

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

File No.DG(V)Val.Rev/55/2022/1095.

Dated 02 November, 2022

**Order in Revision No. 93 /2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No.1674/2022 Dated 05-07-2022**

- This copy is granted free of charge for the private use of the person to whom it is issued.
- 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.
- An extra copy of appeal, if filed, should simultaneously be sent to this office for information and record.
- If an appeal is filed, the appellant should state whether he desires to be heard in person or through an advocate.



M/s Muslim Medical Services

..... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

25-10-2022

For the Petitioners

Mr. Majid Soomro

For the Respondent

Mr. Osama Zaidi, Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against customs values determined vide Valuation Ruling No.1674/2022 dated 05-07-2022, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"Being aggrieved and dissatisfied with the Valuation Ruling No. 1674 of 2022 dated 05.07.2022, the Petitioner prefers this Revision Petition under section 25-D of the Customs Act, 1969, before this Hon'ble Authority on the following facts and grounds, namely:

FACTS

- That the Petitioner is engaged in the import and trade of, inter alia, unbranded ordinary household appliances items (BABY BOTTLE WARMER) @ serial no 35 in valuation ruling, of China origin. The Petitioner scrupulously discharges its liabilities under the various laws and has contributed huge sums to National Exchequer by way of, inter alia, diligent payment

of duties and taxes. The Petitioner, in due course of its business, undertakes imports of the said household appliances from China.

2. That the Respondent Director has been entrusted by the Legislature through the enactment of section 25A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods imported into Pakistan. The Petitioner is seriously aggrieved by the acts of the Respondent Director, whereby it has unlawfully, arbitrarily, without making a determination, and on an ex-parte basis fixed the values of household appliances vide Valuation Ruling No. 1674 of 2022. The Respondent Director has acted in grave violation and in excess of the powers conferred thereupon and, through its actions, is causing serious harm and loss to the Petitioner.
3. That the Petitioner may submit a brief background to the issuance of the impugned Valuation Ruling. The impugned Valuation Ruling was purportedly issued in supersession of the Valuation Ruling No. 1628 of 2022 dated 08/04/2022, wherein the values of household appliances had been determined following the proper association of stakeholders, including importers of household appliances.
4. That the previous Valuation Ruling held field for time, i.e. from 08/04/2022 to the issuance of the impugned Valuation Ruling, and was accepted by both the importers of household appliances as well as the Respondent, as being at or about the international market rate. Although the values in the previous Valuation Ruling were higher than the actual rate at which household appliances were available in the international market, such difference was not prohibitive nor exceptionally detrimental to the local trade, hence, was acceptable for the purposes of valuation.
5. That the Respondent Director initiated proceedings for determination of value of household appliances purportedly on the pretext that the values determined through the previous Valuation Ruling were no longer reflective of the prices at which household appliances were available in the international market.
6. That, however, to the surprise and dismay of the Petitioner as well as the other importers of household appliances, the Respondent Director issued the impugned Valuation Ruling without carrying out any determination of values as envisaged under the Act, 1969, and, instead, issued a list of values which have no foundation in fact nor law.
7. That, further, as apparent from paragraph 4 of the impugned Valuation Ruling, the Respondent Director utterly failed in applying the provisions of the Act, 1969, in a lawful manner. The Respondent Director has failed to provide any lawful or even plausible reasons for rejecting the valuation methods contained in Section 25 of the Act, 1969. Instead, however, the Respondent Director has attempted to justify the unlawful fixation of values through an arbitrary application of the provisions of Section 25(7) of the Act, 1969.
8. That, on a factual plane, the Respondent Director totally ignored the price actually paid / payable for the import of household appliances into Pakistan. As is apparent from the import documentation of the Petitioner, the value of household appliances remains much lower than the value purportedly 'determined' / fixed by the Respondent Director. Copies of Commercial Invoices, Letters of Credit, Goods Declarations, etc.
9. That it is submitted that the Respondent Director has failed to make an actual determination of values of household appliances under the law, including but not limited to Sections 25 and



25A of the Act, 1969, and, instead, the Respondent Director has issued an arbitrary and highly prejudicial list of values which is causing serious loss and harm to the lawfully operated business of the Petitioner.

