

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL, BENCH-III,
2nd FLOOR, JAMIL CHAMBERS,
SADDAR, KARACHI

Before: Mr. Muhammad Nadeem Qureshi, Member Judicial-I, Karachi.

Customs Appeal No. K-1757/2014

7962

M/s. Alpha Diaries (Pvt.) Ltd.,
Office No.9, B-1/B-2, Ghalib Market, Bulberg-III,
Lahore.

Appellant

Versus

The Collector of Customs
MCC, (Adjudication-I),
Karachi.

Respondents

Mr. Muhammad Adeel Awan, Advocate for the Appellant
Mr. S. M. Wasi, A.O. for the Respondents

Date of Hearing: 12.05.2016
Date of Order: 18.05.2016

JUDGEMENT

Muhammad Nadeem Qureshi, Member Judicial-I, Karachi: By this order, I intend to dispose Customs Appeal No.K-1757/2014, filed by the appellant against Order-in-Original No.181/2014-15 dated 10.10.2014 passed by the Collector of Customs (Adjudication-I), Karachi.

2. Brief facts of the case as reported by the Directorate General of Intelligence & Investigation-FBR, Regional Office, Karachi vide Contravention Report No.APPG.34/DCI/R.A/CONT/2013/5126 dated 17.07.2013 are that a credible information was received in the Directorate that some importer were involved in import and clearance of consignments of aseptic packaging material through MCC (Appraisalment), Karachi on under-assessed values in violation of relevant Valuation Ruling No.516/2012 dated 27.12.2012 and the importers resorted to file into-bond GDs for warehousing of the commodity avoiding application of relevant Valuation Ruling and managed

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to get the goods subsequently ex-bonded at the same lower values causing a colossal loss to public exchequer. In order to confirm veracity of information, the relevant clearance data of aseptic packaging material (PCT heading 4811.5990) cleared through MCC (Appraisement), Karachi and other Collectorates, since issuance of Valuation Ruling No.516/2012 dated 27.12.2012, was retrieved and scrutinized. It transpired that previously a Valuation Ruling No.459/2012 dated 16.06.2012 was issued by the Valuation Directorate wherein value of the commodity was determined @ US \$ 1.44/kg which was subsequently set aside in October, 2012 through a Review Order after a fresh / revised Valuation Ruling No.516/2012 dated 27.12.2012 was issued wherein Customs value of commodity was determined @ US \$ 2.60/kg. The said Ruling is still in field. Scrutiny of the data revealed that majority of the consignments of aseptic packaging material of PCT heading 4811.5990 imported by different importers were assessed and cleared on applicable assessable values as per relevant Valuation Rulings. However, few consignments which were warehoused in public bonds through MCC (Appraisement), Karachi were wrongly assessed at the time of in-bonding at previously applicable value @ US \$ 1.44/kg instead of actual applicable value @ US \$ 2.60/kg. The goods were subsequently ex-bonded at the same value. It has transpired that besides three others importers, M/s. Alpha Dairies (Private) Limited, Lahore have imported two consignments of aseptic packaging material during February, 2013 which were warehoused in public bonds after processing and completion of into-bond GDs at lower value of US \$ 1.44/kg instead of applicable value of US \$ 2.60/kg. The Goods Declarations were filed through clearing agent M/s. Ocean World Cargo (CHAL No.2682). Subsequently, 04 ex-bond GDs for release of 58.590 M. Tons of aseptic packaging material of China origin were filed through the same clearing agent and got processed at the same value i.e. @ US \$ 1.44/kg. The appellant in active connivance and collusion with other respondents by clearing the consignments of aseptic packaging material at under-assessed value through non-application of relevant Valuation Ruling by evading government's legitimate revenue to the tune of Rs.3,141,093/-.

