

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

File No. DG(V)Val.Rev/59/2022 /1675.

Dated 24th October, 2022

**Order in Revision No. 88 /2022 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1680/2022 Dated 22-07-2022**

- 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 Silver Lake Foods Products Limited

VERSUS

PETITIONER

Director, Customs Valuation, Karachi

RESPONDENT

Date(s) of hearing

04-10-2022

For the Petitioners

Mr. Zia-Ul-Hassan Advocate
Mr. Raees Khan

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. 1680/2022 dated 22.07.2022 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

1. "That the applicant's company is engaged in the business of manufacturing biscuits, bubble gums, toffees, candies, chocolates, wafers and instant drinks under the name and style as aforementioned.
2. That the applicants company shocked to know that the Director Customs Valuation has notified a Valuation Ruling arbitrarily and illegally at higher side without providing any lawful basis and evidences which is unjust, void and without lawful authority. Being aggrieved with the notified Customs values of said items, the applicant hereby files this Review Application under Section 25D of the Customs Act, 1969 on the following grounds:
 - i. That the determination of value of Gum Base by the Director of Customs Valuation under Section 25-A read with Section 25 (9) of the Customs Act, 1969 is unjust, void ab initio and contrary to the provisions of law.
 - ii. That the impugned Valuation Ruling is contrary to the mandatory provisions of Section-25 read with Section-25A of the Customs Act, 1969 as well as the principles laid down

by Honorable High Court of Sindh in the reported judgments of M/s Sadia Jabbar Vs. Federation of Pakistan & Others (2018 PTD 1746) and M/s Goodwill Traders, Karachi Vs. Federation of Pakistan & Others (2014 PTD 176).

- iii. That the Director of Customs Valuation has erred in law by not taking into consideration that the actual transactional values depend upon the terms of payment, quantities sold and the history of commercial relationship between the supplier and the importer as well as the origin of imported goods.
- iv. That it is pertinent to mention that earlier Valuation Ruling bearing No. 1474/2020 dated 25-09-2022 was set aside by DG Valuation vide Order-In-Review No. 13/2022 dated 18-02-2022. merely on the ground that the prices fixed by Director Valuation of Gum base from Turkey and Brazil were on lower side where as prices of Gum base fixed by Director Valuation imported from China is on higher side. However, while determining value of goods in question the Director Valuation again repeated the said exercise and determined the value of goods imported from China at higher side and that too without providing any breakup and evidence which is unjust, void and without lawful authority.
- v. That the respondents were required to determine value of the subject consignment strictly in accordance with the methods laid down in Section-25 of the Customs Act, 1969. In case of any valuation dispute between the Customs Authorities and the importer, Section-25 of the Customs Act, 1969 provides the basis to determine customs value of the goods by applying the following methods in sequential order.
- Transaction value of identical goods.
 - Transactional value of similar goods.
 - Deducted method.
 - Computed value method.
 - Fall back method.

Thus the Director of Customs Valuation had not undertaken any exercise for determination of transactional value in accordance with the above-mentioned methods in sequential order which is against the mandatory provision of Section-25 of the Customs Act, 1969 as well as the WTO agreements. It is pertinent to mention that denial of adopting methods as provided by Section 25 of the Act ibid by the Director Valuation while determining the value of goods in question is based on presumptions and surmises and contrary to the judgment passed by honorable high court in the case of M/s Goodwill Traders, Karachi Vs. Federation of Pakistan (2014 PTD 176).

- vi. That Director Valuation had notified the prices vide above mentioned ruling in terms of provisions of Section 25(9) of the Customs Act, 1969. Provisions thereof are reproduced below for a quick reference:

Section-25(9)

(9) **Fall Back Method.**- If the customs value of the imported goods cannot be determined under sub-sections (1),(5),(6),(7) and (8), it shall, subject to the rules, be determined on the basis of a value derived from among the methods of valuation set out in sub-sections (1),(5),(6),(7) and (8), that, when applied in a flexible manner to the extent necessary to arrive at a customs value."

Customs Rule No. 121 regarding the procedure for determining value under Section-25(9) is reproduced below:

Rule-121

Fall back method.- (1) Value of imported goods determined under sub-section (9) of section 25 of the Act, shall, to the greatest extent possible be based on previously determined customs values of identical goods assessed within ninety days.

(2) The methods of valuation, to be employed under sub-section (9) of section 25 of the Act may be inclusive of those laid down in sub-sections (1), (5), (6), (7) and (8) of the said section, but a reasonable flexibility in the application of such methods would be in conformity with the aims and provisions of subsection (9) of that section.

Explanation.-Some examples of reasonable flexibility are as follows, namely:-

(i) Identical goods --

(a) the requirement that the identical goods shall be imported at or about the same time as the goods being valued, could be flexibly interpreted;

(b) identical imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; and

(c) customs-values of identical imported goods already determined under sub-section (7) and (8) of section 25 could be used.

