



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

File No.DG(V)Val.Rev/14/II/2023

Dated 5th April, 2023

**Order in Revision No. 23/2023 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1735/2023 Dated 27-01-2023**

- 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 German Specialty Chemicals

..... PETITIONER

VERSUS

Director, Customs Valuation, Karachi

..... RESPONDENT

Date(s) of hearing

22-03-2023

For the Petitioners

Mr. Javed Iqbal Butt Consultant
Mr. Mubashir Aslam Advocate

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.1735/2023 dated 27-01-2023, issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"Grievance:

The Petitioner is aggrieved by Para 4 and Serial No. 5 of the Table to the Valuation Ruling No 1735/2023 dated 27.01.2023 ("Impugned Ruling") (Annex A) and prefers this Revision Petition on the following facts and grounds.

Facts and Grounds of the case: -

1. The Petitioner is the regular importer and distributor of Optical Brightener Agents (OBA)s. The Petitioner imports OBA and claims the same under PCT heading 3204.2000. The Petitioner has never indulged in misdeclaration of value, origin or any other material particular of the declaration in order to hoodwink the Customs or evade duty/taxes or for any other motives in any manner whatsoever. He is a bonafide importer of OBA which conforms to all necessary product certifications. The supplier of Petitioner M/s PT Sinar, Indonesia, is one of the biggest manufacturers of the subject product and sells its product at much compatible values based on economies of scale. It may further be noted that prices of Chinese origin product being at higher values is offset by reduced rate Customs duty under China Pak FTA, whereas assessments of Indonesian Origin OBAs at higher values will render the Petitioner's imports incompatible as there is no FTA with Indonesia as of today.
2. The Petitioner is a law-abiding citizen of Pakistan and is well versed in the laws pertaining to the valuation of the goods enshrined under Section 25 of the Customs Act, 1969.
3. The Petitioner has all along been importing the OBA Cotton for the last many years at true transaction values.
4. The Respondent has issued the Impugned Ruling through which the values of OBA Cotton have been enhanced to an exorbitantly higher slab, which is causing loss to the Petitioner as he is the whole sole importer of this product from P.T. Sinar Sino Kimia, Indonesia. The values so enhanced are arbitrary and do not conform to the various factors which are essential parameters for valuation of dyes and chemicals i.e. Colour Index and Strength.
5. The Ruling describes the methods adopted to determined customs values at Para-4 of the Impugned Ruling as under: -



- "4. Method(s) adopted to determine Customs values: Valuation methods specified in Section 25 of the Customs Act, 1969, were duly applied in sequential order to arrive at the Customs values of subject goods. The transaction value method provided in Section-25(1) was found inapplicable due to absence of information as required under sub-section-(2) of Section 25 of the Customs Act, 1969. Therefore, identical/similar goods methods provided in Section 25(5)(6) ibid were examined for applicability to determine Customs values of subject goods. However the same were found inapplicable since the values of the evidences available in the ninety days data were not determined as per Section 25(1) of the Customs Act, 1969. As a result this Directorate conducted market survey under subsection (7) of Section 25 of the Customs Act, 1969, wherein various wholesale and retail markets were visited to observe the actual prices of reactive dyes, acid dyes, direct dyes, disperse dyes and optical brightening agents of different origins. Moreover, valuation method under Section 25(8) of the Customs Act, 1969 was examined but due to non-availability of conversion cost of the Exporting country, the aforementioned method could not be applied either. Finally, on the basis of available data/information collected and exercise conducted, the values of Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agent have been determined under sub-section (7) read with Section 25(9), of Section 25 of the Customs Act, 1969."
6. A bare perusal of the afore-cited para reveals that all the methods of valuation of goods have been discarded by the learned Respondent. It is incorrect to infer that the transaction value method was inapplicable due to the unavailability of information as required under subsection-(2) of Section 25. Indeed, the dyes and chemicals have all along been imported and every minor detail of the products of dyes and chemicals are available with the Customs. The Petitioner himself had provided all the relevant information including Bank Contracts, Loadport GDs filed in the country of export to establish the

genuineness of the transaction value. This data is available with Customs. In the presence of this information, the assertion of the Respondent that information w.r.t. transaction value and subsection (2) of Section 25 was not available is illogical and unwarranted.