10. That, under the Act, 1969, and the Customs Rules, 2001, the Respondent Director was required to act in a strict manner while considering the application of each method of valuation provided under Section 25 of the Act, 1969. Further, as required by the aforesaid provision, the Respondent Director needed to state lawful grounds for rejecting any particular method of valuation as being not applicable as given under the Act, 1969, whereas the Respondent Director has failed to provide any such grounds.
11. That, without prejudice to the preceding, the Respondent Director has relied upon some market survey purportedly carried out by him in order to justify the fixation of values which are otherwise unlawful and highly prejudicial to the Petitioner, as well as other importers of household appliances. Even if the existence of such a market survey is accepted for the sake of argument, it is submitted that a market survey conducted without the association of any independent party and/ or the stakeholders is a nullity in the eyes of the law.
12. That the market survey purportedly conducted has been conducted in violation of the principles of natural justice and equity, as well as the Act, 1969, and the Rules, 2001. The provisions of Section 25(7) itself state that the unit price at which the imported goods are sold in the "greatest aggregate quantity", which has to be at least at par with the quantities of sale of the Petitioner, as well as other importers, dealing on a wholesale basis. Whereas, the Respondent Director has failed to produce any evidence in support of its contention that a lawful market survey was conducted.
13. That the phrase "greatest aggregate quantity" has been further explicated in Rule 119 of the Rules, 2001, wherein it has been stated that such quantity, in addition to being the greatest aggregate, also needs to be the greatest number in units sold at the first commercial stage after importation. Further, the provisions of Rule 119(3) also necessitate the involvement of the importers, including the Petitioner, in the process of market survey and determination in consequence thereof.
14. That the Respondent has also erred in relying upon the provisions of Section 25(7) of the Act, 1969, to purportedly 'determine' the values of household appliances under the impugned Valuation Ruling. Firstly, the Respondent has not provided any lawful reasons for not following the methods of valuation contained in the preceding provisions of Section 25 of the Act, 1969. Secondly, the Respondent has wrongly applied the provisions of Section 25(7) of the Act, 1969.
15. That, as to the first submission, it is submitted that the Respondent has failed to provide reasons in conformity with Section 25 of the Act, 1969, as to why the methods of valuation laid down in sub-sections (5), (6), and (7) were not followed. As to sub-section (7), the Respondents have not even attempted to state why determination proceedings were not limited thereto. This by itself is an incurable defect in the impugned Valuation Ruling.
16. That, although sub-section (7) of Section 25 of the Act, 1969, permits a flexible application of the preceding methods of valuation, the Respondent has implemented the same in order to fix arbitrary values which are alien to the prices paid / payable at the time of import into Pakistan.



17. That the Respondent has failed to elaborate the 'flexible manner' in which the valuation methods were supposedly applied. The Respondent was under a positive duty to identify the provisions of Section 25 which were flexibly applied in arriving at the values purportedly determined in the impugned Valuation Ruling.
18. That, in addition to the above, it is submitted that the Respondent Director, while undertaking such an exercise for the determination of values of BABY BOTTLE WARMER @ serial no 35, was required to strictly adhere to the provisions of the Customs Act, 1969, as well as the Customs Rules, 2001, and apply those in a transparent, judicious and lawful manner in determining the values of household appliances. The Respondent Director, however, while causing serious prejudice and harm to the Petitioner, completely ignored the dictates of the Act, 1969, as well as the Rules, 2001, and, instead, fixed values of household appliances in an entirely arbitrary, capricious and unreasonable manner, as has been demonstrated herein.
19. That the actions of the Respondent Director are in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the Petitioner as enshrined in the Constitution of Pakistan, 1973, including Articles 4, 8, 10A, 18, and 25A, thereof.
20. That, in light of the preceding factual narration, the Petitioner prefers this petition on, inter alia, the following grounds, namely



