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-90 to 91/2015

M/s. Al-Mastaan Garments,
Karachi. ..... Appellant

Versus

1. The Principal Appraiser,
Group-IV,
MCC of Appraisement-West,
Custom House,
Karachi.

2. The Collector of Customs,
(Appeals),
Karachi. ..... Respondents

Mr. Nadeem Mirza, Advocate, present for the appellant.

None present for the respondent.

Date of hearing: 14.12.2014
Date of Order: 15.12.2015

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ORDER

Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order I intend to dispose of the Customs Appeals No.K-90 to 91/2015 filed by M/s. Al-Mastaan Garments, Karachi, under Section 194-A of the Customs Act, 1969, against Orders-in-Appeal No.9510 to 9511/2014 dated 16.12.2014 passed by the Collector of Customs (Appeals), Karachi. These appeals have identical issue of law and facts, therefore, being heard dealt with and disposed of simultaneously though this common order in the light of the judgment of the Honorable High

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Court of Sindh in Customs Reference No.157 of 2008, S.M. Naqi S/o Syed Muhammad Hussain, Karachi vs Collector of Customs (Adj-I) and Others.

2. Brief facts of the case are that the appeal emanates from the assessment of goods finalized under Goods Declaration Nearing No.KAPW-HC-37263-11-09-2014 by the Model Customs Collectorate of Appraisement-West, Customs House, Karachi. According to the Assessment Order, the appellant imported a consignment of "Raw Silk" under HS Code 5002.0000 from China vide machine No.KAPW-HC-37263-11-09-2014 was declared at the rate of unit value of US$ 25/Kg under the use of benefit of SRO 1125(I)/2011. Therefore, the impugned goods were assessed and disallowed the benefit of SRO 1125(I)/2011.

6. Being aggrieved and dis-satisfied with the impugned Assessment Order, the respondents filed the appeals before the Collector of Customs (Appeals), Karachi. The learned representative of the appellant principally reiterated the arguments which had already been submitted as grounds of appeal. On the basis of grounds of appeal the Collector of Customs (Appeals), Karachi passed an Orders-in-Appeal No.9510 to 9511 dated 16.12.2014. The operative part of the order is being reproduced as under:

> *"I have examined the case record. The appellants in support of their claim as manufacturer produced a rectification order by IRS officer. This order however further substantiates that the appellants do not have inhouse facility of manufacturing as they got their goods manufactured from registered job vendors. This order also holds that the appellants are in the business of import and trade and did not involve in the business of supply of finished goods. In view of the above, it is established that they are not manufacturers of textile. The respondents have assessed the goods in accordance with law. The appeal being without merit fails."*

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7. Being aggrieved and dis-satisfied with the impugned Orders-in-Appeal No.9510 to 9511/2014 dated 16.12.2014, passed by the Collector of Customs (Appeal), Karachi, the appellant filed these instant appeals before this Tribunal on the grounds incorporated in the Memo of Appeal which is reproduced as under:-

1. *That the appellant is registered manufacturer and he is entitled for exemption without any hitch and hindrance under conditions No. (i) & (ii) of the notification 1125(I)/2011 dated 31.12.2011 as amended vide notification No. 154(I)2013 dated28.02.2013, which read as follows:*

   (i) The benefit of this notification shall be available to every such person doing business in textile (including jute), carpets, leather, sports and surgical goods, sectors who is registered as :-

   (a) Manufacturer;
   (b) Importer;
   (c) Exporter; &
   (d) Whole-seller.

   (ii) On import by registered manufacturers of five zero – rated sectors mentioned in condition (i) above, sales tax shall be charged @ 0% on the goods useable as industrial input;

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And notification No. 154(I)/2013 that

(a) In the preamble for the word "at zero rate" the words "at the rate of two percent" shall be substituted.

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(b) after the Table, for the conditions, the following conditions shall be substituted namely:-

CONDITIONS

(i) The benefit of this notification shall be available only to persons doing business in textiles (including jute) carpets leathers, sports and surgical goods sectors who are registered as manufacturer, importer, exporter or wholesaler under the Sales Tax Act, 1990, and appear on the active Taxpayers List)ATL) on the website of Federal Board of Revenue.

(ii) This notification shall apply from:-

(a) Spinning stage onwards, in case of textile sector;

(b) Production of PTA or MEG, in case of synthetic sector;

(c) Regular manufacturing , in case of carpets and jute products;

(d) Tannery onwards, in case of leather sector , and

(e) Organized manufacturing in case of surgical and sports goods.

(iii) On import by registered manufacturers of the 05 sectors mentioned in condition (i), sales tax shall be charged @ two percent on goods useable as industrial output.

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2. That the appellant is entitled for exemption from payment of sales tax under the said notification in every status of his company i.e. manufacturer, importer or exporter, it is

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erroneous on the part of respondent to consider the appellant as commercial importer for denial of the exemption, which is contrary to the fact and status available in the portal of FBR of the appellant and his import squarely falls under condition no. (i) & (ii) of the notification.