7. On the basis of Respondents argument that information w.r.t. primary method of valuation was not available, therefore, secondary methods of valuation as enshrined under subsections (5) and (6) of Section-25 of the Customs Act, 1969, were also inapplicable is incorrect. There is abundant data in the Customs database through, which the Respondent can easily ascertain the actual values of the goods. Hence, the reasons given by the Respondent is a negation of the findings as given in the judgment of hon'ble Supreme Court of Pakistan Collector of Customs PMBQ vs. Zymotic Diagnostic International (2007 PTD 2623). The court had has taken due cognizance of the arbitrary rejection of the transaction values and set out principles for such rejection for resorting to other methods of Valuation in the following terms: -

"6. Section 25 of the Customs Act authorizes an officer of the Customs Department to reject the declared value of a consignment imported in Pakistan and to assess the same. Section 25 lays down various modes in which the officials of the Customs Department are required to proceed in determining or assessing the value of the consignment after rejecting her declared value. However, for rejecting or refusing to accept the value declared by a consignee in respect of imported goods, the concerned officer is required to give cogent, plausible and satisfactory reasons for non-acceptance of the declared value and rejection thereof which cannot proceed on the whims or desire of the officer of the customs. He is required to point out some flaw or defect or such circumstances which create doubt with regard to the veracity and correctness of the declared value or that the same had been under invoiced. Similarly, in determining or assessing the fair value or normal price of such imported consignment the concerned officer is under an obligation to take into consideration all the necessary factors and circumstances enumerated in Section 25 of the Customs Act for such determination and assessment. From a perusal of order of the Collector of Customs it transpires that neither satisfactory and convincing grounds for not accepting the declared value of the imported consignment were given nor the factors and grounds necessarily required to be taken into consideration for determining the fair or normal value of imported consignment were adhered to. The Customs Officer was required to obtain identity of the country of origin of the consignment. Thereafter attempt should have been made to find out the prevailing price of the consignment in the country of the origin. There is nothing on record to indicate that the Customs Department had secured or had attempted to secure invoices from other importers who had imported identical or similar consignment in Pakistan with a view to show that the price declared by such other importers greatly varied from the price declared by the respondent. In absence of such an exercise action in rejecting the declared value of consignment would amount to an arbitrary and capricious exercise. Resort to subsection (7) of section 25 of the Customs Act is to be made only when the Customs Officer who has to make assessment or determination of the fair or normal value of the consignment is of the view that the same cannot be determined otherwise in view of impossibility of procuring evidence as referred to above. The order of the Collector of Customs is absolutely silent in this regard which is an important factor for drawing an interference that no such attempt was made before passing the order. The Customs Officer dealing with the case proceeded in a perfunctory, whimsical and arbitrary manner and the Customs, Excise, Sales Tax Appellate Tribunal was justified in setting aside the same. The High Court also did not commit any illegality or infirmity in accepting the order of the Tribunal and dismissing the Constitutional petition filed by the petitioner."

8. Clearly, the primary method of valuation is the transaction value method and for rejecting this transaction value, the apex court has laid down the principles which must be followed. In the

Petitioner's case, the transaction value is available on record and smooth and there is no iota of doubt about its veracity for the following reasons: -

- i. The value declared on the Commercial Invoice is the same as the value of the Bank Contract;
- ii. The value declared on the Goods Declaration matches with the value mentioned on Load Port GD;
- iii. Bank Debit Advice on PSW System reflects the same value as on the Bank Contract, Commercial Invoice and GD.

9. Further, the Impugned Ruling does not spell out the range of prices that were available in the data and the extent of variation in the prices which resulted in the discarding of values under these subsections.
10. The Ruling further mentions that a market inquiry was conducted under Section-25(7) of the Customs Act, 1969 and different segments of markets were surveyed. Wholesale and Retail Markets were visited to ascertain the actual prices of Reactive Dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents. No such data has been shared with the petitioner to seek their opinion on it. Further, the data so obtained has not been verified as such. Secondly, it is important to mention that Subsection (7) of Section-25 pertaining to Deductive Value Method lays down that the Customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the **greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the person from whom they buy such goods.** Further, the Valuation Ruling does not share any such market inquiry that had been conducted prior to the issuance of this Ruling. In fact, this so-called market inquiry, *prima facie*, does not conform to the requirements, as stipulated under Section-25 read with the Valuation Rules. Secondly, the Workback Method or Deductive Value method as given under Section-25(7) of the Customs Act, 1969, which is reproduced below: -

"(7) DEDUCTIVE VALUE.- If the Customs value of the imported goods cannot be determined under sub-section (6), it shall, subject to rules, be determined as follows: -



