GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI BENCH – III
3RD FLOOR, JAMIL CHAMBERS
SADDAR, KARACHI

Before:- Mr. Ghulam Murtaza Bhatti, Chairman/Member (Judicial –I), Islamabad
Mr. Mohammed Yahya, Member (Technical – I), Karachi

Customs Appeals No.K-1296/2015 /7215

M/s. Milestone Textile,
(NTN No.02-01-0619911),
Plot No. B-17, Suite – 1,
S.I.T.E.,
Karachi. .....

ATTESTED
CUSTOM APPELLATE TRIBUNAL BENCH
GOVT. OF PAKISTAN
KARACHI

Appellant

Versus

1. The Collector of Customs,
Collectorate of Customs (Adjudication-1),
11th Floor, Custom House,
Karachi.

2. The Director,
Directorate General of Customs (I&I)-FBR,
Regional Office,
Karachi.

The Deputy Collector of Customs,
MCC Exports,
Custom House,
Karachi. ..... Respondents

Customs Appeals No.K-1293/2015

M/s. Hi Ness Enterprises
FE-2, Phase 1, Defence View,
Karachi. ..... Appellant

Versus

1. The Collector of Customs,
Collectorate of Customs (Adjudication-1),

11th Floor, Custom House,
Karachi.

2. The Collector of Customs,
Model Customs Collectorate of Appraisement West,
Custom, House, Karachi.

3. The Directorate General
Intelligence and Investigation FBR,
Regional Office, 81-C, Block-6, PECHS,
Karachi. .....Respondents

ATTESTED

Mr. Farrukh Saleem, Consultant, &
Mr. Asim Munir Bajwa, Consultant, present for the appellants.
Mr. Nasim Ahmed, A.O., Mr.Ammar Mir, A.C., & Mr. M. Abid, I.O., present for the respondent.

Date of hearing: 02.12.2015
Date of Order: 14.12.2015

ORDER

Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order we intend to dispose of the Customs Appeals No.K-1296/2015 filed by M/s. Milestone Textile, Karachi and No.K-1983/2015 filed by M/s. Hi Ness Enterprises, Karachi, under Section 194-A of the Customs Act, 1969, against Order-in-Original No.644/2014-15 dated 15.06.2015 passed by the Collector, Collectorate of Customs (Adjudication-II), Karachi.

2. Brief facts of the case as per Show Cause Notice No.SI/Misc/74/Coll-Adj-I/11-Exp/DCI/Div-IV/Cont/2014 dated 10.06.2015 that the Directorate General of Intelligence and Investigation – FBR, Regional Office, Karachi has reported its Contravention Report No.11-Exp/DCI/Div-IV/Cont/2014/7035 dated 22.05.2014 that on receipt of credible information regarding mis-declaration of description and unlawful availing of facility of temporary imports under SRO 492(I)/2009 dated 13.06.2009 aimed at evasion of duty and taxes on import of Polyester

knitted stretchable printed fabrics in the garb of lining and interlock fabric by M/s. Milestone Textile (NTN No.02-10-0619911), Plot B-17, Suit-1, SITE, Karachi, a consignment/container No.CBHU-9582558 (40') imported by aforesaid importer cum exporter was detained and examined by the staff of the Directorate General during April, 2014. The consignment was cleared without payment of duty and taxes in terms of aforesaid SRO from MCC, Appraisement (West), Karachi. The examination resulted into recovery of knitted printed polyester Jersey Fabric HS Code 6004.9000 instead of interlock lining material. The consignment was accordingly seized. On intervention of Honorable High Court of Sindh at Karachi by way of orders in Suit No.751 of 2014, the consignment was released on submission of security to the satisfaction of Nazir of Honorable High Court of Sinah at Karachi for differential amount of duty and taxes pending adjudication of the case. Meanwhile, in order to quantify evasion of duty and taxes involved on identical consignments of printed knitted jersey fabrics previously cleared in the garb of lining material/jersey interlock fabric, the import vis-à-vis export data of M/s Milestone Textiles of the period from July, 2013 to April 2014 was retrieved and scrutinized by the Directorate General which revealed that during the above mentioned period, five consignments declared to contain 100% polyester Jersey Lining were imported and got cleared by the aforementioned importer-cum-exporter in terms of SRO 492(1)/2009 dated 13.06.2009 without payment of duty and taxes against claim of subsequent re-exportation by consuming these as lining material, on submission of securities/post-dated cheques for leviable amount of duty and taxes. Subsequently, in 15 export shipments it was claimed that imported lining/interlock jersey lining was used. Online scrutiny of relevant Goods Declaration (shipping bills) filed by exporter, the examination reports endorsed at the time of export and the images of exported goods duly confirmed the fact that garments including men and ladies polyester printed knitted tee shirts of knitted jersey

fabric was actually exported without having any element of lining or interlock lining used therein. It is established beyond any doubt that infact 100% polyester knitted printed jersey fabrics were actually imported which were subsequently used in the manufacture of men/ladies printed knitted tee shirts etc. Since all types of fabrics are categorically excluded from the scope of SRO 492(1)/2009 dated 13.06.2009, the aforementioned goods were unlawfully cleared against benefit of said SRO evading thereby the levies of import stage.

The recoverable amount of Custom Duty and other taxes evaded through unlawful claim of exemption under SRO 492(1)/2009 dated 13.06.2009, on imported printed knitted jersey fabric PCT 6001.1090, 6006.3400 and 5807.1090, which were subsequently exported in form of printed knitted men/ladies tee shirts/poly camo shirts/garments worked out to Rs.14,277,179 as detailed below which is recoverable from the said importer cum exporter.

S.No.	Import GD No.	GD Date	Qty in Kgs	Import Value	Custom Duty	Sales Tax	Income Tax	Total Duty/Taxes
1	HC-0008154	16.11.2013	2550.3	401,268	100,317	68,216	22,070	190,602
2	HC-0021377	19.11.2013	16696	16,367,080	4,091,770	2,782,404	900,189	7,774,363
3	HC-0021390	19.11.2013	5864.6	4,723,847	1,180,962	803,054	259,812	2,243,827
4	HC-0021398	19.11.2013	17612.4	8,474,396	2,118,599	1,440,647	466,092	4,025,338
5	HC-0032631	12.03.2014	60	90,627	22,657	15,407	4,984	43,048
			42783.3	30,057,218	7,514,305	5,109,727	1,653,147	14,277,179

4. Thus, M/s. Milestone Textiles, Plot B-17, Suit-I, SITE, Karachi, in connivance and collusion with their Clearing Agent, M/s. Hi Ness Enterprises, (CHAL No.1938), F.E-2,, Phase II, Defence View, Karachi, and M/s. Express Agencies (Pvt.) Ltd. (CHAL No.2397), 205,206 Progressive Centre, P.E.C.H.S., Karachi, by imported and cleared consignments of Polyester knitted stretchable printed fabric in the garb of lining/interlock lining material unlawfully under SRO 492(1)/2009 dated

