GOVERNMENT OF PAKISTAN
DIRECTORATE GENERAL OF CUSTOMS VALUATION
CUSTOM HOUSE KARACHI

File No. DG (V)/Val.Rev/859/2016 Dated: September 8, 2016

Order in Revision No. 240/2016 under section 25-D of the Customs Act, 1969 against Valuation Ruling No.908/2016 dated 12-08-2016

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. Ahsan Traders & Others .... PETITIONERS

VERSUS

Director, Customs Valuation, Karachi .... RESPONDENT

Date(s) of hearing	06-09-2016 & 07-09-2016
For the Petitioners	Mr. Karamat Awan for M/s Pakistan Electronics Goods Importers Association. Mr.M. Rizwan Irfan for M/s Karachi Electronics Dealers Association, Karachi Mr. Asif Naveed Sardar Azhar Mr. Imran Qazi Mr. Jasim Siddiqui Mr. Babar M. Mr. Danish Farooq Mr. Saleem Memon Mr. M. Yaseen, KCC&I Mr. Munaf Mr. Abdul Aziz Mr. Amir Shahzad
For the Respondent	Mr. Abdul Majeed, Assistant Director Mr. Safdar Abbas, Principal Appraiser

This revision petition was filed under section 25-D of the Customs Act, 1969 against customs value determined vide Valuation Ruling No.908/2016 dated 12-08-2016 issued under

section 25-A of the Customs Act, 1969, inter alia on the following grounds:

2. That the Applicant is a sole proprietor of M/s Rawalkash Sadozai International and is engaged in the business of import of merchandize of varied nature and their onward marketing in the local market for the past several years. The applicant is an Income Tax payee and enjoys credibility in the commercial circle in general and in the circle of importers in particular.

3. That the applicant being active importer has been importing mobile accessories mainly from China without any hindrance and or any allegation of under invoicing and mis-declaration.

4. That the Director Valuation has issued Valuation Ruling No. 908/2016 dated 12.08.2016 ostensibly under Section 25A of the Customs Act, 1969, illegally and in violation of Section 25A and superior Courts Judgments pronounced in a number of cases.

5. That the impugned valuation ruling has enhanced the values of mobile accessories unilaterally and illegally, in some cases the value of the mobile accessories has been increased more than 900 per cent, which is unimaginable and shows the highhandedness of the Authority who has issued the impugned Valuation Ruling. The Valuation ruling No. 908/2016 dated 12.08.20 16 has been issued in violation of Section 25A of the Act, 1969 and it was issued unilaterally and without hearing the stakeholders. The Method adopted in determining the impugned V.R is in utter violation of under Sec. 25 and 25A of the Customs Act, 1969, and as interpreted in Sadia Jabar case as well as in Goodwill Traders case reported in 2014 PTD 176.

6. It seems that the Director has issued the impugned Valuation Ruling on the basis of so-called valuation guidance/reference dated 23.07.2016, against which various Petitions including CP D 4296/2016 and Cp-D 4297/2016 were filed challenging the so-called valuation guidance/reference dated 23.07.2016. The Hon'ble High Court fixed the case for hearing for 22.08.2016, directing the department to file the comments. It was in such situation that the Director was compelled to hurriedly fix the value of Mobile Accessories illegally and in violation of Sec 25 and 25A of the Customs Act, 1969, and as interpreted in Sadia Jabar case as well as in Goodwill Traders case reported in 2014 PTD 176.

7. If we perused the impugned Valuation Ruling, it will be transpired that the order is stereotype order and almost the same wording is used in every Valuation Ruing. It appears that the Director has issued impugned VR ostensibly under 25(9) of the Customs Act, which is a Fall Back Method, but he has completely failed to appreciate that how the preceded method given under section 25 of the 1969 Act were not applicable. The impugned Valuation Ruling appears to have been issued on the basis of international prices gathered through so-called online sources which is in utter violation of under Sec. 25 and 25A of the Customs Act, 1969 and Customs Rules, 2001 and superior Courts Judgments Pronounced in a number of cases.

