

S B L R 2023 Tribunal 255

[Customs Appellate Tribunal (Karachi)]

*Before: Mr. Abdul Jabbar Qureshi &
Mr. Muhammad Iqbal Bhawana, Members*

Brands Unlimited (Pvt.) Limited---Appellant

versus

Director & another---Respondents

Customs Appeal No. K-130 of 2022 decided on 6th September, 2022

A) **Customs Act, 1969---Section 25, 25A & 25D---** Respondent No.1 has chosen sub section (7) for determination of value by setting aside previous three methods of valuation viz. transaction value method, identical goods method and similar goods method. The deductive value method or sometimes known as market inquiry method is used to determine the value by conducting a local market inquiry and working it back to arrive at Customs value. The provisions of sub-section (7) of Section 25 pertaining to Deductive Method lay down that the Customs value of the imported goods shall be based on the unit price as 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. The Ruling on the one hand does not divulge the details of the market inquiry conducted by the concerned officials of the Valuation Directorate nor does it share the outcome of such inquiry. Further, the Ruling does not base its finding on greatest aggregate quantity which is the pre-requisite for application of this method of valuation---**Observed;** the determination of value has been done in the Ruling as per two categories of brands. High-End and Low-End. The basis for such categorization has not been given in the Ruling. The Appellant's brand 'Lakme' is either a low end brand or high end brand has to be justified on certain touchstones, which are missing in the impugned Ruling. No parameters or criteria for classifying

the subject brand into High End category has been given by the Respondents---Also observed; that a single value has been fixed for high end brands imported from all origins. This again is a clear violation of Section-25 of the Customs Act, 1969 and in complete deviation---Consequently; impugned Valuation Ruling as well as the Order-in-Revisions are bad in law, contrary to the provisions of Section 25, 25A and 25D of the Customs Act, 1969 and the rules framed there under, hence require to be quashed---As a result; Appeal was allowed and impugned Valuation Ruling and the impugned Order-in-Revision to the extent of the present Appellant was set aside. [P-260 & 261]A

Mr. Ramish, Advocate present for the appellant.

Mr. Shankar Lal, VO present for the respondents.

Date of hearing: 22nd June, 2022

JUDGMENT

MR. MUHAMMAD IQBAL BHAWANA, MEMBER TECHNICAL-III, KARACHI: By this judgment, we intend to dispose of above mentioned Customs Appeal filed by appellant against Order-in-Revision No. 39/2021 dated 26.10.2021 passed by Director General of Customs Valuation, Karachi against Valuation Ruling No.1374/2019 dated 20.05.2019 passed by the Director, Valuation, Custom House, Karachi.

2. Brief facts of the case are that a Valuation Ruling bearing No. 1374/2019 dated 20.05.2019 has been issued by Respondent No. 1. Through this Valuation Ruling erstwhile Valuation Rulings 535-536/2013 dated 09.01.2019 had been superseded.

3. The Appellant is the sole importer of Lakme brand cosmetic items. In the erstwhile Ruling viz.535-536/2013 dated 09.01.2019 the cosmetics items with the brand name 'Lakme' was not included meaning thereby the said cosmetics products of the said brand were subject to assessment as per transaction value under Section-25(1) of the Customs Act, 1969.

4. Through the impugned Valuation Ruling viz. 1374/2019 dated 20.05.2019 two categories of brands have been introduced viz. High-End Brand and Low-End Brand. Lakme brand has been listed among the High-End Brands and the values have accordingly been determined at a higher slab from all origins.

5. Being aggrieved by the said Ruling, the Appellant preferred a Revision Respondent No. 2, who vide impugned Order-in-Revision 39/2021 dated 26.10.2021 decided the matter in the following lines:-

“6. After listening to the detailed discussion/arguments of both the parties and perusal of the case record, it is apparent that the Valuation Department had duly taken the stakeholders on board while issuing the impugned Valuation Ruling. Due to the wide variation in the price-range of different cosmetics, especially on account of their brand names, the approach to valuation of such goods, has historically relied upon broad categorization into high/medium and low priced brands and thereafter subjecting such categories to the statutory methodology provided for in Section-25 of the Customs Act, 1969. The petitioners were given sufficient time and opportunity to give their inputs including documentary proof/evidence to substantiate their transaction value but they failed to provide any such proof or fact in support of their declared values. In terms of Rule 109 of the Customs Rules, read with Section 187 of the Customs Act, the onus to shed the burden of proof lies on the importer, which apparently they failed to do.

7. From foregoing discussion, the department recourse to determine the Customs values in terms of Section-25A of the Customs Act, 1969 has been concluded within the legal domain of Section-25 of the *ibid* Act, and therefore, the petitions are accordingly rejected.”