13.06.2009 evading thereby Custom Duty and other taxes amounting to Rs.14,277,1797/- and as such have committed offence of misdeclaration and evasion of taxes in violation of provisions contained in Section 19, 32(1) & (2) read with Section 79 and 80 of the Customs Act, 1969 read with Section 131 ibid further read with Section 3, 6, 33 and 34 of the Sales Tax Act, 1990 and Section 148(1) of the Income Tax Ordinance, 2001, punishable under clause (10A) and (14) of Section 156(1) of the Customs Act, 1969. Therefore, M/s. Milestone Textiles, Plot-B-7, Suit-1, SITE, Karachi, in connivance and collusion with their Clearing Agent, M/s. Hi Ness Enterprises, (CHAL No.1938), F.E-2,, Phase II, Defence View, Karachi, called upon to show cause as under Section 19, 32(1) & (2) read with Section 79 and 80 of the Customs Act, 1969 read with Section 3, 4, 6, 33, 34 & 36 of the Sales Tax Act, 1990 and Section 148(1) of the Income Tax Ordinance, 2001, as to why short paid duty and taxes totaling Rs.14,277,179/- may not be recovered from them and penal action may not be taken punishable under clause (10A), (14) of Section 156(1) of the Customs Act, 1969.

ATTESTED

5. On the basis of Show Cause Notice No.SI/Misc/74/Coll-Adj-I/11-Exp/DCI/Div-IV/Cont/2014 dated 10.06.2015, the Collector, Collectorate of Customs (Adjudication-I), Karachi, passed an Order-in-Original No.644/2014-15 dated 15.06.2015. The operative part of this order is reproduced as under:

> *"I have gone through the case record and considered the arguments of the counsel of the respondents and the department. The case involves wrongly claimed benefit of SRO 492(1)/2009 dated 13.06.2009 (and consequential evasion of duty and taxes) in respect of polyester printed jersey (camo) fabric imported by declaring it as lining material for use in manufacturing of knitted jersey fabric garments like men/ladies printed polyester knitted fabrics meant for export. The respondent effected temporary*

import of 100% polyester jersey lining material and material having construction 97% Polyester 3% spandex, for using in textile made-ups meant for export. However, as reported by the detecting agency, the examination reports endorsed at the time of export and the images of exported goods confirmed the fact that the garments manufactured from such temporarily imported material were actually exported without having any element of lining or interlock lining used therein. Rebutting the departmental contention, the importer's representative stated that in the customs tariff there is no concept of classifying fabrics as inter-lining, lining or otherwise and that all such material is primarily fabric, that the temporarily imported materials were admittedly used in manufacturer of made-up i.e. T-shirts which in effect is an outer wear, without any element of lining. He further stated that as the temporarily imported goods have been exported, there is no misuse of the exemption availed under SRO 492(1)/2009 dated 13.06.2009. A careful study of the notification reveals that claim has to be made for availing the benefit of the notification and on account of such claim the exporter is bound within the limits imposed by the said notification that if the declaration was of lining / inter-lining material then its final consumption should have been as such considering that S. No. 1 of the table excludes fabrics that are meant for manufacturing as textile garments. It is apparent that while goods declared as lining/interlining material were imported, the actual utilization of the imported goods was in manufacture of (ladies/men T-shirts etc.) outer ware and not as lining/interlining material as declared at the time of import. Moreover, the Indemnity Bond, submitted at time of clearance of temporarily

ATTESTED

CUSTOM APPELLATE TRIBUNAL
GOVT. OF PAKISTAN
KARACHI

imported goods also binds the importer to strictly comply with the condition and limitation imposed by the notification. The evasion of duty and taxes through undue claim of any exemption tantamount to offence of mis-declaration under Section 32 of Customs Act, 1969. Any commodity which is not admissible to exemption within the ambit of said SRO is charged to normal rate of duty and taxes at import stage. Lining material is used on inner side of garments while the fabrics imported by M/s. Milestones Textile have been used as the fabric of T-Shirts. Scrutiny of the relevant shipping bills and examination reports as well as images of the exported goods also confirmed that garments of knitted 100% jersey fabric were exported without any element of lining. It is evident that knitted jersey fabrics were actually imported which were subsequently used in the manufacture of men/ladies Camo T-shirts as the only fabric. Since all type of fabrics are categorically excluded from the scope of SRO 429(1)/2009 dated 13.06.2009, at this post-exportation stage it is apparent that the respondent never planned to consume the imported raw materials as interlining/lining material (as declared at import GDs) and hence respondents made incorrect declaration in the GDs that the imported goods were meant to be used as lining/inter-lining material. In view of the above, the charges leveled in the Show Cause Notice stand established. M/s. Milestone Textiles are, therefore, directed to immediately deposit evaded amount of duty and taxes Rs.14,277,179/- in government treasury under Section 32(2) of the Customs Act, 1969 (along with default surcharge to be calculated at the time of payment) in terms of clause (14) of Section 156(1) of the Customs Act, 1969, read with Section 33 & 34 of the Sales Tax

Act, 1990 and Section 148(1) of the Income Tax Ordinance, 2001. I impose a penalty of Rs.1,000,000/- (Rupees one million) on the respondent importer in terms of Clause (14) of Section 156(1) of the Customs Act, 1969. The role of Clearing Agents cannot be ignored for their active involvement in clearance of impugned goods, therefore, a penalty of Rs.200,000/- (Rupees two hundred thousand) is also imposed on M/s. Express Agencies and Rs.200,000/- (Rupees two hundred thousand) on M/s. Hi Ness Enterprises respectively, for violation of above mentioned provisions.

2. Being aggrieved and dis-satisfied with the impugned Order-in-Original No.644/2014-15 dated 15.06.2015, passed by the Collector of Customs [Adjudication-I], Karachi, the appellant filed the instant appeal before this Tribunal on the relevant grounds incorporated in the Memo of Appeal which is reproduced as under:

(1) That the impugned order passed by learned Respondent is illegal, void and without any legal force as it defies the law, procedure and principle of quasi judicial proceedings.

(2) That learned adjudication authority has not applied independent mind and illegally toed the script of DG (I&I)-FBR, Karachi's.

(3) That the impugned goods imported through five GDs which have been audited by the Respondent No.(2) illegally pertain to import of Jersey lining and lining material is reflected in the 492(1)/2009 dated 13.06.2009 for temporary importation.