- (a) if the imported goods or identical or similar imported goods are sold in Pakistan in the condition as imported, the customs value of the imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are so sold in the greatest aggregate quantity, at or about the time of the importation of the goods being valued, to persons who are not related to the persons from whom they buy such goods, subject to the deductions for the following: -
- (i) either the commission usually paid or agreed to be paid or the additions usually made for profit and general expenses in connection with sales in Pakistan of imported goods of the same class or kind;
 - (ii) the usual costs of transport and insurance and associated costs incurred within Pakistan; and
 - (iii) Omitted.
 - (iv) the customs duties and other taxes payable in Pakistan by reason of the importation or sale of the goods.
- (b) If neither the imported goods nor identical nor similar imported goods are sold at or about the time of importation of the goods being valued, the customs value shall, subject otherwise to the provisions of clause (a) of this sub-section, be based on the unit price at which the imported goods or identical or similar imported goods are sold in Pakistan in the conditions as imported at the earliest date after the

importation of the goods being valued but before the expiry of ninety days after such importation.

- (c) If neither the imported goods nor identical nor similar imported goods are sold in the country of importation in the condition as imported, then, if the importer so requests, the customs value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons in the country of importation who are not related to the persons from whom they buy such goods, due allowance being made for the value added by such processing and the deductions provided for in clause (a)."

11. This method has been discussed in detail in Rule 119 of the Customs Rules, 2001. The relevant provision is reproduced below: -

"119. Deductive value method.- (1) For the purposes of this rule, the expression "unit price at which goods are sold in the greatest aggregate quantity" means the price at which the greatest number of units is sold in sales to persons who are not related to the persons from whom they buy such goods at the first commercial level after importation at which such sale takes place."

12. From the Valuation Ruling is not clear how the learned Respondent has applied the Work-Back method; what aggregate value has been taken for arriving at US\$ 5/Kg. In this situation, the values determined through the Impugned Ruling are unlawful and against the laid-down principles of valuation. Hence the Valuation Ruling is required to be quashed on this ground alone. It may further be submitted that the subject product is exclusively imported by the Petitioner and around 99% of the total imports is sold to local industry. It is not understandable how the Respondent conducted market inquiry as the subject product is not available in the local market in retail stores. If the such inquiry has been made, the Respondents may kindly be instructed to provide details of such market inquiry.

13. The Impugned Ruling says that Computed Value Method as provided in Section 25(8) could not be applied due to non-availability of conversion and processing cost of exporting country. The Ruling does not divulge any information or correspondence that was exchanged in obtaining the conversion or processing cost of the exporting country.
14. The Impugned Ruling finally says that on the basis of available data/information collected and exercise conducted, the values of Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents have been determined under sub-section (7) read with Section 25(9), of Section 25 of the Customs Act, 1969.
15. The Respondent department has not shared the data taken for the determination of values u/s 25A in the impugned Ruling. It was also not indicated which type of flexibility was adopted to arrive at values u/s 25(9) of the Customs Act, 1969. As such determined values have hypothetically been arrived at by completely disregarding the methods of Valuation as prescribed by Section 25 of the Customs Act, 1969.
16. The hon'ble Sindh High Court in the case of Goodwill Traders vs. Federation of Pakistan reported as 2014 PTD 176 has conducted a post-mortem of Section-25(9) and the valuation rulings issued under this very section.

"9. In our view, when subsection (9) is examined, it comprises of the following elements. Firstly, it is to apply only if it is determined that the valuation methods contained in subsections (1), (5), (6), (7) and (8) cannot be applied. Secondly, its application is subject to "rules", which at present means the Customs Rules, 2001 ("Rules"). Thirdly, the basic framework of how value is to