6. The Appellant preferred this appeal before us against the impugned Order-in-Revision on the following grounds:-

- i. At the time of conducting exercise prior to issuance of impugned Valuation Ruling, the Appellant was not made party to the proceedings. Hence, the Ruling had been issued at the back of the Appellant, which is against the principle of natural justice and fair play as enshrined under Article 10A of the Constitution of Pakistan.
- ii. Appellant is the sole importer of Lakme brand cosmetic items, which is a low-end brand, therefore, the only data available with the Customs is that of appellant. However, by putting the subject brand among the High-End brand products, Respondent No.1 has dragged the appellant to high inconvenience and has paved the way for ouster of the Appellant and Lakme brand goods from the market.
- iii. Provisions of Section-25 have not been followed by Respondent No.1 while issuing the impugned Valuation Ruling.
- iv. Respondent No. 2 has also failed to appreciate this very aspect while passing the impugned Order-in-Revision. He has also not taken into consideration the argument of the Appellant that categorization in terms of market reputation and brand value is not given under the law.
- v. Respondents have failed to appreciate that Lakme is a brand of cosmetic of Unilever that is specially and exclusively designed for the South Asian countries like Bangladesh, India, Nepal, Pakistan, Sri Lanka. All lake products are manufactured in India only to make sure that the people of the sub-continent nations are provided for the lowest cost possible. Therefore, keeping Lakme in the table of high end brands are arbitrary and unjustified.
- vi. The cosmetic market is very competitive and the companies are prone to use different brands for different market/consumer segments instead of higher, middle or lower and brands. Further, the total list of brands mentioned in the impugned Valuation Ruling is over 100 brands, that do not even have any cosmetic portfolio for example, Aqua Di Parma, CNG, Blut Touch etc. Therefore, it is evident that the impugned Valuation Ruling has been made arbitrarily and without application of legal mind and logic.
- vii. Further, Pakistani brands White Gold and Zero are included in the High End brand although both the brands have zero presence in the international market, who get their products

- manufactured in China. This shows lack of consideration and application of mind while issuing the impugned Ruling.
- viii. During the pendency of the matter before the Respondents, the appellant had imported a consignment of Lakme brand cosmetic from UAE as per their declared value, however, the same was disputed by the department. The goods were accordingly assessed provisionally under Section-81 of the Customs Act, 1969, upon deposit of security amount PKR 11,060,995/-.
7. The representative from the Respondent department made the argument in support of the impugned Valuation Ruling and the impugned Order-in-Revision and prayed to dismiss the appeal.
8. We have perused the case record, heard both the parties and given due consideration to the facts of the case. The main revolves around the legality of Valuation Ruling 1374/2019 dated 20.05.2019 as well as the impugned Order-in-Revision.
9. Section 25A of the Customs Act, 1969, empowers Collector of Customs or Director Customs Valuation to determine the value of imported goods in light of the provisions of Section 25 of the Act *ibid*. Ever since inclusion of Section 25 in the Customs Act, 1969, in the year 2000 in pursuance of WTO Agreement on Valuation, there have been great developments in the Valuation law in Pakistan with specific reference to its application. The hon'ble superior courts have categorically interpreted various provisions of Section 25 and 25A in the light of the Valuation Agreement and the same have become binding precedents for the subordinate fora. Special reference can be made to Sadia Jabbar case, Good Will Traders Case, Rehan Umer case, Zymotic case etc.
10. A Valuation Ruling issued under Section 25A must adhere to the methods of valuation prescribed under Section 25 of the Customs Act, 1969. The first and foremost method of valuation is the transaction value method, which is the price paid or payable on goods sold for export to importing country (here Pakistan). If transaction value is not available or there are doubts about this value, then alternate secondary methods of valuation given under sub section (5), (6), (8) and (9) can be adopted in a sequential

manner to arrive at a fair Customs value. The impugned Valuation Ruling in its para-5 give following logic for determining value under Section-25(7):-

11. A bare perusal of the above para reveals that Respondent No.1 has chosen sub section (7) for determination of value by setting aside previous three methods of valuation viz. transaction value method, identical goods method and similar goods method. The deductive value method or sometimes known as market inquiry method is used to determine the value by conducting a local market inquiry and working it back to arrive at Customs value. The provisions of sub-section (7) of Section 25 pertaining to Deductive Method lay down that the Customs value of the imported goods shall be based on the unit price as 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. The Ruling on the one hand does not divulge the details of the market inquiry conducted by the concerned officials of the Valuation Directorate nor does it share the outcome of such inquiry. Further, the Ruling does not base its finding on greatest aggregate quantity which is the pre-requisite for application of this method of valuation. A

12. The determination of value has been done in the Ruling as per two categories of brands. High-End and Low-End. The basis for such categorization has not been given in the Ruling. The Appellant's brand 'Lakme' is either a low end brand or high end brand has to be justified on certain touchstones, which are missing in the impugned Ruling. No parameters or criteria for classifying the subject brand into High End category has been given by the Respondents.

13. We also observe that a single value has been fixed for high end brands imported from all origins. This again is a clear violation of Section-25 of the Customs Act, 1969 and in complete deviation from the directions and guidelines given in Sadia Jabbar case by the hon'ble Sindh High Court (PTCL 2014 CL 537). Hence, fixing one value for all origins is not tenable under the valuation law.

14. Respondent No. 2 while passing the impugned Order-in-Revision has failed to appreciate the above discussed deficiencies in the impugned Valuation Ruling, which renders the impugned Order-in-Revision untenable under the law.

15. In view of the foregoing deliberation, we are of the considered view that the impugned Valuation Ruling as well as the Order-in-Revisions are bad in law, contrary to the provisions of Section 25, 25A and 25D of the Customs Act, 1969 and the rules framed there under, hence require to be quashed. A

16. In light of the above observations, we allow this appeal and set aside the impugned Valuation Ruling and the impugned Order-in-Revision to the extent of the present Appellant. The security/bank guarantee of PKR 11,060,995/- deposited by the Appellant at the time of the provisional release of their consignment is directed to be returned/refunded to the appellant forthwith.

17. This judgment consists of five (05) pages and each page bears my initials as well as official seal with full signature on the last page.

S B L R 2023 Tribunal 261

[Provincial Ombudsman Sindh]

[Protection against Harassment of Women at the Workplace]

Before: Mr. Justice (R) Shahnawaz Tariq

Ms. Najma Malik---Complainant

versus

Sher Muhammad Jatoi---Accused

Complaint No: 31 (KHI-S)/2019 decided on 31st October, 2022