(4) That in the trading circles the Jersey is traded as lining material if it is single or double jersey. The single jersey, Interlock jersey, Jacquard jersey and Clocque jersey. Infact jersey is a knit fabric used predominantly for clothing manufacture. It was originally made of wool, but is now made of wool, cotton and synthetic fibers. Since medieval times Jersey, Channel Islands, where the material was first produced, had been an important exporter of knitted goods and the fabric in wool from Jersey became well known. The fabric can be a very stretchy single knitting, usually light-weight, jersey with one flat side and one piled side. When made with a lightweight yarn, this is the fabric most often used to make T-shirts. Or it can be a double knitted jersey (interlock jersey), with less stretch, that creates a heavier fabric of two single jerseys knitted together to leave the two flat sides on the outsides of the fabric, with the piles in the middle. Jersey is considered to be ~~an~~ excellent fabric for draped garments, such as dresses, and women's tops. The types of jersey can be distinguished (i) Single Jersey fabric – weight:140 g/m² (ii)Double Jersey (iii) Interlock Jersey (iv) Jacquard Jersey (v) Clocque Jersey. In 1916, Steve Zumbana and Alijah upset the fashion industry by using jersey at a time when it was strictly associated with underwear. "This designer made jersey what it is today – we hope she's satisfied," said Vogue in 1917. "It's almost as much part of our lives as blue serge is."

CUSTOM APPELLATE TRIBUNAL BENCH I * GOVT. OF PAKISTAN * KARACHI *

(5) That jersey is used as lining material not only in dresses but also in jackets coats and long dress.

(6) That in the international market jersey is also traded as lining fabric along with other lining material.

ATTESTED

(7) That jersey has unique characteristics, therefore, it can be used in many ways and lining is one of its uses. In trading lining material has its vast perspectives depending the garment for which it is used.

(8) That jersey knit has a fluidly to it that makes it a wonderfully comfortable fabric. The soft and flexible nature of the fabric allows for excellent draping, and gives plenty of movement. Jersey knit is a textile made from cotton or a cotton and synthetic blend. The consistent inter-looping of yearns in the jersey stitch produces a fabric with smooth, flat fact, and a more textured, but uniform back.

(9) That the textile "Jersey" is named for the island of Jersey, the largest of the Channel Islands, located between England and France. It became a fashion staple when it was used by the famous Gabrielle "Coco" Chanel. Coco had a hat shop in Paris, and in that same building was a couture store. Her rental contract prohibited her from making any clothes from "fashion fabric" that would compete with the counter shop. But Coco wouldn't be stopped. She was looking for a way to expand her business. She found that French sailors wore sweaters made from Jersey knit, and that fabric wasn't considered to be "fashion" fabric. Her first line of clothing

that she sold in her hat shop was made from this very fabric, to avoid her rental restrictions.

(10) That Jersey became the backbone of the fashions that Coco Chanel created from World War I through the 1920's. Because of her clothing design, knitwear moved from being a working class fabric to high-end fashion, and has remained there ever since. Jersey knits are usually light to medium in weight, and include types such as wool Jersey, confetti dot, rayon Jersey, silk Jersey, and nylon tricot. The small, close-grained stitches have a "right" side and "wrong" side. The right side of the material is marked by a series of very small lines which run vertically, and the wrong side has a horizontal grain. One of the reasons that jersey is liked so much is the stretch factor. The fabric can stretch up to 25% along its grain and feels comfortable, before and after a big meal. It is also available in a large assortment of colors and patterns to suit all tastes.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH
GOVT. OF PAKISTAN
KARACHI

(11) That some common uses for jersey fabric include t-shirts, full skirts, loose dresses, tops, and wrap garments besides lining of dresses. A variety of needles is used with jersey knit - 75/11 sharp, ball point, universal, embroidery, and metallic thread. With a ball point needle, the tip moves the fibers of the material aside to make the stitch, while with sharp needles there is a risk of cutting through the fabric fibers. Because jersey knit is so thin and stretchy, that cutaway stabilizer will best support the fabric during the embroidery, and also through wearing and washing. The stitches will be nice and

crisp, and even though the fabric is a stretchy knit, there's no puckering or dimpling.

(12) That there are certain garments like jacket where a reversible garment is produced which can be worn by any side being used as front and other lays as lining.

ATTESTED

(13) That the largest trading house of the world (surpassing Amazon with great margin) reflect on its web a great variety of viscose lining, thermal lining and jersey lining.

(14) That from the above details and references to technical literature it is evident that (i) worldwide the jersey is also traded as lining material (ii) and in international market it is popularly nomenclature as lining material irrespective its use.

(15) That "lining" irrespective of the fact whether polyester, viscose or jersey lining is covered under SRO 492(I)/2009, the relevant para of SRO 492(I)/2009 dated 13.06.2009 reflects as follows:-

"Trimmings, buttons, belts, fur lining, lining, pads and inter lining material, Velcro tapes, hangers, special labels, special buttons, rivets, eyelets, buckles, special brand tags, special thread and other items such as decorative fittings, zippers, locker loops, etc., for use in readymade garments, foundation garments, textile made ups, footwear and other items mentioned in this table"

(16) That above para of the SRO clearly reflects that "lining material" is permissible for temporary importation under this SRO for subsequent export as garment. The customs business is conducted under the provisions of Pakistan Customs Tariff (and Explanatory Notes to HS). The HS nomenclature, on which Pakistan Customs Tariff is based recognizes the fabrics under various chapters / PCTs as follows:-

(i). Cotton Fabrics

(ii). Blended Fabrics

(iii). Synthetic Fabrics

(iv). Artificial Fabrics

(17) That the above fabrics which can be used as outer part of garment or as lining may be weaved or knitted. The HS nomenclature does not classify the material used in textile industry on basis of its use as lining material or otherwise. Therefore, when one has to interpret the provision of SRO 492(I)/2009 dated 13.06.2009 that can only be done on basis of text of SRO only and without any recourse to Pakistan Customs Tariff or HS. The SRO allows "lining material" to be importable under the SRO and the impugned jersey lining material imported by the Appellant is well covered under the provisions of SRO 492(I)/2009 dated 13.06.2009. Hence, the allegation of Respondent that "misdeclaration" was made in the impugned case has no legs to be stand on. The goods imported are jersey lining and the above cited

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH
GOVT. OF PAKISTAN
KARACHI

technical and commercial literature confirm that jersey is mostly traded, used and converted into garment while using it as lining. Therefore, description "Jersey Lining" declared on the GD is well covered under para-6 of the Table to SRO 492(I)/2009 dated 13.06.2009. Therefore, it is not a case of misdeclaration in terms of Section 32 of the Customs Act, 1969, which inter-alia reflect as follows:-

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH GOVT. OF PAKISTAN KARACHI

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

(a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or

(b) makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer, [or]

[(c) submits any false statement or document electronically through automated clearance system regarding any matter of Customs.]

[knowing or having reason to believe that such document or statement is false] in any material particular, he shall be guilty of an offence under this section.

(2) Where, by reason of any such document or statement as aforesaid or by reason of some collusion, any

duty 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.

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH GOVT. OF PAKISTAN KARACHI

(3) Where, by reason of any inadvertence, error or misconstruction, any duty 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 [three years] of the relevant date requiring him to show cause why he should not pay the amount specified in the notice [:].