be determined in terms of the subsection has also been specified. The value must be determined on a basis that is "derived" from among the valuation methods specified in subsections (1), (5), (6), (7) and (8). However, it is permissible to apply these subsections in a "flexible manner". Two points may be noted regarding the basic framework that has been laid down. Firstly, it does not permit a complete abandonment of the valuation methods specified in subsections (1), (5), (6), (7) and (8). These cannot simply be pushed aside and ignored altogether. Rather, what subsection (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 fall-back method as contained in subsection (9) therefore envisages the application of a method that must recognizably be referable back to any one of the other valuation methods or to a combination of the elements of two or more of them. The second point to be noted with regard to the basic framework is that it ties subsection (9) much more closely and strictly to the other valuation methods than does Article 7 of the Valuation Agreement. The latter allows the use of "reasonable" means, which are required only to be "consistent" with the "principles" and "general provisions" of the Valuation Agreement and also of Article VII of GATT, 1994. (It is not necessary to consider Article VII in any detail.) Thus, Article 7 allows for greater latitude and may possibly make permissible a larger departure from the other valuation methods. This however, is not permissible under subsection (9). It is more rigidly structured. Rather than leaving the matter rather open-ended, for the value to be determined by customs authorities essentially at their discretion under loosely worded guidelines (as would have been the case had the language of Article 7 been used), the legislature has chosen to draw the boundaries more tightly. The requirement is not that of reasonableness or of consistency with principles and provisions generally. The procedure or method to be followed is laid down with much greater specificity and expressly tied to the other valuation methods.



10. The foregoing analysis applies, of course, when subsection (9) is considered in terms of its application under section 25 itself. What, however, of section 25A and how does subsection (9) relate to this provision? In our view, the answer to this question lies in what was said in paras. 18 and 19 of the earlier Judgment (reproduced above). In particular, the portions of para. 19 that have been emphasized by underlining are of direct relevance and application. It is in terms as therein explained that subsection (9) interacts with and relates to section 25A. "
17. After deliberating upon the essence of Section-25(9), the hon'ble Sindh High Court arrived at the following conclusion: -

13. We now turn to consider the Valuation Ruling in light of the foregoing discussion. (We may note that a number of valuation rulings were also considered in the Earlier Judgment and found wanting in one respect or another: see paras 23 to 29 thereof.) We conclude that the Valuation Ruling is ultra vires section 25A. One obvious reason for this is that it states, at the end, that "if the declared/invoice value is higher the same shall be applied". In other words, the values determined by the Valuation Ruling are minimum customs values. This is flatly contrary to Rule 110(iv) and hence to subsection (9) of section 25. Secondly, and more importantly, it is clear from a reading of the Valuation Ruling as a whole that in applying the fall-back method, the Director, Valuation has completely abandoned the other valuation methods. Although he has given his reasons for doing so and has stated that the fallback method has been applied to arrive at "fair" values, this approach is contrary to law. It is directly in conflict with the method to be followed if at all subsection (9) is to be applied, as explained above. It also expressly ignores the import data available at Custom House, which is in contradiction of the Rules. It purports to be based on "market survey ... to analyze the prices available in the local market". This is also in express conflict with the Rules. Furthermore, nothing is stated in the Valuation Ruling that would indicate as to how or why the values actually used are "fair" values, even if (which in our view is not the case) it were legally

permissible for the Director to determine value on such basis. In our view, the Valuation Ruling is based on a comprehensive misapplication and misunderstanding of the law. It cannot, therefore, be allowed to stand. It fails and must be set aside."

18. In light of the above submissions, it is clear that the Respondent has miserably failed to appreciate this crucial legal point and has also failed to take into consideration the findings recorded in the landmark judgment of hon'ble Sindh High Court passed in the case of Sadia Jabbar reported as PTCL 2014 CL 537 while issuing the impugned Valuation Ruling.

19. The Valuation Ruling does not give the values of OBA origin-wise and fixes one value for all the origins, which is otherwise not tenable under the law. In the case of Sadia Jabbar vs. Federation of Pakistan (PTCL 2014 CL 537) the hon'ble Sindh High Court has held as under: -

"Furthermore, the customs value determined is applied to China and the "Far East". As noted above, the Valuation Agreement and Section 25 operate in the context of a country of export and a country of import (which of course, is Pakistan), and the "Far East" is not a country. This Ruling, therefore is also ultra vires Section-25A".

20. In the very context, the impugned Valuation Ruling is ultra vires of Section-25A as "All Origins" does not constitute a country, hence, requires reconsideration in light of Para-31 of the aforementioned judgment of the hon'ble High Court which reads:

"In view of what has been stated above, we allow these petitions to the extent that the valuation rulings impugned thereby (and corresponding orders in revision, if any) are quashed and set aside. The concerned officer may, in each case, make a fresh determination of the Customs value of the concerned category of goods under Section 25A in light of what has been stated herein above within 90 days from today, after following the procedure applicable to the method actually adopted and giving an opportunity to the stakeholders to make representations."

