

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

File No. DG (V)Val.Rev/13/VI/2023/375

Dated 5th April, 2023

**Order in Revision No. 24/2023 under Section 25D of the Customs Act, 1969,
against Valuation Ruling No. 1736/2023 Dated 31-01-2023**

- 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 Stanmore Enterprises
M/s AHG Pvt. Ltd.

.....

PETITIONERS

VERSUS

Director, Customs Valuation, Karachi

.....

RESPONDENT

Date(s) of hearing

22-03-2023

For the Petitioners

Mr Umer Ilyas Advocate
Mr. Ilyas Ahsan Consultant
Mr. Faisal Khan Consultant

For the Respondent

Mr. Adresh Arsalan, Valuation Officer

These revision petitions were filed under Section 25D of the Customs Act, 1969, against Customs values determined vide Valuation Ruling No. 1736/2023 dated 31.01.2023 issued under Section 25A of the Customs Act, 1969, inter alia, on the following grounds:

"Being aggrieved and dissatisfied with the subject Valuation Ruling No. 1736 of 2023 dated 31.01.2023, passed by the Respondent Director, the Petitioner prefers this Revision Petition under Section 25D of the Customs Act, 1969, before this Hon'ble Authority on the following facts and grounds:-

FACTS & GROUNDS

1. The Petitioner is a sole proprietorship concern engaged in the business of, inter alia, commercial trade of assorted goods, including Disposable Razor Twin blade and Cartridges of Disposable Razor of assorted brands, including Gillette, (hereinafter

collectively referred to as "Disposable Razors and Parts" (the term encompasses all sorts of goods mentioned in the valuation ruling). Through years of hard work, commitment to professional excellence and by merchandizing of highest quality products at reasonable cost, the Petitioner has earned the trust and confidence of dedicated customers. The present petition has been filed through the authorized person of the Petitioner.

2. The Respondent Director of Customs Valuation has been entrusted by the Legislature through the enactment of section 25A of the Customs Act, 1969, to diligently, efficiently and properly exercise the powers contained therein for the lawful determination of customs values of goods imported into or exported out of Pakistan, which values are then used and applied for calculation of leviable Customs duties as well as allied taxes, as levied under other statutes.
3. In spite of the obligations provided under the law, the Respondent Director has unlawfully, arbitrarily, and in dire contradiction and violation of Section 25A of the Customs Act, 1969, and the Customs Rules, 2001, framed there-under, purportedly 'determined' the values of the Disposable Razors and Parts of different origin vide the impugned Valuation Ruling No. 1736 of 2023 dated 31.01.2023 (hereinafter referred to as 'the impugned Valuation Ruling').
4. As submitted herein, the Respondent Director has acted in violation and excess of the powers conferred thereupon under the Customs Act, 1969, and the issuance of the impugned Ruling have resulted in serious harm and loss to the Petitioner as well as to other importers, who are the only stakeholders for the purposes of determination of values under Section 25A of the Customs Act 1969. The actual prices paid / payable for the impugned goods remains significantly lower than the value unlawfully fixed through the impugned Valuation Ruling, however, despite the patent illegalities therein, the Respondent Director has deemed the impugned Ruling fit for the purposes of assessment of imported consignments of the impugned goods. The Petitioner submits a brief background to the issue as follows.
5. Prior to the issuance of the impugned Valuation Ruling, customs values determined under the Valuation Ruling No. 1364 of 2019 dated 29.04.2019 (herein after referred to as the "Old Valuation Ruling") were applied for the purposes of assessment of customs duty and allied taxes on the import of Disposable Razors and Parts.
6. The values determined under the old valuation ruling also did not match the actual price paid or payable for the disposable razors and parts. To the best of the knowledge of the Petitioner, the old valuation ruling was challenged before the relevant forums by other importers, but they remained unsuccessful in their pursuit. Regardless, the Petitioner only started the trading business after the issuance of the old Valuation Ruling, the Petitioner did not have the right to file the revision petition in terms of Section 25D of the Customs Act 1969 at the given time.
7. It is important to note that regardless of the vires of the old Valuation Ruling, the same was made applicable to all the imports of disposable razors, irrespective of the brand category.



