BEFORE THE CUSTOMS, FEDERAL EXCISE & SALES TAX APPELLATE TRIBUNAL,SPECIAL BENCH, KARACHI.

M/s Shan Associates
Karachi.

Appellant

Versus

1. The Collector of Customs
(Adjudication-I) Custom House,
Karachi.

2. The Collector of Custom
MCC West Custom House,
Karachi.

Respondents

For the appellant.	Mr. Madan Lal, Advocate.
For the respondent.	Mr. Amar Aamir, A.C & Mr. Imtiaz Hussain, A.O.
Date of hearing.	11.11.2015.
Date of judgment.	19.11.2015.

JUDGMENT

ATTESTED

MR. GHULAM MURTAZA BHATTI, CHAIRMAN/MEMBER (JUDICIAL). This appeal is directed against Order-in-Original No. 289101-21112014 dated: 21.11.2014 passed by the Collector (Adjudication), Karachi.

Brief facts of the case are that the importer M/s Shan Associates, electronically filed Goods Declaration No. KAPW-HC-57908-20-10-2014 and declared to contain KNITTED PILE FABRIC (POLAR) classifying the goods under HS Code 6001.9290 claiming customs duty @ 16% under FTA regime vide SRO 659(I)/2007, Sales Tax 3% and Income Tax @ 1% under SRO 1125(I)/2001. The importer determined his liability of payment of applicable duty and taxes and sought clearance under Section 79(1) of the

Customs Act, 1969 under Self Assessment system through their clearing agent M/s U Trade Logistics license No. KCUS-2929.

3. In order to check as to whether the importer has correctly paid the legitimate amount of duties and taxes, the under reference GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred to Examination for confirmation of description, quantity and other physical attributes of the goods. The report of the examining staff is reproduced below :-

"No document found inside the container. Inspected the lot and examined. Declared description:- Polyester Fleece Fabric Shawls in assorted colours, size 7'-5" x 4"-5", packed in poly bags, qty-20 Pcs/ Bag x 834 =16,680 Pcs=12530 kgs approx, duly sealed r/sample is being forwarded to DC Group-IV to check all aspects, brand and I/o-not shown, 100% weight checked by KICT weighbridge vide slip # 479011 dt:21.10.2014 and found gross wt-12730 kgs."

5. And whereas, bare perusal of the examination report, revealed that consignment actually consisted of "Polyester Fleece Fabrics Shawls in assorted colours, size 7'-5" x 4"-5", packed in poly bags, qty-20 Pcs/ Bag x 834 =16,680 Pcs=12530 kgs approx, classifiable under PCT heading 6214.9010 chargeable to Customs Duty @ 25%, Sales Tax @ 17% and Income Tax @ 3% as against declared duty/taxes (mentioned in Para-1). Thus, the importer has deliberately mis-declared the description of goods, PCT, as well as making an inadmissible claim of concessionary notifications with malafide intention to defraud / deprive the state exchequer from its legitimate revenue amounting to Rs.42,96,689/-. The offending value of the goods comes to Rs.86,50,936/-.

6. And whereas the importer and the clearing agent have, thus, violated the provisions of Section 32(1)(2), 32-A and 79(1) of the Customs Act, 1969. Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 , punishable

ATTESTED

under clause 14, 14-A and 45 of Section 156(1) of the Customs Act, 1969 clause 11 (C) of Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001 read with SRO 499(I)/2009 dated: 13.06.2009.

8. Finally the Collector (Adjudication) has held as under :-

"I have gone through the case record and considered written/verbal arguments of the respondent and the department. The main PCT heading 6001 clearly states that 'Pile fabrics, including long pile fabrics and terry fabrics, knitted or crocheted' and heading 6214 is meant for 'Shawls, scarves, mufflers, mantillas, veils and the like.' The respondent declared the goods as 'knitted Pile Fabrics (Polar)' and sought clearance under PCT heading 6001.9290 claiming benefit of FTA CD @ 16% vide SRO 659(I)/2007 and Sales Tax 3% & Income Tax @ 1 % under SRO 1125(I)/2011. dated: 31.12.2011. However, on examination the goods were found to be Polyester Fleece Fabric Shawls in assorted colors, size-7'-5" x 4"-5", 16,680 Pcs (12,530 Kgs) which are appropriately classifiable under PCT heading 6214.9010 Customs Duty @ 25% , Sales Tax @ 17% and Income Tax @ 3%. It is evident that the respondents have mis-declared the description of goods and wrongly claimed concessionary SRO to avail the benefit of FTA. The stance of the department is correct that assessable value in respect of the impugned goods has to have some nexus vis-à-vis price of the raw material of polar fabric (@ US $3.30/Kg) as available in Valuation Ruling 683/2014 dated: 11.09.2014. Moreover, the Collectorate has also clarified that the total re-assessed value comes to Rs.43,64,416/- involving duty and taxes Rs.23,22,415/-. Hence, the charges leveled in Show Cause Notice stand established. I, therefore, order confiscation of the subject goods under section 156(1) clause 14, read with section 32(1) & (2) of the Customs Act, 1969.