GROUND

- A. That the impugned Order is illegal, arbitrary, unjust, ex-parte and without any lawful authority and, as such, is liable to be set aside with immediate effect.
- B. That, the BABY BOTTLE WARMER @SERAIL NO 35 imported from China are made of base metal or plastic, re-cycled plastic or combination of both materials. Such appliances are of very ordinary and disposable in nature having very short life. The input cost of raw material can be easily ascertained from import record of China origin or even from the Valuation Rulings of Base Metal and Plastic Raw Materials issued by the Directorate of Customs Valuation time to time. The Directorate as per very old practice adds conversion cost.
- C. That the impugned Ruling is totally silent as how the learned Director arrived at to current determination of the value of Household appliances (@ serial no.35,BABY BOTTLE WARMER) at the rates in the Ruling 1674 / 2022.
- D. That a critical review and minute study of so-called values fixed through the impugned Ruling revealed that learned Director has not only improperly applied cost of materials etc. but description given in both serial numbers is also in-correct, mis-leading and carries a number of contradictions and anomalies.
- E. That on a careful perusal of the Valuation Ruling vis-à-vis 1628 of 2022it can be easily gathered that the impugned Valuation Ruling 1674 of 2022 dated 08.04.2022 for item BABY BOTTLE WARMER @ serial no 35, contains un-fair, artificial and un-realistic values and seems to have been issued in haphazard manner. The learned Director has issued impugned Valuation Ruling under sub-section (7) of Section 25 (the fall back method).

F. That it is respectfully submitted that the defective market surveys being conducted by the Directorate in the retail markets are resulting into issuances of illegal and un-lawful valuation rulings. Infact, sub-section (7) of Section 25, and corresponding rule 119 does not speak of retail market surveys but it clearly stipulates that the unit price of the greatest aggregate quantity will be taken into account which is carried out at the first commercial level after importation. Similarly, sub-rule (2), (3), (4), (5), (6), and (8) provide detailed mechanism to arrive at C&F Value after making necessary deductions based upon generally accepted accounting principles. Neither the sub-sections nor the rules provide deductions of 10% profit at three stages i.e. (i). importer (ii). Whole seller (iii). Retailer. The Customs Act, Sales Tax Act or the Income Tax Ordinance does not bind a business entity to sale his goods at a fix ratio of profit. Every retail out-let spread over the whole of Pakistan has its own level of running expenditures which fix the ultimate price & profit on each sale. It is not possible for the Directorate to survey the retails of whole Pakistan and thereafter determine the value of imported goods. That is why Section 25 and the rules have restricted the Customs authorities to remain with the scope of first commercial sale after importation in greatest aggregate quantity. However, this aspect is totally ignored by the learned Director and his subordinates while conducting surveys.

G. That the Superior Courts in so many judgments have ruled and observed that the determination of the import value should be on the basis of transaction value as provided under sub-section (1)(a) of section 25 of the Customs Act, 1969. However, If the conditions stipulated under sub-section (1)(a) of section 25 are not fulfilled or an importer is crossing sub-section (1)(a) then other sub-sections of section 25 of the Act to be followed in sequential manner. The Hon'ble Sindh High Court in its judgment reported as PTCL 2008 CL.457 has ruled as under:



"4 . After hearing the learned counsel, we observe that through the comments filed in the petition by the respondent that they have made up their mind to avail the department ruling given in the document, dated 27.12.2006, therefore, no useful purpose will be served if the cases are finally examined under section 81 as the petitioner's request, as has been made here, will not be entertained by the Customs Authority. We have also observed that the language of section 25 of the Customs Act is mandatory and it requires the department to follow step by step for the purpose of determining the value of the imported goods and if there is no result coming out then they may avail the remedy under section 25-A. As per language of the above section the determination of the import value should be on the basis of transaction value, provided that conditions provided in sub-section (1)(a) of section 25 are not available. If an importer is crossing sub-section (1)(a) then other sub-sections of section 25 of the Act to be followed. Here in the case, the customs authorities have given the ruling without any reasoning nor it has been mentioned as to how they have reached that conclusion or do they have evidence of other imports on more value nor the affected persons have been given any opportunity to be heard.