8. In due course of its' business, the Petitioner conducts imports of Disposable Razors. As such, in terms of Section 25 of the Act, 1969, the actual price paid / payable for the said goods at the time of import into Pakistan remains significantly lower than those fixed/notified through the impugned Valuation Ruling.
9. That under the scheme of the Customs Act, 1969 (hereinafter 'the Act, 1969'), the assessment/valuation of imported goods is carried out either under Section 25 of the Act, 1969, or under Section 25A r/w Section 25 of the Act, 1969. Assessment/valuation is carried out under Section 25A of the Act, 1969, where customs / assessable values of imported goods are **determined** in advance by the Respondent Director through the issuance of a valuation ruling issued after strict adherence to the methods of valuation laid down in Section 25 of the Act, 1969, and the Customs Rules, 2001, framed thereunder.
10. However, to the surprise and dismay of the Petitioner, the Respondent Director has issued the impugned Valuation Ruling without associating or otherwise even inviting the Petitioner to participate in the proceedings. In spite thereof, the Respondent Director has proceeded to increase the assessable value of the goods by five (05) times, rendering the business of the Petitioner unsustainable in a manner utterly violative of the provisions of the Customs Act, 1969, as well as the Constitution of Pakistan, 1973.
11. Now coming on to the discussion as to how the Valuation Ruling is issued and whether the same has been issued in conformity with the provisions of Section 25 of the Customs Act 1969 as provided under Section 25A of the Act. Firstly, the Respondent Director in the first paragraph of the impugned Valuation Ruling has provided two (02) major reasons for revising the customs values determined under the Old Valuation Ruling, i.e. (i) the old valuation ruling was three (03) years old, and (ii) a representation was made, purportedly by the Local Manufacturer that prices of raw material have increased so the value of disposable razors and razor parts should also be increased. Both the reasons given in the Valuation Ruling are respectively addressed in the following terms:-



- i. The first reason of existence period of the valuation ruling is legally not right and in facts runs contrary to the scheme of Section 25A of the Customs Act 1969 and Rule 107 of the Customs Rules 2001. Section 25A(4) of the Customs Act 1969 clearly provides that the validity of the Valuation Ruling is continued until and unless revised or rescinded by the competent. Therefore, when the statute categorically provides that the life of the Valuation Ruling has no limitation then any Respondent Director being an officer of the statute and exercising statutory mandate is bound not to apply the statute contrary to the mandate provided therein.
- ii. In continuation to the previous point, the Honourable High Court in the judgment reported as 2018 PTD 1746, has categorically stated that by means of Section 25A(4) the valuation ruling shall continue hold field unless revised or rescinded.

- iii. *The power or right of revision of valuation ruling, as provided under the Section 25A, is with the Director who may either on his own motion or on the request of any person determines the customs values. Such exercise of power is neither dependent nor legally valid if the existing valuation ruling has reached certain age. Since the legislature has categorically not placed any validity time limitation on the values determined under Section 25A of the Customs Act 1969, then the Respondent Director cannot infer any new conditions or limitations to exercise its discretionary powers.*
- iv. *With regards to the second reason, it is submitted that the Petitioner approached with a request of grant of a certified copy of the representation made by the local manufacture for revision of the customs values. The Petitioner's request was not granted by the Respondent Director despite conceding that the relied representation is to be made available to general public as per the fundamental right to information. Infact the Directorate officer has refused to grant the letter in order to protect the local manufacturer on whose instructions the impugned Valuation Ruling has been issued. Importantly, it is submitted that as per the principle settled by the Honourable High Court in the judgment reported as 2019 PTD 301, local manufactures have no standing to ask for determination or re-determination of the customs values. Local Manufacturers cannot neither intervene nor be called upon at proceeding for determination of the customs values, therefore, local manufacturers are not the stakeholder in the proceedings of value determination. It is apparent from the record of the Valuation Ruling that the local manufacturers were called as one the stakeholders in the determination meetings and the whole exercise was performed by the Respondent Director on the direction / representation of a local manufacturer.*



12. *Moving forward, the Respondent Director in the first paragraph of the Impugned Valuation Ruling has contended that the brands which were given exception in the old valuation ruling were added in the Impugned Valuation Ruling because values of those brands were being mis-invoiced. In this regards it is first of all submitted, that the Respondent Director has defined the term mis-invoiced. Mis-invoiced is not a usual and general term used in the customs parlance when one is trying to convey any discrepancy regarding the invoice for the purposes customs clearance. Two popular terms which are coined in the customs parlance are under-invoice or over-invoice. Both the terms covers two distinct situations or actions with the former talking about declaration of lower invoice value when the actual is higher and the latter talking about declaration of higher invoice value when the actual is lower. Both terms also contain different implications and consequences, whereas, the terms mis-invoiced as used by the Respondent Director conveys a different and distinct message. The Respondent Director has not provided any evidence as to how many cases or contraventions were framed against the importers for mis-invoicing on the brands which were allegedly kept outside the purview of the old valuation ruling. Since no such information is available in the Valuation Ruling and no case of mis-invoice has gone pass the eyes of the Petitioner, the contention given by the Respondent Director*

is illegal and the impugned Valuation Ruling must be set-aside to the extent of those brands.