ATTESTED

However, an option under Section 181 of the Customs Act, 1969 is given to the importer to redeem the confiscated goods on payment of 35% Redemption fine amounting to Rs.15,27,546/- in terms of SRO 499(I)/2009 dated; 13.06.2009 of the value of offending goods (as determined by the department) in addition to payment of duty and taxes chargeable thereon. I also impose a penalty of Rs.1,00,000/- on the importer and Rs.50,000/- on the clearing agent for violation of above mentioned provisions of law.

9. Feeling dis-satisfied with the above treatment, the appellant filed appeal before this Tribunal on the following grounds :-

A. That the impugned Order-in-Original has been passed arbitrarily by the respondent without applying his independent mind and without appreciating the legal issues raised in the written submission as well as the oral arguments made at the time of personal hearing, and has failed to rebut the legal issues raised before imposing fine and penalty and thus the impugned order is not sustainable as the same is not a speaking order in terms of section 24-A of the General Clauses Act.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH-II KARACHI ★ GOVT. OF PAKIS

B. That the consignments imported by the appellant is being assessed at US$ 4.00/Kg for a sufficiently long period and the consignments of the appellant is liable to be assessed at US$ 4.00/Kg.

C. That the law of Estoppel shall apply in valuation matters as well, where the department had been assessing certain goods at a certain price, unless some new factors intervene and the prices in the country of export had recorded arise and the evidence of contemporaneous import is available with the Valuation department and the importer is required to be confronted with the same.

D. That the changing of the classification from PCT Heading No.5210.5900 to 5516.1200 can not affect the classification in respect of GDs already filed as departure from departmental practice is not permissible. Where it has followed a particular course in the implementation of some rule, whether right or wrong it will be extremely unfair to make a departure from it after a lapse of considerable time, hereby disturb rights that have

been settled by a long and consistent course of practice. The classification having been consistently followed by the department and the same having become a long standing practice, has almost acquired the force of law and the establish practice cannot be suddenly deviated from.

E. That in case the PCT heading claimed by the importer as per the departmental practice is not acceptable the same is a dispute regarding the interpretation of law as the PCT heading relates to First Schedule of the Customs Act, 1969 and in case the department intend to depart from the existing practice of classifying blended fabrics under Chapter 55 then the matter is require to be referred to FBR as in terms of Rule (2) of Pakistan Rules of Interpretation the final authority to determine the classification in FBR and its decision would be prospective and not retrospective, therefore, the subject goods are to be assessed under PCT heading 5210.5900 as per the existing practice.

F. That the appellant has correctly declared the description of the goods as "blended dyed ladies shirting fabric" and claimed assessment thereof under PCT heading 5210.5900 as per the existing practice whereas a number of consignments has been cleared under the same PCT heading and it was an establishment departmental practice followed by the department and, therefore, claiming assessment under a PCT heading does not amount to mis-declaration. Mis-declaration of goods the emphasis is made on words "material particulars" which means something going to root cause of basic declaration. Simply transcribing wrong PCT heading has alleged would not amount to a mis-declaration as the clearing agent is required to fill PCT column for assistance of assessing officer more-so-when it has been a departmental practice to assess the goods under PCT heading 5210.5900, therefore, no mis-declaration has been made which classification was invoked would not be mis-declaration in terms of Section 32(1) of Customs Act, 1969.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH-II KARACHI ★ GOVT. OF PAKISTA

G. That further in terms of Customs General Order No.10/1999 dated: 22nd April, 1999 wherein it has been clarified at para b(iii) that, **"Where the description of goods is as per declaration but incorrect PCT heading has been mentioned in the bill of entry, no mis-declaration case under section 32 of the Customs Act, 1969, be made out provided there is no change in the rate of custom duty as a result of ascertained PCT heading."**

H. That the Valuation Ruling dated: 21.06.2014 could not applied on goods already imported into Pakistan prior to the issuance of the Valuation Ruling and the same are liable to be assessed at US $4.00/KG, as per the existing practice on the basis of the date available with the appraising authorities and they are not in possession of any evidential invoice of a higher value relating to contemporaneous imports.

