

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

File No. DG (V)Val.Rev/05/I/2023 /300

Dated 15th March, 2023

**Order in Revision No. 13 /2023 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1725/2023 Dated 09-01-2023**

- 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. Nutri Food and Pharmaceuticals & Others

.....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

02-03-2023

For the Petitioners

Ms. Rafia Maniar, Advocate
Mr. Akhtar Ali Shaikh

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. 1725/2023 dated 09.01.2023 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"2. With reference to the subject matter, we, M/s. Franklin Law Associates, under the instructions from and on behalf of our clients being aggrieved with and dissatisfied by impracticable customs values of Milk Preparation for infant use, re-determined vide impugned Valuation Ruling No. 1725/2023 dated 09.01.2023, issued by the respondent department in supersession of the earlier Valuation Ruling No. 1148/2017 dated 04.05.2017, do hereby file this review Petitions, under Section 25D of the Customs Act, 1969, on the consideration of facts and grounds mentioned hereinafter below:

3. **FACTS**

1) That our clients are duly registered Company, engaged in importing of various commodities including Milk Preparation for infant use from worldwide sources including UAE. Our client enjoys unblemished reputation in the business circle having spotless record towards payment of government's legitimate revenues in accordance with law. Our client is regular taxpayers/filers operative on the Active Taxpayer List of FBR.

2) That at the very outset, it is respectfully submitted that our above-mentioned client is an importer of subject items of impugned Valuation Ruling and contributes Billion of Rupees into National Exchequer. That to the utter dismay of our client and other aggrieved importers of subject items, the Directorate General of Customs Valuation abruptly and without any valid reason re-determined the customs value of subject items vide impugned Valuation Ruling No. 1725/2023 Dated 09.01.2023 on higher side, issued in supersession of earlier Valuation Ruling Nos. 1148/2017 dated 04.05.2017, in terms of fall-back method under Section 25(5) R/w 25(9) of the Customs Act, 1969. In this regard, it is respectfully submitted that the impugned Valuation Ruling is self-contradictory and in violation of Customs Act, 1969.

3) That perusal of the impugned Valuation Ruling reveals that the same has been issued under sub-Section (5) of Section 25 r/w Section 25(9) of the Customs Act, 1969. The Valuation department has lethargically ignored the sequential method of valuation in order to arrive at a true customs value of the subject commodity by offering stereotyped reasons commonly reflected in almost all the Valuation Rulings issued by the department. Further, the valuation methods as provided for transactional value under sub-Section (1) of Section 25 of the Customs Act, 1969, were also arbitrarily and mala fide ignored by the department despite the fact that the goods are being regularly imported and cleared on transaction value and without any short levying of duties and taxes. It is relevant to add here that variation in the customs values of under-reference commodity and generally all imported goods is on account of different origin, specifications, different properties and constituents. Furthermore, Valuation Methods provided under sub-Section (7) & (8) were deliberately overlooked for application of Section 25(5) r/w 25(9) of the Customs Act, 1969, for re-determination of customs values of under-reference commodity.

4) That the application of fall-back method by virtue of sub-Section (9) of Section 25 read with Rule 121 of the Customs Rules, 2001, has been duly deliberated in the case of Goodwill Traders, Karachi, Versus Federation of Pakistan & others reported in 2014 PTD 176. It was laid down in the aforesaid ruling that sub-Rule (1) of Rule 121 of the Rules, 2001, required that "to the maximum extent", values under sub-Section (9) must be based on previously determined customs values of identical goods assessed within ninety days. Therefore, keeping in view the quantity and value of each constituent material involved on the manufacture of subject items and customs values of constituent materials of the under-reference commodities imported during the last three months, the customs values of the under-reference commodities determined vide the impugned Valuation Ruling are very much higher than the current prices of the item. Astonishingly, the customs values of the under-reference commodities are even higher than the previous customs values which were determined vide Valuation Ruling No. 1148/2017, dated 04.05.2017.


That further perusal of Impugned Valuation Ruling Reveals that no reason has been provided as to why the sub-Sections (7) and (8) were over looked, despite the fact that the item is readily available in the market therefore this method could not be relied upon. In this regard, it is submitted that the subject commodity is available in almost every pharmaceutical store, across the country. Section 25 (7) of the 1969 Act, read with Rule 119 of the Customs Rules 2001 lays down the procedure to be followed. This includes and allows the Respondents to conduct a survey/market inquiry to determine the Custom values of the subject commodity. However, the perusal of the impugned valuation ruling reveals that the Section 25(7) has not been adhered to with the true spirit and lethargically ignored in order to determine the value under Section 25(5) r/w 25(9) of the 1969 Act.

6) That the valuation methods provided under the provisions of Section 25 of the Customs Act, 1969, are to be applied in sequential manner. The insertion of the words "may or may not" in the provisions of sub-Section 10 of Section 25 ibid through Finance Act, 2007, does not dispense with the application of valuation method in sequential manner with the exception of rare occasions and exceptional circumstances. The issue has been amicably clarified/interpreted by the august judgment of the Hon'ble High Court of Sindh in case of Sadia Jabbar versus Federation of Pakistan and others reported in PTCL 2014 CL 537 & 2018 PTD 1746. It relevant portion of the judgment is reproduced as below:

".....In our view, therefore, the changes made to sub-Section (10) have made no substantive change, and the principle of sequential application continues, as before, to apply to Section 25 in full rigour."

However, the reasons must be specified as to why a certain method has been ignored and why another method has been adopted. In current situation, the perusal of the said VR shows that the Valuation Department has not even dared to apply all the methods and have issued the said VR in haste by ignoring sub-Section (7) & (8) and have failed to provide any reason for the same.

7) That it was further held in the referred incase of Sadia Jabbar versus Federation of Pakistan and others that exercise carried out under Section 25A of the Act is a "determination" and not a mere fixation and further that determination is a multi-step exercise, at each stage of which, there has to be a proper application of mind by the concerned officer. It is therefore appropriate that ruling should contain sufficient details to show that Section 25A has been properly applied. Furthermore, the fact that the determination is subject to revision by the Directorate General of Customs Valuation under Section 25D, the latter's decision is now appealable to be Appellate Tribunal under Section 194A(1)(e) *ibid.*, also make it necessary that the Valuation Ruling should be a speaking order. Contrary to the principles of law settled by the Hon'ble High Court, the impugned Valuation Ruling is neither a speaking order nor the valuation methods as provided under Section 25 of the Act have been adhered to/complied with in sequential manner to determine customs value of under-reference goods.



That in the case of Faco Trading v/s Member Customs Federal Board of Revenue 2013 PTD 825 it was held that the impugned Valuation is in clear violation of sub-Section (9) of the Section 25 of the Customs Act, 1969. There are no reasons given as to how value of goods could not be determined under the provisions of sub-Sections (1), (5), (6), (7) and (8) of Section 25 and why recourse to sub-Section (9) was necessary. In addition to that, sub-Section (9), which is fall-back method, was also not adopted in accordance with law. Since the order itself is illegal and in violation of the Act, therefore, writ petition is competent. Similarly, the impugned Valuation Ruling No.1725/2023 is in violation of Customs Act, 1969 as the exercise of determining the values has not been conducted properly which is clear from the VR itself that not all the sections have been applied and the same has been issued in haste without providing any reason with regards to the non-applicability of sub-Section (7) of Section 25.

9) That being aggrieved with and dissatisfied by impracticable and lower customs values of Milk Preparation for infant use, re-determined vide impugned Valuation Ruling No. 1725/2023 dated 09.01.2023, determined under Section 25A of the Customs Act, 1969, the instant revision application under Section 25D of the Customs Act, 1969, is preferred, *inter alia*, on grounds enumerated as under:

4. GROUNDS

A. That perusal of Impugned Valuation Ruling Reveals that Section 25(7) has not been considered as apart from transactional value, it is the most suitable method for determining the subject values because the subject item is readily available in the market therefore this method could be relied upon. Section 25 (7) of the 1969 Act, read with Rule 119 of the Customs Rules 2001 lays down the procedure to be followed. This includes and allows the Respondents to conduct a survey/market inquiry to determine the Custom values of the subject commodity. However, the perusal of the impugned valuation ruling reveals that the Section 25(7) has not been adhered to with the true spirit and lethargically ignored in order to determine the value under Section 25(5) *r/w* 25(9) of the 1969 Act.

B. That the impractical rising of the custom values of the subject items through implementation of the impugned Valuation Ruling is likely to discourage the importers which will be detrimental to the public exchequer as well as to encourage the local industry to create monopoly. As such, the implementation of the aforesaid Ruling would be economically devastating, hence liable to be set aside.

C. That our client is not in position to import the under-reference goods on the higher and unsupported customs values fixed vide impugned Valuation Ruling which will be detrimental to the public as low quality local manufactured products will create a monopoly by raising their rates.

D. That it has been categorically laid down in case of *Sadia Jabbar versus Federation of Pakistan* and others reported in PTCL 2014 CL 537 & 2018 PTD 1746 & in the case of *Goodwill Traders, Karachi, Versus Federation of Pakistan & others* reported in 2014 PTD 176, that the application of any method other than the valuation methods laid down in Section 25 of the Act, for re-determination of customs values of imported goods, is ultra vires the provisions of Section 25-A of the Customs Act, 1969.

E. That the fall-back method as contained in sub-Section (9) of Section 25 of the Act, envisages the application of method that must recognizably be referred back to any one of the other valuation methods or to a combination of the elements of two or more of them. It may be noted that with regard to basic framework that it ties sub-Section (9) much more closely and strictly to other valuation methods than does Article 7 of the WTO Valuation Agreement which allows the use of reasonable means whereas the sub-Section (9) is more rigidly structured. Reliance is placed on the case of *Goodwill Traders, Karachi Versus Federation of Pakistan* reported in 2014 PTD 176.

F. Further arguments may be urged, with the permission of the Authority, at the time of hearing of this application.

5. PRAYER

a) In view of foregoing, it is humbly prayed that the Valuation Ruling No. 1725/2023, dated 09.01.2023, whereby the customs values of subject items of the impugned Valuation Ruling on the basis of application of Section 25(5) read with 25(9) of the Customs Act, 1969 are heavily increased to discourage the importers and favor the local industry, kindly be set-aside, or in the alternative, a fresh Valuation Ruling may please be issued for determination of true customs values in accordance with law.

b) Prayer is made in the interest of justice."

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

Brief Facts of the Case

Earlier, the Customs values of Milk Preparation for Infant Use were determined under Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1148/ 2017 dated 04-05-2017. The existing valuation ruling was more than five (05) years old and the Customs values determined therein were not reflective of prevailing international market. Therefore, an exercise was undertaken by this Directorate General to determine the same. Meeting was convened on 20-12-2022 which was 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. They submitted their proposals by stating that the prices of impugned goods have increased globally since the issuance of the existing Valuation Ruling. They also pointed out anomaly in the existing VR that Belarus is a country in Europe but it is separately mentioned from Europe and the Customs values of subject goods from Belarus in the existing Valuation Ruling are lower as compared to that of Europe. They suggested to include Belarus in European Category in the new Valuation Ruling. All stakeholders also suggested to increase the customs values of subject goods upto 10% from the existing Valuation Ruling and further added that their declared values are always higher than the values determined by the existing Valuation Ruling.

Accordingly ninety (90) days clearance data was retrieved and the same was scrutinized in view of the input / views by the stakeholders. All the stakeholders/ importers were requested to submit their proposals as well as import related documents before or during the course of stakeholders' 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 (excluding duty & taxes) to substantiate their contentions.*

No import related documents were furnished by the stakeholders / importers which are essentially required in the process of the determination of customs values of any imported commodities into Pakistan. However, after exhausting all valuation methods as envisaged under Section 25 of the Customs Act, 1969, and evaluating / analyzing whole the information so gathered, the customs values were determined in terms of Sub-Section (5) readwith Section 25(9) of Section 25 of the Customs Act, 1969, and notified in terms of Section 25A of the Customs Act, 1969, vide Valuation Ruling No.1725 / 2023 dated 09-01-2023, accordingly for uniform assessment all over the country.

PARAWISE COMMENTS

Para-(1) *Need no comments being introduction of petitioners as importers of Milk Preparation for Infant use from worldwide including U.A.E. etc.*

Para-(2&3) *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 impugned Valuation Ruling No. 1148/ 2017 dated 04-05-2017 and arguments put forward by the Appellants and Respondents were considered during process of revision by the Director General 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 have been provided by the Appellants to reject department's views and in support of their contention. As such Valuation Ruling No.1725/ 2023 dated 09-01-2023 has lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. Moreover, Paras-(4&5) states that the said ruling has been issued in terms of Sub-Section (5) readwith Section 25(9) of the Customs Act, 1969, after analyzing and evaluating whole information so gathered for the purpose of determination of Customs values. Further, the customs value of under reference goods been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioner, 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 such the same is not against the principles of law rather the same is based on factual ground realities of the case.*