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3. The learned Collector of Customs (Adjudication-I), Karachi passed an order-in-original No.181/2014-15 dated 10.10.2014 as follows:

"I have gone through the case record and considered written/verbal arguments of the respondents and the detecting agency. As per record M/s Alpha Dairies (Private) Limited, imported two consignments by declaring the description of goods as 'Aseptic packaging material'. The goods were assessed at US \$ 1.44/kg and after completion of into-bond Goods Declaration (GD) the goods were warehoused in public bond. Upon post-release scrutiny of import documents it was found that the imported goods were required to be assessed at US \$ 2.60/Kg in terms of Valuation Ruling No 516/2012 dated 27.12.2012, determined under Section 25-A of the Customs Act, 1969. The consignments were in-correctly assessed at the time of ex-bonding @ US \$ 1.44/Kg instead of actual assessable value @ US \$ 2.60/Kg in terms of aforesaid Valuation Ruling. Needless to mention that the vires of Section 25-A of the Customs Act, 1969 has been sustained by the Honorable High Court of Sindh in its exhaustive decision dated 28.02.2011 in CP No.2673 of 2009. Hence the importer M/s. Alpha Dairies (Pvt.) Ltd, Lahore and their clearing agent M/s Ocean World Cargo are found guilty of mis-declaration including non-application of relevant Valuation Ruling, in view of the above mentioned factual position, the charges leveled against the respondents in the Show Cause Notice under Section 25A (2), 32(1) & (2), 79 and 80 of the Customs Act, 1969, Section 3 & 6 of the Sales Tax Act, 1990 and Section 148 (1) of the Income Tax Ordinance, 2001 stand established. The importer M/s. Alpha Dairies (Pvt.) Ltd, Lahore are, therefore, directed to make payment of evaded amount of Rs.3,141,093/- (Rupees three million one hundred and forty one thousand and ninety three only) (along with default surcharge to be calculated at the time of payment) as duty / taxes, in terms of clause (14) of section 156(1) of the Customs Act, 1969 read with Sections 32 (1) (2) and 202 of the Custom Act, 1969. Moreover a penalty equivalent to 10% (Ten percent) of the assessed value of the goods is imposed on the respondent importer for violation of the aforesaid provisions of law.

The role of clearing agent cannot be ignored as he should have filed the goods with proper application of Valuation Ruling at US \$ 2.60/Kg under Section 25-A of the Customs Act, 1969 instead of lower value at US \$ 1.44/kg. Hence charges leveled in the Show cause Notice against the clearing Agent namely M/s Ocean World Cargo (C.I.A.I. No. 2682) are also established under the aforementioned provisions of the law read with the Licensing Rules (Rule 101 & 102 of the Customs Rules as notified vide SRO 450(I)/2001 dated 18.06.2001). Therefore, in terms of clause (14) of section 156(1) of the Customs Act, 1969, I also impose a penalty of Rs.200,000/- (Two hundred Thousand Rupees) on the clearing agent."

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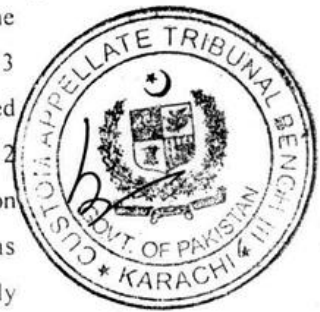


4. Being aggrieved and dis-satisfied with the Order-in-Original, the appellant filed the instant appeals before this Tribunal on the grounds incorporated in the Memo of Appeal.

5. On the date of hearing Mr. Muhammad Adeel Awan, Advocate, appeared on behalf of the appellant, reiterated the contents of the appeal and contended that, the appellant imported two (02) consignments, containing "aseptic packaging material" during the month of February-2013 and filed In-Bond Goods Declarations thereon, bearing No. KAPR-