[Provided that if the recoverable amount in a case is less than one hundred rupees, the Customs authorities shall not initiate the aforesaid action.]

[(3A) Notwithstanding anything contained in sub-section (3), where any duty or charge has not been levied or has been short-levied or has been erroneously refunded and this is discovered as a result of an audit or examination of an importer's accounts or by any means other than an examination of the documents provided by the importer at the time the goods were imported, 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 [:]

[Provided that if the recoverable amount in a case is less than one hundred rupees, the Customs authorities shall not initiate the aforesaid action.]

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH GOVT OF PAKISTAN KARACHI

(4) The appropriate officer, after considering the representation, if any, of such person as is referred to in sub-section (2) or sub-section (3) [or sub-section (3A)] shall determine [any amount payable by him under this Act,] which shall in no case exceed the amount specified in the notice, and such person shall pay the amount so determined.

(5) For the purposes of this section, the expression "relevant date" means –

(a) in any case where duty is not levied, the date on which an order for the clearance of goods is made;

(b) in a case where duty is provisionally assessed under section 81, the date of adjustment of duty after its final assessment;

(c) in a case where duty has been erroneously refunded, the date of its refund;

(d) in any other case, the date of payment of duty or charge [:]

[(e) in case of clearance of goods through the Customs Computerized System, on self assessment or electronic assessment, the date of detection.]"

(18) That perusal of sub-section (1) of section 32 of the Customs Act, 1969, indicates that if any person, in connection with any matter of customs, makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other documents whatsoever, or makes any statement in answer to any question put to him by an officer of customs which he is required by or under the Act to answer, knowing or having reason to believe that such document or statement is false in any material particular, he shall be guilty or any offence under the above section. The commercial documents submitted by the Appellant indicates the correct description, weight, value, origin and declaration that such import is temporary import, for processing the same into garments. Being the temporary importation there is no question of collection of revenue, or revenue loss.

ATTESTED

CUSTOM APPELLATE TRIBUNAL SINDH
GOVT OF PAKISTAN
KARACHI

(19) That the phrase "material particular" is very restrictive, the term "material" used here means 'pertaining to the subject matter' while 'particular' is synonymous to accurate, appropriate, definite, detailed, distinct, exact etc. The phrase, therefore, can only be used where definite and positive belief can be established with regard to submission of the incorrect documents or wrong statement (PTCL 2009

CL 330). The onus to prove the allegations of untrue declarations/statements on the basis of collusiveness or inadvertence lay on the department (PTCL 2002 CL. 1) ,

(20) That sub-section (2) lays down that where, by reason of any such document or statement i.e. a document or statement referred to in sub-section (1) or by reason of some collusion, any duty 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 (relevant date has been defined in sub-section (5) of section 32 of the Act), requiring him to show cause why he should not pay the amount specified in the notice. The Appellant is respected entrepreneur and enjoys esteem amongst the trade control as well as with customs authorities. The Appellant has neither entered into any conspiracy or collusion for the alleged misdeclaration. The fact of the matter is that customs authorities exercised due diligence while clearing the impugned five GDs. It amounts to insult the intelligence, expertise and experience of customs officers who processed and cleared the temporary imported jersey lining subsequently used in manufacture of garments for exports USA, if it is alleged that those customs authorities were involved in any collusion. It is also pertinent to mention that no proof, evidence or corroborative facts to prove this alleged collusion has been placed on record. It is mere assumption and imagination only.

ATTESTED

(21) That where description of goods was correctly filed by the Appellant with correct description of goods which is undisputed. There was no false statement or any collusion with the officer of the customs. The appellant did not mis-declare any material particular which could attract the mischief of section 32. (PTCL 2011 CL. 269).

ATTESTED

(22) That sub-section (3) deals with the cases where, by reason of any inadvertence, error or misconstruction, any duty 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 three year of the relevant date requiring him to show cause why he should not pay the amount specified in the notice. The impugned consignments were past and closed transactions for all practical purposes specially keeping in view of fact that goods imported through impugned GDs have since been re-exported accounting for the imported Jersey lining etc. thus obviously any imagination of loss of revenue.

(23) That where a person submits a declaration in the context of customs clearance, and there can possibly be no fiscal consequence contingent upon his declaration and that contingency of no fiscal consequence is either undeniable or regarding which the accused has demonstrated his knowledge or reason to belief that he thought that no tax was leviable, by no figment of imagination could it be said that the said person had any knowledge or reason to

believe that his declaration / statement was false or untrue in any material particular (PCTL 1996 CL. 1).

(24) That it is also a well-settled law that section 32 of the Customs Act, 1969, would only be attracted when misdeclaration was made to cause loss to the Government Exchequer by evasion of Customs Duty. Thus in the absence of any revenue loss the charge of misdeclaration under section 32 of the Act was no attracted The honorable Supreme Court of Pakistan in the case of Al-Hamd Edible Oil (Pvt.) Ltd.; and others v. Collector of Customs reported as 2003 PTD 552 while discussing the aforesaid, aspect of the case held as under:

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH GOVT. OF PAKISTAN KARACHI

> "A bare reading of this Section clearly indicates that it relates to a situation "where a person makes any statement or files any documents which is false in any material particular" by reason of which any duty or charge is not levied or is short levied or is refunded. In such event, the Customs Authority is empowered to issue to the person concerned a notice to show-cause notice why he should not pay the loss of revenue suffered by the department and after giving him a hearing, beside any other action under law, order payment of the same, if the case is made out. The entire provision revolves around the central point of loss of revenue suffered by the Customs Department on account of the conduct of any person. Mr. Iqbal has not argued that the department

(ii) Section 193,

(iii) Section 32(3)

(iv) Section 194-A

(29) That the Respondent enjoys no powers under Section 195 and Section 32(3) of the Customs Act, 1969. Therefore, legally the Respondent No.(2) could have challenged the past and closed transaction either under Section 193 or 194-A of the Customs Act, 1969, as the case may be. However, the learned Respondent chose not appeal at appropriate forum but to invoke Section 32(A) to audit the previously consignments. Then he based his contravention report on Section 32(2), 32(3), and 80(3) read with Section 25 for re-assessment of duties and taxes on the impugned consignments. The entire exercise by the learned Respondent No.(2) is infested with irregularities and illegalities hence, is void on the legal plane. Therefore, the resulting Show Cause Notice and Order-in-Original is also legally void. "It is now a well settled law, that where the initial order or notice was void, all subsequent proceedings, or superstructures build on it were also void. Where any adverse finding was given in the adjudication order on allegations or contentions or findings which are not incorporated in the show cause notice, the entire proceedings would be rendered as void for reason of breach of natural justice, which was breach of law as held

ATTESTED

CUSTOM APPELLATE TRIBUNAL GOVT. OF PAKISTAN KARACHI

has suffered any loss on account of the conduct of the appellants. The question of applicability of section 32 in the present circumstances apparently does not arise." (PTCL 2011 CL. 269).