21. The Impugned Ruling has at Serial No. 5 of the Table has mentioned the description of goods as under:

5. OBA for Cotton All origins 3204.2000 US\$ 5/Kg

22. The description, 'OBA for Cotton' is a general term, which cannot be applied to the entire lot of OBAs being imported with different Colour Indices and Strengths (Concentrations). Indeed, the value of the dyes and chemicals is mainly dependent on the aforementioned two factors. Therefore, it is quite unjustified to fix a single value for the subject product which is otherwise subject to variations.

23. It may be noted that in terms of Section 25(1) the transaction value of the goods is the price paid or payable for goods sold for export to Pakistan. Even the All Pakistan Chemicals and Dyes Association had suggested the values on the basis of product strength and origin within the range of US\$ 3 – 5/Kg, however, a single value has been fixed which is against the norms of the business.

24. Section 25(1) is reproduced below: -

"25. Value of imported and exported goods.- (1) Transaction Value.- The Customs value of imported goods, subject to the provisions of this section and the rules, shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to Pakistan."

25. The value declared by the Petitioner is always the true transaction value within the parameters of Section 25(1) of the Customs Act, 1969, as is evident from the following: -

- The transactions are effected through Bank Contracts (Annex B) and Bank Debit Advice (Annex C) which is reflected in the PSW System.
- The values declared on the Import Goods Declaration (Annex D) are the same as the values declared by the supplier on Load Port GD (Annex E) filed in the country of export with Indonesian Customs.
- The amount remitted to the supplier is the same as mentioned on the Commercial Invoice (Annex F).
- There is no evidence of remittance of the additional amount over and above the invoice price in respect of the goods imported by the Petitioner. A sample GD is taken for understanding purposes to substantiate the argument of the Petitioner as follows:

Value Declared on the GD (USD-CFR)		Value on Bank Contract (USD-CFR)		Value on Commercial Invoice (USD-CFR)		Value on Bank Debit Advice (USD-CFR)		Value on Load Port GD (USD-CFR)	
Unit Value	Total Value	Unit Value	Total Value	Unit Value	Total Value	Unit Value	Total Value	Unit Value	Total Value
1.65	18562	1.65	18562	1.65	18562	1.65	18562	1.65	18562

26. From the above table it can be seen that all the documents, issued by the supplier and presented by the Petitioner, represent the same value of the subject product. This fact supports the contention of the Petitioner that his declared value was correct and acceptable within the parameters of Section 25(1) of the Customs Act, 1969.

27. The Petitioner is attaching copies of evidential GDs and their corresponding Bank Contracts, Commercial Invoices, Load Port GDs and Bank Debit Advices as (Annex G₁ to G₄) for your perusal.

28. The OBA imported by the Petitioner falls in the lower to medium category hence its price @ US\$ 1.65/Kg is accordingly quoted by the supplier as per its pricing mechanism considering various factors including the quality and attributes of the products. Therefore, determining the values at US\$ 5/Kg is quite unjustified and against the parameters set under Section 25 of the Customs Act, 1969, which is the basis ingredient of Section-25A of the Act *ibid*.

29. The very concept of transaction value, as discussed in detail in the preceding paras, is the price paid or payable for goods sold for export to Pakistan. When the goods are sold for export to Pakistan, the documents that reflect the export price are Commercial Invoice and the Export GD, which, in the Petitioners case, are in conformity with the import declarations. Hence, the value declared in the by the Petitioner are the true transaction values within the parameters of Section-25(1) of the Customs Act, 1969, read with the relevant valuation rules.

30. The impugned Valuation Ruling does not give a single basis or evidence to arrive at such exorbitant values determined at US\$ 5/Kg under Serial 5. Therefore, onus to substantiate these values lies on the Respondent under Article-117(2) of the Qanun e Shahadat Order, 1984, which says:-

"When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Prayer: -

1. In view of the foregoing factual and legal submissions, it is prayed to: -

- i. Set aside the Impugned Valuation Ruling being against the provisions of Section-25 and 25A of the Customs Act, 1969 read with pronouncements of superior judicial fora;
- ii. Hold that the transaction value as declared by the Petitioner was the true transaction value, which should be used for assessment of the subject imported products;
- iii. Grant any other relief which this learned forum may accord to the Petitioner."

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"

Representation was received regarding under-invoicing in the import of Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents and it was requested therein to determine the Customs values of the said goods in line with the international market trends. Therefore, an exercise was undertaken by this Directorate General to determine the same. Meetings were convened on 21-12-2022, 13-01-2023 and 24-01-2023, which were attended by the relevant stakeholders including Pakistan Chemical & Dyes Merchants Association. The issues pertaining to the valuation of subject goods were deliberated upon in detail in the afore-referred meetings. The participants also submitted their proposals and the same were considered for the valuation of the subject goods.