3. The respondent interpreted the status and notification in accordance to his whims and wishes, which is not permitted under law. It is settled rule of interpretation that each and every word of the notification is to be read as it has been written and no other meaning can be given to any word of the notification that **"in interpreting the taxing statute the customs must look to the words of the statute and interpret in the light of what is clearly expressed. It cannot imply anything which is not expressed, it cannot import provision in the statute so as to support assumed deficiency. There is no room for intendment. there is no equity about a tax. There is no presumption as to tax nothing is to be read in , nothing is to be implied. One only look fairly at the language used nothing else to be done"** as held by High Court and Supreme Court of Pakistan in their reported judgment starting from Abbassi Steel Industries Ltd v Collector of Customs **1989 CLC 1463** to M/s. Fazal Ellahi v Additional Collector of Customs, **PTCL 2011 CL 269.** Even otherwise **"if there are two or more interpretation of our provision pertaining to levy of tax on account of anomaly/ambiguity the one favourable to tax payer has to be adopted by the court"** as per judgment reported as **1993 SCMR 274, 2005 SCMR 728, 2007 PTD 1656 & 2008 PTD 1227.** It is considered

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opinion of the Superior Judicial For a in a number of judgments **"that tax payer should not be made to suffer on account of bad drafting of the statute".** Reliance is placed on the judgment of High Court of Sindh reported as **2004 PTD 901**, wherein the Hon'ble judges of the Bench held that:-

"While interpreting the taxing statute the Court must look to the word of statute and interpret it in the light of what is clearly expressed. It cannot imply anything which is not expressed . It cannot import provision in the statute as to support assumed deficiency."

"While finding out intention of the legislature language of the law is not be seen and if the intention is cleared from the language used nothing else is to be done."

"if the legislature has not sufficiently expressed itself Court has no duty to act for it, for court is concerned with what it lays down and not what it has only in mind, but once it has been articulated enough Court does not more than give effect to the intention that it has succeeded in expressing. The intention may be expressed in faulty language, in very faulty language , in-extremely faulty language, this is of no consequence as long as there is no doubt as to the intention. A draftsman mistake as long as it relates to form in which the legislative intend is expressed and not to the substance of it , is of no effect. Of course ones an element of doubt as to the intention of the legislature enter the field consideration otherwise irrelevant may all become relevant.

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4. The respondent inaptly interpreted the word "manufacture" or "produce" and "manufacturer" and "producer" defined in Section 2(16) and (17) of the Sales Tax Act, 1990 and which read as :

2(16) **"Manufacture or Produce"**

(a) Any process in which an Article singly or in connection with other article, materials, components , is either converted into another distinct article or product or is so changed, transformed or reshaped that it becomes capable of being put to use differently or distinctly and include any process incidental or ancillary to the completion of a manufactured product;

(b) Process of printing, publishing, lithography and engraving and

(c) Process and operation of assembling, mixing, cutting, diluting, bottling, packaging, re-packing or preparation of goods in any other manner.

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2(17) **"Manufacturer or Producer"** Means a person who engages, whether exclusively or not the raw material of which the goods are produced are manufactured are owned by him; and shall include--

(a) A person who buy any process or operation assembles, mixes, cuts, dilutes , bottles , packages, re-packages or prepares goods by any other mean.

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(b) --------

(c) --------

5. That since the appellant hold a CMT Unit of garments manufacturing after having fabric manufactured from the imported yarn on overhead basis, he is deems to be manufactured as defined in section 2(17) of the Sales Tax Act, 1990 and this stance of the appellant was accepted by the officer of sales tax and was termed and manufacturer inspite of having no in house manufacturing facility of the fabric , vide order relied upon by the respondent no. 2 in his order. It was mandated upon him to accept the same as the same has been issued by the monitoring Commissionerate of RTO, which registered the appellant as manufacturer strictly as per definition given in Section 2(16) & (17) of the Sales Tax Act, 1990. No question on the status of the appellant could be raised by either of the respondent , the facility has to be allowed to the appellant upon confirmation that (i) his unit falls within the 5 categories (ii) manufacturer and exporter and (iii) active tax payer as per list of FBR.

The appellant carves his right to add any fresh grounds at the time of hearing beside placing any valid incriminating evidence/ documents.

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6. I have heard the arguments of the advocate of the appellant, representative of the respondent MCC (Exports), Karachi, and gone through the complete record of the case.

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9. As regard, Income Tax Ordinance, 2001, we must know that the Customs Authorities do not have any jurisdiction to adjudicate the matters pertaining to Withholding Tax. Here I would like to discuss that the Ordinance does not contain any provision empowering the Customs Authorities to initiate the adjudication proceedings, no notification has been issued to this effect as such placing reliance only on a letter makes the whole proceedings of adjudication and subsequent recovery unlawful and ab-initio void.

