

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI BENCH - I
3RD FLOOR, JAMIL CHAMBERS
SADDAR, KARACHI

Before: Mr. Mohammed Yahya, Member (Technical - I), Karachi

Customs Appeal No.K-538/2015

M/s. A. G. Packages Co.

Through: Sardar Muhammad Ishaque, Advocate,

Pot No.87-S, Suite No.302, 3rd Floor,

Al-ghafoor Chalet, Illama Iqbal Road,

Off. Khalid Bin Walid Road,

Karachi.

Appellant

Versus

The Additional Collector of Customs,
Model Collectorate of Customs (Adjudication-I),
4th Floor, Custom House,
Karachi.

The Collector of Customs,
Model Collectorate of Customs (West),
Custom House,
Karachi.

Respondents

Mr. Sardar Muhammad Ishaq, Advocate, present for the appellant.

Mr. Ghulam Mustafa, A.O, present for the respondent.

ATTESTED

Date of hearing: 12.12.2015

Date of Order: 15.12.2015



Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order I intend to

dismiss the Customs Appeal No.K-538/2015 filed by M/s. A. G. Packages Co.

Through: Sardar Muhammad Ishaque, Advocate, Pot No.87-S, Suite No.302, 3rd

Floor, Al-ghafoor Chalet, Illama Iqbal Road, Off. Khalid Bin Walid Road, Karachi,

under Section 194-A of the Customs Act, 1969, against Orders-in-Original

No.324690-12022015 dated 12.02.2015 passed by the Additional Collector of

Customs (Adjudication-I), Karachi.

2. Brief facts of the case as per Show Cause Notice No.CN-319480-23012015 dated 23.01.2015, that it has been reported by MCC Appraisement-West, Karachi, that the importer M/s. A.G. Packaging Co. electronically filed Goods Declaration No.KAPW-HC-107585-14-01-2015 and declared to contain Miscellaneous items under respective PCT heading at a declared invoice value US\$6,173.05 declaring the total weight 18,500 Kgs. The importer determined his liability of payment of applicable duties & taxes in terms of Section 79(1) of the Customs Act, 1969, through his clearing agent M/s M.A. International License No.KCUS-2154.

3. And whereas, in order to check as to whether the importer has correctly paid the legitimate amount of duty and taxes, the under reference GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred to examination for confirmation of description, quantity and other physical attribute of the goods. On examination of description of item No. 10 was found as "Toyo Power Auto Fan Belt". Part No.RECMF-8490, 6365, 8580, 8720 Quantity 13,358 Kg as against declared description "V. Belt 422 Pkgs' UOM shown in Pkgs. The importer declared PCT heading 4010.3190 with benefits of FTA @ 16%. Whereas, the goods are classifiable under PCT heading 4010.3210 @ 35% without benefits of FTA. Examination report is re-produced as under:-

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"Mis-declaration of PCT of Item No.10. No Document Found.

Examined the Consignment in the Light of GD.

Description: Ladies BRA Qty: 1009 Kgs Approx



- (1) Ladies Underwear Qty: 44400 pcs, = 690 Kg, Net Approx. (1A)
- (2) Metal Arch Clip for File Folder. Item No: Wc120a4r. Qty: 230 Kgs Approx.
- (3) Printed Sticker (Whitening Herbal Beauty Double Action, 500 mleultra, Olay Gold 12m, 500mle. "Trade Mark Spa" Printed On Sticker) Qty:120kg Net Approx
- (4) Tie With Cufflink. Qty: 1120sets = 155kgs Approx.
- (5) Empty Plastic Bottle & Cap. Qty: 640kg Net Approx
- (6) Empty Glass bottle for nail polish with cap and brush (Modern printed on bottles). Qty: Item No: 2967-1. Qty: 460 Kg approx.