The stakeholders contended that the prices of Dyes and Optical Brightening Agents vary on the basis of branded and un-branded goods. Furthermore, some of the importers were declaring values on a very lower side than the actual values in the international market. Therefore, the customs values of the subject goods needed to be determined as per the prevailing international prices. They also submitted proposals in this regard. Ninety (90) days' clearance data was retrieved and the same was scrutinized. The stakeholders were also requested to furnish the following documents before or during the course of above-said meetings:



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

However, after exhausting and examining all valuation methods provided in Section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at customs values of subject goods. Finally, the customs values of the Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents were determined under Sub-Section (7) read with Section 25(9) of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1735 / 2023 dated 27-01-2023 accordingly.

PARAWISE COMMENTS

Para-(1to3) *Need no comments are mention and introduction of the petitioners as importers of Optical Brightener Agents (OBA) and its manufacturer in Indonesia.*

Para-(4to6) *Not agreed. It is submitted that the said Valuation Ruling was issued after a 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.1735 / 2023, dated 27-01-2023 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 (7) read with Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling. In this para petitioners have blamed the Respondent for violation and excess of powers but did not gave any cogent reason for the same. On the other hand they did not even provided import documents to justify their claim which are essentially required in the process of determination of customs values of any imported goods.*

Para-(7to9) *Not Agreed. It is submitted that the Respondent abovenamed had lawfully determined the customs values in the under reference valuation ruling on merits after giving opportunity of hearings to the petitioners. Respondent had justifiably determined the customs values in the impugned valuation ruling by exhausting and examining all the valuation methods as envisaged under Section 25 of the Customs Act, 1969, on the basis of ground realities of the case. Further, the petitioners have simply claimed for the acceptance of their declaration but did not submit any tangible import 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, Rules, 2001. Moreover, requisite import related documents were also not furnished by the petitioners which are essentially required in the process of determination of customs values of any imported goods into Pakistan. As such the transaction value cannot be accepted in absence of any relevant import evidences and documents etc. Further, citation of court case does not relate to the under reference case being of different nature and circumstances and ground realities of the same.*

Para-(10) to (12) *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. 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 (7) readwith Section 25(9) of the Customs Act, 1969. Moreover, concept of "fixation of value" no more exist in the Customs Tariff rather the customs values are being determined in terms of Section 25A of the Customs Act, 1969. The said Valuation Ruling No.1735 / 2023, dated 27-01-2023 had lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country.

**Para-(13)
to (15)**

It is submitted that the meetings with the stakeholders were held on 21-12-2022, 13-01-2023 & 24-01-2023 which were attended by commercial importers as well as local manufacturers of under reference goods and official bearers / representatives of the concerned Association. The participants as well as the Association were requested to provide import 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 the documents before meeting. Again during the meeting 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 the 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-(16)
to (18)**

Denied. In this regard it is to be submitted that 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. Further, 90 days' clearance data was scrutinized and local

market enquiries under Section 25(7) of Section 25 of the Customs Act, 1969, were also conducted and customs values in the impugned valuation ruling were determined in terms of Sub-Section (7) readwith Section 25(9) of the Customs Act, 1969, which showed higher price trend in the markets for uniform assessment all over the country. Only under reference petitioner seems to be aggrieved otherwise assessments are being made as per Valuation Ruling No.1735/2023 dated 27-01-2023 at all Customs Stations and field formations of the country. Further, citation of the court cases does not relate to the under reference case being of different nature and circumstances surrounding the imports.

**Para-(19)
to (21)**

It is submitted that Para-(2) to (5) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Paras-(4&5) states that the said ruling has not been issued only on the basis of local market enquiry rather all the information so gathered was evaluated and analyzed for the purpose of determination of Customs values. 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-LX), in the absence of valid import documents, the burden to prove correctness of transaction value shifts to the importers / applicants. Further, the customs values were determined after properly following and exhausting all the valuation methods in sequential manner and giving reasons for rejection therein and finally the values were determined in terms of Sub-Section (7) readwith Section 25(9) of the Customs Act, 1969, for uniform assessment purposes.