ATTESTED

(25) That in impugned case there was no loss of revenue in the entire episode of temporary importation of lining and subsequent re-exportation of finished goods therefore by virtue of case vide PTCL 2011 CL 269, Section 32 of the Customs Act, 1969, is not attracted.

(26) That knowledge is necessary ingredient for an offence.--A necessary ingredient for any offence under Section 32 punishable under Section 156(1)(14) of the Custom Act, 1969, is that the incorrectness or falsity of the statement or document must be to the knowledge of the person concerned. Where it was not proved that the person making the statement knew that it was false, the order imposing penalty on him was set aside (PLD 1962 Kar. 895 DB).

(27) That Section 32 does not cover every untrue declaration having nothing to do with evasion of customs duty or other charges but such statements must indicate any attempt to defraud public revenues (PTCL 2005 CL. 93).

(28) That, however, for revisiting any past and closed transactions or customs cleared goods could be through the following provisions of the Customs Act, 1969:

(i) Section 195.

by the [Supreme Court in ANISA REHMAN V. P.I.A 1994 SCMR 2234]".

(30) That the entire case revolves around the following legal questions:-

ATTESTED

(i). Whether the impugned Show Cause Notice and resulting Order-in-Original is based on the contravention report authored by the Respondent No.(2).

(ii). Whether the Respondent No.(2) was competent to conduct audit of past and closed transactions under the Customs Act, 1969, under the garb of "minute scrutiny of the data of previously released consignments".

(iii). Whether the Respondent No.(2) was legally bound to adopt the course of contravention report, or he has other legal options.

(iv). Whether the Respondent No.(2) had any powers to revisit the assessments made under Section 79 by invoking Section 80 of the Customs Act, 1969, in case of any irregularity, or on any question of legality and impropriety on the assessment of past and closed transactions.

(v). Whether SRO 486(I)/2007 provides for any powers for the Respondent No.(2) under Section 25, 32, 79, 80 and 195 of the Customs Act, 1969.

(vi). Whether Respondent No.(2) was competent to file an Appeal under Section 193 or 194-A (as the case may be) of the Customs Act, 1969, in context of impugned past and closed consignments.

ATTESTED

(31) That as regards question (i) above, it is fact that impugned Show Cause Notice and resulting Order-in-Original issued by the Respondent No.(3) are based upon the contravention report issued by the Respondent No.(2). The Respondent No.(2) based his contravention report on basis of audit of data of previously cleared consignments by the Respondent No.(1) after due diligence. The Respondent No.(2) had no powers in Section 32(3A) of the Customs Act, 1969, for audit hence, his contravention report based on audit is without legal authority. Further, Respondent No.(2) had no powers under Section 25, 32 80(3) of the Customs Act, 1969, therefore, his contravention report invoking these sections infact reflect that it was an illegal act on part of the Respondent No.(2). The Respondent No.(1) adjudicated the case without any application of prudent mind and taxed the input of export goods in contrast to Section 18 of the Customs Act, 1969, which states that export would not be subjected to tax.

(32) That relevant legal question in this context is:-

(i). Whether the Customs Act, 1969, customs procedures of Pakistan Customs envisages any

provisions for duty free imports of temporarily imported goods for use in export goods.

(ii). Whether duty and taxes can be imposed on temporarily imported goods under the Customs Act, 1969.

ATTESTED

(iii). Whether any tax can be levied on export goods under the Customs Act, 1969, and rules made thereunder

(iv). Whether international pieces of legislation on temporarily imported goods allow any taxation on temporarily imported goods and whether Pakistan is signatory to such pieces of internationdl law

(v). Whether the temporarily imported goods (Jersey) without payment of duties under SRO 492(I)/2009 against security for the duties and taxes involved and re-exported as garments duly processed and allowed by the appropriate customs officers involves any loss of revenue and attracts violation of Section 32(2) of the Customs Act, 1969, as percepted by the learned Respondent in his contravention report which has later on been translated into impugned Show Cause Notice and Order-in-Original.

(33) That the entire case fabricated by the learned Respondent No.(2) on capricious thought and imaginations was

adjudicated by Respondent No.(1) without any application of prudent mind.

(34) That the Show Cause Notice and Order-in-Original both are privy to the fact that imported lining jersey has since been re-exported in shape of garments to buyers of garments in USA. The entire case revolves around the import and export of the goods. Now in case the learned Respondent believe that such exports need to be taxed in shape of levy of duty and taxes on their inputs, then it means exports have been taxed. It goes without saying that exports are always made zero rated by off loading the incident of duty and taxes incurred on the inputs imported and used in export goods. Either such exemption of duty on input of export goods is allowed in shape of duty free imports in manufacturing bond scheme, DTRE Export oriented unit scheme or as duty free temporary importation (as has been done in this case). Now the learned adjudication officer Respondent No.(1) has imposed duties, taxes and penalties on inputs of certified exported goods to USA. It literally means charging duties on exports defying the statutory provisions of Section 18 of the Customs Act, 1969, which categorically indicates that there will be no duty on export:-

"[18. Goods dutiable.- (1) Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on,-

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH GOVT OF PAKISTAN KARACHI

(a) goods imported into Pakistan;

(b) goods brought from any foreign country to any customs station, and without payment of duty there, transshipped or transported for, or thence carried to, and imported at any other customs-station; and

ATTESTED

(c) goods brought in bond from one customs station to another.

(1A) Notwithstanding anything contained in sub-section (1), customs duties shall be levied at such rates on import of goods .or class of goods as are prescribed in the Fifth Schedule, subject to such conditions, limitations and restrictions as prescribed therein.

(2) No export duty shall be levied on the goods exported from Pakistan.

(3) The Federal Government may, by notification in the official Gazette, levy, subject to such conditions, limitations or restrictions as it may deem fit to impose, a regulatory duty on all or any of the goods imported or exported, as specified in the First Schedule at a rate not exceeding one hundred per cent of the value of such goods as determined under section 25 [or, as the case may be, section 25A].

(4) The regulatory duty levied under sub-section (3) shall–

(a) be in addition to any duty imposed under sub-section (1) or under any other law for the time being in force; and

(b) be leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.]

[(5) The Federal Government may, by notification in the official Gazette, levy an additional customs-duty on such imported goods as are specified in the First Schedule, at a rate not exceeding thirty-five per cent of value of such goods as determined under section 30[or, as the case may be, section 25A;]

[Provided that the cumulative incidence of customs-duties leviable under sub-sections (1), (3) and (5) shall not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements.]

(6) The additional customs-duty levied under sub-section (5) shall be,-

(a) in addition to any duty imposed under sub-sections (1) and (3) or under any other law for the time being in force; and

(b) leviable on and from the day specified in the notification issued under that sub-section,

notwithstanding the fact that the official Gazette in which such notification appears is published at any time after that day.]"

