

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

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File No. DG(V)Val.Rev/01/IX/2023 /163

Dated 14<sup>th</sup> February, 2023

Order in Revision No. 02 /2023 under Section 25D of the Customs Act, 1969, against  
Valuation Ruling No. 1705/2022 Dated 08-12-2022

- 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. Dhanani Enterprises & Others

VERSUS

PETITIONERS

Director, Customs Valuation, Karachi

RESPONDENT

Date of hearing

09-02-2023

For the Respondent

Mr. Usman Ghani, Valuation Officer

This revision petition was filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1705/2022 dated 08.12.2022 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"2. Being aggrieved and dissatisfied with the Valuation Ruling No. 1705 of 2022 dated 08-12-2022 issued by the respondent under Section 25A of the Customs Act, 1969, the petitioner prefers to file a Revision Petition under Section 25D of the Customs Act, 1969 against the impugned Valuation Ruling before the Director General, Directorate General of Customs Valuation on the following facts and grounds:

3. FACTS

1) The petitioner wants to import goods with the description "Pet Food (Cat & Dog Food)" classifiable under HS Codes 2309.1000 from Thailand & United Kingdom. The customs values of such goods were earlier determined by the respondent in the exercise of its powers conferred under Section 25-A of the Act vide VR bearing 1570/2021 all dated 25-11-2021. The VR was set aside by Director General Valuation vide Order-in-Revision 24/2022 dated 31-03-2022 with directions to redetermine the customs values.

2) That as per the impugned Valuation Ruling, Analysis / Exercise was done by the respondent to determine the Customs Values by retrieving the 90 days clearance data. It was also mentioned that the import value of Pet Food (from April 2022 to October 2022) had decreased to 27% during the preceding period (i.e. Sep 2021 to March 2022) but in spite of this fact the customs values were exorbitantly increased manifold to the extent of even 50% as compared to the



actual values, and further, the values determined to vide the aforesaid Valuation Ruling were arbitrarily fixed in haste and un utter violation of the laid down valuation methods/mechanism provided in Section 25 & 25A of the Customs Act, 1969, by unduly resorting to falling back method under Section 25 (7), read with Section 25 (9) of the Customs Act, 1969, without reasonable grounds.

3) On the contrary, the petitioner Pet Food customs values have been mala fide fixed on manifold higher values without any cogent and tenable reasons or justification. Prima facies, while determining the customs values of petitioner goods, the Valuation methods as provided under Section 25 of the Customs Act, 1969, has neither been applied in a sequential manner nor were findings of such purported market inquiries ever disclosed to / confronted with the stakeholders. As such, the customs values of Pet Food are apparently fixed by the respondent arbitrarily.

#### 4. GROUNDS

A) That the market inquiry is required to be conducted per the comprehensive procedure; parameters & guidelines are laid down vide Office Order No. 17/2014 dated 19-03-2014. That in accordance with the above guidelines, Market Survey Team, at Pre-Survey Preparation vide Para (A) (i) of the above guideline, is obliged to conduct the identification of origin-wise categories/varieties/grades of goods as per import data; in Survey Methodology vide Para (B) (i) of the above guideline, to record origin-wise market values and specific description of all categories/varieties/grades of goods under survey; in Post-Survey Methodology vide Para (C) (i) of the above guideline, to record origin-wise market values of goods after calculating and accounting for the impact of carriage on market value. That from the bare perusal of the aforesaid Valuation, it is itself the bare perusal of the aforesaid Valuation Ruling, it itself evident that aforesaid mandatory procedure has not been adhered to by the competent authority, As such, the impugned Valuation is liable to set-aside on this ground alone.

B) The Honorable High Court of Sindh, Karachi has already held that the determination of customs values under Section 25A of the Customs Act, 1969 is a multi-stage exercise, at each stage of which there has to be a proper application of mind by the concerned officer. hence, it is appropriate that the Valuation Ruling should contain sufficient detail to show that the discretion provided Under Section 25A subject to Section 25 of the Act, 1969 has been properly exercised which relates to a "determination" and not a mere "fixation" of customs values of goods to be imported or exported. It may be noted that the Valuation Ruling is subject to revision Under section 25-D of the Act, 1969, therefore. it is necessary that the Valuation Ruling should be a speaking order to be passed by fulfilling the requirements envisaged under section 24A of the General Clauses Act. 1897. When we examined the impugned Valuation Ruling and its contents, it has been seen that instead of carrying out a proper exercise of determination of customs values of subject goods with an application of mind by the respondent a stereotyped order in the form of Valuation Ruling was passed by adopting the final method of valuation provided under sub-Section (9) of Section 25 of the Act. 1969 by stating that they have fulfilled the statutory sequential order of Section 25 of the Customs Act, 1969, by conducting a market survey under sub-Section (7) of Section 25 of the Customs Act, 1969. Furthermore, various Retail markets were visited to observe the actual prices of Pet Food for determination of customs values of subject goods, but, neither customs clearance data of ninety days of identical goods nor national and international market inquiries report nor any other material or evidence has been either enclosed with the disclosed by the Department which could establish that the required multistep exercise of determination of customs values of subject goods was properly made from which the impugned customs values were derived for determination under Section 25(9) of the Act, 1969.