I. That not-with-standing the facts that the impugned Valuation Ruling has been issued without disclosing any basis and since the consignments arrived and the GDs were filed prior to the issuance of Valuation Ruling the same are liable to be assessed in terms of Section 25(1) of the Customs Act, 1969.

J. That it is submitted that the subject show cause notice on the basis of which the impugned Order in Original is also legally effective as the provisions of Section 32(1) and Sub-Section (2) cannot be invoked simultaneously as both these provisions contemplates different situations. It is submitted that in terms of Section 32(1) ibid that in case of short levy or evasion became possible clue to collusion of some custom officials the mere fact that no such official was involved and no notice were served in terms of 32(2) ibid indicated that the entire exercise is malafide and therefore, the same renders the SCN legally defective and not maintainable and all the subsequent proceedings emanating from an illegal SCN is void and legally not maintainable.

K. That the respondent has erred in law by confiscating the goods and even an option to the importer to redeem the offending goods under section 181 of the Customs Act, 1969 as the goods are freely importable and the appellant has made no violation of the provisions of Section 15 or of a notification issued under section 16 ibid, therefore, the provisions of Section 17 ibid is not attracted, therefore, the provisions and the quantum of fine and penalty in terms of SRO 499(I)/2009 dated: 13.06.2009 issued in terms of second proviso to Section 181 ibid is also not attracted, therefore, the fine and penalty imposed by the respondent is in violation of the law.

ATTESTED

CUSTOMS APPELLATE TRIBUNAL BENCH-II, KARACHI, GOVT. OF PAKISTAN

10. We have heard both the parties, perused the record and reached to the conclusion as under :-

11. The reason to impose penalty in the instant matter is wrong description of the composition of the fabric in question by the appellant. The department / respondent has to undergo a lab test to correctly determine the composition of the fabric in question here in the instant appeal. Where the composition of the fabrics has been determined only after the lab test and it was not ascertained even by the customs officials in routine, then it

cannot be described that it was a deliberate attempt to defraud the national exchequer by the appellant. In addition no mens-rea has been established by the respondent as against the appellant as per the record on file, particularly since the composition of the fabric could only be determined after the lab test, therefore, it is sufficient to say that this could at the most be mistake on the part of the appellant. Now since the lab test has taken place, the appellant is directed to pay leviable duties and taxes as determined by the department on the basis of the lab test. However, the imposition of penalty and fine is remitted under the circumstances as no mens-rea against the appellant has been proved by the respondent/department as per record of the file.

12. The impugned order is therefore, modified only to the above extent.

-Sd-

(KHAWAJA UMAR MEHDI)
MEMBER (TECHNICAL)

-Sd-

(GHULAM MURTAZA BHATTI)
MEMBER (JUDICIAL)

CERTIFICATE.

ATTESTED

It is certified that this judgment consists of 08 pages and each page has been dictated, corrected and signed by us.

-Sd-

(GHULAM MURTAZA BHATTI)
MEMBER (JUDICIAL)

CUSTOMS APPELLATE TRIBUNAL BENCH-II, KARACHI ★ GOVT. OF PAKISTAN

4-10-1580, dt 4/12/15

Appeal No.(s)/CM: 10.1674/14 — 26/11/14.

M/s. Shan Associates.

Order-in-original: 289/01/14 — 21/11/14.

Coll. of Adj. Khi

Copy forwarded to:

M/s M/s Shan Associates, Merdan (al Cadet) Khi

Collector of

Collector

Collector

Director General

Office Copy

App: 131 Khi

4/12/2015

SAJJAD HAIDER
Assistant Registrar
Customs Appellate Tribunal
Bench II, Karachi
Phone 99202351, Fax 99202687

BEFORE THE CUSTOMS, FEDERAL EXCISE & SALES TAX APPELLATE TRIBUNAL,SPECIAL BENCH, KARACHI.

M/s Shan Associates,
Karachi.