5. In such a situation, above ruling relied upon by the department cannot be sustained and assessment on its basis is set-aside. Mr. Raja Muhammad Iqbal, states that in such a situation, the petitioners be directed to approach the respondent, so that value of the goods may be determined. Of course, after setting aside the assessment on above ruling, the respondent is required to issue a notice to all the petitioners within 15 days time and will determine the value of goods keeping in view strictly the step provided for its determination in section 25 of the Customs Act. The said process is to be done within two months with further observation on the request of the petitioners

that the post-dated cheques submitted by the petitioners towards the differential amount will not be encashed by the department until final determination of the customs duty. All the petitions stand disposed of in above terms."


- H. *That, the Hon'ble Sindh Court while deciding the Constitutional Petition No.1483 of 2005 (2006 PTD 909) at Para 19 has ruled that if market survey is conducted in terms of sub-section (7) of Section 25, the importer must be associated. Para 19 is reproduced as under:-*

"19. Coming to the second question we find that in the Standing Operative Procedure I of 2005, dated 13.09.2005, it is specifically provided that the importer or his representative shall be associated with the working committee if deductive method of valuation under section 25(7) is to be restored. No lengthy discussion is therefore, required and it is held that that no assessment can be made on the basis of working of a committee continued for the purpose of determining the deductive valuation under Section 25(7) without associating importer or his representative in each case."

- I. *That the Petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments.*

PRAYER

In light of the preceding narrations, the Petitioner prays of this Hon'ble Authority that this petition may be allowed, and

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- a) *Declare that the impugned Valuation Ruling 1674 of 2022 dated 05.07.2022 issued by the Respondent Director is ultra vires of the Constitution of Pakistan, 1973, the Customs Act, 1969, the Customs Rules, 2001, and the same is arbitrary, illegal and mala fide.*
- b) *Set aside the impugned Valuation Ruling 1674 of 2022 dated 05.07.2022 being violative of the methods set out in Section 25(7) of the Customs Act, 1969 and Rules made there-under.*
- c) *Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling 1674 of 2022 dated 05.07.2022 till the final disposal of this review petition.*
- d) *That, in the meanwhile, the pending and impending imports of the Petitioner be allowed to be provisionally released in terms of Section 81 of the Customs Act, 1969.*
- e) *Grant any other relief deemed just and appropriate in the circumstances of the case.*

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:-*

"FACTS OF THE CASE"

Previous Valuation Ruling for Household Appliances was issued vide Valuation Ruling No.1628/2022 dated 08-04-2022. The said VR was set aside by the Director General Customs Valuation vide Order-In-Revision No.53/2022 dated 08-06-2022 under Section 25D of the Customs Act, 1969, with the direction to issue a new VR at the earliest after affording opportunity of hearing to the stakeholders. Accordingly, an exercise was initiated by this Directorate General to determine customs values of the subject goods afresh

in terms of Section 25A of the Act. Meeting with stakeholders was convened on **30-06-2022** which was attended by different stakeholders and importers. All the stakeholders / importers were requested to submit following documents before or during the course of stakeholders' meeting so that customs values could be determined : -

- (i) Invoices of imports made during last three months showing factual value
- (ii) Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual current value can be ascertained.
- (iii) Copies of contracts made / LCs opened during the last three months showing value of item in question and ;
- (iv) Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was passed on to the local buyers.

The importers did not submit documents like Proforma Invoices, EIF forms declaration etc. to prove their contention that their declared values are correct. During the course of meetings, it was apprised that the prices of Household appliances has been increased significantly. Accordingly, after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969 as envisaged under Section 25 of the Act *ibid*, customs values of under reference goods were determined in terms of **Section 25(7)** of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1674/2022 dated **05-07-2022**, for uniform assessment all over the Customs Stations of the country.

PARAWISE COMMENTS

Para-(1) Need no comments being introduction of the petitioners and imports made by them.