IB-4741 and KAPE-IB-4742 both dated 14.02.2013, which were assessed by the assessing officer of the Customs department under the applicable and fed in the system Valuation Ruling, bearing No.459/2012 dated 16.06.2012 at the US \$ 1.44/kg. He further contended that, after three (03) months of in-bonding, in the month of May-2013, the appellant filed ex-bond Goods Declarations against the same consignments and the respondent department cleared it under the mandate of section 80 of the Customs Act, 1969, on the same valuation ruling. The appellant disposed of the said consignment accordingly and there was no bar by the law for disposal of the same as the clearance of the same consignments were "past and closed transactions" as the assessment orders, under the mandate of section 80 of the Customs Act, 1969, were neither challenged under section 193 of the Customs Act, 1969 before the appropriate forum of law nor re-opened by the Collector of Customs under the mandate of section 195 of the Customs Act, 1969. Hence, the same assessment orders attained finality under the law. After more than six (06) months of release and disposal of the same consignments, the respondent above-named issued a show cause notice dated 13.11.2013 to the appellant, alleging that the same consignments were to be assessed under another Valuation Ruling, bearing No. 516/2014 dated 27.12.2012 at a higher rate of value i.e. US \$ 2.60/kg. Whereas, the same valuation ruling was never fed into the computer system of the customs department, so that the consignments of the appellant were rightly assessed under the Valuation Ruling No.459/2012 dated 16.06.2012. He argued that, the transaction value of the said consignments are not impugned by the complainant agency, upon which, the assessment was made accordingly at the crucial time. In case of differing opinion by the customs department, no mandatory notice was issued to the appellant above-named under the mandate of section 25(4) of the Customs Act, 1969 despite the law that the department was competent enough to reject the transaction value at the crucial time of assessment. In absence of exercise as above, the action in rejecting declared value of consignments would amount to an arbitrary and capricious exercise. The rejection of declared value of goods and fixation of its enhanced value

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without disclosing adequate material or reasons is a action arbitrary, whimsical, capricious and in complete disregard of section 25 of the Customs Act, 1969. The said show cause notice had been issued as to frustrate the mandate of section 193 and 195 through misuse of authority under section 179 of the Customs Act, 1969. The appellant duly responded to the said show cause notice, vide its reply dated 25.04.2014, which was totally dis-regarded at the time of passing the impugned Order-in-Original, which is perverse, arbitrary and without legal / cogent justification. He prayed this Honorable Tribunal may be pleased to pass an order as to annul the impugned Order-in-Original, passed by the respondent in defiance to the dictates of law.

5. No cross objections under Sub-Section (4) of Section 194-A of the Customs Act, 1969 have been submitted by Respondents. Perusal of the record shows that the appellant submitted the copy of comments filed by the respondent through Intelligence Officer, Mr. Muhammad Sadiq before Collector of Customs Adjudication-I, who passed the impugned Order-in-Original, contents of the same are taken on record same are mentioned here in the interest of justice. Mr. Ghulam Mustafa, Appraising Officer appeared on behalf of the Respondents, also reiterated the contents of para-wise comments and further contended that, in terms of section 25A of the Customs Act, 1969 the applicable customs value determined by the Directorate General Valuation is notified through valuation ruling is to be applied for Customs purpose if declared value is lower than determined minimum assessable value. The valuation ruling is applicable under section 25A (2) of the Customs Act, 1969. The appellant cleared their goods through Customs Automated Clearance System contrary to the Valuation Ruling which resulted in evasion of duty and taxes hence committed the offence of mis-declaration and fiscal fraud. The Show Cause Notice has been correctly issued. He further contended that, this is not a case of routine assessment which is carried out at the time of filing of Good Declaration. The goods have already been cleared by respondent on self assessment basis through Customs Automated Clearance System deliberately ignoring the applicable valuation ruling