- (7) Trolley School Bags made of coated textile fabric. Qty: 150 Kgs Approx.
- (8) Ceramic Mug. Qty: 1250 Kgs per net Approx.
- (9) Metal pant hook Qty:180 Kgs Approx
- (10) Toyo power auto Fan belt Part No: RECMF 8490, 6365, 8580, 8720, Qty: 13358 Kgs Approx
- (11) Children Suction Bowl set with Spoon and Fork made of PP. item No:BL-1073, Brand Nice Baby, Qty:55 Kgs Approx.
- (12) PP feeder (children training) cup 3 In 1 Item No.SH-903, Qty 70 Kgs Approx.
- (13) Children soother with chain, Qty: 38 Kgs Approx.
- (14) Nail polish 15Gram, Qty: 27 Kgs Net Content
- (15) Memory Card 8GB, Brand KINGSTON, Qty: 2000Pcs
- (16) Tight with Shirts, Qty: 5 KGS Approx
- (17) Frock, Qty: 4 doc = 30 Kg.
- (18) Soothing and Moisture Aloe vera 92%, Body Gel 300Ml. Origin Not Shown, Qty: 14.4Kgs
- (19) Polyester Blanket, Qty: 30Kgs Approx Garment Material Accessories. Origin China and not shown 100% Weight Found: 19960 Kgs Gross vide KICT slip No.748722 dated 16-01-2014.

4. Whereas, the aforesaid facts prove that the importer has deliberately concealed / mis-declared the description of the Goods to take an attempt for getting the goods assessed on suppressed value and weight for evading legitimate amount of taxes to the tune of Rs.19,85,075/=-, willfully and with malafide intention.

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Whereas, the importer M/s A.G packaging Co. and M/s M.A International are, therefore; indulge in deliberately concealing the description of the goods in order to take an attempt of getting the goods assessed on suppressed value and payment of duty/ taxes to the tune of Rs. 19,85,075/- willfully and with malafide intention. The act of the importer and clearing agent attracts the provisions of Section 32(1), (2), 79(1) of the Customs Act, 1969, read-with SRO.499(I)/2009 dated 13-06-2009, Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001, punishable under clause (1),(14) of Section 156(1) of the Customs Act, 1969. Therefore, in the light of above

reported facts the Importer and the Cleaning Agent are called upon to show cause as to why the goods should not be confiscated and penal action warranted under aforementioned provisions of law may not be taken against them.

6. On the basis of Show Cause Notice No.CN-319480-23012015 dated 23.01.2015, the Collector of Customs (Adjudication-I), Karachi, passed an Order-in-Original No.324690-12022015 dated 12.02.2015. The operative part of this order is reproduced as under:

"I have gone through the case record and considered arguments of the representative of the respondent and the department. The respondent imported the consignment containing miscellaneous items declared under respective PCT heading. On examination the description of item No.10 was found as "Toyo Power Auto Fan Belt" as against declared description "V-Belt 422 Packages" (UOM Shown in Pkgs). The importer declared PCT heading 4010.3190 with benefit of FTA @ 16%, while the goods are classifiable under PCT heading 4010.3210 @35% without benefit of FTA. Under Section 79(1) of the Customs Act, 1969 the importer is responsible to give correct declaration of the goods mentioning therein complete and correct particulars of the consignment and to pay duty and taxes as per declaration. Hence, the charge leveled in the show cause

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notice stands established. I therefore, order for confiscation of the offending goods under Section 156(1) clause 14 read-with Section 32 (2) of the Customs Act, 1969. However an opinion under Section 181 of the Customs Act, 1969 is given to the Importer to redeem the confiscated goods on payment of 35% Redemption Fine Rs.10,40,107/- (Rupees One million Forty Thousands one hundred and seven Only) in terms of SRO.499(I)2009 dated 13.06.2009 of the value of offending goods as determined by the

department in addition to payment of duty and taxes leviable thereon. A penalty of Rs.1,00,000/- (Rupees One Lac only) is also imposed on the Importer."

7. Being aggrieved and dis-satisfied with the impugned Order-in-Original No.324690-12022015 dated 12.02.2015, passed by the Collector of Customs (Adjudication-I), Karachi, the appellant filed the instant appeal before this Tribunal on the relevant grounds incorporated in the Memo of Appeal which is reproduced as under:

1. That the Appellant is law abiding citizen and Appellant is the responsible businessman by professional in a legal manner and running his business in lawful manner in Pakistan and having commanding a good reputation in the business sector accordingly and always did her job honestly with dedication, sincerity and trustworthily for the entire satisfaction of the business clients keeping in mind the prime interest of national exchequer i.e. local and abroad.