Para-(2&3) Not Agreed. It is respectfully submitted that the impugned Valuation Ruling No.1674/2022 dated **05-07-2022** has lawfully and justifiably been issued by the Respondent in terms of Section 25A of the Customs Act, 1969, under vested powers upon him. The Director (Valuation) has been empowered by the Board to issue valuation rulings after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969. No deviation from laws / rules has occurred while determining the customs values of under reference goods. However, rulings are being issued lawfully by considering record of previous rulings and taking all stakeholders on board. Respondent abovnamed had determined minimum customs values although the same are being sold in the local market at higher prices. On the other hand the petitioners did not submit any import related documents such as copies of sales tax paid invoices, proforma Invoice etc. Therefore, the determined customs values are not exorbitantly increased rather the same are based on ground realities of the case record. As such the Respondent has acted according to law and procedure.

Para-(4to6) Not Agreed. It is submitted that the declared value of the consignment is not reliable and 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 petitioner is aggrieved. The petitioners have negated the impugned Valuation Ruling but neither gave any substantive and cogent reason for not accepting the same nor submitted any import documents to support their contention while assessments are being made as per the same.

Para-(7to9)

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 previous Valuation Rulings and arguments put forward by the Appellants were duly considered during process of issuance of impugned Valuation Ruling No.1674/2022, dated 05-07-2022. However, petitioners still seem to be aggrieved despite two Valuation Rulings have been issued for under reference goods. 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 have been provided by the Appellants to reject department's views and in support of their contention. Further, it is submitted that concept of "fixation of value" no more exists in the Customs Tariff rather customs values are presently being determined in terms of Section 25A of the Customs Act, 1969. As such Valuation Ruling No.1674/ 2022, dated 05-07-2022 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969.

Para-(10to12)

It is submitted that the contents of petition are denied to the extent that declared value of the consignment was not reliable and 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. Customs values in the impugned valuation ruling have been determined in terms of Section 25(7) of the Act ibid by giving reasons for rejection of previous valuation methods. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved.

Para-(13to15)

Not Agreed. It is submitted that the declared value of the consignment is not reliable and 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. The customs values in impugned valuation ruling have lawfully been determined after examining the circumstances surrounding the imports. Assessments are being made as per said Valuation Rulings all over the country but only the under reference petitioners are aggrieved. It is respectfully submitted that



the impugned Valuation Ruling No.1674 / 2022 dated 05-07-2022 has lawfully and justifiably been issued by the Respondent in terms of Section 25A of the Customs Act, 1969, under vested powers upon him. The Director (Valuation) has been empowered by the Board to issue valuation rulings after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969. No deviation from laws / rules has occurred while determining the customs values of under reference goods. However, rulings are being issued lawfully by considering record of previous rulings and taking all stakeholders on board. Respondent abovnamed had determined correct customs values although the same are being sold in the local market at higher prices. On the other hand the petitioners did not submit any import related documents such as copies of sales tax paid invoices, proforma Invoice etc. Therefore, the determined customs values are not exorbitantly increased rather the same are based on ground realities of the case record. As such the Respondent has acted according to law and procedure.

Para-(16&17)

Denied. It is respectfully submitted that the said Valuation Ruling No.1674 / 2022 dated 05-07-2022, was issued after thorough investigation and all aspects were considered. In this regard it is submitted that this Directorate General has determined the justified customs values vide Valuation Ruling No.1674 / 2022, dated 05-07-2022 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 and local market surveys were analyzed and evaluated and after gathering whole the information, the Customs values of under reference goods have been determined in terms of **Section 25(7)** of the Customs Act, 1969, vide above referred Valuation Ruling No.1674 / 2022 dated 05-07-2022 for uniform assessment all over the country. It is submitted that the Director Customs Valuation has been empowered to issue Valuation Rulings by exercising his powers in terms of Section 25A of the Customs Act, 1969, through applying valuation method as best suited to the determination of customs value of any imported goods into Pakistan. As such the impugned valuation ruling is not illegal, arbitrary or discriminatory as the same has been issued after thoroughly after examining the factors surrounding the import and Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969.