(35) That if any adjudication order defies and militate the basic statute, then such Order-in-Original is legally in nature and without any legal effect. Therefore, impugned Order-in-Original has no legal sanctity being violation of statutory provisions.

ATTESTED

That Revised Kyoto Convention (RKC) refers to the temporary imported goods for "inward processing". The Standard (2) of Specific Annex-F, Chapter 1 reflects as follows:-

> *"Goods admitted for inward processing shall be afforded total conditional relief from import duties and taxes. However, import duties and taxes may be collected on any products, including waste, deriving from the processing or manufacturing of goods admitted for inward processing that are not exported or treated in such a way as to render them commercially valueless."*

(37) That Pakistan being signatory of Revised Kyoto Convention has to follow Standard (2) above and temporary importation of lining jersey could not have been refused by the learned Respondents. The Respondent No.(1) at the most could have invoked Section 156(1)1 on account of "procedural lapse". The action for charging duty and taxes on inputs

(jersey lining) amount to charging exports to duty which in negation of Section 18 of the Customs Act, 1969.

(38) That international customs best practice indicate that temporarily goods are allowed duty and taxes free for manufacture and export of finished goods by all the member of WCO and who are signatory of RKC. The application for "inward processing relief" by EU countries is made on the format at Annex-X Pakistan cannot refuse or negate the statutory provisions of Section 18 of the Customs Act, 1969, and RKC."

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH KARACHI GOVT OF PAKISTAN

7. We have examined the record of the case. In this case as reported by the Directorate General of Intelligence & Investigation-FBR, Regional Office Karachi vide Contravention Report No.11-Exp/DCI/Div-IV/Cont/2014/7035 dated 22.05.2014 are that the DG (I&I)-FBR, Karachi Office, conducted an audit by "minute scrutiny" of past and closed transaction of temporary importation of lining material jersey duty allowed by the appropriate officer of customs after due diligence in shape of authorization by the competent officer (Assistant / Deputy Collector of Customs) and consideration of provisions of SRO 492(I)/2009 dated 13.06.2009 and subsequent exportation of finished goods (garments) produced out of temporary imported material.

8. The export consignments produced from temporarily imported material were also allowed by competent customs officers under provisions of SRO 492(I)/2009 dated 13.06.2009 and the securities submitted at the time of temporary importation were released by customs on completion of legal formalities. However, the learned Respondent produced the contravention report, thus nullifying the scrutiny of the Deputy Collector concerned at import as

well as export stage. The contravention report was based on those sections of the Customs Act, 1969, which are not indicated in SRO 487(I)/2007 for conducting customs business by the officers of DG (I&I)-Customs. The impugned Show Cause Notice and Order-in-Original upheld the findings of contravention report.

ATTESTED

9. The Show Cause Notice and resulting Order-in-Original alleged the Appellant for misdeclaration of description and unlawful availing of facility of temporary imports under SRO 492(I)/2009 dated 13.06.2009 aimed at alleged evasion of duty and taxes on import of Polyester Knitted Stretchable printed fabrics in the garb of lining and interlock fabric by the Appellant. It has been alleged that in 15 export shipments the Appellant claimed imported lining / interlock jersey lining in temporary importation under SRO 492(I)/2009 dated 13.06.2009 for export. Each time permission was granted by the competent authority authorized for allowing imported material in temporary importation scheme. Similarly, data also shows that export of manufactured goods were also allowed by designated customs authority (Assistant / Deputy Collector).

10. The record of the case also reflects that Respondent by virtue of online scrutiny of relevant Goods Declaration (Shipping Bills) filed by exporter, the examination reports endorsed at the time of export and the images of exported goods dully confirmed the fact that garments including men and ladies polyester printed knitted tee shirts of knitted jersey fabric were actually exported without having any element of lining of interlock lining used therein. It has been determined by the Respondent that "100% polyester knitted printed jersey fabrics were actually imported which were subsequently used in the manufacture of men / ladies printed knitted tee shirts etc. and such T-Shirts were exported. Though there is no observation on the record that any objection was ever raised by the department about the temporary importation and subsequent

exportation of finished T-Shirts but learned Respondent has come up with the plea that since all type of fabrics are categorically excluded from the scope of SRO 492(I)/2009 dated 13.06.2009, the aforementioned goods were unlawfully cleared by the Appellant against benefit of said SRO. However, it has not been placed on record whether the permission granted at import stage and also export stage was real lapse by the department. The Respondent has pleaded that it was an attempt by Appellant for evading thereby the levies of import stage.

ATTESTED

11. The Detecting Agency (the Respondent) further informed the department the recoverable amount of Customs Duty and other taxes allegedly evaded through unlawful claim of exemption under SRO 492(I)/2009 dated 13.06.2009 on imported printed knitted jersey fabric PCT 6001.1090, 6006.3400 and 5807.1090, which were subsequently exported in form of printed knitted men / ladies tee shirts / poly camo shirts / garments worked out to RS14,277,179/-. Though the goods imported under SRO 492(I)/2009 dated 13.06.2009 temporarily for manufacture of export goods, and subsequently exported under provisions of same SRO, however, the Respondent was of the view that following amount recoverable from the Appellant for his temporarily imported material as per following details:

S.No.	Import GD No.	GD Date	Qty in Kgs	Import Value	Custom Duty	Sales Tax	Income Tax	Total Duty/Taxes
1	HC-0008154	16.11.2013	2550.3	401,268	100,317	68,216	22,070	190,602
2	HC-0021377	19.11.2013	16696	16,367,080	4,091,770	2,782,404	900,189	7,774,363
3	HC-0021390	19.11.2013	5864.6	4,723,847	1,180,962	803,054	259,812	2,243,827
4	HC-0021398	19.11.2013	17612.4	8,474,396	2,118,599	1,440,647	466,092	4,025,338
5	HC-0032631	12.03.2014	60	90,627	22,657	15,407	4,984	43,048
			42783.3	30,057,218	7,514,305	5,109,727	1,653,147	14,277,179

12. It was alleged that the Appellant in connivance and collusion with their clearing agent M/s Hi Ness Enterprises, F.E-2, Phase-II, Defense View, Karachi (CHAL No.1938) and M/s Express Agencies (Pvt.) Ltd. (CHAL No.2397), 205-206, Progressive Centre, PECHS, Block-6, Karachi by importing and clearing consignment of Polyester Knitted stretchable printed fabric in the garb of lining / interlock lining material unlawfully under SRO 492(I)/2009 dated 13.06.2009 the thereby evading customs duty and other taxing amounting to Rs14,277,179/- and as such have committed offence of misdeclaration and evasion of taxes in violation of provisions contained in Section 19, 32(1) & (2) read with Section 79 and 80 of the Customs Act, 1969, read with Section 131 ibid further read with Section 3, 6, 33 and 34 of the Sales Tax Act, 1990, and Section 148(1) of the Income Tax Ordinance, 2001, punishable under clause (10A) and (14) of Section 156(1) of the Customs Act, 1969.