2. That the Appellant has never indulged in activities in derogation of law, they supply their product to maintain all the prescribed record of the Customs and Sales Tax and Income Tax properly and on of liable duty and taxes without fail, honestly, diligently and regularly pay, for the last many years and rendered spot and clean record.

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3. That the Appellant has not violated any of the provisions of the Customs Act 1969 and Sales Tax Act, 1990 and Rules issued there under, the Appellant is discharging his duties and taxes liabilities in accordance with the provisions of the Acts and contributing revenue to the public exchequer, but the Respondent with their mala-fide intention and with their ulterior motives tried to

involve the Appellant in the unlawful case of evasion of duties & taxes and alleged the allegation that the Importer has deliberately mis-declared the description and classification of imported goods, without any documentary evidence and assessed the imported goods on enhance value, without any cogent evidence / reason and without mentioned the proper under Section 25 of the Customs Act, 1969, in the show cause notice, this act of the Customs Department proves their clear injustice; it is not fair & against the principal of law.

4. That the Appellant imported a consignment of "Miscellaneous Items", against Commercial Invoice, Packing List and Bill of Lading and Goods Declaration vide bearing KAPW-HC-107585-14-01-2015 and declared invoice value US\$-6,173.05, under respective PCT heading, with benefit of FTA @ 16%, filed with the Customs Authorities for clearance of imported goods in terms of Section 79(1)(a) of the Customs Act 1969, read with-Rule 433 of the Customs Rules 2001, therein true, complete and correct import value, description and classification of such goods were declared, duly supported by the Commercial Invoice, Packing List and Bill of Lading etc., which is clearly indicate the description of imported

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goods, quantity, quality, PCT heading, Value and paid the leviable amounts of duty & other taxes, in terms of clause (b) of Sub-Section of Section 79 of the Customs Act, 1969, in the National Bank of Pakistan. (Photocopy of the GD, Examination Report, Assessment Notes, Imported goods Item No.10 Photo, PCT Heading, Commercial Invoice, Packing List, Bill of Lading, Challans & Valuation Ruling dated 26-07-2011 are enclosed.

5. That the Customs Department opened their case, for exercise of jurisdiction under Section 80 of the Customs Act, 1969

read-with Rule 438 of the Customs Rules 2001 to satisfy itself regarding correctness of description of goods, quantity, quality, PCT heading, value and assessment and payment of duties & taxes. The Customs Authorities refused to clear the imported goods on declared value and applied the illegal formulate, Customs enhanced the value and consequently the import duty & other taxes was enhanced. Neither there is any evidence of invoice value is available with the Respondents, nor considers the transactional value, therefore, the declared value is transaction value, which cannot be enhanced without written evidence as well as computerized 90 days data and prior information of importer. The value is enhanced arbitrarily without disclosing the evidence or giving reasons of such enhancement, but the Respondents has not considered the same, it is illegal and against the law.

6. That during course of physical examination of the goods, the examination staff confirmed the Appellant declaration in his examination report and also confirms the quantity, art number, net weight of each imported goods and origin and submitted the examination report and assessment staff, without any express reasoning enhance the value of arbitrarily, without any cogent reason or without any documentary evidence, it is illegally enhanced the value by the concerned officer is in violation of section 25(4) of the Customs Act, 1969 read-with Rules 109(3) of the Customs Rules 2001, hence the valuation without any documentary evidence and assessed the imported goods on enhance value, is arbitrary, illegal and also against the basis requirements of valuation of imported goods, it is against the transaction value and contract / agreement between Importer and Exporter, as well as

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without any basis, without an reason and without applying provisions of Section 25(5), (6), (7) & (8) of the Customs Act, 1969 and consequently the import duty & other taxes were enhanced from duties and taxes, leading to increase in duty & taxes forcibly and assessment the high value and demanded the enhance duty and taxed by the Customs Department. Furthermore the enhanced the value based upon surmises and conjectures cannot be considered as transaction value under Section 25 of the Customs Act, 1969, as same is no Importer; hence, the entire valuation is based on fictitious documents.