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No.516/2012. The respondent have evaded Government legitimate duty & taxes by clearing their goods on self assessed lower values in violation of section 25A (2) of the Customs Act,1969. Hence show cause notice has been correctly issued to them within the stipulated time period in terms of section 32(1) & (2) read with section 25A (2) & 179 of the Customs Act, 1969 for adjudication of the case. The reliance is placed in the Judgment dated 19-9-2012 of Supreme Court of Pakistan in Civil Appeal No.332 to 382 of 2012. Show Cause Notice has been correctly issued in terms of section 32(1) (2) section 79 & 179 of the Customs Act, 1969. The reference to section 193 is premature the respondent will be at liberty to file appeal before Collector of Customs Appeal under section 193 of Customs Act,1969 if felt aggrieved of the Order-in-Original as and when passed by the Adjudication Authority. The provision of section 195 is neither relevant nor applicable to respondent case. The goods were cleared through Customs Automated Clearance System on self assessment basis. The appeal under section 193 of Customs Act, 1969 may be filed by the importer, if aggrieved of Order in-Original as and when passed by the Adjudicating Authority. The import data and Ex-bond GD filed by the appellant for clearance of goods on self assessed lower value are itself material and tangible evidences in support of charges levied in the show cause notice. Further in terms of section 32 (1) & (2) any amount evaded through mis- declaration is recoverable from defaulter within five years of clearance of goods through adjudication in terms of section 179 of the Customs Act,1969, hence the cases of evasion never become part and closed transaction. The provision of section 179 read with provision of section 32(1) & (2) duly provide due course of law for adjudication of offences of mis-declaration and recovery of evaded amount. Neither prosecution proceeding have been taken against the respondent nor any injury is being cause to respondent. The reference to section 166 of Pakistan Penal Code is totally irrelevant and no such provision has been invoked for prosecution of respondent. He prayed that the appeal of the appellant may please be rejected in the interest of justice.

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6. Arguments heard and concluded. After perusal of record as well as arguments concluded by both the parties, it has been noticed and observed that the appellant's subject consignment was accordingly processed under the prescribed rules and statutory obligations after complying the Valuation Ruling No.459/2012 dated 16.06.2012 and the consignment was allowed into-bond. Later on, the subject goods were ex-bonded in accordance with proper procedure of law and clearance made by the Clearance Collectorate. After the lapse of near about six (6) months show cause notice was issued against the appellant on 13.11.2013, wherein the allegations were attributed against the appellant that, with active connivance and collusion with the clearing agent M/s. M/s. Ocean Word Cargo and the assessing staff of MCC (Appraisement) Karachi by clearing the under reference consignment of aseptic packaging material at under assessed value through non applicable of relevant Valuation Ruling avoiding thereby the government legitimate revenue. It is also observed from the record that the customs values of aseptic packaging material for "local food / beverages" were earlier determined through Valuation Ruling No.459/2012 dated 16.6.2012, which has been set-aside vide Order-in-Revision No.295/2012 dated 05.12.2012 under Section 25-D of the Customs Act, 1969 and the case was remanded back to Director Valuation for re-examined the matter and to issue the Revised Valuation Ruling in the light of relevant data. Meanwhile, values reflecting in Valuation Ruling No. 414/2012 dated 17.01.2012 issued previously on the subject were made applicable until issuance of Revised / fresh Valuation Ruling. Ultimately on 27.12.2012 in compliance of Section 25-A of the Customs Act, 1969 Valuation Ruling No.516/2012 was issued. According to the allegations of the respondent when the appellant's goods were ex-bonded Valuation Ruling No.516/2012 dated 27.12.2012 has to be applied for assessment of the subject goods, inspite of doing so the goods were ex-bonded by applying the values determined under Valuation Ruling No.459/2012 dated 16.6.2012. That aspect of the case was agitated by the appellant on the ground that when under the mandate of Section 80 of the Customs Act, 1969 goods were ex-bonded that order was neither challenged under Section 193 of the Customs Act, 1969 before any



appropriate forum of law nor re-opened by the Collector of Customs under Section 195 of the Customs Act, 1969. The appellant further relied on the point that the customs computer system verified the declaration as filed by the appellant at the time when the goods were ex-bonded, the reference of Valuation Ruling No.516/2012 dated 27.12.2012 was not present in the computer system. If it is so, the question arises, who made the connivance with the appellant for causing the subject impugned clearance. The para-5 of the Show Cause Notice specifically attributed the allegations against the appellant clearing agent and the assessing staff of MCC Appraisement, Karachi, question was asked during the hearing of the case to the representative of the respondent whether any departmental inquiry has been initiated or conducted against the said staff of MCC Appraisement who connived with the appellant made such thing happened, at that point of time he has no knowledge about that. He was asked by the Court to provide the material evidence about the inquiry if so conducted by the department against the assessing staff of MCC Appraisement appointed at that time when the subject consignment was allowed and released, till to date the respondents nor their representative filed any sort of evidence in support of their claim for assistance of this august Tribunal. It is the duty of the Court to adjudged the equitable rights of persons whether from the department or other legitimates / citizens of Pakistan. In this regard when the allegation of mis-declaration has been allegedly attributed against the present appellant the responsibility of the department was to comply the proper provision of law and invoked the same with its true letter and spirit, there should not be any discrimination on part of the department / respondents. In this particular case the authorities / concerned official responsible for assessment of the subject goods are been treated at par, before invoking the provision of Section 32 of the Customs act, 1969, prima facie element of mens rea not been fund. The filed officers are not authorized to cause discrimination, in a situation, wherein Federal Board of Revenue has already issued directions or guideline and as well the statutory obligations not to be transgressed. Any act of the field officer in violation of such directions would be illegal and of no consequence. Even after introduction of the PaCCS / WeBOC / electronic assessment, CGO

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12/2002, Para-101 (B) still exists and is available on the statute book, therefore, in such a situation, and in absence of any clarification and or amendment, to that effect I have not been able to perused myself to observe that the same would not be applicable in case of assessment of goods declarations under any electronic processing of the same in reported judgement 2016 PTD 35 Honorable High Court of Sindh made the same discretions. Hon'ble Supreme Court of Pakistan in reported judgment PTCL 2008 CL 337 titled as DGI&I & others vs Al-Faiz Industries (Pvt) Ltd & others held that *"If the law have prescribed method for doing a thing in a particular manner such provision of law is to be followed in letter and spirit and achieving or retaining the objective of performing or doing of a thing in a manner other than provided by law would not be permitted--- each and every words appearing in a section is to be given effect and no other word is to be rendered as redundant or surplus -- when the legislature required the doing of a thing in a particular manner then it is to be done in that manner and all other manner or modes of doing or performing that things are barred -- if the doing of a thing is made lawful in a particular manner the doing of that thing in conflict with the manner prescribed will be unlawful as per maxim "Expression facit cessare tacitum"*

7. Although, the re-assessment of the Goods Declaration is permitted under section 80(3) of the Customs Act, 1969 after exhausting of the procedure laid down in section 80(2) *ibid*, for better understanding same are reproduced here-in-below:

(2) *An officer of customs may examine any goods that he may deem necessary at any time after the import of the goods into the country and may requisition relevant documents as and when and in a manner deemed appropriate, during or after release of the Customs;*

(3) *if during the checking of goods declaration it is found that any statement in such declaration or documents or any information so furnished is not correct in respect of any matter relating to the assessment, the goods, shall, without prejudiced to any other action which may be taken under this Act be reassess to duty*

Upon scrupulous reading of sub section (3) of Section 80, it is observed that it is dependent on sub section (2), unless sub section (2) is not complied in letter and spirit no action can be taken under section 80 (3) of the Act.

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Meaning thereby that re-assessment under Section 80 (3) after release of the goods is permitted only after calling for the documents as expressed in Section (2) *ibid*. Upon receipt of documents or the information so transmitted/submitted or the statement given by the importer to the Customs Authority if are found to be incorrect in respect of earlier assessment the reassessment can be made, therefore, in the instant case no such notice under Section 26 of the Customs Act, 1969 has been issued to the appellant. In principle if it is considered for the sake of arguments that the customs is empowered to reassess a Goods Declaration after clearance of the goods under Section 80 (3) without adhering the procedure laid down in Section 80 (2), there was no need for the legislature to frame sub Section (2). The intention of legislature was not as interpreted by the respondent. The fact of matter is no reassessment is permitted under Section 80 (3) of the Customs Act, 1969 once the goods are cleared. The reassessment is permitted prior to passing of Order of clearance under Section 83 and Rule 442 *ibid* upon filing of review by the importer under Rule 441 *ibid* against the assessment orders of Appraiser/Principal Appraiser before the Principal Appraiser and Assistant/Deputy Collector of the Group as the case may be, rendering the reassessment order through show cause notice by the respondent is in derogation of Section 80 and Rule 438 of Sub Chapter III of Chapter XXI of Customs Rule 2001 and as such without any lawful authority, hence void and ab-initio.

