibid*.

7. After listening to the detailed discussions/arguments of both the parties and perusal of the case record, it is apparent that the department had duly consulted the stakeholders while issuing the impugned VR. The importers were given sufficient time and opportunity to give their inputs, including documentary proof/evidence, to substantiate their transaction value but they failed to provide any material documentary proof in support of their declared values which were on the lower side. On the other hand, the DR provided details of market inquiry reports and samples as available on record to substantiate the values determined by them. It is apparent that the importer (petitioner) is unable to shed the burden of proof in terms of Rule 109 of Chapter-IX of Customs Rules, 2001 (SRO 450(I)/2001 dated 18-06-2001). Therefore, there is no reason to interfere with the impugned Valuation Ruling No.1622/2022 dated 31-03-2022. The revision petitions are accordingly rejected.


(Gul Rehman)
Director General

Registered copy to:

M/s 5G Industries,
C/O Sakhi Law Chambers, Suite No.10, 1st floor, SAF Centre,
near Lahore High Court, 8-Fane Road, Lahore

M/s Jalal Brothers,
C/O Nadeem & Company, B-3, 2nd floor,
Pak Chambers, West Wharf 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) All Additional Directors / Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 19) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEOC Database System.
- 20) Guard File.