Para-(18to20)

It is submitted that Paras-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(4) states that the said ruling has been issued in terms of Sub-Section (7) by exhausting and following all the provisions of Section 25, for the purpose of determination of Customs values. The petitioners, on the other hand, did not submit the requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No.450(I)/2001, dated 18-06-2001 (Chapter-IX), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers / applicants. Moreover, it is submitted that concept of "**fixation of value**" no more exist in the Customs Tariff rather customs values are presently being determined in terms of Section 25A of the Customs Act, 1969, by following all valuation methods as



envisaged under Section 25 of the Customs Act, 1969, for uniform assessment all over the country. As such the same is not arbitrary, unjust, malafide or without justification rather the same has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969.

GROUND S

Para-(A to C)

Denied. It is submitted that the impugned Valuation Ruling issued after considering the representation of the petitioners and view point of all the stakeholders. The record of the all previous Valuation Rulings and arguments put forward by the Appellants and Respondents were considered during process of issuance of Valuation Ruling. The Appellants were asked to furnish relevant documents so as to enable that forum to verify the truth and accuracy of their contentions but no corroboratory import documents were provided by any of them. No evidence was placed on record to indicate any deviation from the existing laws / provisions as envisaged in Section 25 readwith Section 25-A of the Customs Act, 1969. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. Further, the Respondent has properly followed all valuation methods sequentially by rejecting and giving reasons of rejection thereof. As such the impugned Valuation Ruling has legally and lawfully been issued in terms of **Sub-Section (7)** of the Customs Act, 1969. Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969, while determining customs values in the under reference valuation ruling.

Para-(D & E)

Not Agreed. It is 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 the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. However, the said Valuation Ruling No.1674/ 2022, dated 05-07-2022 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. It is respectfully submitted that it is not mandatory for Customs to accept each and every transactional value. As such the transaction value cannot be accepted in absence of any relevant import evidences and import documents etc. in terms of Para-108 of the Customs Rules, 2001. It is further submitted that the meetings with the stakeholders was held on **30-06-2022** which were duly attended by the commercial importers as well as official bearers / representatives of the concerned Association. The participants as well as the Association were requested to provide the 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 meetings the participants were requested to submit :-

- (i) **Invoices of imports made during last three months showing factual value.**

- (ii) *Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual Current value can be ascertained.*
- (iii) *Copies of contracts made / LCs opened during the last three months showing value of item in question and ;*
- (iv) *Copies of Sales Tax paid Invoices issued during last four months showing the difference in price 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. Further, it is submitted that concept of "fixation of value" no more exists in the Customs Tariff rather customs values are presently being determined in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.



Para-(F to H)

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. Customs values in under reference valuation ruling have been determined in terms of **Sub-Section (7)** of Section 25 of the Customs Act, 1969, after properly conducting local market enquiries. 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. As such the impugned valuation ruling is not illegal or arbitrary rather the same is based on ground realities of the case and has lawfully been issued for assessment purpose only under reference petitioner seems to be aggrieved otherwise assessments are being made as per the same. However, citation of court case do not relate to the

under reference case being of different nature and circumstances surrounding the imports.

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.1674 / 2022 dated 05-07-2022. The Respondent have acted lawfully and the Valuation Ruling No.1674 / 2022, dated 05-07-2022 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 showing the values of suppliers (excluding duty & taxes) to substantiate their contentions which are essentially required for the process of determination of customs values of any imported goods.

In view of above, it is respectfully prayed that the said Valuation Ruling may be allowed to hold field for assessment being lawful and valid. Further, transaction value cannot be accepted in absence of any tangible import documents. As such no relief is warranted to be given to the petitioners and assessments are liable to be made as per said Valuation Ruling and under reference petition being not maintainable is liable to be dismissed and rejected accordingly."