Appellant

Versus

1. The Collector of Customs
(Adjudication-I) Custom House,
Karachi.

2. The Collector of Custom
MCC West Custom House,
Karachi.

Respondents

1.	For the appellant.	Mr. Madan Lal, Advocate.
2.	For the respondent.	Mr. Amar Aamir, A.C & Mr. Imtiaz Hussain, A.O.
3.	Date of hearing.	11.11.2015.
4.	Date of judgment.	19.11.2015.

JUDGMENT

MR. GHULAM MURTAZA BHATTI, CHAIRMAN/MEMBER (JUDICIAL). This appeal is directed against Order-in-Original No. 281858-05112014 dated: 07.11.2014 passed by the Collector (Adjudication), Karachi.

2. Brief facts of the case are that the importer M/s Shan Associates, electronically filed Goods Declaration No. 160380 dated: 02.06.2014 through Clearing Agent M/s U. Trade Logistics Pvt. Ltd (KCUS-2929). As per declaration the consignment contains i) Cotton Blended Shirting Fabrics ii). Sample Fabrics both falling under PCT Heading 5210.5900 subject to levy of CD@ 12% ad val, claiming FTA concession under SRO 659(I)/2007 and exemption/concession of sales tax under SRO 1125(I)/2011 admissible

to industrial undertaking at a total invoice value of US$ 6390.00. The importer determined his liability of payment of applicable duties and taxes and sought clearance under Section 79(1) of the Customs Act, 1969.

3. In order to check as to whether the importer has correctly paid the legitimate amount of duties and taxes, the under reference GD was selected for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred to Examination for confirmation of description, quantity and other physical attributes of the goods.

4. On physical examination and scrutiny of the documents filed with the subject GD, the goods stuffed in Container No. SEGY-4500087 have been found to be different than the declared goods with variations observed as under :-

Sr.No.	Description declared	Ascertained as per T.R./V.R. and E.R.
1.	Item(s) i) Cotton Blended Shirting Fabrics	
ii.	Sample Fabrics Viscose Rayon 85% & Mercerized Cotton 15%.	
2.	Weight / Quantity	22500 Kg 19890 Kg
3.	PCT	5210.5900 5516.1200
4.	Rate of CD	12% 15%
5.	Value	US$ 0.2840/Kg US$ 4.50/ Kg
6.	Duty / Taxes	
	Custom Duty:	
	Sales Tax	
	Additional Sales Tax	
	WHT :	
	Total:	

Rs.76,297/-

Rs.21,363/-

------/-

Rs.7,335/-

Rs.104,995/-

Rs.13,55,150/-

Rs.17,66,212/-

Rs.3,11,685/-

Rs.6,85,706/-

Rs.41,18,753/-

5. Moreover, the documents filed alongwith Goods Declaration also do not match with the declaration made in GD, which has resulted in less amount of duty taxes than the actual payable. Therefore, by making self assessment and paying less duties and taxes on the basis of mis-declared description/specification, PCT Heading and availing exemption/ concession illegally the importers and the clearing agent have been found guilty of an offence attracting the provisions of Section 79(1) (b), 32(1)(c) and 32(2) and 32A(1)(a)(c) of the Customs Act, 1969 punishable under clauses (10-A) and (14) of Section 156(1) of the Customs Act, 1969. The exemption of sales tax under SRO 1125(I)/2011 is not admissible as the importer has not come up with clean hands. However, adjudication authority may examine this aspect as well.

6. The aforesaid facts prove that the importer has deliberately concealed / mis-declared the relevant particulars of the imported goods in the Goods Declaration (G.D.), filed under Section 79(1) of the Customs act, 1969 and has made an attempt to clear the imported goods on less payment of revenue through self assessment. Had the importer's

G.D. was/is not checked in terms of Section 80 of the Customs Act read with Rules 435 and 438 of the Custom Rules, 2001, the Government's Exchequer would have been deprived from its legitimate revenue to the tune of Rs.40,13,758/-.

7. The act of the importer and clearing agent attract the provisions of Section 32(1), 32(2), 32-A and 79(1) of the Customs Act, 1969 read with relevant provisions of the Sales Tax Act, 1990 and the Income Tax Ordinance, 2001 , punishable under clause (10-A), (14) and (14-A) of Section 15691) of the Customs Act, 1969 read with SRO 499(I)/2009.