8. It is also important to mention here that through the impugned Valuation Ruling, unit of measurement as assigned in PCT is changed from KG to PC. The unit of measurement of items from serial No. 6 to 11 of the impugned valuation ruling has been changed to per piece illegally, whereas the appropriate unit of measurement as per respective PCT is in Kg.

9. According to Section 25A of the Customs Act, 1969, the concerned officer may issue a

valuation ruling but he is required to determine the customs value and not to fix the value. The determination is a multi-step exercise at each stage of which there has to be a proper application of mind by the concerned officer. It is, therefore, necessary that the Ruling should contain sufficient details to show that Section 25A has been properly applied. And without visible exercise reflected on record, a Valuation Ruling cannot be said to have issued legally as provided in Section 25A and interpreted by higher judiciary.

10. In this regard some of the judgments' of the Higher Judiciary are quoted herein below for ready reference:

Sadia Jabar case at para 17 page 13

"Therefore, on its proper interpretation, the change made to sub-section (10) has only a limited ambit. It is only on rare occasions, and in exceptional circumstances and/or for compelling reasons that the appropriate customs officer may deviate from the principle of sequential application. Otherwise the invariable practice must be to adhere to the said principle in the strict sense described in Para 12 supra. Secondly, and perhaps more importantly, even if the Customs officer is now to be regarded as having some discretion in the matter, it is difficult to see how he would be able to exercise it. The reason is that as noted above, each of sub section (5), (6), (7), (8) and (9) expressly opens with words that make it applicable only if " the customs value of the imported goods cannot be determined under" the preceding applicable subsection. These words lock-in the principle of sequential application into the very structure of section 25 ..... In our view, therefore, the changes made to subsection (10) have made no substantive change, and the principle of sequential application continues, as before, to apply to section 25 in full rigor.

FACO TRADING CASE (2013 PTD 825) para 12 (from line 10)

"Presently, the valuation Officer may adopt any of the method provided in section 25 of the Customs Act, 1969, however, it does not mean that valuation officer has unfettered powers to adopt any method on the basis of pick and choose. In fact the valuation officer has to keep in view the interest of the importer as well. He has discretion to follow any method provided in subsections (1), (5), (6), (7) or (8). However, the method adopted must not be to the detriment of the importers and for that purpose for excluding the other methods, reasons must be given. Similarly, the reasons for adopting a particular method are also required to be given, so it becomes clear to the importer that the order is in the public interest and not to the detriment of the importer."

Rehan Umar (2006 PTD 909) para 18

"For the foregoing reasons it is held that different methods of valuation 'provided in section 25 of the Customs Act, 1969 and the Customs Rules, 2001 are required to be applied in a sequential order and without visible exercise reflected on record no resort can be made to subsection (5) and likewise without similar exercise under subsection (5) no resort can be made to subsection (6). In the same manner without an exercise in writing

on record under subsection (6) no resort can be made to subsection (7) and similarly to subsections (8) & (9). This exercise is to be made in each case separately."

11. Again at para 8 of the impugned Valuation Ruling an illegality has been committed which renders the same to nullity in the eyes of law. It purports to apply the invoice value (i.e. transaction value) if it is higher than the value determined in the ruling. This is impermissible under Section 25A. Here again the petitioners are fortified by the judgment in the case of Sadia Jabar (relevant paras 24, 25 26,). This aspect is also considered in M/s Goodwill Traders (2014 PTD 176) in para 13 (from line 4) in the following words:

"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 section (9) of section 25."

12. In view of above, you are therefore, requested to revise the impugned valuation ruling keeping in view above characteristics and issue the fresh valuation ruling and release our consignment at the declare value."