13. *In continuation to the previous submission, it is important to highlight that if there are some importers doing the "mis-invoicing" then those importers must be pointed out and appropriate directions may be passed to punish those importers. Those importers and traders who are not involved in such practices cannot be punished under the grab of punishing few importers. Secondly, valuation ruling is not an instrument that can be used to halt the international trade and punish the importers, who are otherwise doing honest business.*
14. *Secondly, in continuation to the previous submission, it is pertinent to mention here that the brands allegedly excluded from the purview of the old valuation ruling were also being assessed in terms of the customs values determined in the Old Valuation Ruling.*
15. *The impugned Ruling states that two (02) meetings were convened, on 15.11.2023 and 23.11.2022, but the Petitioner was not called upon on either of the meetings. However, the meeting notice, as obtained from the office of the Respondent Director, reveals that the meeting notices were also sent out to the local manufacturers, M/s. Treet Corporation Ltd being one of the prominent. It is re-iterated that local manufacturers cannot be considered as stakeholders for determination of values because they have intentions and resources to get the prices determined on the higher side in order to achieve a competitive edge, and prima facie the information given in the Valuation Ruling shows the same. If the local manufacturers have any grievance regarding the price of the imported goods then they may approach the competent authority for redressal in terms of the Anti-Dumping Duties Act 2015. Thus, the impugned Valuation Ruling is ultra vires and illegal on this very ground.*
16. *It is submitted that the Respondent Director while choosing the appropriate method in determining the customs values, gave cyclostyle reasons to disregard the application of methods provided under Sections 25(1), 25(5) and 25(6) of the Customs Act 1969, in order to apply the method provided under Section 25(7). The Respondent Director in the impugned Valuation Ruling unlawfully disregarded the application of Section 25(1) because according to the Respondent the information required under Section 25(2) was not available. Whereas, the Respondent Director, as apparent from the content of the impugned Valuation Ruling, never asked for the information which maybe required under Section 25(2). The application of Section 25(7) for determination is therefore, illegal as the primary method of transaction value was disregarded without any logical and valid reason.*
17. *Methods of determination provided under Section 25(5) and (6) were disregarded on the reason that the provided data was absent of absolute demonstrable evidences of quantities and qualities. In this regards it is submitted that the no details as to how the given data lacked the evidential quantity and quality in provided in the impugned Valuation Ruling. Reading of Section 25(5) and 25(6) along with the allied rules, clarifies that the competent legislature has been duly empowered to adjust the given quantity and quality in order to determine the customs values under either of the two sub-sections. The Respondent Director has failed to provide any reason why the adjustments provided under the law was not applied when the data was available.*



18. The Respondent Director without giving any reason regarding avoiding the methods provided in Sections 25(5) and 25(6) of the Customs Act 1969, arbitrarily resorted to the method of market inquiry as provided in Section 25(7) of the Customs Act 1969. The Respondent Director has contended that the market inquiry was conducted in conformity of law and the Directorate Office Order, but evidence of such contention has not been provided under the Impugned Valuation Ruling. The Respondent Director is bound to provide full information and detail regarding the method that has been applied for determination in the Valuation Ruling, and from the reading of the impugned valuation ruling no such detail has been provided. In addition to the above contention, the Respondent Director has applied the provisions of Section 25(7) illegally because of the following reasons:-

- i. First of all, reading of Section 25(7) along with allied Rule 119 of the Customs Rules 2001, the alleged constituted market survey team was bound to only collect data from the first commercial level after importation, whereas, in the instant case, as admitted in the impugned Valuation Ruling, the alleged team only visited the retailer markets, which is not the first commercial level. On this very reason, the impugned Valuation Ruling is illegal and ultra vires because the very method they used, which is illegal in itself as well, was used contrary to the mandate provided under the law.
- ii. Secondly, the Respondent Director has contended that the team visited the retail market to observe the customs values. With utmost respect to the Respondent Director and the team, it is submitted that no retail market display customs values on the products. Customs Value as defined in Section 25(13)(a) means the value of goods for the purposes of levying duties of customs and other taxes on imported goods. Certainly prices mentioned by Retail market are retail prices, which are not values of goods for the purposes of levying duties and taxes.
- iii. Moreover, it is submitted that under the present economic situation of the country it was not reasonable for the Respondent Director to conduct market survey that too of retail market, when the domestic prices are constantly changing due to number of factors, not limited to foreign exchange fluctuations.
- iv. It is pertinent to mention here that for determination of customs values by way of method other than the transactional value, the Respondent Director was bound to make sure that aggregate quantity principle be applied in letter and spirit.
- v. In addition to the above, it is submitted that the Respondent Director has applied Section 25(7) in conjunction with Section 25(9) of the Customs Act 1969 without providing any reason as to why the provisions of Section 25(8) were disregarded.

19. In addition to the above submissions, it is submitted that the Respondent Director instead of determining the values of goods and categories of goods, has framed the impugned valuation ruling by categorizing same and identical goods according to the brand name / label the good contain. Perusal of Section 25 and Section 25A along with allied rules and other provisions of Customs Act 1969, envisages that the



Respondent Director is only mandated to determine values of goods or categories of goods as provided in the first schedule. No provision of customs laws, gives power to the Respondent Director to categorized or label the identical goods on the basis of high end brand and low end brands, and as a consequence thereof subject the completely identical goods merely on the basis of brand label they carry. The impugned Valuation Ruling, therefore, is arbitrary and contain fictitious values. Moreover, it is submitted that the Respondent Director has no mandate or power to categorized identical goods in terms of High End or Low End. However, without prejudice, if there is any power to this affects that too cannot be exercised without giving prior notice to the concerned and effected persons as per the provisions of Article 10A of the Constitution of Pakistan 1973.

20. It is pertinent to mention here that the goods under consideration are normal household product and are sold at the minimum possible values with minimum possible profit margin so that the product is available to the general public. There is no distinction of brand or brand value in disposable razors and parts, therefore, the categorization according to the brand label is illegal and arbitrary.
21. The impugned Ruling is self-evident of high-handed, unlawful, illegal and mala fide acts, whereby the Respondent Director has failed to carry out any determination of values and, instead, has given stereotypical statements in an attempt to justify the imposition of unrealistic and unlawful values.
22. That the Respondent has rejected the transaction values on the pretext that documents were not submitted, however, as stated hereinabove, there has been no opportunity given to the Petitioner to make such submission nor has the point of view of the Petitioner taken onboard prior to issuance of the impugned Ruling.
23. The Respondent Director must be invited to show the manner in which the values contained in the impugned Ruling have been arrived at. Mere cyclostyle statements regurgitated from other rulings issued in the past are not sufficient as an exercise under Section 25A of the Act, 1969, is mathematical in nature and is regulated by the law as contained in Sections 25 and 25A of the Act, 1969, read with Chapter LX of the Customs Rules, 2001. In spite of the foregoing, the Respondent Director has refused to place on record such exercise and, instead, has reiterated the bald statements that are reproduced in paragraph 4 of the impugned Valuation Ruling.
24. However, the Respondent has asserted that a market survey was conducted independently which resulted in the issuance of the impugned Valuation Ruling. Again, the Respondent department, in an effort to keep the determination process obscure and riddled in uncertainties, fails to contextualise the said market survey and does not provide any details as to when this market survey was conducted, nor does it provide any values uncovered in said market survey. This deliberate concealment leads to the conclusion that any such survey was not conducted at all.
25. In continuation of the above, even if such a survey was conducted by the Respondent, the willful exclusion of the concerned stakeholders in the process, including the Petitioner, raises suspicion about the substantive content of the survey and the manner in which it was conducted. This, coupled with the lack of any evidence or details pertinent to the survey, raises suspicion about whether the survey was actually



conducted in the first place or whether it is being used to justify the Respondent's arbitrary and capricious customs values.

26. Given the nature of the instant proceedings, it is prayed of this learned Authority that the Respondent Director / its officers be mandated to place on record the exercise undertaken purportedly to arrive at the values contained in the impugned Ruling and to substantiate the same through documentary proof.
27. As can be demonstrated, the price actually paid / payable for the said Pencils remain significantly lower than the value unlawful, illegally and arbitrarily fixed through the impugned Ruling by the Respondent Director, and the demonstrated value is the determinable and correct value for the purposes of assessment of consignments imported by the Petitioner.
28. Under the Act, 1969, and the Customs Rules, 2001, the Respondent Director was required to act in a strict manner while considering the application of each method of valuation provided under Section 25 of the Act, 1969. Further, as required by the aforesaid provision, the Respondent Director needed to state lawful grounds for rejecting any particular method of valuation as being not applicable as given under the Act, 1969, whereas the Respondent Director has failed to provide any such grounds.
29. The Respondent Director has incorrectly rejected the methods of valuation contained in Section 25 of the Act, 1969. As to sub-section (1) of Section 25 of the Act, 1969, the Respondent merely deemed it inapplicable without any cogent reasons having been provided therefor. The Respondent utterly and miserably failed to consider the declared and assessed values in the imports over the previous ninety (90) days, which evidence the actual prices payable / paid for imports.
30. Without prejudice to the foregoing, it is submitted that as to sub-sections (5) & (6) of Section 25 of the Act, 1969, the Respondent Director has refused to apply the same in spite of the fact that irrefutable evidences created thereunder and fully applicable for the purposes of determination are in the knowledge and possession of the Respondent Director. It is evident from the contents of the impugned Valuation Ruling that the Respondent Director did not have any lawful reason to reject application of methods of valuation contained in sub-sections (5) and (6) of Section 25. Firstly, the Respondent Director has failed to appreciate that sub-sections (5) and (6) envisage two separate / independent methods of valuation, wherein sub-section (5) requires consideration of identical goods being assessed by the respective Collectorates, evidence whereof is provided hereinabove. Concomitantly, where no identical goods are available as envisaged in sub-section (5), the Respondent Director must invoke sub-section (6) of Section 25 of the Act, 1969, whereunder similar goods and values thereof have to be considered.
31. Furthermore, as stated hereinabove, the impugned Ruling covers numerous values, however, paragraph 4 thereof states that "a market inquiry" was conducted. This indicates that the magnitude of conducting a proper market survey for the sheer number of items / goods covered by the impugned Ruling could not have been conducted and was, therefore, abandoned. It is submitted that the responsibility taken



upon by the Respondent Director in issuing an instrument in terms of Section 25A is heavy, and had to be discharged thoroughly and strictly in accordance with the law.