**Para-(22)
to (24)**

It is submitted that the Valuation Ruling No.1735 / 2023, dated 27-01-2023 itself is a self speaking document which has lawfully been issued by the Respondent under Section 25A of the Customs Act, 1969, after exhausting all the valuation methods as envisaged under Section 25 of the Customs Act, 1969. It is further submitted that no valuation method was abandoned as stated by the Petitioner rather all valuation methods from Sub-Section (1) to Sub-Section (9) of Section 25 of the Customs Act, 1969, were exhausted while determining the customs values of under reference goods by giving reasons for rejection of previous methods and after exhausting & examining all the valuation methods customs values were determined in terms of Sub-Section (7) readwith Section 25(9) of the Customs Act, 1969, for uniform assessment all over the country. These values are not arbitrary or unlawful as the same have been determined after properly analyzing and evaluating so gathered from different sources. Therefore, no violation of any rules has occurred while determining the Customs values in the said ruling.

**Para-(25)
to (27)**

Denied. It is submitted declared values were examined which were found under-invoiced, therefore, Valuation Ruling No.1735, dated 27-01-2023 issued is correct and justified and correctly and lawfully issued after fulfilling all the requirements and after extensive exercises in terms of Section 25-A of the Customs Act, 1969. 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) and (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



Sub-Sections (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 best 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 is not arbitrary, unlawful, illegal or against the principles of justice rather the same is based on ground realities of the case and international market price trends.

Para-(28)
to (30)

Denied. It is respectfully submitted that the customs value of under reference goods had been determined strictly in accordance with the provisions of Section 25 of the Customs Act, 1969. Moreover, the petitioners, on the other hand, did not submit the requisite corroboratory import documents or any evidence to substantiate their cause of grievance and to enable this forum to verify the truth and accuracy of transaction value of the applicant. As per Rule-109 of the Valuation Rules issued under SRO No.450(I)/2001, dated 18-06-2001 (Chapter-IX), in the absence of valid import documents, the burden to prove the of transaction value shifts to the importers / applicants. As such the same is not against the principles of laws rather the same is based on factual ground realities. Moreover, the impugned Valuation Ruling has been issued in terms of Sub-Section (7) read with Section 25(9) of the Customs Act, 1969, which showed higher price trend in the local markets. It is respectfully 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 vide Valuation Ruling No.1735 / 2023, dated 27-01-2023 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 (7) of Section 25(9) of the Customs Act, 1969, vide above referred Valuation Ruling for uniform assessment all over the country. It is further submitted that the Petitioner has simply claimed for the acceptance of their declaration but did not submit any tangible documents in support to justify their declarations disclosing full and accurate details relating to the value of the imported goods as per Para-108 of Customs Rules, 2001. As such in presence of the clear Valuation Ruling in the field, transaction value cannot be accepted in absence of any relevant import evidences and documents etc.

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.1735 / 2023 dated 27-01-2023. The Respondents have acted lawfully and the Valuation Ruling No.1735 / 2023, dated 27-01-2023

had 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 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 No.1735 / 2023 dated 27-01-2023 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 make as per said Valuation Ruling. In the light of above submissions and actual position, the under reference petition being not maintainable is liable to be dismissed and rejected accordingly."

ORDER

3. Hearing in this case was conducted on 22-03-2023 on which date both the counsel of the petitioner and the respondent department were heard in detail. The counsel contended that his client is aggrieved by Para 4 and Serial No. 5 of the Table to the impugned Valuation Ruling (VR) No.1735/2023 dated 27.01.2023. The respondent department issued the impugned VR through which the values of 'Optical Brightening Agent' (OBA) Cotton have been enhanced to an exorbitantly higher slab, which is causing loss to the petitioner as he is the whole sole importer of this product from M/s P.T. Sinar Syno Kimia, Indonesia. The values so enhanced are arbitrary and do not conform to the various factors which are essential parameters for the valuation of dyes and chemicals i.e., Colour Index and Strength. Moreover, the perusal of para-4 of the impugned VR reveals that all the methods of valuation of goods have been discarded by the respondent department. It was argued that the respondent department has not shared the data taken for the determination of values under Section 25A in the impugned Ruling. It was also not indicated which type of flexibility was adopted to arrive at values under Section 25(9) of the Customs Act, 1969. As such determined values have hypothetically been arrived at by completely disregarding the methods of Valuation as prescribed by Section 25 of the Customs Act, 1969. The counsel stated that in terms of Section 25(1) the transaction value of the goods is the price paid or payable for goods sold for export to Pakistan. Even M/s Pakistan Chemicals and Dyes Merchants Association had suggested the values on the basis of product strength and origin within the range of US\$ 3 to 5/Kg, however, a single value has been fixed which is against the norms of the business.