8. Finally the Collector (Adjudication) has held as under :-

"I have gone through the case record and considered written/verbal arguments of the respondent and the department. It has been alleged by the department that the importer has mis-declared the description of the impugned goods and wrongly claimed benefit of SRO 659(I)/2007 dated: 30.06.2007 to avail the benefit of Pak-China FTA in respect of which Customs Duty @ 12% ad vai was chargeable on the impugned goods. The claimed PCT heading i.e. 5210 clearly states "Woven fabrics of cotton, containing less that 85% by weight of cotton, mixed mainly or solely with man made fibers, weighing not more than 200g/m2." The respondents declared the goods as 'Cotton Blended Shirting Fabrics' under PCT Heading 5210.5900 subject to levy of CD@ 12% ad val, under claim of FTA concession. Representative samples were drawn from the consignment (in presence of the importer / clearing Agent as observed in the examination report) and forwarded to Custom House Laboratory for test. I have examined the lab test report provided by the department and incidentally whose findings are not contested by the respondents. As per lab test report (bearing No. 160380) the samples have been found viscose rayon 85% and mercerized cotton 15%. Hence, the description of the impugned goods has been found mis-declared and the goods are appropriately classifiable under PCT heading 5516.1200 attracting customs duty @ 15% as

determined by the department. The argument of the respondents that the imported goods are in fact two different types of fabrics i.e. Cotton Blended fabrics and Viscose Blended Fabrics is not materially sustainable in view of the unequivocal findings of the test report. In view of the above, it is clear that the respondents have mis-declared the description of goods and wrongly claimed benefit of SRO 659(I)/2007 dated: 30.06.2007 to avail the benefit of Pak-China FTA. As regards the benefit of SRO 1125(I)/2011 dated: 31.12.2011, the MCC may examine its admissibility subject to all just exceptions and its applicability vis-à-vis the description as determined by the detecting MCC. Based on the foregoing discussion, it is apparent that the charge of mis-declaring leveled in Show Cause Notice thus, stands established, I therefore, order confiscation of the subject goods under section 156(1) clause 14, read with section 32(1) & (2) of the Customs Act, 1969. However, an option under Section 181 of the Customs Act, 1969 is given to the importer to redeem the confiscated goods on payment of 35% fine amounting to Rs.31,16,577/-of the value of offending goods in terms of SRO 499(I)/2009 in addition to payment of duty and taxes chargeable thereon. A total penalty of Rs.2,00,000/- on the importer and Rs.100.000/- on the clearing agent."

9. Feeling dis-satisfied with the above treatment, the appellant filed appeal before this Tribunal on the following grounds :-

A. That the impugned Order-in-Original has been passed arbitrarily by the respondent without applying his independent mind and without appreciating the legal issues raised in the written submission as well as the oral arguments made at the time personal hearing, and has failed to rebut the legal issues raised before imposing fine and penalty and thus the impugned order is not sustainable as the same is not a speaking order in terms of section 24-A of the General Clauses Act.

B. That the consignments imported by the appellant is being assessed at US$ 4.00/Kg for a sufficiently long period and the consignments of the appellant is liable to be assessed at US$ 4.00/Kg.

C. That the law of Estoppel shall apply in valuation matters as well, where the department had been assessing certain goods at a certain price, unless

some new factors intervene and the prices in the country of export had recorded arise and the evidence of contemporaneous import is available with the Valuation department and the importer is required to be confronted with the same.

D. That the changing of the classification from PCT Heading No.5210.5900 to 5516.1200 can not affect the classification in respect of GDs already filed as departure from departmental practice is not permissible. Where it has followed a particular course in the implementation of some rule, whether right or wrong it will be extremely unfair to make a departure from it after a lapse of considerable time, hereby disturb rights that have been settled by a long and consistent course of practice. The classification having been consistently followed by the department and the same having become a long standing practice, has almost acquired the force of law and the establish practice cannot be suddenly deviated from.

E. That in case the PCT heading claimed by the importer as per the departmental practice is not acceptable the same is a dispute regarding the interpretation of law as the PCT heading relates to First Schedule of the Customs Act, 1969 and in case the department intend to depart from the existing practice of classifying blended fabrics under Chapter 55 then the matter is require to be referred to FBR as in terms of Rule (2) of Pakistan Rules of Interpretation the final authority to determine the classification in FBR and its decision would be prospective and not retrospective, therefore, the subject goods are to be assessed under PCT heading 5210.5900 as per the existing practice.