C) The Honorable High Court of Sindh in its judgment in the case of M/s. Goodwill Traders v/s Federation of Pakistan cited in 2014 PTD 176 has already made an interpretation of sub-Section (9) of Section 25 of the Act, 1969 and held that it comprises three elements, firstly, it is to





apply only if it is determined that valuation methods contained in sub-Sections (1), (5), (6), (7) and (8) of Section 25 cannot be applied secondly, its application is subject to "Rules", which at present means the Customs Rules, 2001, and thirdly, the basic framework of how value is to be determined in terms of sub-Sections has also been specified. The Honorable High Court also held that customs values in terms of Section 25 of the Act, 1969 must be determined on a basis that is "derived" from among the valuation methods specified in sub-Sections (1), (5), (6), (7), and (8) of the Act, 1969, however, it is permissible to apply these sub-Sections in a "flexible manner", these sub-sections cannot simply be pushed aside and ignored altogether. Rather, what sub-section (9) envisages is a value derived on the basis of any one of the other valuation methods, flexibly applied, or a suitable blending of elements from two or more of the other valuation methods, again applied flexibly. The basic framework ties Section (9) of Section-25 of the Act, 1969 much more closely and strictly to the other valuation methods than does article 7 of the Valuation Agreement. The perusal of para-wise comments of the Department and impugned Order-in-Revision does not disclose which valuation methods are specified in sub-Section (1), (5), (6), (7) and (8) of Section 25 of the Act, 1969 and rules of the Customs Rules, 2001 were found appropriate and applied in such manner as observed by the Honorable High Court to derive the impugned customs values of subject goods as determined by the Director Valuation in the impugned ruling.

D) It is noted that methods of customs valuation are 'required to be applied in sequential order, as this has been examined in various judgments by the Superior Judicial Fora, where in, it has been held that the provisions of Section 25 of the Act, 1969 have to be followed in a sequential manner without exception, reference is placed to reported/unreported judgments listed below:

- i) 2006 PTD 909 Rehan Omer v/s Collector of Customs, Karachi
- ii) 2008 PTD 1494 M/s Toyo International Motorcycle v/s Federation of Pakistan
- iii) 2008 PID 1250 Najam Impex v/s Assistant Collector of Customs, Karachi
- iv) PTCL 2014 CL.537 Sadia Traders v/s FOP
- v) 2013 PTD 825 Facio Trading Co v/s Members Custom, Federal Board of Revenue
- vi) 2014 PTD 176 Goodwill Traders, Karachi v/s FOP.

E) Additionally, for kind ease of your reference a table is reproduced below for your kind attention.

S. No.	Description	Origin	Customs Values as per VR 1705/2022	Customs Values as per VR 1570/2021	Prices Quoted by Exporters
1.	Pet Food (Cat & Dog Food)	China/Thailand	0.90\$ kg	1.45\$ kg	0.76\$ kg
		All Other Origins	1.05\$ kg	1.35\$ kg	0.76\$ kg

F. The petitioner craves leave of the Director General, Directorate General of Customs Valuation, to adduce and raise further grounds at the time of the hearing of this revision application.

5. **PRAYER**

In light of the arguments presented above, it is prayed that in the larger interest of justice:

- a) To set-aside the impugned Valuation Ruling No.1705/2022 dated 08-12-2022, based on the non-reading of evidence and arguments put forth, hence arbitrary, unsupported, unlawful, and of no legal effect.



b) *Direct the respondent to conduct a fresh exercise and determine the values of Pet Food (Cat & Dog Food) through the issuance of a new Valuation Ruling under Section 25-A of the Customs Act, 1969 at the earliest, after giving a fair opportunity of hearing to the appellant.*

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

"Brief facts of the case:

(1) *Earlier, the Customs values of Pet Food (Cat and Dog Food) were determined under Section 25A of the Customs Act, 1969 vide Valuation Ruling No.1570/2021 dated 25-11-2021 which was set-aside by the Director General of Customs Valuation vide O-in-R No.24/2022 dated 31.03.2022 with directions to re-determine the Customs values of Pet Food (Cat and Dog Food). Therefore, an exercise has been undertaken by this Directorate to determine the same.*