4. On the other hand, the departmental representative (DR) explained that representation was received regarding under-invoicing in the import of Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents (OBS) and it was requested therein to determine the Customs values of the said goods in line with the international market trends. Therefore, an exercise was undertaken by this Directorate General to determine the same. Meetings were convened on 21-12-2022, 13-01-2023 and 24-01-2023, which were attended by the relevant stakeholders including Pakistan Chemical & Dyes Merchants Association. The issues pertaining

to the valuation of impugned goods were deliberated upon in detail in the afore-referred meetings. The participants also submitted their proposals and the same were considered for the valuation of the impugned goods. The stakeholders contended that the prices of Dyes and Optical Brightening Agents vary on the basis of branded and un-branded goods. Furthermore, some of the importers were declaring values on a very lower side than the actual values in the international market. Therefore, the customs values of the subject goods needed to be determined as per the prevailing international prices. They also submitted proposals in this regard. Ninety (90) days' clearance data was retrieved and the same was scrutinized. However, after exhausting and examining all valuation methods provided in Section 25 of the Customs Act, 1969, were duly applied in their regular sequential order to arrive at customs values of subject goods. Finally, the customs values of the Reactive dyes, Acid Dyes, Direct Dyes, Disperse Dyes and Optical Brightening Agents were determined under sub-Section (7) read with Section 25(9) of the Customs Act, 1969, for uniform assessment across the country vide Valuation Ruling No.1735/2023 dated 27-01-2023 accordingly.

5. Following the petitioner's discussion/arguments and scrutiny of the case record, it is apparent that with a view to satisfying the precept of Natural Justice, the department sought to consult the relevant stakeholders and meetings were held on 21-12-2022, 13-01-2023 and 24-01-2023 while issuing the impugned Valuation Ruling No.1735/2023 dated 27-01-2023. Moreover, the explanation of the DR and facts of the case elaborated, the departmental recourse to determine the Customs values in terms of Sections 25 and 25A of the Customs Act, 1969 has been conducted within the legal domain of the ibid Act. I, therefore, find no reason to interfere with the impugned VR No.1735/2023 dated 27-01-2023. The petition being devoid of any merit and legal contents is hereby rejected 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), Custom House, Karachi.
- 4) The Director General, PCA& Internal Audit, Custom House, Karachi.
- 5) The Director General, IOCO, Custom House, Karachi.
- 6) The Director General, Transit Trade, Custom House, Karachi.

- 7) The Chief Collector of Customs (North), Custom House, Islamabad.
- 8) The Chief Collector of Customs Enforcement (Central), Custom House, Lahore.
- 9) The Chief Collector of Customs Appraisement, (Central), Custom House, Lahore.
- 10) The Chief Collector of Customs, Baluchistan, Custom House, Quetta.
- 11) The Chief Collector of Customs, Khyber Pakhtunkhwa, Custom House, Peshawar.
- 12) The Chief Collector of Customs, Appraisement (South), Custom House, Karachi.
- 13) The Chief Collector of Customs, Enforcement (South), Custom House, Karachi.
- 14) The Directors, Intelligence & Investigation, Karachi / Lahore / Islamabad / Quetta / Peshawar / Faisalabad.
- 15) The Director, Directorate of Customs Valuation, Lahore.
- 16) The Collector of Customs, Collectorate of Customs, (Appraisement - West / Appraisement - East / Appraisement - Port Muhammad Bin Qasim / Enforcement / JIAP), Karachi / Hyderabad / (Appraisement / Enforcement), Quetta / Gawadar / (Appraisement / Enforcement / AIIA), Lahore / Appraisement, Faisalabad / Appraisement, Sambrial (Sialkot) / Enforcement, Multan / Islamabad / Gilgit -Baltistan / (Appraisement / Enforcement), Peshawar / Enforcement, Dera Ismail Khan / Exports (Port Muhammad Bin Qasim / Custom House), Karachi.
- 17) The Secretary (Valuation & Audit), Federal Board of Revenue, Islamabad.
- 18) All Additional Directors / Deputy Directors / Assistant Directors, Customs Valuation, Karachi
- 19) The President, FPCC&I/KCC&I, Karachi
- 20) Deputy Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WBOC Database System.
- 21) Deputy Director (Revision), Customs Valuation, Karachi
- 22) Guard File.