13. The respondent department was asked to furnish comments to the arguments submitted by the petitioner in the case. Parawise comments on the petition are given as under:

14. Brief facts of the case are that it has been brought to the notice of this Directorate General that Mobile Accessories are being imported at heavily under-invoiced values and the Customs values of Unbranded Mobile Battery /Mobile battery charger were determined under Section 25-A of the Customs Act, 1969 vide Valuation Ruling No.374/2011 dated 14-09-2011 are also on lower side. This Directorate General under took exercise to determine the customs values of Mobile Accessories in the light of existing international market prices. Therefore an exercise to determine customs values of Mobile Accessories in terms of Section 25-A of the Customs Act, 1969 was initiated.

15. Meeting for the determination of customs values of Mobile Accessories with stakeholders was scheduled on 26-05-2016 and 08-06-2016. But no one appeared nor was any written reply received.

16. For the purpose of determination of customs value valuation methods given in Section 25 of the Customs Act, 1969 were followed to arrive at customs values of mobile accessories in sequential manner. Transaction value method provided in Section 25 (1) was found inapplicable because the requisite information was not available. Identical / similar goods value methods provided in Section 25(5) & (6) were examined for applicability to the valuation issue in the instant case which provided some reference values of the subject goods but the same could not be exclusively relied on due to wide variation in declared values of subject goods. Thereafter, market inquiries as envisaged under section 25(7) of the Customs Act, 1969, were conducted. During the local market enquiry, it was observed that the mobile accessories being sold in two different categories one is low end brands and second is branded like Creative, Bosch, Logitech,

Philips, Toshiba, Sony, Beats, Samsung, Nokia. LG, Canon, Q-Mobile & Yamaha. There were considerable variation in the market prices of the subject goods, depending on the quality and the location of the market. Online values of subject goods were also obtained. All the information so gathered was evaluated and analyzed for the purpose of determination of customs values. Consequently, the customs values of low-end brand and branded mobile accessories were determined under Section 25(9) of the Customs Act, 1969 vide Valuation Ruling No. 908/2016 dated 12-08-2016.

17. Para wise Comments

Para (1): Need no comments being introduction of the importers.

Para(2): Denied. It has been brought to the notice of this Directorate General that mobile accessories have been imported heavy under-invoiced values and imports data of the relevant period were retrieved and found some mobile accessories were imported @US$ 0.05/pc.

Para(3): Denied. It is submitted that the customs values are being determined under section 25 read-with Section 25A of the Customs Act, 1969. For uniform assessment of imported goods at all customs stations across the country.

Para(4): Denied. The Valuation Ruling No.908/2016 dated 12-08-2016 was issued after due process under section 25A of the Customs Act, 1969 for uniform assessment of imported goods at all customs stations. The stakeholders' meetings were convened on 26-05-2016 and 08-06-2016. The said letters were circulated to a number of importers, trade bodies including Federation of Pakistan Chamber of Commerce and Industry, Chambers of Commerce and Industry of Lahore and Karachi and clearance Collectorates. This wide circulation for stakeholders meeting was made with the sole purpose that maximum stakeholders may participate so that their input and feedback is duly considered while determining customs values under section 25A. Non participation of one or other importers does not vitiate the validly issued valuation ruling.

Para(5): Denied. The existing valuation ruling is a speaking one and clearly reveals that all valuation methods as described in Section 25 of the Customs Act, 1969 were exhausted and finally Customs values were determined under section 25 (9) of the Customs Act, 1969. The said ruling does not in any way contradicts any instructions or orders issued by the superior courts.

Para(6): Denied. It is submitted that the customs values are being determined under section 25 read-with Section 25A of the Customs Act, 1969, for uniform assessment of imported goods at all customs stations.

Para (7): Denied. The petitioners' contention that the unit of measurement as assigned in PCT is changed from KG to PC is not correct. Pakistan Customs Tariff does not

mention unit of measure. The unit of measure have separately been issued by the Federal Board of Revenue through a Customs General Order.

Para (8-9): Denied. The existing valuation ruling is a speaking one and clearly reveals that all valuation methods as described in Section 25 of the Customs Act, 1969 were exhausted and finally customs values were determined under section 25 (9) of the Customs Act, 1969.