7. That the determination of imported goods is built-in Job of the Customs Officers in terms of under Section 80(1) of the Customs Act, 1969 read-with Rule 438 of Sub-Chapter-III of Chapter 21 of Customs Rules 2001, process / scrutiny the imported goods, the Section 80(1) of the Customs Act, 1969, read-with Rules 438 of Customs Rules 2001, are read as under:-

Section 80. Checking of goods declaration by the Customs. (1) On the receipt of goods declaration under Section 79 an officer of Customs shall satisfy himself regarding the correctness of the particulars of imports, including declaration, assessment and in case of the Customs Computerized System, payment of duty, taxes and other charges thereon.

Rule 438 Assessment of Custom Authority. Where any declaration has been filed under Rule 433 or additional documents have been submitted under Rule 437 the Customs shall satisfy itself as to their correctness including its value, classification, claim of exemption, payment of duty

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and taxes and may be re-assess the goods during or after clearance.

In view of the above, that the Respondent without call the any documents and evidence himself the process and assessment therefore, all proceeding on the basis of assumptions or presumptions, it is illegal & against the law & incorrect interpretation of provisions of Statute and Rules made there under which is unwarranted in law as held by the Honourable High Court of Sindh in case of Al-Hilal Motors reported as PTCL 2004 CL 1. Furthermore, in this regard the Appellant gain strength from the case laws, reported in PLD 1988 Lahore 177, PTCL 1995 CI-123 and Tribunal Order in Appeal No.K-1292/2011, in respect of M/s Bina Paper, wherein the Hon'able High Court has held that "where order of Customs Authorities were passed on the basis of no evidence, such orders therefore not sustainable being illegal and without lawful authority," therefore, such proceeding, being illegal and without lawful authority.

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8. That the Appellant is imported the Misalliances Items, declared the correct PCT Heading 4010.3190 as per Customs Valuation Ruling No.359/2011 dated 26-07-2011, issued by the Director Valuation, regarding description "V-Belts", is covered under PCT Heading 4010.3190 and fixed the Customs value for US\$- 1.80 per Kg. and data available under PCT Heading 40103190. Whereas the Respondent could not accepted the declared PCT Heading and change the PCT Heading 4010.3210. In case of dispute the matter is required to be referred to PCT Classification Committee Custom House, or Federal Board of Revenue or World Customs Organization for correct classification, for decision and

issuance of public notice for further guidance / implementation contrary to above mentioned legal course of action. Furthermore, no penal action could be invoked against the importer under clause 14 of the Section 156(1) ibid read with SRO.499(I)/2009 dated 13-06-2009, whereas, the Importer other Importers are imported the same and identical goods, within the 90 days, the Respondent himself change the description and classification receive the huge amounts i.e. duty & taxes forcibly. It is illegal & against the law.

9. That the Appellant is requested for 1st examination of the imported goods to the Custom Department, the Department processed the case for 1st Appraisal examination, during the course of physical examination, it was transpired that the imported goods Item No.10 are declared "V-Belt" whereas assessed "Toyo power auto fan belt", it has been found that the consignment imported by the Appellant was under-invoiced and mis-declared the description and classification of item No.10. On the basis of calculation of difference between the assessment value and the declared value it has been found that the importer made an attempt to deprive the government of its legitimate revenue to the

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of Rs.19,85,075/= and passed the impugned order as non specking order, without opportunity of hearing and without providing the documentary evidence, it is against the law. it is, before, may kindly vacate the show cause notice, waived the fine & penalty and set-aside the impugned order, passed by the Respondent.

10. That the Appellant has not been provided with any evidence, disclosed the evidence in the GD, which assessing the consignment or showed the evidence on computer display.

11. That the Appellant was never satisfied on account of basis of determination of value i.e. which method has been used for such assessment and whether the methods were applied his squirted manner or not as has been held by the Honourable High Courts.