ORDER

Hearing in the case was conducted on 25-10-2022 on which date the petitioner and the respondent department were heard in detail. The petitioner contended that they are sole agent of "beurer" brand household products. The petitioner stated that they scrupulously discharges its liabilities under the various laws and has contributed huge sums to national exchequer by way of diligent payment of duties and taxes. The petitioner, in due course of its business, undertakes imports of the said household appliances from China. The petitioner stated that they are seriously aggrieved by the acts of the Respondent department whereby it has unlawfully, arbitrarily, without making a determination, and on an ex-parte basis, and enhanced the Customs values vide impugned Valuation Ruling No.1674/2022 dated 05-07-2022, from US\$ 18.75/pc to 66.3/pc (Category-A), for 'Baby Bottle Warmer (single bottle)', which is more than 300% higher than the previous VR (appeared at serial No.35 of the Table of para-5 of the impugned VR), whereas the Customs values of almost all other household items falling in the impugned VR have been revised downward more than 200%. The respondent department has acted in grave violation and in excess of the powers conferred thereupon and, through its actions, is causing serious harm and loss to the petitioner. Moreover, the name of their brand i.e. "beurer" is also not included in any category of the brands whereas they claimed to be included in Category-A. The petitioner further stated that their brand "beurer" is a German brand and also based in China and the petitioner is importing their goods from China also. The petitioner further stated that without prejudice to the preceding, the Respondent department has relied upon some market survey purportedly carried out by them in order to justify the fixation of values which are otherwise unlawful and highly prejudicial to the petitioner.

4. On the other hand, the departmental representative (DR) stated that the prevailing market trends were fully observed and kept in account during the exercise conducted in terms of Section 25A of the Customs Act, 1969. The DR further stated that all stakeholders were requested to submit their proposals/suggestions as well as documentation in support of their declarations and contentions. 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 of the Customs Act, 1969, the respondent department, after conducting market inquiries, determined the Customs values under sub-Section (7) of Section 25 of the ibid Act. Whereas, the available record with the DR was examined which reveal that the market survey report was not only sketchy, but also unsupportive to the department's stance as there were no visiting card(s) available in the file and even the quotations/bills etc. regarding the subject items i.e. baby bottle warmer, presented by the DR are without any date/un-dated & bill/quotation number.

5. On account of the foregoing irregularities, the process of determination of value suffers from procedural impropriety whereas the arguments of the petitioner carry weight. It is also apparent that there is a single petitioner i.e. M/s Muslim Medical Services rightly aggrieved and filed instant petition. Moreover, the petitioner also produced their sales tax invoices for supply in the domestic market as evidence. After hearing contentions of the appellant, it appears that the Customs values notified for "Baby Bottle Warmer (single bottle)" at serial No.35 of the Table suffers from procedural impropriety and is accordingly set aside to the said extent only. In addition, the Director, Customs (Valuation), Karachi is hereby directed to undertake fresh exercise in terms of Section 25A of the Customs Act, 1969 by recourse to the valuation methodology elaborated in Section 25 of the Act ibid so that the Customs values of "Baby Bottle Warmer (single bottle)", appeared at serial No.35 of the impugned VR No.1674/2022 dated 05-07-2022 is determined in line with the prevailing international prices of the impugned item. Further, the "beurer" brand may be included in the appropriate category after verification, as they claimed that they should 'fall in Category-A as per correct Customs values. Moreover, the appellants are advised to present their case before the Director Customs Valuation, Karachi, supported by all relevant record and evidence of prices prevalent in the country of export to justify the truth and correctness of their transaction values. This exercise is to be completed at the earliest in accordance with law, after giving a fair opportunity of hearing to the petitioner(s)/stakeholders. The instant revision petition, filed in terms of Section 25D of the Customs Act, 1969, is disposed of accordingly.


(Gul Rehman)
Director General

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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 Customs)-FBR, Islamabad.
- 4) The Director General, PCA & Internal Audit, Islamabad
- 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 Appraisalment, (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, Appraisalment (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, Karachi / Lahore / Quetta / Peshawar.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisalment - West / Appraisalment - East/
Appraisalment - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad /
(Appraisalment / Enforcement), Quetta / Gwadar / (Appraisalment / Enforcement / AIIA), Lahore /
Appraisalment, Faisalabad / Appraisalment, Sambrial (Sialkot) / Enforcement, Multan / Islamabad /
Gilgit -Baltistan / (Appraisalment / Enforcement), Peshawar / 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.