(ii) Similar goods --

(a) the requirement that the similar goods shall be imported at or about the same time as the goods being valued could be flexibly interpreted;

(b) similar imported goods produced in a country other than the country of exportation of the goods being valued could be the basis for customs valuation; and 283

(c) customs-values of similar imported goods already determined under sub-sections (7) and (8) of section 25 of the Act could be used.

(iii) Deductive method --

The requirement that the goods shall have been sold in the "condition as imported" as provided in clause (a) of sub-section (7) of section 25 of the Act could be flexibly interpreted, and the ninety days requirement could be administered flexibly."



Clearly the provisions of Section 25(9) and Rule 121 have neither been followed nor applied by the Director Valuation in determining the Customs value of goods in question and hence the Valuation Ruling mentioned above is void ab initio. Since import data in respect of said goods was available with the Customs, identical goods method as envisaged under Section 25(5) of the Customs Act, 1969 could not have been bypassed. Likewise there was no justification to avoid application of deductive method as envisaged under Section-25(8) *ibid*. Section 25(9) does not permit determination of Customs value in total disregard of the secondary methods of valuation as laid down in Section-25(5) to 25(8) of the Customs Act, 1969.

- vii. That it is a well-settled law that transaction value cannot be discarded unless the customs could challenge the same on account of any evidence to controvert the genuineness of the transaction value. The transaction/invoice value as declared by us is correct and in accordance with the statutory provisions of law. The said aspect can be

verified by examining the LCs, Sales Tax Invoices & Returns a copy of which are enclosed herewith.

Prayer

- a. Under the circumstances, it is requested that the Valuation Ruling No. 1680/2022 dated 22-07-2022 may kindly be set aside/ rescinded.
- b. Grant any other relief, which is deemed appropriate in these circumstances of the case.
- c. Applicant reserves his right to raise further grounds at the time of hearing."

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"

Earlier, the customs value of Gum Base was determined under Section 25A of the Customs Valuation vide Valuation Ruling No.1474 / 2020 dated 25-09-2020. The importers filed revision petition under Section 25D of the Customs Act, 1969. The Director General of Customs Valuation set aside the valuation ruling vide Order-In-Revision No.13/2022 dated 18-02-2022 with the direction to determine afresh the Customs value of gum base on its merits, keeping in view the value of impugned item in international market and addressing the disparity in quality and prices after giving a fair opportunity of hearing to the stakeholders. Accordingly, an exercise was initiated to determine the Customs value of the subject goods in terms of Section 25A of the Customs Act, 1969.

Meeting was held on 05-04-2022 which was attended by different stakeholders. The participants were requested to submit following documents before or during the course of meeting so that customs value 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.

During the meeting, the stakeholders claimed that there is considerable variation in values of imported gum base primarily due to different qualities of Gum Base being imported for use in wide variety of bubble gums and therefore, the variation in price is chiefly because of its quality. It was also stated that the softness of gum base is the main reason for variation in prices as the high quality bubble gums are mostly soft, while cheapest type bubble gums are mostly hard. The importers of Chinese origin gum base argued that their imported gum base was lower in quality and consumed in manufacturing of bubble gum which is used by lower income group customers. The participants also informed that some of the European manufacturers had established their factories in China and selling the product of Chinese origin. The documents submitted by the importers were examined and it was observed that there is a variation in declared invoice values of the subject goods.

However, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, finally, customs values of under reference goods were determined in terms of Section 25(5) & (6) i.e. Identical / Similar Goods Value Method of the Customs Act, 1969 for uniform assessment all over the country vide Valuation Ruling No.1680 / 2022 dated 22-07-2022 accordingly.

PARAWISE COMMENTS

Para-(i & ii)

Not Agreed. It is submitted that the contents of Para-(i) & (ii) are denied to the extent 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 petitioners seem to be aggrieved. Moreover, the impugned Valuation Ruling has been not been issued in terms of Section 25(9) as stated by the petitioners rather the same had been issued under Section 25(5) & (6) of the Customs Act, 1969. Further, citation of court case do not relate to the under reference matter being of different nature and ground realities of the same. As such the said Valuation Ruling No.1680 / 2022 dated 22-07-2022 is not unjust, void or ab initio and contrary to the provisions of law rather based on facts of the case and has correctly and justifiably been issued in terms of Sub-Section (5) & (6) of Section 25 of the Customs Act, 1969, for uniform assessment all over the country.

Para-(iii & iv)

Denied. It is submitted that the customs value of under reference goods had been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioners, on the other hand, did not submit requisite import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No.450(I)/2001, dated 18-06-2001 (Chapter-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 law rather the same is based on factual ground realities. As such the impugned Valuation Ruling has lawfully and correctly been issued in terms of Section 25(5) & (6) of the Customs Act, 1969, for assessment of under reference goods.