32. *Without prejudice to the preceding, the Respondent Director had a positive obligation to ensure that market survey was conducted, and values and categories of goods generated in the manner found in a lawful survey. A lawful survey would, of course, be one which is strictly compliant with the law, including conduct of stakeholders, at the same commercial level and quantities at the first stage after import, etc.*
33. *While 'determining' values under the impugned Ruling, the Respondent ignored the sequential methods of valuation contained in Section 25 of the Act, 1969, and, in a patently arbitrary and whimsical manner, chose Section 25(7) in conjunction with Section 25(9) of the Act, 1969, as the appropriate instrument of 'determination' of values. It is submitted that the Respondent has utterly failed to adhere to the provisions of the Act, 1969, and has failed to elucidate any cogent reasons for not applying / following the methods of valuation preceding sub-section (9) of Section 25 the Act, 1969.*
34. *In addition to the above, it is submitted that the Respondent Director, while undertaking such an exercise for the determination of values of the said Cutting Blades, was required to strictly adhere to the provisions of the Customs Act, 1969, as well as the Customs Rules, 2001, and apply those in a transparent, judicious and lawful manner in determining the values. The Respondent Director, however, while causing serious prejudice and harm to the Appellant, completely ignored the dictates of the Act, 1969, as well as the Rules, 2001, and, instead, fixed values in an entirely arbitrary, capricious and unreasonable manner, as has been demonstrated herein.*
35. *The actions of the Respondent Director are in stark contrast to and in utter disregard for, inter alia, the fundamental rights of the Petitioner as enshrined in the Constitution of Pakistan, 1973, including Articles 4, 8, 10A, 18, and 25A, thereof.*
36. *The impugned Ruling is illegal, arbitrary, unjust, ex-parte and without any lawful authority and, as such, is liable to be set aside with immediate effect.*
37. *The impugned Ruling has been issued in a manner impermissible by the law. It is contrary to the provisions of Section 25 of the Act, 1969.*
38. *In spite of the provisions of sub-section (5) and (6) of Section 25 of the Act, 1969, the impugned Ruling is ignorant of the import data and assessment carried out at the time of import of the said Cutting Blades.*
39. *Without prejudice to the foregoing, the impugned Ruling has also failed to adhere to the provisions of sub-sections (7) and (9) of Section 25 and the relevant rules, as has been enumerated hereinabove.*
40. *The slipshod manner in which the impugned Ruling has been issued is also visible from the fact that the Respondent evidently has not uploaded the Impugned Valuation Ruling on the FBR Website.*



41. The Petitioner craves leave of this learned Authority to prefer further grounds at the time of arguments

PRAYERS

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

- I. Set aside / quash the impugned Valuation Ruling No. 1736 of 2023 dated 31.01.2023 as being unlawful, illegal, and contrary to the Customs Act, 1969, the Customs Rules, 2001, and the Constitution of Pakistan, 1973, and having been issued in dire contradiction to the Judgments of the Hon'ble Superior Courts.
- II. Declare that the impugned Valuation Ruling No. 1736 of 2023 dated 31.01.2023 is unsustainable for the purposes of assessment of any imported consignments of the disposable razors.
- III. Declare that the Respondent Director has failed to provide any cogent reasons justifying the issuance of an instrument/valuation ruling under Section 25A of the Customs Act, 1969.
- IV. Direct that the Petitioner's imports be assessed in accordance with Section 25(1) of the Customs Act, 1969.
- V. Restrain the officers of the Respondent and all the clearance Collectorate of the goods from applying the impugned Valuation Ruling No. 1736 of 2023 dated 31.01.2023, and the values contained therein for any purposes, including but not limited to assessment.
- VI. Suspend the operation of the impugned Valuation Ruling No. 1736 of 2023 dated 31.01.2023 till final disposal of the title petition.
- VII. Grant any other relief deemed just and appropriate in the circumstances of the case."



M/s AHG Pvt. Ltd.

"We would like to introduce ourselves as an importer of Disposable Razors and authorized Importer & Exclusive Distributor of Societe BIC. BIC has manufacturing & Production facilities in many countries of Europe, Asia & Africa.

We wish to notify our grievance on the aforementioned Valuation Ruling No. 1736/2023 dt. 31.01.23 and would like to contest and file a revision petition against the Valuation Ruling No. 1736/2023 on the following grounds:

- 1) That the values determined in the VR No. 1736/2023 dt. 31.01.23 are significantly higher than the actual transactional values on which BIC products are imported and sold in the market.