Para-(4&5) *Not Agreed. It is submitted that the said Valuation Ruling was issued after thorough investigation and all aspects were considered. In this regard it is submitted that this Directorate General has determined the correct customs values in the Valuation Ruling No.1725 / 2023, dated 09-01-2023 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 was analyzed and evaluated and after gathering all information, the customs values have been determined in terms of Sub-Section (5) readwith Section 25(9) of the*



Customs Act, 1969, vide above referred Valuation Ruling. Moreover, it is not correct that customs values had been fixed by the Respondent as concept of "fixation of value" no more exists in the Customs Tariff rather presently customs values are being determined in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the customs stations of the country. 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. Moreover, citation of court case do not relate to the under reference case being of different nature and circumstances surrounding the imports. The said Valuation Ruling No.1725 / 2023, dated 09-01-2023 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.

Para-(6&7)

Not Agreed. It is 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 the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. 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 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 S.R.O. No.450(I)/2001, dated 18-06-2001 (Chapter-LX), in the absence of valid import documents, the burden to prove the correctness 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. Further, it is submitted that all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, were duly exhausted and examined and after giving reasons for rejection of valuation methods customs values were finally determined in terms of Sub-Section (5) read with Section 25(9) of the Customs Act, 1969. The said Valuation Ruling No.1725 / 2023, dated 09-01-2022 had lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.



Para-(8&9)

In this regard it is submitted that this Directorate General has determined the correct customs values in the Valuation Ruling No.1725 / 2023, dated : 09-01-2023 for level playing field and for uniform assessment all over the Customs Stations of the country. Import data of previous 90 days was analyzed and evaluated and after gathering all information, the Customs values have been determined in terms of Sub-Section (5) readwith Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling. It is submitted that this Directorate General convened meeting for the

determination of under reference items and all stakeholders were duly invited. As such the Respondent has acted according to law while issuing the said ruling. It is submitted that the Respondent had correctly and lawfully issued Valuation Ruling in terms of Section 25A and the same was based on factual grounds of the case. It is submitted that the said Valuation Ruling has lawfully been issued in terms of Section 25-A by the Respondent after extensive exercises and holding meetings with relevant stakeholders of the said goods. As such the Respondent has acted in accordance with law and under powers vested upon him under the law.

GROUND S

Para-(A&B) 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 impugned Valuation Ruling No.1148/ 2017, dated 04-05-2017 which is almost five years old and arguments put forward by the Appellants were duly considered during process of issuance of under reference Valuation Ruling No.1725/2023 dated 09-01-2023. 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, has been occurred. The petitioners could not substantiate their claim with supporting documents on record. No any supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. Customs values in the impugned Valuation Ruling had been determined after properly exhausting and examining all the valuation methods as envisaged under Section 25 ibid in terms of Sub-Section (5) readwith Section 25(9) of the Customs Act, 1969. As such Valuation Ruling No.1725/ 2023, dated 09-01-2023 have lawfully and justifiably been issued in terms of Section 25-A of the Customs Act, 1969 by the Respondent for uniform assessment all over the country.



Para-(C) 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. The customs values in the impugned valuation ruling had been determined in terms of in terms of Sub-Section (5) readwith Section 25(9) of the Customs Act, 1969, for uniform assessment all over the country.

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.1725/2023, dated 09-01-2023 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 meeting with the stakeholders was held on 20-12-2022, which was duly attended by the 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 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 any required documents before meeting. Again during the meeting the participants were requested to submit the same.*



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.

Para-(J) *Relates to the time of hearing before the Competent Authority.*

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.1725 / 2023 dated 09-01-2023. The Respondent have acted lawfully and the Valuation Ruling No.1725 / 2023, dated 09-01-2023 has correctly and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. On the other side the petitioner filed 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 be made as per said Valuation Ruling and the under reference petition being not maintainable is liable to be dismissed and rejected accordingly."