Para-(v & vi)

It is submitted that the impugned Ruling was issued after considering the representation of the petitioners and view point of all the stakeholders. The record of Valuation Ruling No.1474/2020, dated 25-09-2020, and arguments put forward by the Appellants were duly 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 that any deviation from the existing laws/ provisions as envisaged in Section 25 readwith Section 25-A of the Customs Act, 1969, has been occurred. 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, proper local market enquiry was also conducted in terms of Section 25(7) of the Customs Act, 1969, but as the goods are for industrial consumption and not available in the local market. As such after examining & exhausting all valuation methods sequentially by giving reasons of rejection

of previous methods, customs values were determined in terms of Sub-Section (5) & (6) of Section 25 of the Customs Act, 1969. As such Valuation Ruling No.1680/ 2022, dated 22-07-2022 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. Further, 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. As such the impugned valuation ruling has correctly and lawfully been issued in terms of Sub-Sections (5) & (6) of the Customs Act, 1969.

Para-(vii)

It is submitted that the meetings with the stakeholders were held on 05-04-2022 which was attended by commercial importers as well as local manufacturers of under reference goods and official bearers / representatives of concerned Association. The participants as well as the Association were requested to provide documents like copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meeting. Again during the meeting the participants were requested to submit :

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- (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.

PRAYER

In view of above narrated facts, it is submitted that the petitioner is required to get the goods cleared as per Valuation Ruling issued under Section 25-A of the Customs Act, 1969, which is legal and lawful. The Valuation Ruling No.1680 / 2022, dated 22-07-2022 has lawfully been issued after considering all the facts and figures and after following valuation methods sequentially as per law. 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 import 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 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. As such no relief is warranted to be given to the petitioners and assessments are liable to made as per said Valuation Ruling. In the light of above submissions and factual position, the under reference petition being not maintainable is liable to be dismissed and rejected accordingly."

ORDER

3. Hearing in the case was conducted on 04-10-2022 on which date both the petitioner/counsel of the petitioner and the respondent department were heard in detail. The counsel contended that the respondent department has erred in law by not taking into consideration that the actual transactional values depend upon the terms of payment, quantities sold and the history of commercial relationship between the supplier and the importer as well as the origin of imported goods. The counsel added that earlier Valuation Ruling (VR) No.1474/2020 dated 25-09-2022 was set aside by the competent authority vide Order-in-Revision No.13/2022 dated 18-02-2022 merely on the ground that the prices fixed by the respondent department of Gum base from Turkey and Brazil were on lower side where as prices from China is on higher side. However, while determining Customs values of goods in question the respondents again repeated the said exercise and determined the values of goods imported from China at higher side and that too without providing any breakup and evidence which is unjust, void and without lawful authority. Moreover, the respondents were required to determine Customs values of the subject goods strictly in accordance with the methods laid down in Section 25 of the Customs Act, 1969 which were not followed.

4. On the Other hand, the departmental representative (DR) submitted that during the meeting, the stakeholders claimed that there is considerable variation in values of imported gum base primarily due to different qualities of Gum Base being imported for use in wide variety of bubble gums and therefore, the variation in price is chiefly because of its quality. It was also stated that the softness of gum base is the main reason for variation in prices as the high quality bubble gums are mostly soft, while cheapest type bubble gums are mostly hard. The importers of Chinese origin gum base argued that their imported gum base was lower in quality and consumed in manufacturing of bubble gum which is used by lower income group customers. The participants also informed that some of the European manufacturers had established their factories in China and selling the product of Chinese origin. The

documents submitted by the importers were examined and it was observed that there is a variation in declared invoice values of the subject goods. However, after exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, finally, Customs values of under reference goods were determined in terms of Section 25(5) & (6) i.e. Identical / Similar Goods Value Method of the Customs Act, 1969 for uniform assessment across the country vide Valuation Ruling No.1680 / 2022 dated 22-07-2022 accordingly.

5. The DR further 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 import clearance data from which the department determined the Customs values in terms of Section 25(5)&(6) of the Customs Act, 1969. The DR presented details of the valuation exercise/working using the sequential methodology prescribed in Section 25 of the Act *ibid*.

6. 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 import clearance data to substantiate the Customs 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.1680/2022 dated 22-07-2022. The revision petition is accordingly rejected.



(Gul Rehman)
Director General

Registered copy to:

M/s Silver Lake Foods Products Limited
C/o Mr. Zia-Ul-Hassan Advocate
Zia Bashir Law Associates,
Room No.1103, 11th Floor, Uni Center,
I.I.Chundrigar 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), Customs, Islamabad.
- 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 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, 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 & WEBOC Database System.
- 20) Guard File.