12. That the Appellant are regular importer of assorted goods etc., the Appellant imported the consignments of same goods in the past which were cleared by the Customs Authorities without any problems accepting the declaration, classification and value of goods. The Appellant had submitted Commercial Invoice, Packing List and Bill of Lading issued by the exporter & shipping company. The Respondent may verify its authenticity from there-own sources independently. The charges of mis-declaration of under Invoice and enhance the value and classification, which is incorrect, without any documentary proof, illegal and against the law. It also does not disclose the evidence like value of similar goods, identical goods, Valuation Ruling etc., It indicates that the Customs have arbitrarily entranced the value without any legal backing and providing evidence, the Customs has, in fact deprived appellant from his right of defense such enhance the value has no standing in the eyes of law, hence, the impugned order passed by the Respondents may kindly be set-aside, in the best interest of justice.



13. That the show cause notice issued under Section 32 of the Customs Act, 1969 and high value assessment is faulty, mis-beading and incorrect as it does not expressly narrate the charges, does not invoke the relevant sections of tax laws. For example, it confronts the value in a very vague way and further does not invoke Section 25 of the Customs Act, 1969. It also does not disclose the evidence

like value of similar goods, identical goods, Valuation Ruling etc., It indicates that the Customs have arbitrarily entranced the value without any legal backing. By not invoking the relevant Section of law and also neither providing relevant documentary evidence, the Customs has, in fact deprived appellant from his right of defense such show cause notice as well as enhance the value has no standing in the eyes of law. That the so called loading or enhancement on the basis of whims of officers is much more than the true and correct transaction value of the imported goods. This is not ascertainment of value; instead it is extortion by the revenue authorities. This exercise of applying notional or whimsical value mechanically is indeed violative and destructive of the mechanism provided under Section 25 of the Customs Act, 1969, read-with Chapter IX of the Customs Rules, 2001. Furthermore, the Customs Department also overlooked the fact that in case they had suspicion of under valuation; the burden of proof was on the department to prove beyond reasonable doubt that the value declared by the Importer was false and not the transaction value. No proof, whatsoever, was brought on record or shown to the Importer and value was enhanced arbitrarily, illegal and against the law.

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14. That the Importer vehemently and repeatedly requested the revenue authorities to abstain from enhancing the value on relevant, illogical, non-existent and baseless grounds and notional value and that Customs should determined / assess the value strictly in accordance with the provisions of Section 25 of the Customs Act, 1969, read-with Customs Rules, 2001 which provide a comprehensive and exhaustive mechanism for the determination of high value of imported goods, without material evidence

against the Importer, hence same is illegal, without lawful authority and against the judgement of the Honourable High Court Order, passed in W.P No.1756/2010, regarding determination of customs value, in accordance with law and rules as well as guidelines provided in the said judgment. The logical outcome of the said order of the Honourable Islamabad High Court is that Recourse to this method can be made only if the customs value of imported goods can not be determined under sub section (1), (5), (6), (7) &(8). In other words if "sub Section 9 of Section 25 of the Customs Act 1969 is regarding Fall Back Method is adopted, then reason must be given that the customs value of the imported goods could not be determined under the earlier methods." Further, the Honourable Court held that Rule 110 and Rule 121 of the Customs Valuation Rules had to be adhered to while determination of customs value under Section 25(9) of the Customs Act, 1969 (para 13-16 of the Honourable High Court Order refers). The Honourable High Court also rejected the presumptions made by the department on basis of internet surfing while holding that even the provisions of Sub-Section 9 of the Section 25 of the Customs Act, 1969, were not adopted in accordance with law. The Honourable High Court held that "Since the order itself (Ruling) is illegal and in

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violation of the Act, therefore, writ petition is competent." therefore, it is illegal, ultra vires and without lawful authority liable to be set aside the same, in the best interest of justice.