(2) *Meetings were convened on 10.11.2022 and 18-11-2022 which were attended by all the relevant stakeholders. The issues pertaining to the valuation of subject goods were deliberated upon in detail in the afore-referred meeting.*

(3) *Ninety (90) days clearance data has been retrieved and same has been scrutinized. It is revealed from the analysis of the recent/past data that import value of the subject goods (during April, 2022 to October, 2022) has decreased to Rs. 424 Million (-27%) vis-à-vis import value (i.e. Rs 581 Million) during the corresponding/preceding period (i.e. Sep, 2021 to March, 2022). It is also observed that imports from some of the origins in the above referred Valuation Ruling are considerably reduced and the impugned goods are shifted in great quantities to those origins which are not mentioned in the said Valuation Ruling. Subsequently, Market inquiry has been conducted and examined in the light of this Directorate's Office Order No.17/2014 dated 19.03.2014 and in terms of Section 25 (7) read with Section 25 (9) of the Customs Act, 1969.*

(4) *Valuation methods specified in Section 25 of the Customs Act, 1969, were duly applied in their sequential order to arrive at the 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 due to wide variation of values in import data. Moreover, the requisite information under law was not available to arrive at correct/ transaction value. Therefore, identical/similar goods value methods provided in Section 25(5) (6) ibid were examined for applicability to determine Customs value of subject goods. The data provided some reference; however, it was found that the same could not be solely relied upon due to absence of absolute demonstrable evidences of quantities and qualities, variation in declaration, variety and specifications. Information available was, hence, found incomplete. In line with statutory sequential order of Section 25 of the Customs Act, 1969, this Directorate conducted market survey under sub-Section (7) of Section 25 of the Customs Act, 1969. Various Retail markets were visited to observe the actual prices of Pet Food (Cat and Dog Food). On the basis of available data/information collected and exercise conducted the values of Pet Food (Cat and Dog Food) have been determined under sub-Section (7), read with Section 25 (9), of Section 25 of the Customs Act, 1969.*

PARAWISE COMMENTS

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

Para (1) *Requires no comments.*

Para (2) *Denied. It is respectfully submitted that the Customs values determined vide Valuation Ruling No. 1705/2022, dated 08-02-2021, are strictly in accordance*



with the provisions of Section 25 of the Customs Act, 1969. The said Valuation Ruling was issued after thorough investigation and consideration of all aspects.

Para(3) Denied. The impugned Valuation Ruling was issued by following all the sequential methods as provided in Section 25 of the Customs Act 1969. Details have already been provided in "Brief Facts of the Case".

### **GROUND**

Para (A) Denied. Market inquiries are conducted in a fair and independent manner. All the guidelines laid down in Office Order No.17/2014 dated 19.03.2014 was followed in the light of sub-Section (7) of Section 25 of the Customs Act, 1969.

Para (B-D) Denied. The impugned Valuation Ruling was issued following all the procedure laid down in Section 25 of the Customs Act, 1969. All the provision of Section 25 were followed in their sequential order to arrive at assessable Customs values. This ruling is a comprehensive document and sufficient details as enumerated in "Brief Facts of the Case" have been provided therein.

Para(E&F) Require no comments.

### **PRAYER**

It is respectfully prayed that the customs values of the subject goods were rightly determined after exhausting all legal formalities in accordance with Section 25 of the Customs Act, 1969. The petition of appellant may kindly be rejected."

### **ORDER**

3. Hearing in this case was fixed for 09-02-2023. However, both the petitioners i.e. M/s Dhanani Enterprises and M/s Marium Impex, vide their letters dated 30-01-2023 requested for withdrawal of their petitions filed under Section 25D of the Customs Act, 1969. Therefore, in view of their written requests, the instant revision petitions are disposed of being withdrawn by the petitioners.



(Gul Rehman)  
Director General

Registered copy to:

S.No.	Petitioners
1	M/s. Dhanani Enterprises, 3, Alisons Chamber, Jaswani Street, Off Nicol Road, Karachi.
2	M/s. Marium Impex, House No. 177-H, Block-2, P.E.C.H.S., 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, 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, Lahore.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisalment - West / Appraisalment - East / Appraisalment - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad / (Appraisalment / Enforcement), Quetta / Gawadar / (Appraisalment / Enforcement / AIIA), Lahore / Appraisalment, Faisalabad / Appraisalment, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan / (Appraisalment / 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 & WBOC Database System.
- 20) Guard File.