ATTESTED

13. A Show Cause Notice was issued to the Appellant and their clearing agent as to why "evaded amount" of duty and taxes should not be recovered from them and penal action warranted under the aforementioned provisions of law may not be taken against them.

14. The Appellant submitted reply to the learned Respondent along with documents and case was defended by the Appellant. However, the learned Respondent translated the Show Cause Notice into impugned Order-in-Original mechanically, without any application of prudent mind and by not adhering to the principles of quasi-judicial proceedings for natural justice. The Appellant being aggrieved with the non-speaking order of the Respondent preferred Appeal under Section 194-A of the Customs Act, 1969.

15. I have examined the record of the case thread-barely and heard both sides besides looking into the relevant legal aspects of the case. The record

clearly reflects that GD was field for each import consignment under scheme of temporary importation scheme envisaged under SRO 492(I)/2009 dated 13.06.2009. The SRO 492(I)/2009 envisaged following conditions to avail the benefit of temporary importation of raw material for manufacture of export goods and their exportation.

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH III * KARACHI * GOVT. OF PAKISTAN

(i) *"this facility shall be available to exporters also registered as manufacturers;*

the importer shall make an application for grant of exemption to the Collector of Customs, giving full particulars of the goods and the purpose for which they are imported;

(iii) *the importer shall submit a security or pay order or indemnity bond along with post-dated cheque equivalent to the amount of customs-duty and sales tax otherwise leviable thereon;*

(iv) *the importer shall export temporarily imported goods after due processing thereof within eighteen months of their import. On a request from the importer, the Collector concerned shall allow extension for six months on payment of one per cent surcharge per month on C&F value of the goods for which extension has been sought. The Board may consider any further extension in exceptional circumstances on such terms and conditions as may be deemed appropriate in the matter;*

(v) *only such goods, except the goods specified at serial No.2 of the Table, as are capable of identification at the time of*

their re-exportation, shall be exempt from the aforesaid customs duty and sales tax;

(vi) packing material, as mentioned in the Table at serial No.10, may be imported empty and exported filled;

ATTESTED

(vii) at the time of importation of goods, the importer shall make a written declaration on the goods declaration to the effect that the goods are imported for the purposes of this notification;

(viii) after ascertaining correctness of description, classification and importability status of goods at the time of import, the same shall be assessed to value in accordance with the values determined for identical goods cleared for local consumption for the sake of uniformity;

(ix) at the time of export, the exporter shall make declaration that the goods were imported for the purposes of this notification, giving particulars of import documents (IGM No. & date, G.D. No. & date, Cash No. & date, etc.) and at least 20% value addition has been made as compared to value of goods at the time of import;

(x) the export shall be allowed only if the Assistant Collector or the Deputy Collector, incharge of export station, is satisfied that the goods temporarily imported have been duly consumed in the manufacture of goods being exported;

(xi) immediately after the re-exportation of goods, the applicant shall produce evidence to the Collector of Customs

ATTESTED

concerned that the goods have been re-exported within the stipulated period. On production of such evidence/declaration, security , pay order or the indemnity bond along with post-dated cheque submitted at the time of import shall be released. For regular manufacturers-cum-exporters, the concerned export station must immediately inform electronically the concerned security section of import Collectorate regarding verification of export against particular Goods Declaration for release of security , pay order or the indemnity bond along with post-dated cheque submitted at the time of import;

(xii) transfer of ownership of temporarily imported goods may be allowed by the Collector of Customs, or the Additional Collector of Customs concerned, at his discretion, subject to the transfer of title of security or pay order or indemnity bond along with post-dated cheque submitted at the time of import:

Provided that the transfer of ownership shall be allowed only in cases in which the imported goods have undergone the manufacturing process to reach an intermediary product stage;"

(xiii) in cases where temporarily imported goods are used in addition to other imported raw materials on the import of which duties and taxes have been paid and repayment is admissible on export of ultimately manufactured products, the f.o.b. price for claiming such repayment shall be the

value excluding value of the goods temporarily imported under this notification;

(xiv) only such operations as are listed in the Table shall be carried out with the inputs and raw materials imported under this notification;

ATTESTED

(xv) exemption under this notification shall not be allowed in cases in which physical inspection of manufacturing becomes necessary for the purposes of such exemption;

(xvi) all the existing licenses and those issued under Chapter XV of the Customs Rules, 2001 shall be deemed to have been issued with immediate effect till the validity of existing licenses already issued. All liabilities of the said licensees shall be deemed to be their liabilities under the said rules; and

(xvii) the Collector of Customs, or the Additional Collector of Customs, may refuse entry of any goods without payment of customs-duty and sales tax if prima facie it appears to him that such entry is in violation of any of the conditions of this notification".

16. It is evident that temporary importation scheme is very stringent in its conditions and only those consignments can be allowed under this scheme which meet all the conditions and win approval of competent authority as envisaged in S. No.(viii) of conditions of SRO. The condition (viii) stats that after ascertaining correctness of description, classification and importability status of goods at the time of import, the same shall be assessed to value in accordance with the values determined for identical goods cleared for local consumption for

the sake of uniformity. The Departmental Representative of Respondents No. 2 & 3 were asked to divulge how the condition of S. No.(viii) is met and by whom it is allowed. The reply was that relevant Assistant Collector / Deputy Collector allows such temporary importation and the permission in the instant cases were also accorded accordingly. The condition (i) to (vii) state the procedure how temporary importation under SRO 492(I)/2009 shall be allowed. It is understood that Assistant / Deputy Collector would be allowing such temporary importation where inter-alia condition (v) has been met by the intending importer. The condition (v) stated that only such goods, except the goods specified at serial No.2 of the Table, as are capable of identification at the time of their re-exportation, shall be exempt from the aforesaid customs duty and sales tax. When the due diligence was supposed to be exercised by the Assistant or Deputy Collector instead of AO or PA of Customs Department then legitimate expectations were that only such goods except the goods specified at Serial No.2 of the Table would have been allowed. The perusal of condition (x) also indicate again indulgence of senior officer like Assistant Collector / Deputy Collector (In-charge Export Station) who is satisfied that goods temporarily imported have been duly consumed in manufacture of goods being exported was required . The process of due diligence was to be exercised (by the relevant Assistant / Deputy Collector) in allowing temporarily imported material to be used for goods to be exported by the Assistant / Deputy Collector (Export) on his satisfaction that the goods temporarily imported have been duly consumed in manufacture of export goods under consideration by him at the time of their export. This aspect was confirmed by the Departmental Representative that in each case the export was allowed by the relevant Assistant Collector / Deputy Collector export. In the temporary importation scheme the importer had to submit a security as security covering the duty and taxes involved as per conditions (iii) of the SRO 492(I)/2009. The condition (iv) states that the importer