10. The differentiation between tax collection and recovery is obvious in the Ordinance where Section 148 of the Ordinance and Section 6 of the Sales Tax Act, 1990 empowers the Collector of Customs to collect the advance tax and sales tax, whereas mode of recovery is dealt under Section 140 of the Ordinance and Section 11 read with Section 36 of Sales Tax Act, 1990. This difference has also been discussed at length by the Honorable Peshawar High Court in the case title M/s. Nadeem Electronics Vs. Collector of Customs etc. has observed as under:-

> ***"Qazi Muhammad Ghazanfar learned counsel for the department claimed that Section 32 of the Customs Act was not applicable and that the department had made a recovery within the prescribed period provided by Section 36 of the Sales Tax Act, 1990, itself. This aspect of the case was discussed at length and was seriously attended to. After having gone though Sections 6 and 36 of the Sales Tax Act, 1990 and Section 32 of the Customs Act, 1969 we are of the considered view that Section 6 of the Sales Tax Act provides only for the time and manner of recovery, in the normal course of conduct. Through such Section the time and manner of recovery has been made similar to that of the recovery of Customs Duty. There is a detailed procedure of***

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the recovery of Customs Duty which also required to be recovered within a specified period. Instead of repeating that lengthy procedure and office routines, it was simply provided in Section 6 of the Sales Tax Act that the time and manner shall be similar to that of recovery made under the Customs Act.

The law was not unmindful of the extraordinary circumstances under which the customs duty or the sales tax might not be levied at all, might be short levied, erroneously refunded by reason of any untrue statement, error, inadvertence, misconstruction, misrepresentation, collusion or a deliberate act. If such circumstances aforesaid arise in connection with the recovery of customs duty, the same shall be recovered according to the procedure laid down in Section 32 of the Customs Act, 1969 but if such circumstances or certain specific circumstances have resulted into the non levying, short-levying or the erroneous refunding of the sales tax, the recovery shall be resorted to in accordance with the procedure laid down in Section 36 of the Sales Tax Act, 1990. A perusal of Section 32 of the Customs Act and Section 36 of the Sales Tax would clearly indicate that there are few circumstances which are different in the two sections.

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Thus, we are of the view that the recovery of sales tax not being normal but under abnormal and specific circumstances given in section 36 of the Act shall be recovered under that section alone and not under Section 6 of the Sales Tax Act, 1990 or under Section 32 of the Customs Act, 1969. If the time and manner of recoveries under Section 6 of the Sales Tax Act could have been deemed to

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have been fully covered by Section 32 of the Customs Act, 1969, there was no need at all to have enacted Section 36 of the Sales Tax Act. If the argument of the petitioner accepted to be correct, the enactment of Section 36 of the Sales Tax Act would appear to be a complete superfluity. Rather, if we place reliance on Section 32 of the Customs Act, 1969, the petitioner would be lodged in trouble for making wrong statement in the letter of credit knowing or having reasons to believe that such statement was false.

Consequently we are of the view that the special circumstances of non-levying, shot levying or erogenous refunding mentioned in Section 32 of the Customs Act are different from circumstances mentioned in Section 36 of the Sales Tax Act. That if such specific circumstances arise concerning the recovery of Customs Duty, such Custom Duties shall be recovered under Section 32 of the Customs Act, 1969. But if such circumstances arise regarding the recovery of sales tax, the same shall be recovered under Section 36 of the Sales Tax Act, 1990."

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11. The Honorable Karachi High Court vide 2004 PTD 901 in the case title Hashwani Hotel Ltd Vs Government of Pakistan has also observed as under:

"The position of law prevailing for the purpose of sales tax shall be discussed by us presently. However, it is not the end of matte, for the reason that the question for consideration before us, pertains to the sales tax and not to the customs duty. Although it is provided in Section 6 of the Sales Tax Act, that the tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the

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Customs Act, 1969, but this provision shall not change the nature of tax and therefore, except the provision pertaining to the collection of sales tax, no other provision in the Customs Act, is attracted and particularly the provisions pertaining to the assessment or exemption of sales tax shall still be dealt with under the provision of the Sales Tax Act."

12. Keeping in view the above judgments of the Honorable High Courts, my observations and discussions I am of the considered opinion that Customs Authorities do have the powers to adjudicate matters pertaining to the Withholding Tax, Sales Tax and Federal Excise Duty, in view of specific provisions of Income Tax Ordinance, 2001, Sales Tax Act, 1990 and Federal Excise Act viz adjudication and recovery. The customs authorities have trespassed the jurisdiction, as such the Orders-in-Appeal No.9510 to 9511/2014 dated 16.12.2014 is set-aside. The appeal is accepted with no order as to cost.

13. Order passed and announced accordingly.

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[redacted]

(Mohammed Yahya)
Member (Technical – I)

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Appeal No. Old K-90/2015 dt. 06/01/2015
Appeal No. New.
M/s Al-Mastaan Garments, Karachi against
Order-in-Appeal No. 9510 to 9511/14 dated 16.12.2014 issued by Collector of Customs (Appeals), Karachi

Copy forwarded to:

1. M/s Al-Mastaan Garments, Karachi
C/o Nadeem Mirza, FCA
2. Collector of Customs, MIR Appraisement (West), Karachi
3. Collector of Customs [redacted] / Quetta
4. The D.G Intelligence & Investigation [redacted] / Sukkur / Quetta
5. The D.G Valuation / Post Clearance Audit, Karachi
6. Office Copy

18/12/15

Asstt. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench

Cus/1626/2014/A.West

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