F. That the appellant has correctly declared the description of the goods as "blended dyed ladies shirting fabric" and claimed assessment thereof under PCT heading 5210.5900 as per the existing practice whereas a number of consignments has been cleared under the same PCT heading and it was an establishment departmental practice followed by the department and, therefore, claiming assessment under a PCT heading does not amount to mis-declaration. Mis-declaration of goods the emphasis is made on words "material particulars" which means something going to root cause of basic declaration. Simply transcribing wrong PCT heading has alleged would not amount to a mis-declaration as the clearing agent is required to fill PCT column for assistance of assessing officer more-so-when it has been a departmental practice to assess the goods under PCT heading 5210.5900, therefore, no mis-declaration has been made which classification was invoked would not be mis-declaration in terms of Section 32(1) of Customs Act, 1969.

G. That further in terms of Customs General Order No.10/1999 dated: 22nd April, 1999 wherein it has been clarified at para b(iii) that, **"Where the description of goods is as per declaration but incorrect PCT heading**

has been mentioned in the bill of entry, no mis-declaration case under section 32 of the Customs Act, 1969, be made out provided there is no change in the rate of custom duty as a result of ascertained PCT heading."

H. That the Valuation Ruling dated: 21.06.2014 could not applied on goods already imported into Pakistan prior to the issuance of the Valuation Ruling and the same are liable to be assessed at US $4.00/KG, as per the existing practice on the basis of the date available with the appraising authorities and they are not in possession of any evidential invoice of a higher value relating to contemporaneous imports.

I. That not-with-standing the facts that the impugned Valuation Ruling has been issued without disclosing any basis and since the consignments arrived and the GDs were filed prior to the issuance of Valuation Ruling the same are liable to be assessed in terms of Section 25(1) of the Customs Act, 1969.

J. That it is submitted that the subject show cause notice on the basis of which the impugned Order in Original is also legally effective as the provisions of Section 32(1) and Sub-Section (2) cannot be invoked simultaneously as both these provisions contemplates different situations. It is submitted that in terms of Section 32(1) ibid that in case of short levy or evasion became possible clue to collusion of some custom officials the mere fact that no such official was involved and no notice were served in terms of 32(2) ibid indicated that the entire exercise is malafide and therefore, the same renders the SCN legally defective and not maintainable and all the subsequent proceedings emanating from an illegal SCN is void and legally not maintainable.

K. That the respondent has erred in law by confiscating the goods and even an option to the importer to redeem the offending goods under section 181 of the Customs Act, 1969 as the goods are freely importable and the appellant has made no violation of the provisions of Section 15 or of a notification issued under section 16 ibid, therefore, the provisions of Section 17 ibid is not attracted, therefore, the provisions and the quantum of fine and penalty in terms of SRO 499(I)/2009 dated: 13.06.2009 issued in terms of second proviso to Section 181 ibid is also not attracted, therefore, the fine and penalty imposed by the respondent is in violation of the law.

10. We have heard both the parties, perused the record and reached to the conclusion as under :-

11. The reason to impose penalty in the instant matter is wrong description of the composition of the fabric in question by the appellant. The department / respondent has to undergo a lab test to correctly determine the composition of the fabric in question here in the instant appeal. Where the composition of the fabrics has been determined only after the lab test and it was not ascertained even by the customs officials in routine, then it cannot be described that it was a deliberate attempt to defraud the national exchequer by the appellant. In addition no mens-rea has been established by the respondent as against the appellant as per the record on file, particularly since the composition of the fabric could only be determined after the lab test, therefore, it is sufficient to say that this could at the most be mistake on the part of the appellant. Now since the lab test has taken place, the appellant is directed to pay leviable duties and taxes as determined by the department on the basis of the lab test. However, the imposition of penalty and fine is remitted under the circumstances as no mens-rea against the appellant has been proved by the respondent/department as per record of the file.

12. The impugned order is therefore, modified only to the above extent.

-Sd-

(KHAWAJA UMAR MEHDI)
MEMBER (TECHNICAL)

-Sd-

(GHULAM MURTAZA BHATTI)
MEMBER (JUDICIAL)

CERTIFICATE.

It is certified that this judgment consists of 08 pages and each page has been dictated, corrected and signed by us.

-Sd-

(GHULAM MURTAZA BHATTI)
MEMBER (JUDICIAL)