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8. Although, the Valuation Ruling is applicable under Section 25-A (2) of the Customs Act, 1969 in the present case, but on the contrary the department / respondents or their representative for better reasons known to them failed to apply the subject Valuation Ruling in the customs clearance system. This very defect cannot be cured at this stage of the case when admittedly the goods which were cleared, after due process of law the same consignment / goods were disposed of in the market by the importer. The reliance placed by the respondent referring the judgement dated 19.09.2012 of Honorable Supreme Court of Pakistan in Civil Appeal No.332 to 382 of 2012 have entirely different controversy at par from the present in this case.

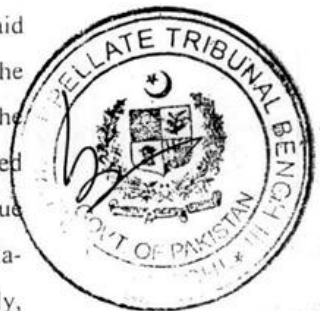
9. The appropriate authority to pass order under section 80 of the Customs Act, 1969 and Rule 438 of Customs Rule 2001 as notified in Serial No.3 (ii) of Notification SRO 371(I)/2002 dated 15.06.2002 is Principal Appraiser. Resultant, he is the only authority to issue show cause notice for creating recovery. To the contrary, the respondent created recovery through show cause notice dated 13.11.2013 by usurping the powers of his subordinate, which is not permitted under law. Neither superior nor subordinate are empowered to eclipse the powers of their subordinate/ superior while acting as quasi judicial officers and this has been time and again held by the Superior Judicial Fora in umpteenth reported judgment that, it is an element of principle i.e. a mandatory condition for the exercise of jurisdiction by the Port, Tribunal or authority is not fulfilled as per the express provision of the Act/Rule than the entire proceeding which follows become illegal and suffers from want of jurisdiction/powers. Any order passed in continuation of these proceeding in adjudication or appeal equally suffer from illegality and are without jurisdiction. I am flabbergasted to note that the respondent intentionally ignored the said fact while passing impugned order despite not warranted under law and he completely ignored the provision of the Act/Rules and the citation relied upon by the appellant as evident from the fact that he summarily brushed aside the those in very cursory and wonton manner. The fact of matter is that the relied upon citation by the appellant quoted in para 3(xi) to (xiv) incorporated in page 6 to 8 of the order-in-appeal are applicable with full force in the case of the appellant. I prefer to relied upon case reported at 2010 PTD 465 Collector of Customs, Model Customs Collectorate v M/s. Kapron Overseas Supplies Co., (Pvt) Ltd as case identical to the appellant, the High Court of Sindh held that "Any transgression of such jurisdiction for not being technical defect would render entire exercise of authority to be ab-initio, void and illegal--- the exercise of jurisdiction by an authority is a mandated requirement and its non fulfillment would entail the entire proceeding to be "corum non-judice". Since, in the instant case the reassessment order is without power/jurisdiction, the entire proceeding right from reassessment order to Order-in-Original are also without lawful authority and jurisdiction.

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10. It is the high time to think over such discrepancies and to obey and follow the proper provision of law as mandated in the statute by the concerned officials as well as the officials of the Federal Board of Revenue having the competent jurisdiction to comply with, otherwise, such consistent derogatory and transgressional acts of dis-obedience from legal provisions of law were not eliminated, the same would cause the irreparable losses and damages not only to the relevant importers, but serious losses could be occurred to the government exchequer also.