- 2) That, values determined in the VR No. 1736/2023 dt. 31.01.23, if enforced will make BIC products unjustifiably expensive and unaffordable and will render the business unviable in the Pakistan market.
- 3) That the placement of BIC branded products the VR No. 1736/2023 dt. 31.01.23 as 'High End Brands' is Wrong & Unjustified as globally and locally, BIC is well-known as a 'Value for Money' and 'Affordable' brand by the masses.
- 4) The directorate of valuation has issued above referenced valuation after a period of more than 4 years and has not consulted with us before changing this valuation.

In view of above, we humbly request you to please review the recently issued valuation ruling and give us time for hearing to substantiate our claim."



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:

"FACTS OF THE CASE"

Earlier, the Customs values of disposable razor and razor parts were determined vide Valuation Ruling No. 1364/2019 dated 29-04-2019 with limited scope. The existing Valuation Ruling is more than 3 years old and a representation was received that raw material costs have been increased so the value of disposable razors and razor parts should also be increased. Moreover, the brands which have been given exceptions in the existing Ruling may also be added in the upcoming Valuation Ruling as the same is being mis-invoiced.

Accordingly, an exercise has been initiated by this Directorate to re-determine Customs values of disposable razor and razor parts under Section 25A of the Customs Act, 1969. Meetings were convened on 15-11-2022 and 23-11-2022 which were attended by the relevant stakeholders. The issues pertaining to the valuation of the subject goods were deliberated upon in detail in the afore-referred meetings. Ninety (90) days' clearance data has been retrieved and the same has been scrutinized. 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) of the Customs Act, 1969. The importers/stakeholders were requested to submit the following documents so that correct customs values could be determined: -

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

However, no substantial documents were submitted by anyone proving

that the transactional values declared were correct which are essentially required in the process of determination of customs values of any imported goods into Pakistan.

Finally, On the basis of available data/information collected and exercise conducted, the value of disposable razor and razor parts has been determined under sub-section (7), read with Section 25 (9), of Section 25 of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1736 / 2023 dated 31-01-2023 accordingly.

PARAWISE COMMENTS

Para-(1) Need no comments being introduction of the petitioner as trader of Disposable Razors and parts.

Para-(2-4) Denied. It is respectfully submitted that the said Valuation Ruling No. 1736 / 2023 dated 31-01-2023, was issued after thorough investigation and all aspects were considered. This Directorate General has determined the minimum customs values vide Valuation Ruling No. 1736 / 2023 dated 31-01-2023 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 and local market surveys were analyzed and evaluated and after gathering all information, the Customs values of under reference goods have been determined in terms of Section 25 (7), read with section 25 (9) of the Customs Act, 1969, vide above referred Valuation Ruling No. 1736 / 2023 dated 31-01-2023 for uniform assessment all over the country. It is submitted that the Director Customs Valuation has been empowered to issue Valuation Rulings by exercising his powers in terms of Section 25A of the Customs Act, 1969, through applying valuation method as best suited to the determination of customs value of any imported goods into Pakistan. As such the Respondent had acted according to law and procedure as laid down in Section 25 of the Customs Act, 1969.

Para-(5-7) Need no comments being related to petitioner's introduction.

Para-(8-10) Denied. It is submitted that the impugned Valuation Ruling issued after considering view point of all the stakeholders. It is pertinent to mention here that there is no mention of any importer by the name "M/s Stanmore Enterprises" in our import data of the period 01-07-2021 to 13-11-2022. That's why he was not among the invitees of the meeting. Whereas, name of M/s. AHG (Pvt) Ltd. is present at Serial No. 10 of both the meeting notices issued on 03-11-2022 & 16-11-2022 respectively. The petitioner (M/s. AHG (Pvt) Ltd.) neither appeared in the meetings held on 15-11-2022 & 23-11-2022 respectively nor furnished relevant documents so as to enable the directorate to verify the truth and accuracy of their contentions. The record of the all previous Valuation Rulings and arguments put forward by the stakeholders were considered during process of issuance of




Valuation Ruling. The stakeholders 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 read with Section 25-A of the Customs Act, 1969. The petitioners could not substantiate their claim with supporting documents on record. No supporting documents / evidences have been provided by the Appellants to reject department's views and in support of their contention. Further, the Respondent has properly followed all valuation methods sequentially by rejecting and giving reasons of rejection thereof.