Para (10): Denied. The Director (Valuation) is authorized / empowered by statute to determine the value of any goods or category of goods, exported out of and imported into Pakistan. Furthermore under the SRO 494(I)/2007 dated 09-06-2007 issued by the Board, in terms of Section 3E of the Customs Act, 1969, promulgated vide Finance Act, 2007, the functions and powers of the officers of Directorate General of Valuation, were enumerated in terms of Section 3D ibid, as promulgated vide Finance Act, 2007.

PRAYER

18. It is respectfully prayed that petitioners have failed to furnish the corroboratory documents to justify their point of view and the existing valuation ruling No. 908/2016 dated 12-08-2016 was issued in the light of current price trend. Section 25 (1), (4), (5), (6) & (7) were exhausted and finally section 25 (9) was found applicable for determination of customs value of mobile accessories. Accordingly, Honourable Director General may graciously he pleased to set aside the petitions made by the Applicants and maintain the Valuation Ruling No. 908/2016 dated 12-08-2016 issued under section 25A of the Customs Act, 1969.

ORDER

19. I have perused the record of the case and heard in detail the contending parties, i.e., importers, and the department. During the discussion the M/s Electronics Goods Importers Association, Lahore and Pakistan Electronic Merchants Association, Karachi emphasized that the impugned items were highly smuggling prone goods. They claimed that owing to this valuation ruling survival of importers was at stake, as amount of duty and taxes per container has increased more than four folds. They also alleged that the market survey conducted by the department was irrelevant as it was conducted from retailers, whose profit margins are normally exorbitant especially in this line of business. They, therefore, requested that the survey shall be conducted from wholesale market, i.e., Shahjahan Market at Abdullah Haroon Road, Karachi or Hall Road, Lahore. They also agitated that after issuance of valuation ruling No. 374/2011 dated 14-09-2011 of mobile batteries, the legal imports of mobile batteries substantially decreased. They also stated that the department has taken average of mobile accessories whereas, in Pakistan primarily low quality mobile accessories are imported which are much cheaper than the branded and better quality accessories. Pakistan's market of mobile accessories is very price sensitive and any increase would affect import trend and result in shift towards smuggling. They also pointed out that local manufacturing of mobile accessories was non-existent in the Pakistan. The importers vehemently stated that majority of import of mobile accessories are of low end

brands from China and that they would request to reconsider values of B category of Chinese origin low end mobile accessories.

20. The department, however, defended its position by claiming that repeated market surveys were conducted and samples of different accessories were actually bought. The samples were presented during the hearing by the department with the claim that worked out values truly reflect customs values. The department, while presenting samples, claimed that all types of mobile accessories were abundantly available in the market, and importers' claim regarding only lowest category imports was factually incorrect. The department also contended that online values were obtained from different suppliers which verifies department's stance that values determined vide impugned valuation ruling were based on averages taken from lower end mobile accessories as has been shown in the Column 6 of the Table regarding Chinese origin accessories of low end brands.

21. The importers strongly asserted that after the issuance of the impugned ruling, the clearances have been totally halted. It was therefore, decided during the hearing conducted on 06-09-2016 to re-survey from the wholesale market and reconvene proceedings again on 07-09-2016. The fresh survey was conducted by different teams than those who had originally surveyed the markets. Actual buying from the wholesale market was made by new teams. It was found that all qualities / price items were available in the market. As the importers had agitated that the profit margins given by the department for various stages, were less than market realities, selling price of importers, as provided by the Electronics Goods Importers Association, Lahore, on its letter head, was also relied upon. The importers had also presented customs cleared transactions, before issuance of valuation ruling, where assessment were made on very low side, agitating that such huge rise in customs values was unbearable for those importers who were trying to survive on legitimate trade.

22. During the proceedings, importers also agitated that PCT of different items have not correctly been reflected which would cause difficulties in the clearance of their cargo. The DR defended their point of view on the ground that the Customs values determined in the ruling are for the descriptions and specifications as mentioned in the Table of the ruling and HS codes are mentioned for illustrative purposes only so that VR values are made accessible to the assessing officers and that this has also been enumerated in Para 11 of the Ruling.