11. That under Article 4 of the Constitution of Islamic Republic of Pakistan every citizen enjoy the protection of law and to be treated in accordance with law is inalienable right of every citizen, wherever he may be, and every other person for the time being within Pakistan, clause (a) of Sub Article (2) express that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. In the instant case the proceeding initiated by the respondent are in "unlawful manner" in negation of Article 4 and the judicial principle laid down from time to time by the Superior Court. It means, according to the accepted form of legal process and postulates, a strict performance of the function and duties laid down by law. It may well be as has been suggested in some quarters, that in this sense it is comprehensive as the American "due process" clause in a new garb. It is in this sense that an action which is mala-fide or colorable is not regarded as action in accordance with law. Similarly, action taken upon extraneous or irrelevant consideration is also not an action in accordance with law. Action taken upon no ground at all or without proper application of mind by the quasi judicial authorities would also not qualify as an action in accordance with law and would therefore, have to be stuck down as being action taken in unlawful manner. A person acting in pursuance of a statute cannot be set to be acting bona-fide, if he has no reasonable ground for believing that the statute justifies him in what he does. If the case, therefore is one where there are no grounds or the grounds are such that no reasonable person would have acted on the supposition that he was acting under the authority of statute, then it is a case of the court to look into it. In order to thwart, the commission of unlawful act in derogation of

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the provision of the statute the Hon'ble Supreme Court of Pakistan in reported judgment PTCL 2003 CL 345 held that "the thing should be done as they are required to be done, or not at all" and in PLD 1971 Supreme Court 61 "neglect of plain requirement of an absolute statutory enactment prescribing how something is to be done, would invalidate thing being done in some other manner" & PLD 1973 Supreme Court 236 "it is now well established that where an inferior Tribunal or Court has acted wholly without jurisdiction or taken any action "beyond the sphere allotted to the Tribunal by law and therefore outside the area within which to law recognizes a privilege to err" then such action amounts to a "usurpation of power warranted by law" and as such an act is a nullity that is to say the result of a purported exercise of authority which has no legal effect whatsoever" in such a case, it is well established that a Superior Court is not bound to give effect to it." The said ratio was maintained, in the case of E.A Awans reported as PLD 1964 SC 536 "where it has been unambiguously and categorically held that if the doing of a thing is made lawful in a manner than doing of that thing in conflict with the manner prescribed will be unlawful." The Hon'ble Apex Court in 2001 SCMR 838 and 2003 SCMR 1505 held that "while considering the impact of violation or non-observance of the method prescribed by law for doing an act in a particular manner or mode, such provision of law is to be followed in letter and spirit and achieving or attaining the objective of performing or doing of a thing in a manner other than provided by law would not be permitted. The same observation has been made by the Hon'ble Supreme Court of Pakistan in the Civil Petition filed by Director General of Intelligence & Investigation and others v M/s. Al-Faiz Industries (Pvt) Ltd and others reported as 2006 SCMR 129 "if the law had prescribed method for doing of a thing in a particular manner, such provision of law is to be followed in letter and spirit and achieving or attaining the objective of performing or doing of a thing in a manner other than provided by law would not be permitted."

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12. By getting the strength, to what have been discussed herein above, particularly the interpretation of law and legal proposition in the light of prescribed law and observations made thereon and to follow the *ratio*

decidendi, observed by the superior courts and my own observations, I hold that, the proceedings, actions and orders passed during hierarchy of the customs are completely suffers from grave legal infirmities are declared illegal, ab-initio and of no legal effect on various accounts as detailed above, appeal is accordingly allowed with no order as to cost.

13. Judgement passed and announced accordingly.

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(MUHAMMAD NADEEM QURESHI)
(Member (Judicial-I))
Karachi

GOVERNMENT OF PAKISTAN
CUSTOMS, EXCISE & SALES TAX
APPELLATE TRIBUNAL, BENCH-III, KARACHI

Appeal No(s)/CN No. (s) K-1757/14 to 1074/14 dated 26/12/14 of
M/S Alpha Diaries Pvt. Ltd against
Order-to-Original No. (s) VR No. 459/2014 dated 18/6/14 issued
by D. Mentor
copy forwarded to:
1. M/S Alpha Diaries Pvt. Ltd
2. Collector of Customs Karachi/Hyderabad Ma Appmt (West)
3. Collector of Sales Tax Federal Excise, Karachi/Hyd/Quetta
4. The Director General Intelligence & Investigation
Karachi / Hyd / Quetta
5. The Director of General P.C.O Karachi
6. Office Copy.

(Sadiq-ul-Umer)
Assistant Registrar

18/5/16