15. That the Honourable Lahore High Court, Lahore decided the case in various Writ Petitions reported in PTCL 2008 CL 409 in respect of M/s Toyo International Motorcycle, held that "Section 25 is follow up of the General Agreement of Trade and Tariff (GATT) and is to bring a new system based upon harmony, trust and mutual

respect.----- The methods of customs valuation are required to be applied in a sequential order under Section 25(10) the contents of General Agreement of Trade and Tariff are not to be considered. ----- Sequential order provided in Section 25 is mandatory, therefore, valuation advice prepared and issued in total disregard of the same is illegal,-----Non reference to adoption of procedure provided in Section 25 in valuation advice would lead to presumption that if the sequential order was adopted and is not mentioned in letter, it was against revenue and draftsman of valuation advice."

16. That the Customs Department have violated the guidelines given by the Honourable High Court in W.P. No.1756/12, hence entire act of the Customs Department regarding non acceptance of the declared value of the imported goods of the appellant being the highest value of the imported goods and determine / assess the value of the imported goods in terms of sub Section (1) of Section 25-A on his own motion but after following the methods laid down in Section 25 and 25-A of the Customs Act, 1969. The Section 25A of the Customs Act, 1969 cannot be used for the

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wholesale determination of the Customs value which transforms the "determination" in view of Section 25A to an inexpressible fixation of value. In the instant matter, the Customs Authorities in contrary to provisions of the Section 25A has fixed the customs value of the impugned goods which is inexpressible / settled in the case of *Abdulla Jabbar*, in CP No.2673/2009 as held by the Honourable High Court, that value shall be determined in accordance with the difference in brands, quality, reputation, specification and characteristics of the goods. The provision of Section 25(5)(d) of the Act, 1969 has been deliberately and malafidely violated while

determining the value in the impugned ruling and the Customs Authorities deliberately neglected the lowest transactions of the Appellant as per Customs data / record of last ninety days prior to date of import.

17. That the so called loading or enhancement on the basis of whims of officers is much more than the true and correct transaction value of the imported goods. This is not ascertainment of value; instead it is extortion by the revenue authorities. This exercise of applying notional or whimsical value mechanically is indeed violative and destructive of the mechanism provided under Section 25 of the Customs Act, 1969, read with Chapter IX of the Customs Rules, 2001.

18. That the Respondent also overlooked the fact that in case they had suspicion of under valuation; the burden of proof was on the department to prove beyond reasonable doubt that the value declared by the Appellant was false and not the transaction value. No proof, whatsoever, was brought on record or shown to the Appellant and value was enhanced arbitrarily.

19. That the Respondent authorities were not ready to listen and accept any reason or logic and were adamant on their illegal and illogical approach in ascertaining the value of imported goods and made it clear that unless the Appellant accepts this arbitrary, capricious and capricious assessment of value of imported goods and pay duties and taxes accordingly under protest, the Respondent will not release the imported consignment, it is against the law and un-justice.



20. That the scheme and methods as laid down under Section 25 were never followed by the Respondents i.e. [Collector of

Customs and Director of Valuation), while determining the value while the Appellant declared actual value paid by him in term of Section 25(1) of the Act read with Rules 113 of the Customs Rules 2001.

21. That basis above fixation of prices without visible exercise reflected on record under sub Section (1) to (4), (5), (6), (7) or (8) in a manner other than the prescribed under the law would patently be illegal as held in case reported as 2006 PTD 909 and 2006 PTD 2807.

22. That it is assertively pointed out that the concept of determination of value on the whims of officers or notional values is completely alien to and indeed violative of the provisions and scheme of the Customs Act, 1969.

23. That the rejection of declared value of impugned imported goods and determination and enhancement of customs value of impugned imported goods without having sufficient evidence or material is not permissible under the law. Where no evidence is to show that the disputed transaction is false or is an outcome of a fraudulent activity, in possession of the Customs Authorities, the commercial documents presented by the importer cannot be

ATTESTED rejected.



24. That the Respondent has to show that invoice price of the impugned goods are not genuine and did not state the real price paid by the Appellant. Provision contained in Section 25, customs Act, 1969 and rules framed there under are complete Code in themselves, so far, the customs valuation of the imported goods is concerned, which are required to be applied and acted upon strictly in the manner and method contained therein and no room

exists for any deviation from these rules on the part of Customs Authorities.

