

**ORDER-IN-ORIGINAL NO. 152 OF 2015-2016**  
**M/s. Monnoowal Textile Mills Limited, Lahore**  
Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402)/Monnoowal Textile/2015



**GOVERNMENT OF PAKISTAN**  
**COLLECTORATE OF CUSTOMS (ADJUDICATION-II)**  
**11<sup>TH</sup> FLOOR, CUSTOMS HOUSE, KARACHI**

FBR

Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402)/Monnoowal Textile/2015

Dated: 02-12-2015

Before : Syed Mahmood Hassan  
Additional Collector  
Collectorate of Customs (Adjudication-II), Karachi

Respondents : M/s. Monnoowal Textile Mills Limited,  
(NTN-0657801)  
Monnoo House 3, Montgomery Road, Lahore.

Date of Institution : 08-06-2015 (show cause notice)

Dates of hearings : 17-06-2015, 01-07-2015, 15-07-2015, 29-07-2015, 20-08-2015,  
03-09-2015, 16-09-2015, 29-09-2015, 06-10-2015, 20-10-2015  
and 23-11-2015

Date of judgment : 01-12-2015

Present

For Respondents : Mr. Amir Qureshi and Mr. Khalid Mehmood Akhtar

For Department : Mr. Mehtab Ahmed Principal Appraiser.

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- 1) This copy is granted free of charge for the private use of the person to whom it is issued.
- 2) An appeal against this order lies with the Appellate Tribunal, Karachi, within 60 days from the date of communication of this order. The appeal shall be accompanied by a fee of Rs.1000/- (One thousand only) to be paid in the manner that may be prescribed by the Board.
- 3) The appellant should state in his Appeal if he desires to be heard in person or through a pleader.

Brief facts of the case as reported by the Model Customs Collectorate of Appraisement (East), Customs House, Karachi vide contravention report No. 4(402)KAPE-DC(IV)/2015 dated 04-06-2015, are reproduced as follows:-

1	Name and address of the importers:	M/s. Monnoowal Textile Mills Limited. (NTN-0657801) Monnoo House 3, Montgomery Road, Lahore
2	No of GDs where the contravention was detected	KCSI-HC-154218-07-05-2013

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3.	Description of the Goods	Raw and Ginned Cotton
4.	Total Amount of Taxes Evaded	Rs. 2,363,808/-
5.	Total Value of the Imported Goods	Rs. 59,095,201/-

2. And whereas, M/s. Monnoowal Textile Mills Limited, Lahore, imported a consignment of raw and ginned cotton and filed goods declaration mentioned as above, at an invoice value of Rs. 59,095,201/-,

3. And whereas, M/s. Monnoowal Textile Mills Limited, Lahore, availed the facility of self-declaration available to them under section 79 of the Customs Act, 1969, determining their duty and taxes on their own,

4. And whereas, M/s. Monnoowal Textile Mills Limited, Lahore, unlawfully claimed the benefit of SRO 1125(1)/2011 dated 31-12-2011 on the above consignment; and paid Sales Tax @ 0% (under SRO 551(1)/2008) and Income Tax @ 1%, while the goods were subject to 5% Income Tax at import stage as the concurrent benefit of SRO 212(1)/2013 dated 14-03-2013 is only available to goods that are covered under SRO 1125(1)/2011. The Customs Computerized System cleared their consignment through "Green Channel" without any human intervention;

5. And whereas, the importer was not entitled to the benefit of SRO 1125(1)/2011 dated 31-12-2011 in the light of amending SRO 154(1)/2013 dated 28-02-2013 which has excluded raw and ginned cotton from the purview of SRO 1125(1)/2011 dated 31-12-2011 through condition (ii) of the said SRO;

6. And whereas the above said condition (ii) has stipulated that the benefit of the SRO will be available to the Textile Sector "From Spinning Stage Onwards"; as the goods of the importer were clearly of the "Ginning Stage" hence, were categorically excluded from the purview of the SRO 1125(1)/2011 dated 31-12-2011. Now, therefore, in view of the above factual position, it is established beyond any doubt that the importer has willfully evaded legitimate government revenue to the tune of Rs. 2,363,808/- and contravened the following provisions of the law:-

ACTS	SECTIONS	PUNISHABLE
The Customs Act, 1969	32, 32(1), 32(2), 32(A), 79	Clause 14, 14A, of Section 156(1) of the Customs Act, 1969
The Sales Tax Act, 1990	Section 33 & 34	Clause 11(c) of Section 33
The Income Tax Ordinance, 2001	Section 148	Section 148

7. Accordingly, M/s. Monnoowal Textile Mills Limited, Lahore, was called upon to show cause under provisions of 32, 32(1), 32(2), 32(A) & 79 of the Customs Act, 1969, Sections 33 & 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 as to why the evaded amount of taxes amounting to Rs. 2,363,808/- (along with the default surcharge) may not be recovered from them and penal action under clauses (14) & (14A) of Section 156(1) of the Customs Act, 1969, Clause 11(c) of Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 may not be taken against them.

8. In this case the show cause notice was issued on 08-06-2015. The period of 120 days as provided in sub-section (3) of section 179 of the Customs Act, 1969, for conclusion of adjudication proceedings was

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set to expire on 06-10-2015. The subject case was not decided in the time frame as provided in section 179 of the Customs Act, 1969 due to the reason that the departmental representative failed to submit parawise comments on time. The undersigned provided ample hearing opportunity to both parties. Extension of (60) sixty days to decide the case was granted by the Collector, Collectorate of Customs (Adjudication-II), Karachi in exercise of powers under Section 179(3) of the Customs Act, 1969. Thus the time limit further stood extended upto 05-12-2015.

9. The case was fixed for hearing on 17-06-2015, 01-07-2015, 15-07-2015, 29-07-2015, 20-08-2015, 03-09-2015, 16-09-2015, 29-09-2015, 06-10-2015, 20-10-2015 and 23-11-2015. The importer submitted written reply to the show cause notice. For ease of reference the same is reproduced hereunder:-

**Subject:- Reply to show cause Notice No. Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402)/Monnoowal Textile/2015 dated 08-06-2015.**

Respected Sir,

The above show cause notice is prepared and issued under various sections of the Customs Act, 1969, the Sales tax Act, 1990 and the Income tax Ordinance, 2001. We requested to adjourn the matter for two weeks vide our letter dated 15.06.2015. Our request was acceded to and date of hearing was fixed for 01.07.2015 vide your office notice dated 18.06.2015.

We would like to make reference to clarification C No. 171/WHIT/2006 Islamabad, June 30, 2015 issued by Muhammad Ashgar Khan Niazi Secretary (Law and clarification) on chargeability of high rate of withholding tax at import stage at 5.5% from the beneficiaries i.e. textile spinning units under SRO 1125(I)/2011 dated 31.12.2011 which speaks as follows (copy attached)

(I am directed to refer to the provisions of clause (9C) of part II of the second schedule Part II of the First Schedule to the Income Tax Ordinance, 2001 and SRO 1125(I)/2011 dated 31.12.2011 as amended through SRO 154(I)/2013 dated 28.02.2013 and to say that "manufacturers doing business in textiles (including Jute), Carpets, leather, sports and surgical goods sectors and fulfilling the conditions of SRO 1125, irrespective of the type of goods imported are covered under SRO 1125(I)/2011 dated 31.12.2011 and reduced rate of 1% under Section 148 of the Income Tax Ordinance, 2001 will be applicable on their imports from 14.03.2013 till date")

Hence suffice it to state & request that charges framed in the above show cause notice be quashed and declared to be of no liability, no legal effects in the interest of justice, fairness and equity.

Kind regards

-sd-

**For MONNOOWAL TEXTILE MILLS LIMITED**

10. The respondent also submitted copy of the Board's letter vide C No. 147/WHIT/2006 dated 30-06-2015 in their support. For ease of reference the same is reproduced as hereunder:-

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

C No. 147/WHIT/2006 Islamabad, dated 30-06-2015

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Mr. S. M. Tanzeer  
Chairman, AP/IMA  
AP/IMA House 44-A, Lalazar  
Minerva Jamzuchan Khan Road  
P.O. Box No 5446  
Karachi-74000

SUBJECT: CHARGABILITY OF HIGHER RATE OF WITHHOLDING TAX AT IMPORT STAGE AT 5.5% FROM THE BENEFICIARIES I.E. TEXTILE SPINNING UNITS UNDER SRO 1125(I)-2011 DATED 31.12.2011.

Kindly refer to your letter No. PZ Admin-FBR-15-005 dated 29<sup>th</sup> January 2015 on the subject.

Vide above referred letter, a clarification has been sought as to what rate of Income Tax is applicable on import of cotton by manufacturers covered under SRO 1125(I)-2011 dated 31.12.2011.

I am directed to refer to the provisions of clause 19C of Part "I" of the Second Schedule Part of the First Schedule to the Income Tax Ordinance, 2001 and SRO 1125(I)-2011 dated 31.12.2011 as amended through SRO 154(I)-2013 dated 28.02.2013 and to say that "manufacturers doing business in textiles (including jute), carpets, leather, sports and surgical goods sectors and fulfilling the conditions of SRO 1125 (respective of the type of goods imported, are covered under SRO 1125(I)-2011 dated 31.12.2011 and reduced rate of 1% under Section 148 of the Income Tax Ordinance, 2001 will be applicable on their imports from 14.03.2013 till date.

-sd/-

(Muhammad Asghar Khan Niazi)  
Secretary (Law and Clarification)

11. Time and again this office issued notices to the department for submission of parawise comments however neither the departmental representative attended the hearing nor any comments were submitted. To provide a fair opportunity to the department the Collector of Customs Model Customs Collectorate of Appraisement (East), Karachi, was requested vide letter C.No. Adj-II/Add.Coll/SCN-113/MCC.E/Cont. 4(402)/Qadri Textiles Mills/2015 dated 21-08-2015 to direct the concerned quarters for submission of parawise comments and attend hearing. For ease of reference letter dated 21-08-2015 is reproduced hereunder:-

GOVERNMENT OF PAKISTAN  
COLLECTORATE OF CUSTOMS (ADJUDICATION-II)  
CUSTOM HOUSE, KARACHI

Adj-II/Add.Coll/SCN-113/MCC.E/Cont.4(402)/Qadri Textiles Mills/2015

Dated:- 21-08-2015

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

Subject: SUBMISSION OF PARAWISE COMMENTS

Kindly refer to this office letter No. Adj-II/Add.Coll/SCN-MCC.E/Cont.4(402)/Qadri Textiles Mills/2015 dated 31-07-2015 on the subject cited above. (copy enclosed).

2. It is submitted that the following cases relating to recovery of With Holding Tax are

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pending with this office.

S.NO.	SCN NO.	IMPORTERS NAME	AMOUNT INVOLVED
1	108	M/s. Reliance Weaving Mills Limited, (NTN-0133480) Multan.	1,803,399/-
2	109	M/s Hira Textile Mills Limited, (NTN-0816005) Lahore.	2,665,774/-
3	112	M/s. Equity Textiles Ltd. (NTN-2300072) Karachi.	1,606,123/-
4	113	M/s Qadri Textile Mills, (NTN-0657808) Lahore.	1,562,436/-
5	110	M/s. Monnoowal Textile Mills Limited, (NTN-0657801) Lahore.	2,363,808/-

3. Time & again the Collectorate has been requested to submit comments on the reply submitted by the respondents. However, the Collectorate is neither submitting parawise comments nor anyone is attending hearing on behalf of the Collectorate, which is causing undue delay in finalization of adjudication proceedings.

4. The subject issue has also been clarified by Board vide Letter No. C.No. 1(7)WHT/2006, e. Dax 91638-R dated 30, June 2015 (copy enclosed). It is requested that concerned quarters be directed to submit comments thereon on or before the next date of hearing fixed for 03-09-2015 at 1030 hrs., besides attending the hearing along with relevant case record.

-sd/-  
 (Syed Mahmood Hassan)  
 Additional Collector

12. On 28-09-2015 Mr. Mehtab Ahmed, Principal Appraiser submitted parawise comments on behalf of the Collectorate, which are reproduced as under:-

**FOR THE HONOURABLE ADC (ADJUDICATION), CUSTOM HOUSE, KARACHI.**

1. Reliance Weaving Mills Ltd.
2. M/s. Hira Textile Mills Ltd.
3. M/s. Equity Textiles Mills Ltd.
4. M/s. Qadri Textile Mills.
5. M/s. Monnoowal Textile Mills Ltd.

**VERSUS**

Federation of Pakistan. .... Respondents

**PARAWISE COMMENTS ON BEHALF OF THE RESPONDENT NO.2**

The answering respondent, submits the following para-wise comments for kind consideration of ADC (Adjudication)

**PRELIMINARY SUBMISSIONS:-**

  
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- 1- That it is respectfully submitted that all the assessment orders & decisions of the Customs appropriate officers are appeal-able before the appellate authority in terms of Section 193 & 194-A of the Customs Act, 1969 (hereinafter referred as the "Act"). Since the petitioner approached this Honourable Court without exhausting the remedies available within the relevant statute of customs hierarchy, therefore, considering the provisions of Article 199(1) of the Constitution, the subject petition is not maintainable on this account also.
- 2- That it is respectfully submitted that the petitioner is not entitled for the benefit of reduced rate of Income Tax @ 1% due to the reason that said concession was admissible when SRO 1125(1)/2011 was in field and exemption of Sales Tax on import of raw & ginned cotton was available under aforesaid notification. Simultaneously the Income Tax concession was also available on import of aforesaid item in terms of SRO 212(1)/2013. However, the exemption of Sales Tax was subsequently withdrawn on import of raw & ginned cotton in terms of Condition No.2(1) of SRO 154(1)/2013 dated 26-02-2013. In the aforesaid SRO the exemption of Sales Tax was extended only at spinning stage and onward in the cases of textile. The afore stated position would clearly reveal that imported raw & ginned cotton were not admissible for the benefit of sales tax in terms of SRO 1125(1)/2011 dated 31-12-2011, therefore, the claim of the petitioner for the benefit of the income tax at the reduced rate of 1% also does not merit consideration and is liable to be charged at 5% in view of the amendment SRO 154(1)/2013 dated 26-02-2013.
- 3- That the subject petition has been filed with false statements, concealment of facts and with un-clean hands, therefore, the subject petition is not maintainable and is liable to be dismissed on this account also. It is pertinent to mention that the benefit of SRO 1125(1)/2011 dated 31-12-2011 in respect of exemption of Sales Tax was admissible on import of raw & ginned cotton further the exemption of income tax under SRO 212(1)/2013 was also admissible at concessional rate 1%. However, the exemption of sales tax on ginned cotton was withdrawn through SRO 154(1)/2013 dated 26-02-2013. Where vide condition No.2(1) the said exemption was extended from spinning stage and onward in cases of textile. The facts of the case mentioned in above lines would reveal that in terms of SRO 154(1)/2013 dated 26-02-2013 the Sales Tax exemption was not available on the import of raw & ginned cotton. Accordingly, the importers of said item were not entitled for availing the benefit of income tax at the concessional rate of 1% under SRO 212(1)/2013. Since through SRO i.e. 154(1)/2013 dated 26-02-2013 the exemption of Sales Tax was extended from spinning stage and not to the raw & ginned cotton in cases of textile. Therefore, the concessional rate of Income Tax was not allowed. The petitioner's claim in respect of their consignments of raw & ginned cotton did not merit consideration under concessional rate of Income Tax @ 1% under the relevant provision of law.

**PARAWISE COMMENTS ON FACTS OF THE PETITION:-**

- 1- That the contents of para (1) of the petition require no comments being facts of the case.
- 2- That the contents of para (2) of facts of the petition require no comments.
- 3- That the contents of para (3) of facts of the petition require no comments.
- 4- That the contention of the petitioner, vide para (4) of facts of the petition is incorrect, hence, is vehemently denied. It is, however, respectfully submitted that the exemption of sales tax & Income Tax @ 1% was admissible under SRO 1125(1)/2011 & SRO

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212(1)/2013, however, the benefit of SRO 212(1)/2012 in respect of concessionary rate of income tax on import of raw & ginned cotton was withdrawn through SRO 154(1)/2013 where in terms of Condition No 2(1), the exemption of sales tax admissible on import of raw & ginned cotton from spinning stage and onward in cases of textile. The aforesaid condition was not changed in the subsequent SROs i.e. SRO 551(1)/2008 rescinded vide SRO 573(1)/2014 where the Sales Tax was chargeable @ 17% and then 5% as per the 8<sup>th</sup> Schedule of the Sales Tax Act, 1990, through Finance Act, 2014. The afore-stated position clearly reveals that the petitioners are mis-quoting the factual position to avail the inadmissible benefit of income tax at concessionary rate of @ 1% instead of @ 5%.

- 5- That the contention of the appellant, vide para (5) of facts of the petition is incorrect and mis-statement. The factual position is that the SRO 1125(1)/2011 was rescinded by SRO 154(1)/2013 dated 26-02-2013 where as per the Condition No.2(1) the benefit of exemption of sales tax is extended only from the spinning stage onward in the cases of textile. Therefore, the claim of the petitioner in respect of SRO 1125(1)/2011 is incorrect and did not merit consideration.
- 6- Require no comments.
- 7- Require no comments being irrelevant in this case.
- 8- That as stated in above line the contention of the appellant is incorrect, keeping in view that in terms of Condition No 2(1) of SRO 154(1)/2013 the exemption of sales tax was admissible from the spinning stage onward in cases of textile. Hence, the benefit of income tax under concessionary rate of 1% cannot be extended on import of raw & ginned cotton to the appellant and the appellant is liable to pay the income tax @ 5%.
- 9- That the contention of the appellant is incorrect as there is no Respondent No.3 in the subject appeal.
- 10- That the contention of the appellant, vide para (11) of facts of the appeal is incorrect, hence, is vehemently denied. It is respectfully submitted that under sub-section (5) & (6) of Section 148 of the Income Tax Ordinance, 2001, the appropriate officer is not only authorized to collect but also to recover Income Tax in same manner and at the same time, as if it were a duty of Customs. Further the Ministry of Law & Justice had clarified vide their letter No.F-242/2012-Law-1 dated 11-07-2012 that customs authorities are empowered to recover short paid amount of levies at import stage.

**PARAWISE COMMENTS ON GROUNDS OF THE PETITION:-**

- a. That the contention of the petitioner, vide para (a) of grounds of the petition is incorrect, hence, is vehemently denied. As already stated in foregoing lines that under sub-section (5) & (6) of Section 148 of the Income Tax Ordinance, 2001, the appropriate officer is not only authorized to collect but also to recover Income Tax in same manner and at the same time, as if it were a duty of Customs. Further the Ministry of Law & Justice had clarified vide their letter No.F-242/2012- Law-1 dated 11-07-2012 that customs authorities are empowered to recover short paid amount of levies at import stage.

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- b. That the contention of the petitioner, vide para (b) of grounds of the petition is incorrect and even mis-stating the factual position. In fact the petitioner is required to pay the income tax @ 5% as the Concurrent benefit of SRO 212(1)/2013 dated 14-03-2013 is only available to goods which are covered under SRO 1125(1)/2011 dated 31-12-2011.
- c. That in the absence of the copies of referred decisions of Honourable High Court appropriate comments cannot be offered.
- d. That the contents of para (d) of the grounds of the petition are irrelevant to the subject petition, keeping in view that the facts involved in the subject petition is different in its nature. As per the case record the petitioner are not entitled for the benefit of reduced rate of Income Tax @ 1% due to the reason that said concession was admissible when SRO 1125(1)/2011 was in field and exemption of sales tax on import of raw & ginned cotton was available under aforesaid notification. Simultaneously the income tax concession was also available on import of aforesaid item in terms of SRO 212(1)/2013. However, the exemption of Sales Tax was subsequently withdrawn on import of raw & ginned cotton in terms of Condition No.2(1) of SRO 154(1)/2013 dated 26-02-2013. In the aforesaid SRO the exemption of sales tax was extended only at spinning stage and onward in cases of textile. The afore stated position would clearly reveal that imported raw & ginned cotton were excluded from the purview of SRO 1125(1)/2011 dated 31-12-2011, therefore, the claim of the petitioner for the benefit of the Income Tax at the reduced rate of 1% does not merit consideration and is liable to be charged at 5%.
- e. That in the light of the submissions made in above lines, the contents of this para is incorrect, hence, is vehemently denied and require no further comments.
- f. That the contention of the petitioner, vide para (f) of the grounds of the petition is incorrect and even mis-stating the factual position. Keeping in view that in the subject case the petitioner is required to pay the income tax @ 5% as the Concurrent benefit of SRO 212(1)/2013 dated 14-03-2013 is only available to goods which are covered under SRO 1125(1)/2011 dated 31-12-2011. Moreover, the exemption of sales tax was subsequently withdrawn on import of raw & ginned cotton in terms of Condition No.2(1) of SRO 154(1)/2013 dated 26-02-2013. In the aforesaid SRO the exemption of sales tax was extended only at spinning stage and onward in the cases of textile. The afore stated position would clearly reveal that imported raw & ginned cotton were excluded from the purview of SRO 1125(1)/2011 dated 31-12-2011, therefore, the claim of the petitioner for the benefit of the Income Tax at the reduced rate of 1% does not merit consideration and is liable to be charged at 5%.
- g. That the contention of the appellant, vide para (g) of the grounds of the appeal is incorrect, hence, is vehemently denied. As already stated in foregoing lines that under sub-section (5) & (6) of Section 148 of the Income Tax Ordinance, 2001, the appropriate officer of Customs is not only authorized to collect but also to recover income tax in same manner and at the same time, as if it were a duty of Customs. The argument of the petitioner that only the officers of Inland Revenue can recover sales tax & income tax is incorrect. It is submitted that the show cause notice has been issued invoking the provisions of Sections 32(1), (2) & (3A) of the Act, which empower the customs authorities to recover short levied amount of duty & taxes. For reference the relevant part of Section 32(2) of the Customs Act, 1969 is reproduced hereunder:-

  
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32. [False] statement, error, etc:- (1) If any person, in connection with any matter of customs:-

- (a) ---
- (b) ---
- (c) ---

(2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any duty, taxes or charge has not been levied or has been short-levied or has been erroneously refunded, the person liable to pay any amount on that account shall be served with a notice within [five] years of the relevant date, requiring him to show cause why he should not pay the amount specified in the notice.

Furthermore, under the provisions of Section 179 of the Customs Act, 1969 the custom officers are empowered to adjudicate the cases relating to recovery of duty & taxes. For ease of reference the relevant part of Section 179 of the Customs Act, 1969 is reproduced hereunder:-

179. Power of adjudication- Subject to sub-section (2), in cases involving confiscation of goods or recovery of duty & other taxes not levied, short levied or erroneously refunded, imposition of penalty or any other contravention under this Act or the rules made there under, the jurisdiction and powers of the officers of customs in terms of amount of duties & other taxes involved, excluding the conveyance, shall be as follows, namely:

In addition, the Customs Officer has also been empowered by the legislature to recover duty & taxes under Section 202 of the Customs Act, 1969. For ease of reference the relevant part of Section 202 of the Customs Act, 1969 is reproduced hereunder:-

202. Recovery of Government dues:- (1) When, under this Act or under any other law for the time being in force, which provides for any tax, duty or other levy being collected in the same manner as customs-duties are collected, a penalty is adjudged against, or notice or demand is served upon, any person calling for the payment of any amount unpaid which may be payable by way of penalty or by way of duty, tax or other levy or under any bond [guarantee] or other instrument executed under this Act or such other law or the rules made there under, the appropriate officer:

In the light of afore-stated provisions of law, the officers of customs are empowered to collect, adjudicate & recover customs duty & other taxes not paid or short paid at import stage".

Further the Ministry of Law & Justice had clarified vide their letter No.F-242/2012-Law-I dated 11-07-2012 that customs authorities are empowered to recover short paid amount of levies at import stage.

- h. That the contention of the petitioner, vide para (h) of grounds of the petition is incorrect, hence, is vehemently denied require no further comments.
- i. That in the light of the submissions made in above lines, the contents of this para is incorrect, hence, is vehemently denied and require no further comments.

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J. That the contention of the petitioner is incorrect as there is no Respondent No.3 in the subject petition.

K. That the contention of the petitioner, vide para (k) of grounds of the petition is incorrect. It is pertinent to mention that the benefit of SRO 1125(1)/2011 dated 31-12-2011 in respect of exemption of sales tax was admissible on import of raw & ginned cotton further the exemption of income tax under SRO 212(1)/2013 was also admissible at concessory rate 1%. However, the exemption of Sales Tax on ginned cotton was withdrawn through SRO 154(1)/2013 dated 26-02-2013. Where vide condition No. 2(1) the said exemption was extended from spinning stage and onward in the cases of textile. The facts of the case mentioned in above lines would reveal that in terms of SRO 154(1)/2013 dated 26-02-2013 the Sales Tax exemption was not available on the import of raw & ginned cotton. Accordingly, the importers of said item were not entitled for availing the benefit of Income tax at the concessory rate of 1% under SRO 212(1)/2013. Since through SRO i.e. 154(1)/2013 dated 26-02-2013 the exemption of Sales Tax was extended from spinning stage and not to the raw & ginned cotton in cases of textile. Therefore, the concessory rate of income tax was not allowed. The petitioner's claim in respect of their consignments of raw & ginned cotton did not merit consideration under concessory rate of income tax @ 1% under the relevant provision of law.

L. That as already stated in detail in foregoing paras that under sub-section (5) & (6) of Section 148 of the Income Tax Ordinance, 2001 the appropriate officer of Customs is not only authorized to collect but also to recover Income Tax in same manner and at the same time, as if it were a duty of Customs. Further the Ministry of Law & Justice had clarified vide their letter NO.F-242 2012-Law-I dated 11-07-2012 that customs authorities are empowered to recover short paid amount of levies at import stage.

That in the light of the afore stated position, it is respectfully submitted that the claim of charging income tax @ 1% as advance income tax under Section 148 read with 151 Schedule Part-II of Income Tax Ordinance, 2001 and SRO 1125(1)/2011 dated 31-12-2011 is incorrect and did not merit consideration due to the reason that the aforesaid SRO was amended through SRO 154(1)/2013 dated 26-02-2013 and as per the Condition No.2(1) of the aforesaid SRO the benefit of exemption of sales tax was not admissible to the raw & ginned cotton. The aforesaid situation clearly shows that the claim of petitioner in respect of SRO 1125(1)/2011 was not tenable in these cases. The Honourable ADC (Adjudication), is therefore, graciously requested to kindly dismiss the cases of the importers.

-sd-

Mehrab Ahmed

Principal Appraiser Group-IV

13. The parwise comments submitted by the department were forwarded to the respondent. The respondent submitted rejoinder in this case, which is reproduced as under:-

Subject:- Show cause Notice No. Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402) Monnoawal Textile 2015 dated 08-06-2015 dated 08-06-2015. Submission/Rejoinder regarding.

Respected Sir,

Additional Collector  
Collectorate of Customs (Adjudication-II)  
Karachi

**ORDER-IN-ORIGINAL NO. 152 OF 2015-2016**  
**M/s. Monnoawal Textile Mills Limited, Lahore**  
Adj-II/Add.Coll/SCN-110/MCC.E. Cont.4(402) Monnoawal Textile/2015

Kindly refer to above and hearing notice dated 30-09-2015 whereby Para wise comments submitted by the respondent department has been provided for submission of rejoinder on 06-10-2015. In this regard we have the Honour to submit the followings:

1. That in this case originally the proceedings were initiated vide show cause notice dated 08-06-2015 by alleging that the M/s. Monnoawal Textile Mills Limited, Lahore has unlawfully claimed the benefits of SRO. 1125(1)/2011 dated 31-12-2011 while clearing the consignment vide G.D. No. KCSI-HC-154218-07-05-2013 and paid income tax @ 1% instead of 5% as the benefit of SRO. 1125(1)/2011 has been withdrawn by issuing amending SRO. 154(1)/2013 dated 28-02-2013 which has excluded raw and ginned cotton from the purview of SRO. 1125(1)/2011 through condition (ii) of the said SRO. Therefore, M/s. Monnoawal Textile Mills Limited, Lahore was called upon to show cause as to why the evaded amount of Rs.2,363,808/- (along with default surcharges) may not be recovered.
2. That the above referred show cause was duly responded by the registered person vide its reply dated 01-07-2015. It has been submitted in the reply that the registered person has rightly claimed the benefit of SRO. 1125(1)/2011 dated 31-12-2011 by paying 1% income tax. Reliance in this regard was placed upon the clarification issued by FBR vide C. No. 1(7) WHT 2006 dated 30-06-2015. (Copy of reply and clarification is again being submitted, for your ready reference).
3. That it has again being submitted that the subject proceedings were initiated under the impression and presumption that the exemption of sales tax and reduce rate of income tax @ 1% which was admissible under SRO. 1125(1)/2011 and SRO. 212(1)/2013 had been withdrawn through SRO. 154(1)/2013 whereby in terms of Condition No. (ii) tax, the benefits of the above said SRO's were available only from spinning stage onward, in case of textile sector instead of ginning stage onward. The above said wrong impression, made basis for issuing show cause notice, has subsequently been clarified by the FBR by issuing clarification vide C.No. 1(7) WHT 2006 dated 30-06-2015. Relevant part of the clarification is as under: -
  - "2. vide above referred letter, a clarification has been sought as to what rate of income tax is applicable on import of cotton by manufacturers covered under SRO. 1125(1)/2011 dated 31.12.2011.
4. (I am directed to refer to the provisions of clause (9C) of part II of the second schedule) Part II of the First Schedule to the Income tax Ordinance) 2001 and SRO 1125(1)/2011 dated 31.12.2011 as amended through SRO 154(1)/2013 dated 28.02.2013 and to say that "manufacturers doing business in textiles (including Jute), Carpets, leather, sports and surgical goods sectors and fulfilling the conditions of SRO 1125, irrespective of the type of goods imported) are covered under SRO 1125(1)/2011 dated 31.12.2011 and reduced rate of 1% under Section 148 of the Income Tax Ordinance) 2001 will be applicable on their imports from 14.03.2013 till date".

Additional Collector  
Collectorate of Customs (Adjudication-II)  
Karachi

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Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402)Monnoowal Textile/2015

*Perusal of the above clarification issued by FBR reveals that irrespective of the type of goods imported, the rate of 1% of Income tax would be applicable as has been applied in the present case.*

5. *Apart from the above, perusal of the Para wise comments filed by the respondent/ department would reveal that the same has been filed against a case wherein adjudication proceedings have been finalized. Whereas, in the present case i.e. M/s. Monnoowal Textile Mills Limited, Lahore the adjudication proceedings are under the way and no determination of liability has been made so far, therefore, M/s. Monnoowal Textile Mills Limited, Lahore is legally not required to file the rejoinder/ replication of the Para wise comments submitted the department.*

6. *Without further prejudice to what has been stated above, the reporting agency/ authority is Coram non Judice in the present case and the entire proceedings are without lawful jurisdiction.*

*In view of the above, it is submitted that the present controversy regarding imposition of the rate of Income Tax has been resolved by the FBR in favor of the registered person by issuing clarification letter referred supra, it is, therefore, humbly prayed that the present proceedings initiated by virtue of show cause notice dated 08-06-2015 for imposition of higher income tax @ 5% instead of 1% may please be dropped being based upon wrong understanding of the statutory stipulation and consequently the show cause notice under reply may also be vacated as having no legal consequence.*

*Alternatively, if anything is contrary to the submission of the registered person, the same may please be confronted in the interest of justice and fair play for pleading our defense.*

*Thanking You,*

*-sd-*

*For: MONNOOWAL TEXTILE MILLS LIMITED*

14. I have gone through the case record and have considered the written as well as verbal arguments put forth by the respondents. The case of the department is that M/s. Monnoowal Textile Mills Limited, (NTN-0657801) Monnoo House 3, Montgomery Road, Lahore imported a consignment of raw and ginned cotton and filed goods declaration No. KCSI-HC-154218-07-05-2013 at an invoice value of Rs. 59,095,201/- and availed the facility of self-declaration available to them under section 79 of the Customs Act, 1969, determining their duty and taxes on their own. The respondent unlawfully claimed the benefit of SRO 1125(1)/2011 dated 31-12-2011 on the above consignment; and paid Sales Tax @ 0% (under SRO 551(1)/2008) and Income Tax @ 1%, while the goods were subject to 5% Income Tax at import stage as the concurrent benefit of SRO 212(1)/2013 dated 14-03-2013 is only available to goods that are covered under SRO 1125(1)/2011. The Customs Computerized System cleared their consignment through "Green Channel" without any human intervention. The respondent was not entitled to the benefit of SRO 1125(1)/2011 dated 31-12-2011 in the light of amending SRO 154(1)/2013 dated 28-02-2013 which has excluded raw and ginned cotton from the purview of SRO 1125(1)/2011 dated 31-12-2011 through condition (ii) of the SRO.

15. The department had correctly identified that the benefit of SRO 1125(1)/2011 dated 31-12-2011 is available from spinning sector onward. To arrive at a logical conclusion it will be appropriate to examine the provisions of SRO 1125(1)/2011 dated 31-12-2011. For ease of reference the same are re-produced hereunder:

  
Additional Collector  
Collectorate of Customs (Adjudication-II)  
Karachi



**ORDER-IN-ORIGINAL NO. 152 OF 2015-2016**  
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Adj-II/Add.Coll/SCN-110/MCC.E/Cont.4(402)/Monnoowal Textile/2015

- (ii) The benefit of this notification shall be available only to persons doing Business in textiles (including jute), carpets, Leather) 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 Tax payers list (ATL) on the website of Federal Board of Revenue;
- (iii) 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 five sectors mentioned in condition (i), sales tax shall be charged at the rate of two per cent on goods industrial inputs.

16. A bare perusal of the afore-stated provisions clearly reflects that the benefit of the said SRO is not available on import of raw cotton, thus the importer has claimed an inadmissible benefit.

17. Board has also issued a clarification vide C.No. 1(7)WHT/2006 E.Dox 91638-R dated 30-06-2015 which is reproduced for ready reference.

GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

C.No. 1(7)WHT/2006 E.Dox 91638-R

Dated 30-06-2015

Mr. S. M. Tanveer,  
Chairman, APTMA,  
APTMA House, 44-A, Lalazar,  
Moulvi Tamizuddin Khan-Road,  
P.O. Box No.5446,  
Karachi-74000.

SUBJECT: CHARGEABILITY OF HIGHER RATE OF WITHHOLDING TAX AT IMPORT STAGE AT 5.5% FROM THE BENEFICIARIES I.E. TEXTILE SPINNING UNITS UNDER SRO 1125(1)/2011 DATED 31.12.2011

Kindly refer to your letter No. PZ Admin FBR/15-005 dated 20<sup>th</sup> January, 2015 on the subject.

2. Vide above referred letter, a clarification has been sought as to what rate of Income Tax is applicable on import of cotton by manufacturers covered under SRO 1125(1)/2011 dated 31.12.2011.

3. I am directed to refer to the provisions of clause (9C) of Part of the Second Schedule, Part of the First Schedule to the Income Tax Ordinance, 2001 and SRO 1125(1)/2011 dated 31.12.2011 as amended through SRO 154(1)/2013 dated 28.02.2013 and to say that "manufacturers doing business in textiles (including jute), carpets, leather, sports and surgical goods sectors and fulfilling the conditions of SRO 1125, irrespective of the type of goods imported, are covered under SRO 1125(1)/2011 dated 31.12.2011 and reduced rate of 1% under Section 148 of the Income Tax Ordinance, 2001 will be applicable on their imports from 14.03.2013 till date.

-sd/-

Muhammad Asghar Khan Niazi  
Secretary (Law and Clarification)

Additional Collector  
Collectorate of Customs (Judication-II)  
Karachi


ORDER-IN-ORIGINAL NO. 152 OF 2015-2016  
M/s. Monnoowal Textile Mills Limited, Lahore  
Adj-II/Add.Coll/SCN-110/MCC.E.Cont.4(402)/Monnoowal Textile/2015

18. Perusal of Board's clarification reveals that to avail the benefit of reduced rate of Withholding Tax @ 1% it is imperative for the importer to fulfill the conditions of SRO 1125(1)/2011 dated 31-12-2011. As discussed above, the importers do not qualify the conditions of SRO 1125(1)/2011 dated 31-12-2011 since raw and ginned cotton has been excluded from the purview of the said SRO. Since the importer do not fulfill the condition of SRO 1125(1)/2011 dated 31-12-2011 they are not entitled to reduced rate of Withholding Tax @ 1% as contained in Board's afore-stated clarification.

19. In the light of afore-stated facts, the charges leveled in the show cause notice stand established. M/s. Monnoowal Textile Mills Limited, (NTN-0657801) Monnoo House 3, Montgomery Road, Lahore is hereby ordered to deposit an amount of Rs. 2,363,808/- into the government treasury in terms of the provisions of Sections 32, 32(1), 32(2), 32(A) & 79 of the Customs Act, 1969. A penalty of Rs. 300,000/- (Rupee Three Hundred Thousands Only) is also imposed upon M/s. Monnoowal Textile Mills Limited, (NTN-0657801) Monnoo House 3, Montgomery Road, Lahore in terms of clause 14 of Section 156(1) of the Customs Act, 1969 for claiming an inadmissible benefit. The Collectorate may proceed to recover the default surcharge strictly in accordance with law.

20. This order consists of (14) fourteen pages and each page bears my seal and initial.

M/s. Monnoowal Textile Mills Limited,  
(NTN-0657801)  
Monnoo House 3, Montgomery Road, Lahore

  
(Syed Mahmood Hassan)  
Additional Collector  
Collectorate of Customs (Adjudication-II)  
Karachi

Copy for information to:-

1. The Collector of Customs, Collectorate of Customs (Adjudication-II), Custom House, Karachi
2. The Collector, Model Customs Collectorate of Appraisement (East), Custom House, Karachi
3. Notice Board
4. Guard File

  
(Syed Mahmood Hassan)  
Additional Collector  
Collectorate of Customs (Adjudication-II)  
Karachi