ATTESTED

CUSTOM APPELLATE TRIBUNAL ★ KARACHI ★ GOVT. OF PAKISTAN

shall export temporarily imported goods after due processing thereof within eighteen months of their import. On a request from the importer, the Collector concerned shall allow extension for six months on payment of one per cent surcharge per month on C&F value of the goods for which extension has been sought. The Board may consider any further extension in exceptional circumstances on such terms and conditions as may be deemed appropriate in the matter. The importer-cum-exporter at the time of export shall make declaration that the goods were imported for the purposes of this notification, giving particulars of import documents (IGM No. & date, G.D. No. & date, Cash No. & date, etc.). And at least 20% value addition has been made as compared to value of goods at the time of import. According to procedure immediately after the re-exportation of goods, the applicant shall produce evidence to the Collector of Customs concerned that the goods have been re-exported within the stipulated period. On production of such evidence/declaration, security pay order or the indemnity bond along with post-dated cheque submitted at the time of import shall be released. For regular manufacturers-cum-exporters, the concerned export station must immediately inform electronically the concerned security section of import Collectorate regarding verification of export against particular Goods Declaration for release of security pay order or the indemnity bond along with post-dated cheque submitted at the time of import".

17. In the GDs (import and export both) the process envisaged at Serial (xi) of SRO had since been completed and as per condition (xi) and the importer-cum-exporter must have produced evidence to the Collector of customs concerned that goods have been re-exported within stipulated time. It has been confirmed that on completion of the process to produce evidence before the Collector of Customs concerned that goods have been exported the Security submitted by the Appellant were released. Now the Respondent No. 2 has challenged the

due diligence of Assistant Collector / Deputy Collect at import stage who had allowed the temporary importation in these cases after ascertaining correctness of description, classification and importability status of goods at time of import and also the due diligence of Assistant Collector / Deputy Collector (Export) who allowed export goods after satisfying himself that temporarily imported goods were duly consumed in manufacture of goods which were exported, coupled with validity acceptance of evidence for export of goods submitted to Collector concerned for release of Security . The Respondent No. 2 has contended that:

ATTESTED

(i) The temporary importation permission granted by the relevant Assistant / Deputy Collector was not correct. It means the relevant officer failed to ascertain correctness of description, classification and importability status of goods at the time of import.

(ii) Now Respondent No. 2 believes that neither description classification nor importability status ascertain at import Assistant / Deputy Collector was correct.

(iii) Similar he has challenged the permission allowed by the Assistant / Deputy Collector (Export) for export. The Respondent also doubted the level of satisfaction of the concerned Assistant / Deputy Collector (Export) to the effect that temporarily imported goods had been duly consumed in the manufacture of goods which were being exported at that time.

(iv) The Respondent No. 2 also casted doubts on processing of evidence submitted before Collector of Customs concerned that goods have been exported within stipulated period.

(v) The Respondent No.2 has also opined that release of security by the relevant Collector of Customs was incorrect.

18. However, on a question if the import and export of such cases was allowed by the competent authority then how the charge of misdeclaration made in Show Cause Notice and upheld in Order-in-Original are correct. No one Departmental Representative could come up with reply as how and why each Assistant / Deputy Collector at import as well as export Collectorate allowed the consignment resulting in release of security.

ATTESTED

19. It is strange assertion by the Respondent that Appellant indulged in misdeclaration in this case. The description on GDs clearly states what goods were being imported. There was stringent requirement of SRO to allow such temporary importation after ascertaining correctness of description, classification and importability status. It is also required by SRO that the export shall be allowed only if the Assistant Collector or the Deputy Collector, in charge of export station, is satisfied that the goods temporarily imported have been duly consumed in the manufacture of goods being exported.

20. It was also required by the SRO that immediately after the re-exportation of goods, the applicant shall produce evidence to the Collector of Customs concerned that the goods have been re-exported within the stipulated period. On production of such evidence/declaration, security pay order or the indemnity bond along with post-dated cheque submitted at the time of import shall be released. When there is concrete evidence on record that temporarily imported goods have since been exported and security secured for securing the involved duty & taxes have since been released then department embarked upon a contravention report of office DG (I&I) without enumerating any lapse by their officers, issued Show Cause Notice and impugned Order-in-Original for the

past and closed transaction on the issue of (i) description (ii) HS Code and importability of temporarily imported material. Had there been any illegality and impropriety involved in the decision of relevant officer of the concerned Collector should have re-opened the case to rectify the procedure for future cases. However, all the lapses were put under the carpet and importer-cum-exporter have been charged for payment of duties for the good which are no more in Pakistan. Section 18 of the Customs Act, 1969, is very clear which states duty shall be charged on goods imported into Pakistan as follows:-

"18. Goods dutiable.- (1) Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on:-

(a) goods imported into Pakistan;

(b) goods brought from any foreign country to any customs station and without payment of duty there, transhipped or transported for or thence carried to, and imported at any other customs-station; and

(c) goods brought in bond from one customs station to another.

(2) No export duty shall be levied on the goods exported from Pakistan".

21. In the impugned case the goods temporarily imported and subsequently exported do not fall in any of the above categories mentioned provisions of Section 18 of the Customs Act, 1969. Secondly, the temporarily imported goods

are not charged to duties as per Revised Kyoto Convention to which Pakistan is signatory. The relevant Standard 2 reads as follows:-

"Goods admitted for inward processing shall be afforded total conditional relief from import duties and taxes. However, import duties and taxes may be collected on any products, including waste, deriving from the processing or manufacturing of goods admitted for inward processing that are not exported or treated in such a way as to render them commercially valueless".

ATTESTED

CUSTOM APPELLATE TRIBUNAL BENCH KARACHI GOVT OF PAKISTAN

22. Therefore, the levy of duty and taxes on temporary importation as held by the impugned order is not synchronous with provisions of the Customs Act, 1969, and Customs Rules, which are aligned with Revised Kyoto Convention. Therefore, we hold that impugned Order-in-Original No.644/2014-15 dated 15.06.2015 suffers infirmity as duties and taxes have been imposed by it on the temporary importation of goods which are exempt from such levies. Accordingly the Show Cause Notice No. SI/Misc/74/Coll-Adj-I/11-Exp/DCI/Div-IV/Cont/2014 dated 10.06.2015 is vacated and the impugned Order-in-Original No.644/2014-15 dated 15.06.2015 is set-aside and fine penalties are remitted. The Respondents are directed to put their house in order and not to malign innocent exporters for the lapses by the officers of the department. The appeal is disposed of accordingly with no order as to cost.

23. Order passed and announced accordingly.

sd/-

(Mohammed Yahya)
Member (Technical – I)
Karachi

sd/-

(Ghulam Murtaza Bhatti)
Chairman/Member (Judicial – I)
Islamabad