Para-(11&12) *The contents of Para 11 & 12 are denied being misleading based on the misinterpretation of law and misrepresentation of facts. The respondent has performed his duty within the ambit of law.*

Para-(13&14) *The contents of Para 13 & 14 need no comments.*

Para-(15&16) *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. 1736/2023 dated 31-01-2023 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 meetings with the stakeholders were held on 15-11-2022 & 23-11-2022. The participants were requested to provide the documents like copies of contracts made / LCs, Sales Tax Paid Invoices to substantiate their contention of decrease in market prices. Yet they did not provide required documents before meeting. Again during the meetings the participants were requested to submit :-*

- 
- (i) *Invoices of imports made during last three months showing factual value.*
 - (ii) *Websites, names and E-mail addresses of known foreign manufacturers of the item in question through which the actual Current value can be ascertained.*
 - (iii) *Copies of contracts made / LCs opened during the last three months showing value of item in question and ;*

- (iv) *Copies of Sales Tax paid Invoices issued during last four months showing the difference in price to substantiate that the benefit of difference in price was passed on to the local buyers.*

Instead of furnishing any documentary evidence about downfall in prices in international market, they relied upon their rhetoric of decline in 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 along with 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-(17-20)



It is respectfully 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 further submitted that keeping in view the provisions of clause (f) of Section 25(2) of the Act read with section 25 (1) and 25 (11) of the Act and further read with rules 107 and 121 of Chapter- IX of the Customs Rules, 2001, every declared value cannot be termed as "transaction" value and every "transaction value " cannot be considered as "Customs Value" in the presence of comparative evidential imports data or Valuation Ruling issued under section 25-A of Act ibid.

Para- (21-25)

Not Agreed. It is submitted that transaction value could not be accepted being on lower side and there was found wide variation in declared values of under reference goods. 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 of the case. Further, it is submitted that record of previous Valuation Ruling No. 1736 / 2023 dated 31-01-2023 was also duly considered and after exhausting and examining all the valuation methods as envisaged under Section 25, Customs values were determined in terms of Sub-Section (7) of Section 25, read with section 25(9), of the Customs Act, 1969, by giving reasons for rejecting the previous Sub-Sections of Section 25 of the Customs Act, 1969. As such the impugned valuation ruling is not unlawful or otherwise rather it is based on ground realities of the case. Assessments are being made as per said ruling but only above referenced Petitioners seems to be aggrieved with the same.

Para- (26-30) Denied. The said Valuation Ruling No. 1736 / 2023 dated 31-01-2023 has lawfully and justifiably been issued in terms of Section 25A of the Customs Act, 1969, for uniform assessment all over the country. 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. Further, it is submitted that record of previous Valuation Ruling was also duly considered and after exhausting and examining all the valuation methods as envisaged under Section 25, Customs values were determined in terms of Sub-Section (7) of Section 25, read with Section 25(9) of the Customs Act, 1969, by giving reasons for rejecting the previous Sub-Sections of Section 25 of the Customs Act, 1969. However, the phrase "**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.



Para-(31&32) The contents of para 31 & 32 need no comments.

Para-(33&34) Not Agreed. It is submitted that Paras-(2) to (4) clearly states whole the process of issuance of said Valuation Ruling. Moreover, Para-(4) states that the said ruling has been issued in terms of Sub-Section (7), read with section 25(9), of Section 25 of the Customs Act, 1969, by exhausting and following all the provisions of Section 25, for the purpose of determination of Customs values. As such the impugned Valuation Ruling No. 1736 / 2023 dated 31-01-2023 is not arbitrary, fictitious or presumptive rather based on factual ground realities of the case and liable to remain infield for assessment purposes.

Para-(35&40) The contents of Para 35-40 are devoid of any substance, hence denied.

Para- (41) Need no comments.

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.1736/2023 dated 31-01-2023. The Respondent have acted lawfully and the Valuation Ruling No.1736/2023 dated 31-01-2023 has correctly and justifiably been issued in terms of Section 25-A of the Customs Act, 1969. On the other side M/s. AHG (Pvt) Ltd. (petitioner) and other stakeholders failed to furnish the requisite documents particularly copies of Sales Tax Paid Invoices issued showing the values of suppliers (excluding duty & taxes) to substantiate their contentions which are essentially required for the process of determination of customs values of any imported goods.

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



ORDER

Hearing in this case was conducted on 22-03-2023 on which date both the petitioners/counsel of the petitioners and the respondent department were heard in detail. The counsel of the petitioner M/s Stanmore Enterprises contended that in spite of the obligations provided under the law, the respondent department has unlawfully, arbitrarily, and in dire contradiction and violation of Section 25A of the Customs Act, 1969, and the Customs Rules, 2001, framed there-under, purportedly determined the values of the 'Disposable Razors and Parts' of different origin vide the impugned Valuation Ruling No.1736/2023 dated 31.01.2023. It was argued that reading Section 25(7) along with allied Rule 119 of the Customs Rules, 2001, the alleged constituted market survey team was bound to only collect data from the first commercial level after importation, whereas, in the instant case, as admitted in the impugned Valuation Ruling, the alleged team only visited the retailer markets, which is not the first commercial level. For this very reason, the impugned Valuation Ruling is illegal and ultra vires because the method they used, which is illegal in itself as well, was used contrary to the mandate provided under the law. The counsel further argued that the respondent department stated that the team visited the retail market to observe the customs values, whereas no retail market displayed Customs values on the products. Customs Value as defined in Section 25(13)(a) means the value of goods for the purposes of levying duties of customs and other taxes on imported goods. Moreover, under the present economic situation of the country, it was not reasonable for the respondent department to conduct market survey that too of the retail market when the domestic prices are constantly changing due to a number of factors, not limited to foreign exchange fluctuations. Further, for the determination of Customs values by way of a method other than the transactional value, the respondent department was bound to make sure that the aggregate quantity principle was applied in letter and spirit. The counsel contended that the respondent department has applied Section 25(7) in conjunction with Section 25(9) of the Customs Act 1969 without providing any reason as to why the provisions of Section 25(8) were disregarded. The counsel contended that the Customs