25. That the Appellant has correctly declared the value of imported goods from China and is prepared to contest and challenge the arbitrarily and whimsically enhanced value by the Respondent, it is illegal and against the law. Furthermore, that an invoice price cannot be routinely discarded except on the strength of clear evidence that the invoice is not genuine and it does not show the real price as has been transacted between the importer and foreign supplier, and that something else has passed clandestinely between the importer and foreign supplier. Reliance upon *Rehan Umer Vs. Federation of Pakistan & Others* (2005 PTD 909).

26. That the Appellant of the imported consignment was required to be taken at transaction value i.e. the price actually paid on the imported goods. Unless it is proved that the transaction value is based on fake documents or it is the result of any relationship between the buyer and seller the Customs Authorities is under legal obligation to accept transaction value under Section

ATTESTED 5(1) of the Customs Act, 1969 for the assessment of duties and taxes.



That the Respondent failed to appreciate that there is absolutely no evidence whatsoever to suggest that the transaction value on the basis of which the Appellant has declared the value of imported consignment is incorrect or the parties to the transaction are related in any manner. In the absence of any evidence the transaction value declared by the Appellant should have been accepted. The Respondent had nothing before him to

support an 'imaginative' value applied to the Appellant's imported consignment. This order of loading of value is bad in faith as well as in law.

28. That the Honourable Federal Tax (Ombudsman) in identical case of M/s Nadeem Textile Mills Ltd., reported in SBLR 2002 (Tri.) 79, clearly held that the principles of law enunciated by the Honourable Supreme Court of Pakistan and the Honourable High Court is (a) binding force on all the citizen and any defiance from its implementation is tantamount to mal-administration. As far as the following rather obeying the opinion judgements etc of our the Honourable Higher Courts by the Subordinate Courts, the Tribunals and the Adjudication Authorities is concerned is a legal and conditional bindings otherwise it make the delinquent liable for a server action as held in 1993 P.Cr.L.J. 1701 Lahore and NLS 1995 Cr.S.C. 10 respectively.

29. That a law applying to one person or are class of person may be constitutionally valid if there insufficient basis or reason for it, but a value which is arbitrary and is not founded on any rational basis is no value as to warrant its exclusion from the mischief of Articles the impugned orders passed by the Respondents, are against Guaranteed Fundamental Right of the Applicant and violative of Articles 4, 13, 18, 24 & 25 of Constitution of Islamic Republic of Pakistan 1973.

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8. I have heard the arguments of the advocate of the appellant, representative of the respondent and gone through the complete record of the case. Since, a controversy has arisen about the classification of the impugned goods, as such it will be more appropriate that specialized institution should give its findings. Therefore, the case is remanded to the respondent MCC

(2)

(Appraisement) with the directions to place the matter before Classification Committee which after due deliberation should give its finding in the light of Rules of Interpretation, Sections Note and Chapter Notes. In case it is proven that the appellant has mis-declared the description/classification, same should be sent to concerned Adjudicating Authority for deciding the matter afresh. Accordingly, the appeal is disposed of with no order as to cost.

9. Order passed and announced accordingly.

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sd/-
(Mohammed Yahya)
Member (Technical - I)

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76/12/15

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI

Appeal No. Old 5-538/2015 dated 29/03/2015
Appeal No. New 5-538/2015 dated 29/03/2015
M/s A.G. Packages Co.
Order-in-O/Appeal 224630/15 dated 12-02-15 against
by Collector AB, Karachi issued

Copy forwarded to:

- 1- M/s A.G. Packages Co.
- 2- Collector of Customs M/s (West) Karachi
- 3- Collector of Customs Hyderabad / Sukkur / Gaddani / Quetta
- 4- The D.G Intelligence & Investigation BR-Karachi/Hyderabad/Sukkur/Quetta
- 5- The D.G Valuation / Post Clearing Audit, Karachi
- 6- Office Copy

ON-318480-230/2015

Assistant Registrar-
Asst. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench