DR. WASIF ALI MEMON
Collector of Customs (Adjudication-I)

ORDER-IN-ORIGINAL NO.351/2015-16

An appeal against this order lies under section 194-A of the Customs Act, 1969 before the Customs Appellate Tribunal, Jamil Chamber, Saddar Karachi, within 60 days of the communication of this order. An appeal should bear a court fee stamp of Rs. 1,000/-

The appellant should state in his appeal if he desires to be heard in person or through advocate.

SION OF DUTY AND TAXES AMOUNTING TO RS. 2,346,637/- ACCOUNT OF PILFERAGE THE GOODS EN-ROUTE BY M/S. VENUS PAKISTAN, KARACHI (CLEARING AGENT) & M/S. VSF LOGISTIC LIMITED KARACHI (BONDED CARRIERS),.

RESPONDENTS:	i.	M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi (Clearing Agent).
	ii.	M/s. VSF Logistic Limited, (Bonded Carrier):- (a) Suit No.208, Cannon Building, Dubai (b) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur Karachi.
CASE INSTITUTED BY:		Directorate General of Transit Trade, Custom House, Karachi.
POWER DELEGATED		Collector of Customs (Adjudication-I), vide Board's letter C.No. 5(11) Cus.Jud/2015 dated 02-10-2015.
DATE OF HEARING:		15.07.2015, 31.07.2015, 18.08.2015, 27.08.2015, 21.10.2015, 05.11.2015 & 01.12.2015
DATE OF		17.12.2015

	JUDGMENT:		
6.	PRESENT:	a)	For the Respondent: Mr. Nadeem Ahmed Mirza (Consultant) & Mr. Obaydullah Mirza (Advocate) of M/s. Nadeem & Co. on behalf of the respondent No. 1 & 2.
		b)	For the Department: Mr. Ehtesham & Mr. Shahid Murad (Appraising Officers), Directorate General of Transit Trade, Custom House, Karachi.

ORDER

Brief facts of the case as reported by the Directorate General of Transit Trade, Custom House, Karachi vide its contravention report No. SI/MISC/303/2011-TG dated 20-05-2015 that M/s. ISAF Kandahar Afghanistan C/s Supreme Fuels Trading FZE, RCP 3 Gate, Kandahar Airport, Kandahar, Afghanistan imported (2x20') containers bearing No. CAIU206811-0 and SUDU396124-8 vide IGM No.8574/2011 dated 05.01.2011, Index No 42 against B/L No. SUDU100018926109 said to contain "Ether Alcohols and their derivatives" 40 pallet, weighing 37,500 kgs gross. As per the said BIL the notify party has been found to be M/s. Venus Pakistan Pvt., 9/1 K-28, Trans Layari, Hawks Bay Road Karachi. That the British High Commission, Islamabad vide their letter No. Nil dated 13.04.2011 nominated/authorized to M/s. Venus Pakistan (Pvt) Ltd., as their Clearing Agent for clearance of the consignment and transit to Afghanistan and also mentioned that British High Commission and their contractor M/s. Venus Pakistan (Pvt) Ltd., took joint responsibility for theft, loss or damage of the said cargo during the transportation from Karachi to its final destination. Accordingly, M/s. Venus Pakistan (Pvt) Ltd. filed a GD bearing No. KAPR-AT-20696 dated 22.01.2011 declaring the description as "AL48TYPE6" and PCT 2909.4490 for clearance of the consignment in terms of Para 25 & 31 of Customs General Order (CGO) 12/2002. M/s. NLC vide letter No. 786/ACHC/825/NLC/DRY dated 15.06.2011 permitted to M/s V.S.F. Logistics (Bonded Carrier) to carry the containers for transit to Afghanistan. The GD was processed and out of charged from Customs on 21.06.2011. The containers were gate out on 05.07.2011 from Karachi Port.

2. Whereas, during reconciliation it was found that Cross Border Certificate (CBC) of the containers was not received after a lapse of 15 days as stipulated in terms of Para 25 and 31 of the Customs General Order (CGO) 12/2002 dated 15.06.2002 read with Public Notice No.16/2000 dated 30.09.2000. Since no CBC was furnished by the party, therefore, a notice dated 14.09.2011 followed by reminders dated 15.10.2011, 29.03.2013 and 18.09.2013 were issued, but no reply was received. Sensing some suspicious/foul play on the part of Clearing Agent and Bonded Carrier, status of the containers was investigated and found that clearing agent M/s. Venus Pakistan (Pvt) Ltd. and Bonded carrier M/s. V.S.F. Logistics after gate out retained the containers in the warehouse of M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor, Mauripur, Karachi, due to a dispute of outstanding dues against M/s. Supreme Food Services which is a contractor of ISAF. Since the importer in this consignment was ISAF who were allowed to import under Para 25 and 31 of CGO 12/2002 and M/s. Supreme Foods (contractors) were not entitled to import for ISAF/NATO/US Forces in Afghanistan under the said Paras of Customs General Order (CGO) 12/2002, hence, M/s. Venus Pakistan (Pvt) Ltd. and Bonded

Carrier retained the containers (which was the original import of ISAF), illegally with malafide intention and without any valid legal justification. They even did not bother to inform the concerned Collectorate/Directorate of Transit Trade for a long period after gate out of the containers. Later on, M/s. Venus Pakistan (Pvt) Ltd., vide letter dated 08.04.2013 and 08.11.2013 explained that they had monetary dispute with M/s. Supreme Food Services, the authorized representative of ISAF and due to these reasons they held up the delivery of the under reference containers.

3. Whereas, since the Customs have nothing to do with the internal monetary disputes among the parties and the justification given by the clearing agent is not tenable rather attracts serious action. Above act of the Clearing Agent and Bonded Carrier is a sheer violation of law/rules and failure to discharge their responsibilities as bonded carrier with particular reference to para-25A(f)(iii)(v) and (vii) of the Customs General Order (CGO) 12/2002 dated 15.06.2002.

4. Whereas, in view of the foregoing facts M/s. Venus Pakistan the Clearing Agent and M/s. VSF Logistic Limited, Bonded Carrier retained the containers illegally in their warehouse after gate out since 05.07.2011. In order to ascertain current status of the cargo, the department decided to examine the goods physically so as to confirm Seal No. and other aspects. Accordingly the goods were examined on 04.05.2015 at the warehouse of M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor, Maripur, Karachi, and representative samples were drawn for lab test to confirm exact description.

5. Whereas, in view of the above explained facts the clearing agents M/s. Venus Pakistan Pvt. Ltd. and the Bonded Carrier M/s. V.S.F. Logistics retained the containers illegally, and thus, it is a case of attempt to pilferage the goods en-route. This attracts the violation of Para 25 & 31 of Customs General Order (CGO) 12/2002 dated 15.06.2002, Public Notice No.16/2000 dated 30.09.2000, read with Sections 2(s), 15, 16, 32(1), 32(2), 79, 121,127, 128, 129 & 192 and 209 of the Customs Act, 1969, Section 3,6(1) & 11 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001, punishable under clauses 8(i), 9, 14, 44, 63, 64, 86 & 89 of Section 156(1) of the Customs Act, 1969, Sections 33 & 34 of the Sales Tax Act, 1990, and Section 148 of the Income Tax Ordinance, 2001.

6. Accordingly, clearing agent M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor, Maripur, Karachi, and Bonded Carrier (i) M/s. VSF Logistic Limited, Suite No.208, Cannon Building, Dubai and (ii) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur, Karachi were called upon to show cause vide notice C.No. Adj-II/Coll/SCN-153/Transit Trade/SI/Misc-303-2011-TG/Venus Pakistan/2015 dated 03-07-2015 under the provisions of Section 32(2) of the Customs Act, 1969, read with Sections 2(s), 15, 16, 32(1), 79, 121,127, 128, 129 & 192 and 209 of the Customs Act, 1969, read with Paras 25 & 31 of the Customs General Order (CGO) 10/2002 dated 01-08-2002, Chapter VIII Clearing Agent Licensing Rules, Bonded Carrier Licensing Rules under Sub-Chapter XIV of Chapter-XXV of the Customs Rules issued vide SRO 450(1)/2001 dated 18.01.2001, Section 3(i) of the Imports and Exports (Control) Act, 1950 and Import Policy Order 2012-13, as to why the evaded amount of duty and taxes amounting to **Rs. 2,346,637/- (Customs Duty amounting to Rs. 357,040/-, Sales Tax amounting to Rs. 1,274,638/-, Add. Sales Tax amounting to Rs. 263,175/-, Income Tax amounting to Rs. 451,784/-)** may not be recovered from them and penal action under clauses 8(i), 9, 14, 63, 64, 86 and 89 of Section 156(1) of the Customs Act, 1969, besides Sections 33 & 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 may not against them. Scrutiny of record revealed that hearings of the case were conducted on 15.07.2015, 31.07.2015,

18.08.2015, 27.08.2015 & 21.10.2015. The consultant / advocate (M/s. Nadeem & Company) for the respondents appeared on behalf of M/s VSF Logistics Limited, Karachi and M/s. Venus Pakistan (Pvt) Limited, Karachi submitted written replies (dated 27.07.2015) to the Show Cause Notice, contents of which are as under respectively:

a) **Reply of M/s. VSF Logistics Limited, Karachi**

Asalaam Alaikum Wa Rehmatullah Wa Barakatahu,

In continuation of our letter dated 13.07.2015 through which vakalatnama was submitted with your authority for confirmation of the fact that our client has engaged our services for submission of reply, which was undertaken to be submitted on or before 31.07.2015. Inspite of the said fact your authority has dispatched hearing memo for 31.07.2015 to our client which is not appreciated due to the fact that upon submission of vakalatnama, each and every correspondence /communication has to be dispatched by your office directly to us not to our client.

Reverting to the contents of show cause notice, we state on behalf of our client that the Transit Trade with Afghanistan is being governed by 02 instruments namely (i) Afghan Pakistan Transit Trade Agreement 1965 (APTTA) & (ii) Para 31 of CGO 12/2002. Upon perusal of all of these we failed to find any phrase or Article, condition or para, wherein the Government of Pakistan inclusive your authority is empowered to issue show cause notice to logistic firm transiting the goods to Afghanistan for ISAF and this is due to the reason that on the consignment meant for Afghanistan the goods declaration is filed under the provision of Section 129 of the Customs Act, 1969 and para 31 not under the provision of Section 79(1) ibid and the goods are transported as per devise procedure in para 25 of CGO 12/2002 dated 15.06.2002 due to the said fact none of the provision of the Customs Act, 1969 are applicable.

Any proceeding under any provision of the Customs Act and para 25 of CGO 12/2002 dated 15.06.2002 against our client is void and ab-initio. Hence, coram non judice and this stood validated from the reported judgment, the Hon'ble Supreme Court of Pakistan in reported judgments ***PLD 1993 Karachi 93 M/s. Najib Zarab Ltd v Government of Pakistan and 1996 SCMR 727 FOP v Jamaluddin & others and Najib Zarab Ltd*** *held that:*

> *"The question which arise for consideration is whether the CBR and /or*
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> *The Collector of Customs, could lawfully banned or disallow imports of tyres by Afghan National under the Afghan Transit Trade Agreement and refuse the facility through the territory of Pakistan in respect of such tyres during the subsistence of the said agreement. The question when examined on purely legal and jurisdictional plan, it answer is bound to be negative. We quite agree with the view taken by the learned judges of the High Court that keeping in view the back ground of the Transit Agreement and the fact that Afghanistan is a land locked country, the goods imported by Afghan National from other country for use and consumption in Afghanistan could not be said to have been imported into Pakistan merely because they crossed the Customs barrier and entered into Pakistan through*

to be transited to their destination viz Afghanistan. Such goods, in fact are goods in transit to be dealt with and transshipped to Afghanistan in accordance the transit agreement and the Protocol appended thereto. Customs Law relating to importation would not, therefore be applicable to them. Assuming, however, for the sake of arguments that such goods could be construed to have been imported into Pakistan under Customs Act, and the Section 16 of the said Act, could be invoked which give powers to prohibit or restrict the importation and exportation of the goods (though in the earlier round of litigation, both parties has conceded in this Court that section 16 of the Customs Act, 1969 was not applicable in the present case and cases of the goods in transit were governed by Section 129 of the said Act). Still the impugned order/letters could not be cloth with lawful Authority for two reasons. Firstly, the powers under section 16 was conferred on the Federal Government which could not exercise by subordinate authority like Collector of Customs, who in the instant case had issued Public Notice purporting to impose the banned on the import of tyre and secondly the power was to be exercised by a notification in the official Gazzette which requirement was not complied within the present case.

It was further held that the treaty with Afghanistan dealt with import into Afghanistan from Pakistan and the treaty of transit read with protocol dealt with the goods which are in transit in Pakistan coming from other countries. Afghanistan being a land locked country and construing the expression used in Customs Act, in our opinion it would be wrong to say that the moment goods crossed the Customs bearer or entered into Pakistan territorial water as defined in Customs Act, they should be construed to have been imported into Pakistan under the Customs Act, and the other provision relating to importation would be applicable for importation of these goods. Looking at from another point of view, if we accept the contention of the respondents advanced in this case then that would mean all goods which are prohibited in Pakistan but which are not prohibited in Afghanistan could not have transit as such through Pakistan. That, in our opinion would not be a reasonable construction to make specially keeping in view the back ground of the treaty and the protocol we have mentioned herein before. If the grievances of the respondent were as it seems, to have been that the tyres and tubes after entering into Afghanistan illegally re-entered into Pakistan and are mixed up with mess of other tyres and tubes, then other remedies might be opened to the respondent. Similarly, if the allegation of the respondent be true as was sought to be made out that the tyres and tubes which are meant for transit had been stolen and surreptitiously mixed up with the Pakistani goods then other civil and criminal remedies might be open to the respondent but not invoking section of Customs Act as was sought to be done by the respondent in these cases. We are, however of the view that the provision of the Customs Act, and Import and Export Control Order dealt with different kinds of situation i.e. after being imported into Pakistan and not imported into Afghanistan. The provision of Customs Act, do not deal with the goods in Transit which are not really imported into Pakistan.

That the Hon'ble High Court of Sindh in a similar case instituted by Directorate General of Intelligence and Investigation-FBR vide order

dated 27.10.2010 in ***C.P. No. D-2410 of 2010*** *in the case ditto to the instant. Their Lordships of the High Court while quashing the FIRs, held that:*

> *"How Article X of the Afghan Transit Trade Agreement 1965 comes into play and which is the appropriate authority in Pakistan which would or could be regarded as having jurisdiction with regards thereto especially in light of section 129 of Customs Act. However we are satisfied that these consideration are not relevant for the purpose of this petition and in the fact and circumstances of the present case, in the present matter a simply allegation is made by the respondent no. 2 that a very specific provision of the Customs Act namely Section 32(1) has been violated and the same amounts to an offence which could be taken cognizance by the Customs Judge appointed under the Customs Act. In our view, the petitioner's consignment and the description of the goods in the documents accompanying that consignment do not come within the preview of Section 32 and even such description may have been within the ambit of said section the same would amounts to mis-declaration only if the goods were intended for import into Pakistan . That obviously does not apply in the present case since the goods admittedly are in transit under the Afghan Transit Agreement.*
>
> *In so far as the jurisdiction of the respondent no. 2 concerned it appears that these goods were seized and examined by the Directorate after these had been cleared and were out of charge and therefore, in our view, the provision relied upon namely section 197 to 198 of the Customs Act are not attracted in the facts and circumstances of the present case and since admittedly the Directorate has no jurisdiction under section 129 of the Customs Act, therefore the action taken by the respondent no. 2 and his subordinate officer in the present case was without jurisdiction. We would clarify that nothing observed herein above in any way intended to ambit or obstruct the concerned custom authorities or other law enforcing agencies in Pakistan for taking any appropriate action in accordance with law in respect of smuggling or any such offence. However, we would note that smuggling is a technical term which is specifically defined in Customs Act and therefore if any action is to be taken it must come within the parameters of that definition and relevant provision of the Customs Act, Nothing has been shown to us from the record to this effect and even a bare perusal of the FIR's (which had been placed on the record) does not in any manner indicate that the facts of this case come within the meaning of smuggling as defined in section 2(s) of the Customs Act and other provision thereof .*
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> *In view of the foregoing we hereby allow this petition to the extent that the FIR's C.No. Appg-287//DCI/ESKO/2010 dated 24.05.2010 and FIR C.No. Appg-288//DCI/ESKO/2010 dated 24.05.2010 are quashed and all proceeding there-under are declared to be without lawful authority.*
> *That result is that the petitioner shall be at liberty to take its good in terms of the subject consignment and strictly in accordance with the applicable rule and procedure to Afghanistan by way of transit in terms of Afghan Transit Trade Agreement. "*

Notwithstanding, to the settled legal plane, it is felt appropriate to comment upon other factual and legal aspect of the case, only for the sake of regularization and for keeping the record straight:

1. *The expression of Section 179 of the Customs Act, 1969 is very clear in regards to determination of Adjudicating Authority on the basis of* ***"amount of duty and taxes involved excluding the conveyance."*** *Not* ***"amount of evaded duty and taxes".*** *In the instant case of appellant the involved amounts of duty and taxes mentioned in the show cause notice are Rs. 2,346,637.00. Meaning thereby the competent authority to adjudicate the case in question under clause (ii) of Section 179 (1) is Additional Collector. To the contrary, your authority issued the show cause notice and intends to pass order while usurping the powers of Collector, which is not permitted under law. Rendering both suffers from lack of powers/jurisdiction, hence, ab-initio null and void and* ***coram non judice*** *as held in Order in* ***Sales Tax Appeal No. 444/03, STA 465/07*** *and judgments reported at* ***Major Syed Walayat Shah v/s Muzaffar Khan and 2 others (P.L.D, 1971 S.C 184), Omer & Company v/s Controller of Customs, (Valuation): PLD 1976 Supreme court 514 Ali Muhammad v/s Hussain Buksh & others (1992 A.L.D. 449 (1) Karachi AAA Steel Mills Ltd V/s Collector of Sales Tax and Central Excise Collectorate of Sales Tax , PLD 2001 Supreme Court 514 Land Acquisition Collector, Noshehra & others v/s Sarfraz Khan & Others, , 2004 PTD 624),, PLD 2004 Supreme Court 600, All Pakistan news Paper Society & others, v FOP, PLD 2005 Supreme Court 842 Khyber Tractors (Pvt) Ltd v FOP., PTCL 2007 CL.78 Pak Suzuki Motors Company Ltd, Karachi v Collector of Customs, Karachi, 2009 PTD (Trib) 1996 & 2010 PTD(Trib) 832, [(2009) 100 TAX 24 (H.C. Lah.)], 2010 PTD 465 & 2010 PTD (Trib) 1636***

2. *That since as stated in the show cause notice the case of our client pertains to technical violation of import or export restriction without the involvement of any evasion of duty and taxes which is the subject case. It falls within clause (d) of para 3 of notification No. 886(I)/2012 dated 18.07.2012* ***(Exhibit "A").*** *The appropriate authority to adjudicate such cases rest with the Directorate General of Transit Trade. By laying hands on the Sovereign Territory of the DG T&T, your authority transgressed the power not vested with. Rendering the show cause notice and the anticipated order to be passed as without power/jurisdiction, void and ab-initio as held in reported judgment* ***PLD 1975 SC 331, ST Appeal No. 984/98, ST Appeal 72/04, ST Appeal 54/09, St Appeal No. 2352/99, ST Appeal No. 106/03, PTCL 2001 CL 615 , 2004 PTD 624, 2004 PTD 3020, PTCL 2007 CL 498, 2009 PTD (Trib) 1925, PTCL 2004 CL 551, 2010 PTD (Trib) 759 , 2010 PTD (Trib) 1283, Customs Appeal No. K-44/2010 & Customs Appeal No. K-435/08 to 455/08, 2010 PTD (Trib) 2523 & K-***

3. That even otherwise, since no duty and taxes evasion is apparent in the case of transit goods, for which our client obtained delivery of the cargo for transportation , the case in question squarely falls within the powers/jurisdiction of Principal Appraiser due to the fact that alike situation of Goods Declaration filed under section 79(1) of the Customs Act, 1969. To proceed with no other authority can eclipse his power. Even otherwise cases of no loss of revenue fall under the jurisdiction of Principal Appraiser in the case of clearance for home consumption by virtue of being appropriate authority under section 80 and 83 of the Customs Act, 1969 in terms of notification No. 371(I)/2002 dated 15.06.2002 and none else. To the contrary, your authority issued show cause notice while transgressing the powers of the Principal Appraiser, which is not permitted under law, rendering the show cause notice without power/jurisdiction , hence void and ab-initio and coram non judice.

4. That in the show cause notice Section 209 of the Customs Act, 1969 and Sub Chapter XVI of Chapter XXV of the Customs Rules, 2001 (Licensing of Transport Operators) has been invoked. The appropriate authority to proceed under the said section under Rule 651 of and Sub Chapter XV of Chapter XXV of the Customs Rules, 2001 rest with the Licensing Authority which is Collector of Customs-Appraisement-West. Your authority figure nowhere in the Rule 639. Resultant, by invoking the provision of Licensing of Transport Operators, your authority transgressed the exclusive domain of licensing authority to which you are not vested with. Rendering the show cause notice without power/jurisdiction and as such coram non judice and this stood validated from the reported judgments **PLD 1975 SC 331, ST Appeal No. 984/98, ST Appeal 72/04, ST Appeal 54/09, St Appeal No. 2352/99, ST Appeal No. 106/03, PTCL 2001 CL 615 , 2004 PTD 624, 2004 PTD 3020, PTCL 2007 CL 498, 2009 PTD (Trib) 1925, PTCL 2004 CL 551, 2010 PTD (Trib) 759 , 2010 PTD (Trib) 1283, Customs Appeal No. K-44/2010 & Customs Appeal No. K-435/08 to 455/08, 2010 PTD (Trib) 2523 & K-638/2010- 727/201**

5. The powers of adjudication are specific and empowered by the statute. It is an elementary principle of law that where there is a conflict between special and general provision of law, the special provision shall prevails (reference is invited to the case of **Lt. General (Retd) Shah Rafi Alam Vs Lahore Race Club, PLJ 2003 Lah 1660).** The power of adjudication, as already observed is special in nature. This cannot be eclipsed by any other general provision. Even otherwise there is another settled principal of interpretation of statute i.e. that the courts can supply construction with a view to avoiding absurdity (reference is invited to the case of **Khalid Qureshi** v

UBL 2001 SCMR 103). Equally it must be kept in mind that if it is held that sections 4 and 179 and SRO 371(I)/2002 dated 15.06.2002 occupy the same fields, there is likely to be redundancy in respect of powers conferred u/s 179 and notification SRO 371(I)/2002 dated 15.06.2002. The Supreme Court in the case of ***East West Steamship v Queen land Insurance PLD 1963 SC 663*** *has been pleased to hold that redundancy is to be avoided in respect of any provision of the statute. There is also plethora of case law on the point that where there is a conflict between two provision of the statutes, the later provision prevails and has to be given precedents (reference is invited to the case of* ***Sahibzada Sharfuddin v Town Committee, 1984 CLC 1517****. Apart from this law favour actions of the authorities to be confined to their own spheres of jurisdiction conferred by the statute. An action taken by a state functionary beyond the ambit of his jurisdiction is nullity. In this respect the judgment reported as* ***Abida Rashid v Secretary, Government of Sindh PLD 1995 Kar 587*** *is referred. Their lordship observed as under:*

> ***"It is trite law that power vested in an authority should only be exercised by that authority, in default whereof, the exercise of power and authority becomes without jurisdiction, illegal, void , ab-initio and of no legal effect. The term "without jurisdiction" has been judicially interpreted to include usurpation of power warranted by law (the Chief Settlement Commissioner Lahore v Raja Muhammad Fazil Khan & others PLD 1975 @ p.339) an act done which the person doing, it has no jurisdiction at all to do or which was clearly outside the scope of his activities (The State v Zia-ur-Rehman PLD 1973 SC 49) and a judgment or order delivered by a court or a judicial or a quasi judicial authority not competent to deliver it (Muhammad Saleh & others v M/s. United Grain and Fodder Agencies PLD 1964 HC 97) . The Constitution jurisdiction can thus be exercise when it is shown that the order is passed without jurisdiction or in excess of jurisdiction. As observed earlier the respondent no. 1 has no jurisdiction to pass the impugned order. As such we declare the same to be of no legal effect. Accordingly, we allow this petition but leave the parties to bear their own cost".***

6. *That while dealing with the powers of adjudication, it is needless to observe, that our Supreme Court has also jealously guarded the same. In* ***Assistant Director v B.R. Herman Mohata Ltd PLD 1992 SC 485*** *a full Bench of Supreme Court was pleased to observe that section 223 of the Customs Act, 1969 could not be employed so as to interfere with the judicial or quasi judicial functionaries. It was clearly observed that the*

power of the CBR as to prescribed guideline were not relevant for the exercise of judicial function. To similar effect is the judgment of Supreme Court reported as ***Central Insurance v CBR 1993 SCMR 1232.*** *In this case the CBR issued direction for the reopening of Income tax Assessment u/s 65 of the Income tax Ordinance 1979. It was held by the Supreme Court that the CBR did not figure in the hierarchy of the officer provided in the statute for the purpose of assessment and adjudication. On the basis of this it was held that the directions of the CBR to reopen the assessment were without jurisdiction and the adjudication officer was directed to apply its own mind. Reliance is placed on the order of the Tribunal in* ***S.T. Appeal No. 176/2007 M/s. Muller & Phipps Pakistan (Pvt) Ltd vs the Collector of Sales Tax Enforcement LTU, Karachi & 2011 PTD (Trib) 2114 Collector of Customs, Peshawar vs Collector of Customs (Appeals) Peshawar & 2011 PTD (TRIB) 2557 M/s. Wawa Garments Industries (Pvt) Ltd v The Additional Collector of Customs, Export, Karachi.***

7. *That it is imperative for the appellant to invite the attention of the Honorable Appellant Tribunal that where order has been made without any powers/jurisdiction, irrespective of the merit of the case, such order are coram non-judice as held by High Court of Sindh in Customs Reference No. 101 and C.M.A No. 1281 of 2009 reported as* ***2010 PTD 465 Collector of Customs, Model Customs Collectorate v M/s. Kapron Overseas Supplies Co., (Pvt) Ltd*** *filed on the question of law that whether passing of order without jurisdiction is a technical defect and does not render the proceeding as ab-initio void . The Hon'ble High Court dismissed the reference while holding that* ***"any transgression of such jurisdiction for not being a technical defect would render entire exercise of authority to be ab-initio, void and illegal"*** *, without discussing the merit of the case, which relates to origin of imported goods and the Hon'ble High Court further held that* ***"the exercise of jurisdiction by an authority is a mandatory requirement and its non fulfillment would entail the entire proceeding to be "coram non judice."*** *The said defect render the show cause notice as well as Order-in-Original ab-initio, null and void by virtue of suffer of lack of power/jurisdiction. Hence, coram non judice and needs to be struck down.*

8. *That your authority has also invoked the provision of Section 129 of the Customs Act, 1969 irrespective of the fact i.e. not applicable and to prove our stance it is appropriate for us to reproduce the provision of Section 129 of the Customs Act, 1969 for ease of reference:*

> ***"Transit of goods across Pakistan to a foreign territory. Where any goods are entered for transit across Pakistan to a destination outside Pakistan, the appropriate officer may, subject to the provisions of the rules, allow the***

goods to be so transited without payment of the duties which would otherwise be chargeable on such goods."

From the expression of the above provision , it is vividly clear that the provision is simply a machinery provision incorporated in the Act for devising Rules etc. and not a charging section, resultant no show cause notice can be issued by any authority under the said provision of the Act and this stood substantiated from section 156(1), ibid as was prior to amendment through Finance Act, 2012 , showing penalty of Rs. 25,000.00 upon contravention of Rules framed under Section 129 of the Customs Act, 1969. Since, there were no rules for Afghan Transit Trade at the time of clearance of the goods. Resultant, clause 64 of Section 156(1) ibid contain no consequence in case of contravention of Section 129 ibid., rendering the show cause notice as void and ab-inito as held by Superior Judicial Fora in reported judgment PTCL 2002 CL 1 & 2006 SCMR 1519 and the order so passed is palpably illegal , hence void and ab-intio.

9. *That the show cause notice also contained contravention of para 25 of CGO 12/2002 dated 15.06.2002. The said para contains procedure and direction for* ***the "forward mounting base (FMB) at Karachi of the International Security Assistant Forces for Afghanistan ISAF and similar relief operations conducted by the United Nations"*** *for the Transport Operators and field formation to comply with and by virtue of the said direction no charge can be leveled on any one including our client in the absence of any legal sanction/rules framed therein. Reliance is placed on reported judgment PLD 1988 Karachi 99, Indus Automobiles (Pvt) Ltd v CBR and PTCL 1995 CL 65.*

10. *Notwithstanding with the above legal deficiencies, it is appropriate for us to submit that our client has done nothing contrary to the expression of para 25 of CGO 12/2002 and which stood validated from the following:*

(i) *That our client is an entity of UAE and he was undertaking all the transportation of M/s. Supreme Fuels Gmbh & Co., UAE and Supreme Food Services FZE & for taking care of his interest in Pakistan appointed M/s. Venus Pakistan (Pvt) Ltd as their agent. As soon as our client obtain the container from the terminal, his principal informs that not to transport the goods to Afghanistan unless the company pays its outstanding dues which are about 30 millions dollars. He informs the said position to M/s. Venus Pakistan (Pvt) Ltd, Karachi, which issued instructed our client to park the container in the Venus Container Terminal (Pvt) Ltd, till the time dispute is resolved. Accordingly the containers were parked accordingly.*

(ii) *The said fact was intimated to M/s. Supreme Fuels Gmbh & Co., UAE and Supreme Food Services FZE that unless dues are not cleared the containers lying in safe custody at our client agent M/s. Venus Pakistan (Pvt) Ltd will not be shipped instead of resolving the issue they lodged a complaint with the Collector of Customs, Appraisement vide CCA/02/2011 dated 17.08.2011. On the strength of which the Deputy Collector Appraisement-Licensing forwarded letter dated 24.09.2011 to our client authorized agent in Pakistan. Our client advocate namely Mr. Isaac Ali Qazi intimated to the learned Deputy Collector vide letter dated 04.10.2011 that the delay in transporting of the container solely rest on the part of the consignee and the reason for that were enumerated in the letter.* ***(Exhibit "B" & "C")***

(iii) *That inspite of the intimation the Deputy Collector Appraisement Licensing instead of getting the issue resolve amicably between our client and the consignee kept the same in the file without any action. Resultant, our client and his agent in Pakistan lost hope of resolving the issue with the indulgence of custom authority opted to seek relief through court of law. Hence, the agent of our client filed Civil suit No. 665/2011 against M/s. Supreme Fuels Gmbh & Co., UAE our client for recovery of US$. 18,187.380.23. Another Suit No. 23 of 2012 was filed against supreme Food Services FZE, UAE for recovery of US$. 1499142.85 along with mark up @ bank rate* ***(Exhibit "D' & "E").***

(iv) *That inspite of the said intimated fact the Assistant Collector Afghan Transit Group forwarded our client notice dated 29.03.2013 under section 26 of the Customs Act, 1969 containing the same submission as were made earlier , but with the addition that cross border certificate of the container may please be submitted within a week as directed in clause (x) of para 31 of CGO 12/2002.* ***(Exhibit "F")***

(v) *The agent of our client replied the said notice vide letter dated 08.04.2013 with the submission that they have already responded to the said query to the Deputy Collector of the Appraisement and the said fact has been discussed by their Chief Executive Officer with Mr. Khawar Farid Manica and he has given assurance that for resolving the issue a notice shall be forwarded to M/s. Supreme Fuels/Foods, UAE.* ***(Exhibit "G").***

(vi) *That while ignoring the said reply the Assistant Collector Transit Trade once again forwarded notice dated 18.09.2013 under the provision of Section 26 of the Customs Act, 1969 containing the same contents as were in the notice dated 29.03.2013. Reply to the same was again submitted by the agent of our client vide letter dated 07.11.2013, which was self contained, beside extending assurance that as soon as the monitory dispute is settled, the container in question shall be move to its final destination.* ***(Exhibit "H" & "I").***

(vii) *That inspite of the said vital fact, the Deputy Collector (Processing/HQRS) again forwarded letter dated 04.03.2014 to the agent of our client with the allegation that they have retained the containers after clearance at their office situated at plot No. 9/1, K-28, Maripur, Hawksbay* ***(as against to the fact that the container were parked in safe and secure condition at our client agent container terminal namely M/s. Venus Container Terminal (Pvt) Ltd, West Wharf Road, Karachi. (Exhibit "J")***

(viii) *That our client agent vide letter dated 10.03.2014 informed the learned Deputy Collector that the issue in question has been deliberated upon with the Collector Appraisement and even the Director General Transit Trade and no mala-fide is visible on their part as the container were retained and parked for settlement of the outstanding dues, which the consignee is not ready to pay and for which suits have been filed in the High Court of Sindh, the containers in question shall be delivered to the consignee accordingly upon resolution of the issue.* ***(Exhibit "K")***

(ix) *That inspite of the bona-fide of our client, the official of transit trade directed the Licensing Authority to suspend our client clearing license, which was not warranted under law. Resultant, our client agent forwarded a self contained letter to Director Transit Trade and had also discussed the issue with the Learned Member Customs & Chief Collector Preventive. Who directed DG Transit Trade to take up the issue with the defaulting consignee in writing and after sorting out the issue the container so parked is delivered to the consignee.* ***(Exhibit "L")***

(x) *That inspite of the clear instructions by the higher authorities and to the fact that the containers in question are parked in safe and secure condition having no chance of pilferage , the official of Director General of Transit Trade seized those in terms of section*

168(1) of the Customs Act, 1969 and a notice under section 171 of the Customs Act, 1969 was served on our client agent, while ignoring the fact that the transit goods cannot be seized as these cannot be confiscated by any authority as none of the provision of the Customs Act, 1969 is applicable on the transit goods and this has been discussed in detail in the earlier part of this reply. ***(Exhibit "M" & "N")***

The case in question is not of pilferage, instead the containers are parked in safe and secure condition at our client container terminal namely M/s. Venus Container Terminal (Pvt) Ltd, which is under licensed of the customs, meaning thereby that these are under control of the customs. Resultant, the issuance of show cause notice is uncalled for as the customs is not empowered to involve itself in a private monitory dispute. By seizing the container, serving notice under section 171 of the Customs Act, 1969, issuing show cause notice under section 180 of the Customs Act, 1969, the Directorate General of Transit Trade and your authority infact favoured M/s. Supreme Fuel Gmbh & Supreme Food Services FZE, Dubai, UAE.

That since the official of Director General of Transit Trade and your authority have involved in the matter of monitory dispute between 02 independents business entities. It is requested to your authority to issue notice to the consignee, for ensuring the payment of above 30 million dollar to our client, held by them since long without any cause or reason and thereafter either re-export or move the containers to the country of origin or Afghanistan. It is a unique case where the customs have involved itself in a monitory dispute of two private person as against the fact that it never ever involves in such type of matter by virtue of the fact that it is not the matter of the customs nor it falls within the ambit of any provision of Customs Act, 1969.

In view of the above submission, it is requested to your authority to kindly vacate the show cause notice issued to our client, which is not warranted at all in the given circumstances of the case and instruct the Official of Transit Trade to comply the direction of the Member Customs and the Chief Collector- Preventive for resolving the issue involving above 30 million dollar as against the container valuing to only US$. 49,896.00.

b) **Reply of M/S. Venus Pakistan (Pvt) Limited, Karachi**

Asalaam Alaikum Wa Rehmatullah Wa Barakatahu,

In continuation of our letter dated 13.07.2015 through which vakalatnama was submitted with your authority for confirmation of the fact that our client has engaged our services for submission of reply, which was undertaken to be submitted on or before 31.07.2015. Inspite of the said fact your authority has dispatched hearing memo for 31.07.2015 to our client which is not appreciated due to the fact that upon submission of vakalatnama, each and every correspondence /communication has to be dispatched by your office directly to us not to our client.

Reverting to the contents of show cause notice, we state on behalf of

our client that the Transit Trade with Afghanistan is being governed by 02 instruments namely (i) Afghan Pakistan Transit Trade Agreement 1965 (APTTA) & (ii) Para 31 of CGO 12/2002. Upon perusal of all of these we failed to find any phrase, Article, condition or Rule wherein the Government of Pakistan inclusive your authority is empowered to issue show cause notice to a clearing agent engaged in transiting the goods to Afghanistan for ISAF and this is due to the reason that on the consignment meant for Afghanistan the goods declaration is filed under the provision of Section 129 of the Customs Act, 1969 and para 31 not under the provision of Section 79(1) ibid. due to the said fact none of the provision of the Customs Act, 1969 is applicable.

Any proceeding under any provision of the Customs Act and para 31 of CGO 12/2002 dated 15.06.2002 against our client is void and ab-initio. Hence, coram non judice and this stood validated from the reported judgment, the Hon'ble Supreme Court of Pakistan in reported judgments ***PLD 1993 Karachi 93 M/s. Najib Zarab Ltd v Government of Pakistan and 1996 SCMR 727 FOP v Jamaluddin & others and Najib Zarab Ltd*** *held that:*

"The question which arise for consideration is whether the CBR and /or

The Collector of Customs, could lawfully banned or disallow imports of tyres by Afghan National under the Afghan Transit Trade Agreement and refuse the facility through the territory of Pakistan in respect of such tyres during the subsistence of the said agreement. The question when examined on purely legal and jurisdictional plan, it answer is bound to be negative. We quite agree with the view taken by the learned judges of the High Court that keeping in view the back ground of the Transit Agreement and the fact that Afghanistan is a land locked country, the goods imported by Afghan National from other country for use and consumption in Afghanistan could not be said to have been imported into Pakistan merely because they crossed the Customs barrier and entered into Pakistan through to be transited to their destination viz Afghanistan. Such goods, in fact are goods in transit to be dealt with and transshipped to Afghanistan in accordance the transit agreement and the Protocol appended thereto. Customs Law relating to importation would not, therefore be applicable to them. Assuming, however, for the sake of arguments that such goods could be construed to have been imported into Pakistan under Customs Act, and the Section 16 of the said Act, could be invoked which give powers to prohibit or restrict the importation and exportation of the goods (though in the earlier round of litigation, both parties has conceded in this Court that section 16 of the Customs Act, 1969 was not applicable in the present case and cases of the goods in transit were governed by Section 129 of the said Act). Still the impugned order/letters could not be cloth with lawful Authority for two reasons. Firstly, the powers under section 16 was conferred on the Federal Government which could not exercise by subordinate authority like Collector of Customs, who in the instant case had issued Public Notice purporting to impose the banned on the import of tyre and secondly the power was to be exercised by a notification in the official Gazzette which requirement was not complied within the present case.

It was further held that the treaty with Afghanistan dealt with

import into Afghanistan from Pakistan and the treaty of transit read with protocol dealt with the goods which are in transit in Pakistan coming from other countries. Afghanistan being a land locked country and construing the expression used in Customs Act, in our opinion it would be wrong to say that the moment goods crossed the Customs bearer or entered into Pakistan territorial water as defined in Customs Act, they should be construed to have been imported into Pakistan under the Customs Act, and the other provision relating to importation would be applicable for importation of these goods. Looking at from another point of view, if we accept the contention of the respondents advanced in this case then that would mean all goods which are prohibited in Pakistan but which are not prohibited in Afghanistan could not have transit as such through Pakistan. That, in our opinion would not be a reasonable construction to make specially keeping in view the back ground of the treaty and the protocol we have mentioned herein before. If the grievances of the respondent were as it seems, to have been that the tyres and tubes after entering into Afghanistan illegally re-entered into Pakistan and are mixed up with mess of other tyres and tubes, then other remedies might be opened to the respondent. Similarly, if the allegation of the respondent be true as was sought to be made out that the tyres and tubes which are meant for transit had been stolen and surreptitiously mixed up with the Pakistani goods then other civil and criminal remedies might be open to the respondent but not invoking section of Customs Act as was sought to be done by the respondent in these cases. We are, however of the view that the provision of the Customs Act, and Import and Export Control Order dealt with different kinds of situation i.e. after being imported into Pakistan and not imported into Afghanistan. The provision of Customs Act, do not deal with the goods in Transit which are not really imported into Pakistan.

That the Hon'ble High Court of Sindh in a similar case instituted by Directorate General of Intelligence and Investigation-FBR vide order dated 27.10.2010 in ***C.P. No. D-2410 of 2010*** *in the case ditto to the instant. Their Lordships of the High Court while quashing the FIRs, held that:*

"How Article X of the Afghan Transit Trade Agreement 1965 comes into play and which is the appropriate authority in Pakistan which would or could be regarded as having jurisdiction with regards thereto especially in light of section 129 of Customs Act. However we are satisfied that these consideration are not relevant for the purpose of this petition and in the fact and circumstances of the present case, in the present matter a simply allegation is made by the respondent no. 2 that a very specific provision of the Customs Act namely Section 32(1) has been violated and the same amounts to an offence which could be taken cognizance by the Customs Judge appointed under the Customs Act. In our view, the petitioner's consignment and the description of the goods in the documents accompanying that consignment do not come within the preview of Section 32 and even such description may have been within the ambit of said section the same would amounts to mis-declaration only if the goods were intended for import into Pakistan . That obviously does not apply in the present case since the goods admittedly are in transit under the Afghan Transit Agreement.

In so far as the jurisdiction of the respondent no. 2 concerned it appears that these goods were seized and examined by the Directorate after these had been cleared and were out of charge and therefore, in our view, the provision relied upon namely section 197 to 198 of the Customs Act are not attracted in the facts and circumstances of the present case and since admittedly the Directorate has no jurisdiction under section 129 of the Customs Act, therefore the action taken by the respondent no. 2 and his subordinate officer in the present case was without jurisdiction. We would clarify that nothing observed herein above in any way intended to ambit or obstruct the concerned custom authorities or other law enforcing agencies in Pakistan for taking any appropriate action in accordance with law in respect of smuggling or any such offence. However, we would note that smuggling is a technical term which is specifically defined in Customs Act and therefore if any action is to be taken it must come within the parameters of that definition and relevant provision of the Customs Act, Nothing has been shown to us from the record to this effect and even a bare perusal of the FIR's (which had been placed on the record) does not in any manner indicate that the facts of this case come within the meaning of smuggling as defined in section 2(s) of the Customs Act and other provision thereof.

In view of the foregoing we hereby allow this petition to the extent that the FIR's C.No. Appg-287//DCI/ESKO/2010 dated 24.05.2010 and FIR C.No. Appg-288//DCI/ESKO/2010 dated 24.05.2010 are quashed and all proceeding there-under are declared to be without lawful authority.
That result is that the petitioner shall be at liberty to take its good in terms of the subject consignment and strictly in accordance with the applicable rule and procedure to Afghanistan by way of transit in terms of Afghan Transit Trade Agreement. "

Notwithstanding, to the settled legal plane, it is felt appropriate to comment upon other factual and legal aspect of the case, only for the sake of regularization and for keeping the record straight:

1. *The expression of Section 179 of the Customs Act, 1969 is very clear in regards to determination of Adjudicating Authority on the basis of* ***"amount of duty and taxes involved excluding the conveyance."*** *Not* ***"amount of evaded duty and taxes".*** *In the instant case of appellant the involved amounts of duty and taxes mentioned in the show cause notice are Rs. 2,346,637.00. Meaning thereby the competent authority to adjudicate the case in question under clause (ii) of Section 179 (1) is Additional Collector. To the contrary, your authority issued the show cause notice and intends to pass order while usurping the powers of Collector, which is not permitted under law. Rendering both suffers from lack of powers/jurisdiction, hence, ab-initio null and void and* ***coram non judice*** *as held in Order in* ***Sales Tax Appeal No. 444/03, STA 465/07*** *and judgments reported at* ***Major Syed Walayat Shah v/s Muzaffar Khan and 2 others (P.L.D, 1971 S.C 184), Omer & Company v/s Controller of Customs, (Valuation): PLD 1976 Supreme court 514 Ali Muhammad v/s Hussain Buksh & others (1992 A.L.D. 449 (1) Karachi AAA Steel Mills Ltd V/s Collector of Sales Tax and Central Excise Collectorate of Sales Tax ,***

PLD 2001 Supreme Court 514 Land Acquisition Collector, Noshehra & others v/s Sarfraz Khan & Others, , 2004 PTD 624),, PLD 2004 Supreme Court 600, All Pakistan news Paper Society & others, v FOP, PLD 2005 Supreme Court 842 Khyber Tractors (Pvt) Ltd v FOP., PTCL 2007 CL.78 Pak Suzuki Motors Company Ltd, Karachi v Collector of Customs, Karachi, 2009 PTD (Trib) 1996 & 2010 PTD(Trib) 832, [(2009) 100 TAX 24 (H.C. Lah.)], 2010 PTD 465 & 2010 PTD (Trib) 1636

2. *That since as stated in the show cause notice the case of our client pertains to technical violation of import or export restriction without the involvement of any evasion of duty and taxes which is the subject case. It falls within clause (d) of para 3 of notification No. 886(I)/2012 dated 18.07.2012* ***(Exhibit "A").*** *The appropriate authority to adjudicate such cases rest with the Directorate General of Transit Trade. By laying hands on the Sovereign Territory of the DG T&T, your authority transgressed the power not vested with. Rendering the show cause notice and the anticipated order to be passed as without power/jurisdiction, void and ab-initio as held in reported judgment* ***PLD 1975 SC 331, ST Appeal No. 984/98, ST Appeal 72/04, ST Appeal 54/09, St Appeal No. 2352/99, ST Appeal No. 106/03, PTCL 2001 CL 615 , 2004 PTD 624, 2004 PTD 3020, PTCL 2007 CL 498, 2009 PTD (Trib) 1925, PTCL 2004 CL 551, 2010 PTD (Trib) 759 , 2010 PTD (Trib) 1283, Customs Appeal No. K-44/2010 & Customs Appeal No. K-435/08 to 455/08, 2010 PTD (Trib) 2523 & K-638/2010-727/2010.***

3. *That even otherwise, since no duty and taxes evasion is apparent in the case of transit goods, for which our client obtained clearance , the case in question squarely falls within the powers/jurisdiction of Principal Appraiser due to the fact that alike situation of Goods Declaration filed under section 79(1) of the Customs Act, 1969. To proceed with no other authority can eclipse his power. Even otherwise cases of no loss of revenue fall under the jurisdiction of Principal Appraiser in the case of clearance for home consumption by virtue of being appropriate authority under section 80 and 83 of the Customs Act, 1969 in terms of notification No. 371(I)/2002 dated 15.06.2002 and none else. To the contrary, your authority issued show cause notice while transgressing the powers of the Principal Appraiser, which is not permitted under law, rendering the show cause notice without power/jurisdiction , hence void and ab-initio and coram non judice.*

4. *That in the show cause notice Section 209 of the Customs Act, 1969 and Chapter VIII (Clearing Agent Licensing Rules) has been invoked. The appropriate authority to proceed under the said section under Rule 102 of Chapter VIII rest with the Licensing Authority which is either Collector of Customs-Appraisement-West or the officer not below the rank of Assistant Collector, duly authorized by the Collector as defined in clause (f) of Rule 90 ibid. Your authority figure nowhere in the Rule. Resultant, by invoking the provision of Licensing Rules, your authority transgressed the exclusive domain of licensing authority to which you are not vested with. Rendering the show cause notice without power/jurisdiction and as such*

coram non judice and this stood validated from the reported judgments ***PLD 1975 SC 331, ST Appeal No. 984/98, ST Appeal 72/04, ST Appeal 54/09, St Appeal No. 2352/99, ST Appeal No. 106/03, PTCL 2001 CL 615 , 2004 PTD 624, 2004 PTD 3020, PTCL 2007 CL 498, 2009 PTD (Trib) 1925, PTCL 2004 CL 551, 2010 PTD (Trib) 759 , 2010 PTD (Trib) 1283, Customs Appeal No. K-44/2010 & Customs Appeal No. K-435/08 to 455/08, 2010 PTD (Trib) 2523 & K-638/2010-727/201***

5. *The powers of adjudication are specific and empowered by the statute. It is an elementary principle of law that where there is a conflict between special and general provision of law, the special provision shall prevails (reference is invited to the case of* ***Lt. General (Retd) Shah Rafi Alam Vs Lahore Race Club, PLJ 2003 Lah 1660).*** *The power of adjudication, as already observed is special in nature. This cannot be eclipsed by any other general provision. Even otherwise there is another settled principal of interpretation of statute i.e. that the courts can supply construction with a view to avoiding absurdity (reference is invited to the case of* ***Khalid Qureshi v UBL 2001 SCMR 103).*** *Equally it must be kept in mind that if it is held that sections 4 and 179 and SRO 371(I)/2002 dated 15.06.2002 occupy the same fields, there is likely to be redundancy in respect of powers conferred u/s 179 and notification SRO 371(I)/2002 dated 15.06.2002. The Supreme Court in the case* ***of East West Steamship v Queen land Insurance PLD 1963 SC 663*** *has been pleased to hold that redundancy is to be avoided in respect of any provision of the statute. There is also plethora of case law on the point that where there is a conflict between two provision of the statutes, the later provision prevails and has to be given precedents (reference is invited to the case of* ***Sahibzada Sharfuddin v Town Committee, 1984 CLC 1517.*** *Apart from this law favour actions of the authorities to be confined to their own spheres of jurisdiction conferred by the statute. An action taken by a state functionary beyond the ambit of his jurisdiction is nullity. In this respect the judgment reported as* ***Abida Rashid v Secretary, Government of Sindh PLD 1995 Kar 587*** *is referred. Their lordship observed as under:*

> ***"It is trite law that power vested in an authority should only be exercised by that authority, in default whereof, the exercise of power and authority becomes without jurisdiction, illegal, void , ab-initio and of no legal effect. The term "without jurisdiction" has been judicially interpreted to include usurpation of power warranted by law (the Chief Settlement Commissioner Lahore v Raja Muhammad Fazil Khan & others PLD 1975 @ p.339) an act done which the person doing, it has no jurisdiction at all to do or which was clearly outside the scope of his activities (The State v Zia-ur-Rehman PLD 1973 SC 49) and a judgment or order delivered by a court or a judicial or a quasi judicial authority not competent to deliver it (Muhammad Saleh & others v M/s. United Grain and Fodder Agencies PLD 1964 HC 97) . The Constitution jurisdiction can thus be exercise when it is shown that the order is passed without jurisdiction or in excess of jurisdiction. As observed earlier the respondent no. 1***

has no jurisdiction to pass the impugned order. As such we declare the same to be of no legal effect. Accordingly, we allow this petition but leave the parties to bear their own cost".

6. *That while dealing with the powers of adjudication, it is needless to observe, that our Supreme Court has also jealously guarded the same. In* ***Assistant Director v B.R. Herman Mohata Ltd PLD 1992 SC 485*** *a full Bench of Supreme Court was pleased to observe that section 223 of the Customs Act, 1969 could not be employed so as to interfere with the judicial or quasi judicial functionaries. It was clearly observed that the power of the CBR as to prescribed guideline were not relevant for the exercise of judicial function. To similar effect is the judgment of Supreme Court reported as* ***Central Insurance v CBR 1993 SCMR 1232.*** *In this case the CBR issued direction for the reopening of Income tax Assessment u/s 65 of the Income tax Ordinance 1979. It was held by the Supreme Court that the CBR did not figure in the hierarchy of the officer provided in the statute for the purpose of assessment and adjudication. On the basis of this it was held that the directions of the CBR to reopen the assessment were without jurisdiction and the adjudication officer was directed to apply its own mind. Reliance is placed on the order of the Tribunal in* ***S.T. Appeal No. 176/2007 M/s. Muller & Phipps Pakistan (Pvt) Ltd vs. the Collector of Sales Tax Enforcement LTU, Karachi & 2011 PTD (Trib) 2114 Collector of Customs, Peshawar vs Collector of Customs (Appeals) Peshawar & 2011 PTD (TRIB) 2557 M/s. Wawa Garments Industries (Pvt) Ltd v The Additional Collector of Customs, Export, Karachi.***

7. *That it is imperative for the appellant to invite the attention of the Honorable Appellant Tribunal that where order has been made without any powers/jurisdiction, irrespective of the merit of the case, such order are coram non-judice as held by High Court of Sindh in Customs Reference No. 101 and C.M.A No. 1281 of 2009 reported as* ***2010 PTD 465 Collector of Customs, Model Customs Collectorate v M/s. Kapron Overseas Supplies Co., (Pvt) Ltd*** *filed on the question of law that whether passing of order without jurisdiction is a technical defect and does not render the proceeding as ab-initio void . The Hon'ble High Court dismissed the reference while holding that* ***"any transgression of such jurisdiction for not being a technical defect would render entire exercise of authority to be ab-initio, void and illegal"*** *, without discussing the merit of the case, which relates to origin of imported goods and the Hon'ble High Court further held that* ***"the exercise of jurisdiction by an authority is a mandatory requirement and its non fulfillment would entail the entire proceeding to be "coram non judice."*** *The said defect render the show cause notice as well as Order-in-Original ab-initio, null and void by virtue of suffer of lack of power/jurisdiction. Hence, coram non judice and needs to be struck down.*

8. *That your authority has also invoked the provision of Section 129 of the Customs Act, 1969 irrespective of the fact i.e. not applicable and to prove our stance it is appropriate for us to reproduce the provision of Section 129 of the Customs Act, 1969 for ease of reference:*

"Transit of goods across Pakistan to a foreign territory. Where any goods are entered for transit across Pakistan to a destination outside Pakistan, the appropriate officer may, subject to the provisions of the rules, allow the goods to be so transited without payment of the duties which would otherwise be chargeable on such goods."

From the expression of the above provision , it is vividly clear that the provision is simply a machinery provision incorporated in the Act for devising Rules etc. and not a charging section, resultant no show cause notice can be issued by any authority under the said provision of the Act and this stood substantiated from section 156(1), ibid as was prior to amendment through Finance Act, 2012 , showing penalty of Rs. 25,000.00 upon contravention of Rules framed under Section 129 of the Customs Act, 1969. Since, there were no rules for Afghan Transit Trade at the time of clearance of the goods. Resultant, clause 64 of Section 156(1) ibid contain no consequence in case of contravention of Section 129 ibid., rendering the show cause notice as void and ab-inito as held by Superior Judicial Fora in reported judgment PTCL 2002 CL 1 & 2006 SCMR 1519 and the order so passed is palpably illegal , hence void and ab-intio.

9. *That the show cause notice also contained contravention of para 31 of CGO 12/2002 dated 15.06.2002. The said para contains procedure and direction for the field formation to comply with and by virtue of the said direction no charge can be leveled on any one including our client in the absence of any legal sanction/rules framed therein. Reliance is placed on reported judgment PLD 1988 Karachi 99, Indus Automobiles (Pvt) Ltd v CBR and PTCL 1995 CL 65.*

10. *Notwithstanding with the above legal deficiencies, it is appropriate for us to submit that our client has done nothing contrary to the expression of para 31 of CGO 12/2002 and which stood validated from the following:*

    (i) *That our client during the course of his business activities received complete sets of documents from M/s. Supreme Fuels Trading FZE for clearance of 20 pallets Ether-Alcohols and their derivatives for ISAF , Khandhar, Afghanistan alongwith authorization of British High Commission, Islamabad vide dated 13.04.2011 for the confirmation of the fact that our client is the authorized agent for the purpose of clearance of the goods for onward transit to Khandhar/Afghanistan.* ***(Exhibit "B", "C to C1", "D to D1" ,"E to E1" & "F")***

    (ii) *The client on the strength of those filed GD with the MCC of Appraisement, which was registered vide No. KAPR-AT- 20696 dated 22.01.2011. Subsequently the nominated official of the MCC of Appraisement completed the procedure outlined in para 31 of CGO 12/2002 dated 15.06.2002 and Board letter No. 3(18) LNP/04 dated 22.11.2004 and cleared the goods for transit to Afghanistan.* ***(Exhibit "G")***

    (iii) *That after allow loading the container so cleared were loaded on authorized Hired Mechanical*

Transport by the NLC vide No. 786/ACHC/825/NLC/DRY dated 15.06.2011, namely V.S.F. Logistics, consequent to which convoy note No. 1070 were prepared and the official of Preventive Collectorate after sealing the container prepared Form "A" and the container were subsequently gate out. **(Exhibit "H", "I" & "J")**

(iv) The driver of the Hired Mechanical Transport were delivered the respective documents in accordance with the direction contained in para 31 of CGO 12/2002 dated 15.06.2002 and copy of the same were courier to the Supreme Fuel FZE, Dubai, UAE. Thereafter, the job of our client stood concluded due to the fact that he undertook the clearance of the cargo for onward transit to Afghanistan and now it was between the Hired Mechanical Transport Company to deliver the same in save and sound condition to Kabul, Afghanistan.

(v) That none of the phrase of para 31 of the CGO 12/2002 direct a clearing agent to ensure crossing of border of the consignment and delivery of the same to the importer in Afghanistan.

That our stance stood validated from the order dated 26.09.2014 of the larger Bench of Customs Appellate Tribunal issued in the cases established against the clearing agent by the MCC of Port Muhammad Bin Qasim under the provision of Customs Act, 1969 on the basis of allegation of non submission of CBC. The Hon'ble Tribunal set-aside the order of the adjudicating authority to the extent of our client while holding in para 15 to 21 that:

"15- There is no denial from either side that all the appellant are licensed Customs House Agent who were engaged in the clearance of the goods relating to their Afghan clients admittedly the consignment arrived at Karachi Port /Port Qasim were cleared by the Customs for onward transit to Afghanistan and were put on the container in the presence of concerned customs authorities which were checked by them. After fulfillment of necessary formalities, the container was sealed. Thereafter the imported cargos were lifted by the authorized national bonded carrier i.e. National Logistics Corporation (NLC) to safely transit the goods across Pakistan through designated destination i.e. either through spin-boldac (Chamman) or the Torkham Borders.

16- The responsibility of the appellant company's was restricted to the Karachi Port/Port Qasim till the cargo was loaded on the trailer , check by the customs authorities and containers are sealed and handed over to the bonded carriers. Thereafter it is the sole responsibility of the carrier companies and others involved in the safe transportation/transit of the goods across the country, which also included getting receipt from the competent authority as to the safe and sound arrival of the goods at the destination along with cross border certificate.

17- In the instant cases, this Tribunal has observed that the stereo typed notices by the Additional Collector Port

Muhammad Bin Qasim, Karachi and were served upon the appellant. Perusal of the show cause notices reveals that no specific allegation was leveled against the appellant except that the appellant are clearing agent who allegedly join hands with the NLC Management and miss appropriated the goods from the containers within the territory of Pakistan.

18- there are certain admitted fact in this case that the appropriate goods arrived in Karachi Port which were loaded in the container; they were checked by the competent custom authorities; GD were filed by the appellant; containers were sealed and were handed over to NLC for further transportation to Afghanistan.

19- as per the relevant law, the clearing agent's job ends with the filing of GD's , their processing and loading of the containers etc. and it is sole responsibility of the carrier to safely transit the goods across the country through designated destination via Chamman or Torkham Boarder.

20- The above appeals were heard at length. There is no evidence in the record that the appellant's actively participated or connived in the mis-appropriation /pilferging or smuggling of the impugned goods. Similarly, the D/R's representing various Directorates could also not point out that the goods from the container were pilfered, smuggled or mis-appropriated by the appellant or with their connivance.

21- The upshot of the above discussion is that this larger bench is unanimously of the view that no sufficient evidence is available on the files/record to connect the appellants i.e. clearing agent with the smuggling, pilfering or misappropriation of the impugned goods. As a consequence, all these appeals to the extent of appellant/clearing agent are accepted and impugned order to the extent of clearing agent are set aside.

In view of the above submission, it is established without any iota of doubt that our client has carried out the transaction in accordance with the laid down procedure in para 31 of CGO 12/2002, which has been held by the Hon'ble Tribunal as correct. Additionally the show cause notice issued by your authority is without any lawful authority being without power/jurisdiction and in derogation of the law laid down by the Superior Judicial For a. It is therefore requested to your authority to kindly vacate show cause notice to the extent of our client.

7. The Board allowed and transferred to adjudicate the instant case vide letter No. C.No 5(11) Cus.Jud/2015 dated 2nd October, 2015 received on 25-10-2015. In this case show cause notice was issued on 03-07-2015 by the Collector of Customs, Collectorate of Customs (Adjudication-II), Customs House, Karachi. The period of 120 days as provided in sub-section (3) of section 179 of the Customs Act, 1969, for conclusion of adjudication proceeding was set to expire on 30-10-2015. To meet the requirements of natural justice, the time limit for finalizing adjudication proceedings was extended in terms of Section 179(3) by the competent authority. The case was re-fixed on 05.11.2015 and 01.12.2015, Mr. Nadeem Ahmed Mirza (Consultant) of M/s. Naddem & Co. appeared on behalf of the respondents and stated that we have already submitted written replies to the Show Cause Notice. Mr. Shahid Murad, Appraising

Officer appeared for the detecting agency and defended the charges leveled in the Show Cause Notice. He elaborated upon the points made in the contravention report.

8. I have gone through the case record and have considered the written as well as verbal arguments put forth by the respondent and departmental representative. It has been alleged by the detecting agency that M/s. ISAF Kandahar Afghanistan C/s Supreme Fuels Trading FZE, RCP 3 Gate, Kandahar, Airport Kandahar, Afghanistan, imported (2x20') containers bearing No. CAIU206811-0 and SUDU396124-8 vide IGM No.8574/2011 dated 05.01.2011, Index No 42 against B/L No. SUDU100018926109 said to contain "Ether Alcohols and their derivatives" 40 pallet, weighing 37,500 kgs gross. As per the said BIL the notify party has been found to be M/s. Venus Pakistan Pvt., 9/1 K-28, Trans Layari, Hawks Bay Road Karachi, the British High Commission, Islamabad vide their letter No. Nil dated 13.04.2011 nominated/authorized to M/s. Venus Pakistan (Pvt) Ltd., as their Clearing Agent for clearance of the consignment and transit to Afghanistan and also mentioned that British High Commission and their contractor M/s. Venus Pakistan (Pvt) Ltd., took joint responsibility for theft, loss or damage of the said cargo during the transportation from Karachi to its final destination. Accordingly, M/s. Venus Pakistan (Pvt) Ltd. filed a GD bearing GD No. KAPR-AT-20696 dated 22.01.2011 declaring the description as "AL48TYPE6" and PCT 2909.4490 for clearance of the consignment in terms of Para 25 & 31 of Customs General Order (CGO) 12/2002. M/s. NLC vide letter No. 786/ACHC/825/NLC/DRY dated 15.06.2011 permitted to M/s V.S.F. Logistics (Bonded Carrier) to carry the containers for transit to Afghanistan. The GD was processed and out of charged from Customs on 21.06.2011. The containers were gate out on 05.07.2011 from Karachi Port. During reconciliation it was found that Cross Border Certificate (CBC) of the containers was not received after a lapse of 15 days as stipulated in terms of Para 25 and 31 of the Customs General Order (CGO) 12/2002 dated 15.06.2002 read with Public Notice No.16/2000 dated 30.09.2000. Since no CBC was furnished by the party, therefore, a notice dated 14.09.2011 followed by reminders dated 15.10.2011, 29.03.2013 and 18.09.2013 were issued, but no reply was received. Sensing some suspicious/foul play on the part of Clearing Agent and Bonded Carrier, status of the containers was investigated and found that clearing agent M/s. Venus Pakistan (Pvt) Ltd. and Bonded carrier M/s. V.S.F. Logistics after gate out retained the containers in the warehouse of M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor, Mauripur, Karachi, due to a dispute of outstanding dues against M/s. Supreme Food Services which is a contractor of ISAF. Since the importer in this consignment was ISAF who were allowed to import under Para 25 and 31 of CGO 12/2002 and M/s. Supreme Foods (contractors) were not entitled to import for ISAF/NATO/US Forces in Afghanistan under the said Paras of Customs General Order (CGO) 12/2002, hence, M/s. Venus Pakistan (Pvt) Ltd. and Bonded Carrier retained the containers (which was the original import of ISAF), illegally with malafide intention and without any valid legal justification. They even did not bother to inform the concerned Collectorate/Directorate of Transit Trade for a long period after gate out of the containers. Later on, M/s. Venus Pakistan (Pvt) Ltd., vide letter dated 08.04.2013 and 08.11.2013 explained that they had monetary dispute with M/s. Supreme Food Services, the authorized representative of ISAF and due to these reasons they held up the delivery of the under reference containers. Whereas, since the Customs have nothing to do with the internal monetary disputes among the parties and the justification given by the clearing agent is not tenable rather attracts serious action. Above act of the Clearing Agent and Bonded Carrier is a sheer violation of law/rules and failure to discharge their responsibilities as bonded carrier with particular reference to para-25A(f)(iii)(v) and (vii) of the Customs General Order (CGO) 12/2002 dated 15.06.2002. M/s. Venus Pakistan the Clearing Agent and M/s. VSF Logistic Limited, Bonded Carrier retained the containers illegally in their warehouse

after gate out since 05.07.2011. In order to ascertain current status of the cargo, the department decided to examine the goods physically so as to confirm Seal No. and other aspects. Accordingly the goods were examined on 04.05.2015 at the warehouse of M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor, Maripur, Karachi, and representative samples were drawn for lab test to confirm exact description. Whereas, in view of the above explained facts the clearing agents M/s. Venus Pakistan Pvt. Ltd and the Bonded Carrier M/s. V.S.F. Logistics retained the containers illegally, and thus, it is a case of attempt to pilferage the goods en-route. This attracts the violation of Para 25 & 31 of Customs General Order (CGO) 12/2002 dated 15.06.2002, Public Notice No.16/2000 dated 30.09.2000, read with Sections 2(s), 15, 16, 32(1), 32(2), 79, 121,127, 128, 129 & 192 and 209 of the Customs Act, 1969, Section 3,6(1) & 11 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001, punishable under clauses 8(i), 9, 14, 44, 63, 64, 86 & 89 of Section 156(1) 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 duty and taxes amounting to **Rs. 2,346,637/- (Customs Duty amounting to Rs. 357,040/-, Sales Tax amounting to Rs. 1,274,638/-, Add. Sales Tax amounting to Rs. 263,175/-, Income Tax amounting to Rs. 451,784/-)** may not be recovered from them and penal action under clauses 8(i), 9, 14, 63, 64, 86 and 89 of Section 156(1) of the Customs Act, 1969, besides Sections 33 & 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 may not against them.

9. In the light of afore-sated facts the department alleged that the M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi and M/s. VSF Logistic Limited, address (a) Suit No.208, Cannon Building, Dubai & (b) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur, Karachi in connivance with each other to retain the containers illegally concealed the facts for a long time with malafide intention to attempt to pilfer the same and consume the cargo in Pakistan. M/s. NLC took full responsibility about the safety of goods and to comply with all Customs formalities and procedures while permitting to the Bonded Carrier for safe transportation of the container, however, they had also failed to fulfill their responsibilities. The department alleged that amount of duty and taxes amounting to **Rs. 2,346,637/- (Customs Duty amounting to Rs. 357,040/-, Sales Tax amounting to Rs. 1,274,638/-, Add. Sales Tax amounting to Rs. 263,175/-, Income Tax amounting to Rs. 451,784/-)**, should be recovered from the respondents besides initiation of penal action for the violation of legal provision as contained in the show cause notice. The respondent advocate had objected on the power of Collector to adjudicate the case is not sustainable, Federal Board of Revenue has a specifically asked the Collector (Adjudication-I) to decide the case that too on the insistence of the advocate as Collector (Adjudication-II) was instrumental in initiation of this case. FBR under Section 179 is empowered to vary and regulate the system of adjudication. Now objecting the FBR domain to Collector (Adjudication-I) to hear and decide the case is no argument to be forwarded.

10. In order to arrive at a logical conclusion it will be appropriate to examine the relevant provisions of law. For ease of reference the same are reproduced here under:-

> Rule 484: Violation of rules:-Where any violation of act or rules made there under including these rules is detected during the transit of cargo from port of entry to port of exit, the carrier shall, in addition to any other action as is envisaged in the said Act or the rules, be liable to pay the duty and taxes as may be leviable on such cargo.

Provided that no punitive action shall be taken against the carrier without affording the carrier an opportunity of being heard.

The relevant clauses of CGO 10 of 2012 are reproduced hereunder:

Clause 9 (IX):- The transportation of the cargo from the Port of entry to the Port of exists in a safe and secure manner shall be the responsibility of the concerned authorized carrier.

Clause 11(IV):- If the goods are found missing, stolen or remove due to any reason penal action shall be taken against the concerned persons including the carrier, authorized agent and focal person along with recovery of the duty and taxed involved in accordance with the provisions of Customs Act, 1969.

Customs General Order (CGO) No. 12 / 2012 Para 31(xiii) is reproduced hereunder:-

(xiii) In case any wrong doing is detected in the cargo in transit in Pakistan, the consulate /embassy, their representative/Pakistan Railways/NLC shall be liable to pay the leviable taxes in addition to any other proceedings a envisaged in the of the Customs Act, 1969

11. The provision of para 25 & 31 of CGO 12 of 2002 dated: 15.06.2002 as mentioned in the SCN has been rescinded and replaced with CGO 10 of 2012. Therefore, the prevalent law applicable to the present case is CGO 10 of 2012 and the case is being decided of in the light of provisions of applicable law. A plain reading of the afore-stated provisions makes it clear that the carrier is responsible for safe transportation of the goods from the port of entry to the port of exit and if any pilferage takes place he is liable to pay duty/taxes leviable thereon, In addition to any other proceeding as envisaged in of the Customs Act, 1969. In this case the department has itself admitted that no pilferage has taken place, thus no question of recovery of duty & taxes arises. The only offence that can be attributed to the respondents is that they took the containers to on non designated place rather than taking them to a customs bonded area and never informed the customs authorities about the fact these containers have not crossed the border. The case record clearly shows that the bonded carrier M/s. VSF Logistic Limited along with M/s. Venus Pakistan (Pvt) Ltd. miserably failed to discharge their liability by not taking the goods to a bonded area and not informing customs authorities within time about the same. The learned counsel for NLC has pointed-out that the focal person (authorized representative of Embassy) is also liable / responsible as per provisions of law. It has been observed that the contention of learned counsel is partially correct as it also remained inactive to persue their case with due diligence. However, the detecting agency has failed to include the name of the authorized representative of the Embassy and National Logistic Cell (NLC) in the contravention report. Accordingly, the same was not included in the show cause notice. At this stage no order can be passed against the authorized representative of Embassy, however, the Directorate General of

Transit Trade, Custom House, Karachi is directed to initiate proceedings against the authorized representative of the embassy strictly in accordance with law. The role of customs officials entrusted with the responsibility of reconciliation of Transit Trade Cargo cannot be ignored. The Directorate General of Transit Trade, Custom House, and Karachi is directed to ascertain the role of customs officials due to whose negligence this lapse could not be detected for years and take appropriate action against them as per law and procedure, after ascertaining through a fact finding enquiry.

12. It is established that M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi and M/s. VSF Logistic Limited, address (a) Suit No.208, Cannon Building, Dubai & (b) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur, Karachi failed to fulfill their responsibility stand established. The Imported goods are still lying in the custody of the M/s.Venus Pakistan. The Transit Trade Collectorate may take Custody of the goods is terms of rule 10(IV) of the CGO 10/2012 and dispose these off as per relevant rules and procedure, if in consumable state however may also like to see if these are not required in the Suit No. 23 dt.2012 filed at the Sindh High Court, or any other case pending for the time being.

13. In the light of afore-stated facts the charges in the show cause notice that M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi and M/s. VSF Logistic Limited, address (a) Suit No.208, Cannon Building, Dubai & (b) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur, Karachi failed to fulfill their responsibility stand established. **In a way they have actively or tacitly interfered in smooth official business to settle private dispute with Supreme Foods Services.** A penalty of **Rs. 1,000,000/- (Rupees One Million Only)** is imposed on M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi in terms of clause 64 of Section 156(1) of the Customs Act, 1969 failing to fulfill their obligation as bonded carrier and not informing customs authorities regarding non crossing of transit cargo besides taking the goods to an area in violation of the legal provision as contained in the show cause notice. A penalty of **Rs. 500,000/- (Rupees Five Hundred Thousand Only)** is also imposed upon the clearing agent M/s. VSF Logistic Limited in terms of clause 14 of Section 156(1) of the Customs Act, 1969.

14. This order consists of (28) pages and each page bears my initial as well as official seal with full signature on the last page.

(Dr. Wasif Ali Memon)
Collector

To:

1. M/s.Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road, PAF Masroor Maripur, Karachi.

2. M/s. VSF Logistic Limited:-

   (a) Suit No.208, Cannon Building, Dubai
   (b) C/o. M/s. Venus Pakistan (Pvt) Ltd, 9/1 K-28 Hawksbay Road PAF Masroor Maripur Karachi.