23. Keeping in view that no direct evidences of transaction values are available or verifiable, the working presented by the importers, and the results of re-surveys from the whole sales markets, the customs values of low end brands of Chinese origin (Category-B) as appearing in Column (6) of Para 6 of the impugned Valuation Ruling No. 908/2016 dated 12-8-2016 are re-determined in following terms along with appropriate HS Codes in terms of section 25-D read with section 25A (3) of the Customs Act, 1969 and Valuation Ruling No. 908/2016 dated 12-8-2016 is modified accordingly from the date of its issuance.

S. No.	Description of Goods	PCT	Proposed PCT for Weboc	Customs values in US$/PC
1	Mobile Charger with Wire	8504.4020	8504.4020.1000	**0.24**
	Mobile Charger without Wire 500mA		8504.4020.1100	**0.17**
	Mobile Charger without Wire 2A		8504.4020.1200	**0.24**
	Mobile Charger without Wire 3A		8504.4020.1300	**0.50**
2	Car Charger (Single Pin)	8504.4020	8504.4020.1400	**0.20**
3	Car Charger (Multi Pin)	8504.4020	8504.4020.1500	**0.26**
4	Desk Top Battery Charger	8504.4020	8504.4020.1600	**0.18**
5	Power Bank 2600mAh	8507.8000	8507.8000.1000	**0.75**
	Power Bank 4000mAh to 10000mAh	8507.8000	8507.8000.1100	**2.00**
6	Selfie Stick without Remote	8529.9090	8529.9090.1000	**1.20**
7	Selfie Stick with Remote	8529.9090	8529.9090.1100	**2.10**
8	Mobile Battery	8506.8000	8506.8000.1000	**0.30**
9	Casing / Pouch (Plastic/ Artificial Leather)	8529.9090	8529.9090.1200	**0.10**
10	Casing / Pouch (Pure Leather)	8529.9090	8529.9090.1300	**0.60**
11	Glass Protector	8529.9090	8529.9090.1400	**0.12**
12	Card Reader (Single Slot)	8523.8090	8523.8090.1000	**0.08**
	Card Reader (Multi Slot)	8523.8090	8523.8090.1100	**0.25**
13	Mobile Hand free	8518.3000	8518.3000.1000	**0.20**
14	Mobile Headphones	8518.3000	8518.3000.1100	**1.75**
15	Ear Phone	8518.3000	8518.3000.1200	**0.08**
16	Mobile Battery of category-A (China origin) at Sr.No.7 of VR 908/2016	8506.8000	8506.8000.1100	**0.80**

24. Being identical on facts and law points, this order shall apply mutatis mutandis to the following (29) petitions.

S #	Petitioners Name	S #	Petitioners Name
1	M/s Moqadas Enterprise	22	M/s Murad Electronis
2	M/s R. H. Enterprise	23	M/s Star Communication
3	M/s M.F Enterprise	24	M/s Dawood International
4	M/s Q-Star Trading	25	M/s Digital Site
5	M/s Rais Enterprise	26	M/s Awan Services International (Pvt.) Ltd.
6	M/s Yahoo Computers	27	M/s Sharjah International
7	M/s Bukhari International	28	M/s Muhamamd Bashir & Sons
8	M/s Royal International	29	M/s A. A. Mobile Accessories
9	M/s Aniqa Enterprise		

10	M/s Rawalkash Sadozi International, **C/O** Ghulam Shaikh & Co, Adv.
11	M/s Electronics Goods Importers Ass.
12	M/s Aziz Traders
13	M/s FBU Enterprise
14	M/s Hasan Traders
15	M/s Huzaifa International
16	M/s A. T. MAL
17	M/s A.T. Alpha
18	M/s Muhammad Ibrahim & Co.
19	M/s AMB Traders
20	M/s Ali Traders
21	M/s Multi Electronic

08/9/16

(Abdul Rashid Sheikh)
Director General

DIRECTORATE GENERAL OF CUSTOMS VALUATION KARACHI

Registered Copy to:

S #	Petitioners' Name & Address	S #	Petitioners'Name & Address
1	M/s Ahsan Traders	19	M/s Murad Electronis, Shop No 46, Rafiq Electronic Market, Sohrab Katrak Road, Saddar, Karachi.
2	M/s R. H. Enterprise		
3	M/s M.F Enterprise		
4	M/s Q-Star Trading		
5	M/s Rais Enterprise	20	M/s Star Communication, Office # 214, 2nd floor, Shajan Electronic Market, Opp, Hashoo Centre, Abdullah Haroon Road, Saddar Karachi.
6	M/s Yahoo Computers		
7	M/s Bukhari International		
8	M/s Royal International		
9	M/s Aniqa Enterprise		
10	M/s Rawalkash Sadozi International, **C/O M/s Ghulam Shaikh & Co,** Advocates, B-15, Jason V.I.P Apartment, Clifton, Block 7, Near Boat Basin, Karachi	21	M/s Dawood International, House No 77, Street # 19, Qaddafi Colony, Badami Bagh, Lahore,
		22	M/s Digital Site, Shop # 7/8, 1st floor, Feroze Din Centre, Lahore
11	M/s Electronics Goods Importers Association, 3rd floor, Rehman Centre, Adjacent	23	M/s Awan Services International (Pvt.) Ltd, 3rd floor, Rehman Centre, Adjacent Business Centre, 16-A,

	Business Centre, 16-A, Hall Road, Lahore.		Hall Road, Lahore.
12	M/s Aziz Traders, Shop, 5 1st floor, , Shajan Electronic . Centre, Abdullah Haroon Road, Saddar Karachi	24	M/s Sharjah International, Shop # 13-14, 1st floor, Usama Centre, Hall Road, Lahore.
13	M/s FBU Enterprise, 5-B, Ist floor, Ikhlaq Centre, 16-A, Hall Road, Lahore.	25	M/s Muhamamd Bashir & Sons, Shop No-3, 3rd floor, Usama Centre, Hall Road, Lahore.
14	M/s Hasan Traders, Shop 4 GM, Sharah-e-Quaid-e-Azam, 45- The Mall Lahore.	26	M/s A. A. Mobile Accessories, Shop No 11, Feroze Din Centre, Kacha Hall Road, Lahore
15	M/s Huzaifa International, Shop No-F2-F3,Usama Centre, Hall Road, Lahore.	27	M/s AMB Traders, Ahmad Mobiles 6th Floor, Usama Centre, Hall Road, Lahore.
16	M/s A. T. MAL, 17-Main Hall Road, Near Mezan Bank, Lahore	28	M/s Ali Traders, Business Centre, 16- Hall Road, Lahore.
17	M/s A.T. Alpha, Business Centre,1st floor, Hall Road, Lahore.	29	M/s Multi Electronic, Chaudhary Centre, 16 - Hall Road, Lahore.
18	M/s Muhammad Ibrahim & Co., 339, Karim Block, Allama Iqbal Town, Lahore.	30	M/s Moqadas Enterprise, 20-B, Sh. Rehman Market, 16- Hall Road, Lahore.

Copy to:

1. Member (Customs), FBR, Islamabad.
2. Chief Collectors Customs Appraisement (South)/Enforcement, Karachi/ (North) Islamabad/(Central) Lahore.
3. Collector, MCC Appraisement (East)/ Appraisement (West)/Port M. Bin Qasim/ Preventive, Karachi.
4. Collector, MCC, Appraisement/Preventive, Lahore/Quetta/Peshawar/Faisalabad/ Sambrial/Multan/Hyderabad/Islamabad/Gilgit-Baltistan/Gawadar.
5. Director, Customs Valuation, Karachi/Lahore.
6. Deputy Director (WeBOC/Database), Customs Valuation, Karachi for uploading in One-Customs and WeBOC database.
7. Asstt. Director (Review), Karachi.
8. All Deputy/Assistant Directors (Valuation)
9. Guard File.