ORDER

3. Hearing in this case was conducted on 02-03-2023 on which date both the counsel of the petitioners/petitioner and the respondent department were heard in detail. The main contention of the petitioners is that the Customs values determined by the respondent department are on the higher side and not reflected in the local and international market trends. It is stated that the perusal of the impugned Valuation Ruling reveals that neither Section 25(5) nor Section 25(7) has been considered, appropriately. In the hierarchy of Valuation Methods – as given under Section 25 of the Customs Act, 1969 – Deductive Value Method (i.e. Market Inquiry) is also a very suitable method for determining the subject values because the subject item is readily available in the market; therefore, this method could be relied upon. Section 25 (7) of the Customs Act, 1969 read with Rule 119 of the Customs Rules, 2001 lays down the procedure to be followed. This includes and allows the Respondents to conduct a survey/market inquiry to determine the Custom values of the subject commodity. However, the perusal of the impugned valuation ruling reveals that Section 25(7) has not been adhered to in its true spirit and lethargically ignored in order to determine the value under Section 25(5) read with Section 25(9) of the Customs Act, 1969. It is further contended that their clients are not in a position to import the under-reference goods on the higher and unrealistic Customs values determined vide impugned Valuation Ruling which will be detrimental to the public as low-quality local manufactured products will create a monopoly by raising their prices.



4. The representative of M/s Nutri Food and Pharmaceutical stated that they are regular importers of impugned items from Belarus at low prices and Customs values and origin were separately mentioned vide previous VR No.1148/2017 dated 04-05-2017 but vide impugned VR Belarus origin is omitted and now clubbed with all other origins. Moreover, they submitted a letter issued by the Embassy of the Republic of Belarus in Pakistan stating that Belarus is not a member of the European Union, and Belarusian company JSC Bellakt is a key manufacturer of infant formula milk powder (range of products) in Belarus. This company has a strategy to sell the goods at a minimum possible price to help parents to bear the additional cost in Belarus as well in more than 20 export markets, including Pakistan. They furnished updated prices lists for local markets in Pakistan and also submitted the local market price lists of other origins/brands for comparison of prices of their products vis-à-vis products of other brands/origins. The petitioner contended that the market survey conducted for the determination of Customs values of Belarus-origin products was not comprehensive and needs revision for determination of actual Customs values.

5. The department representative (DR) was called to justify the basis of their work regarding the whole exercise of market inquiry carried out by them and share the analysis based on which the final value was given. In response, the DR submitted that the values of the subject item had been worked out on the basis of the market survey as well as consulting data of import clearance. Accordingly, the record available with the DR was examined and the market survey report was without any indication as from where these prices were obtained. Survey was also silent regarding

market prices of the UAE and Belarus origins goods. There were no price lists or cash memos/bills available in the file and even the prices reportedly obtained from different shops were not recorded separately during the market inquiry. Moreover, the petitioners stated that they were not invited to the meeting conducted under Section 25A of the Customs Act, 1969, and no consultations were held with them.

6. On account of the foregoing deficiencies, the process of determination of values suffers from procedural impropriety whereas the arguments of the petitioners regarding enhancement of the Customs values for Belarus origin products, and clubbing it with all other origins, carry weight. Moreover, the petitioner of Belarus-origin impugned products also produced the latest price lists and their sales tax invoices for supply in the domestic market as evidence. The petitioners also requested that the Customs values for UAE and Belarus origins may be notified separately in the VR. After hearing contentions of the appellants, it appears that the Customs value notified vide impugned Valuation Ruling suffers from procedural impropriety. Therefore, the case is remanded to the Director of Customs Valuation, Karachi for denovo consideration and he is directed to undertake a fresh exercise in terms of Section 25A of the Customs Act, 1969 by having recourse to the valuation methodologies elaborated in Section 25 of the Customs Act, 1969 within 30 days in line with the prevailing international prices of the impugned item. The petitions are hereby disposed of accordingly.

7. Being identical on facts and law point, this order shall apply mutatis mutandis, to the following (03) revision petitions:

1. M/s Nutr-X Health Products
2. M/s Nutrasel (Pvt.) Ltd.
3. M/s Azon Pharmaceutical & Nutrition's (Pvt.) Ltd.


(Gul Rehman)
Director General

Registered copy to:

M/s. Nutri Food and Pharmaceuticals,
M/s Nutr-X Health Products
M/s Nutrasel (Pvt.) Ltd.
M/s Azon Pharmaceutical & Nutrition's (Pvt.) Ltd.

C/o Franklin Law Associates,

1st Floor, Plot No.4C, Lane No.3, Al-Murtaza Commercial, DHA, Phase-VII, 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/SAPT/ 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) The President, FPCC&I/KCC&I, Karachi.
- 20) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 21) Guard File.