values determined especially Serial No.4 and 5 of the Table of the impugned Valuation Ruling No.1736/2023 dated 31-01-2023 are without any comprehensive market inquiry and also not shared with them.

4. The counsel of M/s AHG Pvt. Ltd. contended that the placement of *BIC* branded products in the impugned VR as 'High End Brands' is wrong and unjustified as globally and locally, *BIC* is well-known as a value-for-money and affordable brand by the masses. The respondent department has issued the impugned VR after a period of more than four years and has not consulted with them. It was contended that the Customs values determined vide Serial No.4 and 5 of the Table of the impugned Valuation Ruling No.1736/2023 dated 31-01-2023 are without any proper survey and working by the respondent department and also not consulted with them.



5. On the other hand, the departmental representative explained that earlier the Customs values of disposable razors and razor parts were determined vide Valuation Ruling (VR) No.1364/2019 dated 29-04-2019 with limited scope. The existing valuation ruling is more than three years old and a representation was received that raw material costs have been increased so the value of disposable razors and razor parts should also be increased. Moreover, the brands which have been given exceptions in the existing valuation ruling may also be added in the upcoming valuation ruling as the same is being mis-invoiced. Accordingly, an exercise has been initiated by this Directorate to re-determine Customs values of disposable razors and razor parts under Section 25A of the Customs Act, 1969. Meetings were convened on 15-11-2022 and 23-11-2022 which were attended by the relevant stakeholders. The issues pertaining to the valuation of the impugned goods were deliberated upon in detail in the meetings. Ninety (90) days' clearance data has been retrieved and the same has been scrutinized. 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) of the Customs Act, 1969. The importers/stakeholders were requested to submit import-related/supportive documents to enable this office to determine the correct customs values. However, no substantial documents were submitted by anyone proving that the transactional values declared were correct which are essentially required in the process of determination of customs values of any imported goods into Pakistan. Finally, on the basis of available data/information collected and exercise conducted, the value of disposable razors and razor parts has been determined under sub-Section (7), read with Section 25(9), of Section 25 of the Customs Act, 1969, for uniform assessment all over the country vide Valuation Ruling No.1736/2023 dated 31-01-2023 accordingly.

6. The departmental representative (DR) was also 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 values were given. In response, the DR submitted that the values of impugned goods were 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 which revealed that the market survey report was very sketchy and no cash memos were available on the record. There was no visiting card(s) available in the file and even the prices reportedly obtained from different

shops were not recorded separately during the market inquiry. The DR did not substantiate their working for Serial No.4 and 5 of the Table of the impugned Valuation Ruling.

7. On account of the foregoing deficiencies and irregularities, the process of determination of values suffers from procedural impropriety whereas the arguments of the petitioners regarding defective market survey carry weight. After hearing contentions of the appellants, it appears that the Customs values notified for Disposable Razors at Serial No.4 and 5 of the Table of the impugned VR, suffer from procedural impropriety and are accordingly set aside to the said extent only. In addition, the Director, Customs (Valuation), Karachi is hereby directed to undertake a fresh exercise in terms of Section 25A of the Customs Act, 1969 by recourse to the valuation methodology elaborated in Section 25 of the Act ibid so that the Customs values of Disposable Razors at Serial No.4 and 5 of the Table of impugned VR No.1736/2023 dated 31-01-2023 are determined in line with the prevailing international prices of the impugned items. The revision petitions are hereby disposed of accordingly.


(Gul Rehman)
Director General

Registered copy to:

M/s Stanmore Enterprises,
C/O Mr Umer Ilyas Khan Advocate,
Office No.SF-1, 2nd floor, Plot No.17-C, Zamzama Commercial Lane-2,
Phase-V, DHA, Above Noor's Store Building, Clifton, Karachi

M/s AHG (Pvt.) Ltd.
Plot No.104, Sector 27, Korangi Industrial Area, Karachi

Copy to:

- 1) The Member Customs (Operations/Policy), 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, (Appraisement - West / Appraisement - East/ Appraisement - Port Muhammad Bin Qasim/SAPT/ / 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) Assistant Director (HQ), Directorate General of Customs Valuation, Karachi, for uploading in One Customs & WEBOC Database System.
- 21) Guard File.

