

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

Before: Mr. Amjad Ali Bohio, Member Judicial-III, Karachi.

Customs Appeal No.K-1312/2015

M/s. Al-Malik Traders,
Lahore.

VERSUS

1. The Deputy Collector of Customs,
Group-III, MCC of Appraisement-West,
Custom House, Karachi.
2. The Deputy Collector of Customs,
Adjudication-I,
Collectorate of Customs Adjudication-I,
Customs House, Karachi.
3. The Collector of Customs (Appeals),
81-C, Block-6, P.E.C.H.S.,
Karachi.

..... Respondents

Mr. Nadeem Ahmed Mirza, Consultant, present for the appellant.
Mr. Ghulam Mustafa, A.O., present for the respondent.

Date of Hearing: 11.12.2015
Date of Order: 11.12.2015

JUDGMENT

AMJAD ALI BOHIO, MEMBER JUDICIAL-III:- By this order, I
dispose of Customs Appeal No.K-1312/2015 filed by the appellant
against the Order-in-Appeal No.10498 to 10499/2015 dated 11.08.2015,
passed by the Collector of Customs (Appeals), Karachi.

2. Brief facts leading to the above appeal are, that the appellant
imported a consignment and electronically filed Goods Declaration No.
KAPW-HC-111425-21-01-2015 for the imported consignment declared



to (i) Rubber Oil Seals For Various Model Motorcycle under PCT heading 4016.9940 (ii) Stem Seal under PCT heading 4016.9320 (iii) Rubber Roller under PCT heading 4016.9990 at a declared invoice value of JPY 216900.00 (YEN). The importer determined his liability of payment



of applicable duties & taxes and sought clearance under Section 79(1) of the Customs Act, 1969. In order to check as to whether the importer has correctly paid the legitimate amount of duties and taxes, 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 attribute of the goods. Perusal of the case in the light of examination report revealed that during the course of examination a higher value invoice found at JPY 6144250/- as against declared invoice value of JPY 216900/-. The difference between declared and found is worked out to be JPY 5927350/- which is 2732% higher. For ease reference examination report is reproduced below:-

"Examination Report

This GD has encounter following discrepancy:

ASSESSMENT ALERT! THIS IS THE CASE OF MIS-DECLARATION OF VALUE FOUND INVOICE NUMBER: P-129 DATED: 18-12-2014, FOUND VALUE: 6144250 JYN (Japanese yen), DECLARED VALUE: 216900 JYN (Japanese yen), DIFFERENCE VALUE 5927350 JYN..... THE DETAIL AS UNDER----DESCRIPTION: MOTOR CYCLE PARTS CONSISTING OF 1-RUBBER OIL

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SEAL, PART NO: EN025-NCS029, 12225, ETC, 2-VALVE
STEM SEAL, PART NO: 12209GB4-683, 14730GB0912,
3-CAM CHAIN TENSIONER RUBBER ROLLER, PART
NO: 1450086000, ETC, I/O: JAPAN, BRAND: ARS,
CHECKED WEIGHT 100% VIDE BOML SLIP NO:
84873 DATED: 22-1-2015, FOUND GROSS WEIGHT
40KGS, DECLARED GROSS WEIGHT 2380KGS, IT IS
POINTED OUT THAT DURING THE EXAMINATION OF
GOODS INVOICE WAS FOUND AMOUNTING RUPEES
6144250 JYN, WHEREAS DECLARAED INVOICE
SHOWING 216900 JYN, THE DIFFERENCE OF VALUE
IS 5927350 JYN, WHICH IS 2732% EXCESS WHICH
MAY BE THE GROSS MIS-DECLARATION OF VALUE
BY THE TRADER, PUNISHABLE UNDER SECTION 32,
32A OF CUSTOMS ACT 1969 UNDER CLAUSE 14A OF
156, GROUP MAY TAKE NECESSARY ACTION AS PER
LAW AND IMAGES ARE ATTACHED INCLUDING
WEIGHT SLIP AND INVOICE.

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The aforesaid facts prove that the importer has deliberately
concealed and filed an un-true declaration in order to get the
goods released on highly suppressed values and to evade legitimate
amount of Customs Duty & other Taxes to the tune of Rs.3,361,865/-
willfully and with malafide intention and have attempted to defraud/
deprive the state exchequer from its legitimate revenue. Value of the
offending goods comes to Rs.5,281,721/-. The importers are, therefore,
indulge in deliberately concealing the value of goods in order to take
an attempt of getting the goods release on highly suppressed values

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and with malafide intention to deprive the government exchequer from its legitimate revenue”.

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Such show cause notice dated 30.01.2015 was issued by Deputy Collector of Customs, Adjudication.

The appellant vide representation dated 17.03.2015 submitted his above show cause notice but the Deputy Collector of Adjudication, Custom House, Karachi, did not agree with contentions/reply of the appellant and passed the order vide Order-in-Original No.360573-08052015. The operative part of the order is reproduced as under:-

"I have examined the record of the case available in the system and the reply to the show cause notice dated 17.03.2015 and comments of Deputy Collector of Group dated 26.03.2015. The perusal of the case in the light of examination report revealed that during the course of examination a higher value invoice was found of JPY 61,44,250/- as against declared invoice value of JPY 2,16,900/- and the difference of the declared and found is JPY 59,27,350/- which is 2732% higher than the declared invoice. The submissions of the consultant have been minutely examined and all the evidences of the past releases and the copies of the different judgments cited were also perused. The worthy consultant has been repeatedly asked to provide the proof of the payment of this transaction and he informed this office that the payment was made against the telegraphic transfer but could provide any evidence to that effect which shows that the imported did not want to disclose the real extent and the basis of the transaction which give credence to the fact that this is transaction dodgy and the importer has made a phony and fake invoice to hide its actual transaction value. Therefore, the charge of mis-declaration of value has been established against the importer tried to get the goods cleared on payment of

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lesser duty and taxes willfully and with malafide intention to defraud/deprive the state exchequer from its legitimate revenue as leveled in show cause notice for the violation of section 16, 32(1) and 79(1) of the Customs Act, 1969, punishable under Clause (1), (9) & (14) of Section 156(1) of the Customs Act, 1969. Therefore, I hereby order that the contravened items are confiscated under section 181 and 156 of the Customs Act, 1969, read with SRO 499(1)/2009. However, the importer has the option to get his goods released/redeemed on payment of 35% redemption fine of the value of offending goods amounting to Rs.18,48,603/- (mis-declaration of value) as per SRO 499(1)/2009 dated 13.06.2009 and personal penalty of Rs.200,000/- is imposed with a warning to the importer to be careful in future, if there is any recurrence in future the importer and his associates would be dealt with stern action. Furthermore, the assessing staff is required to finalize the assessment on the basis of the invoice found and recover legitimate leviable amount of duty and taxes alongwith amount of redemption fine and penalty as per necessary trade regulation, whichever is applicable."

5. The Deputy Collector of Customs Group-III, MCC, Appraisement-West, Custom House, Karachi filed the appeal against the Order-in-Original No.360573-08052015, passed by the Deputy Collector of Customs, Adjudication, Custom House, Karachi, before the Collector of Customs (Appeals), Karachi, who passed the order as under:-

"I have examined the case record. The appeal by the importer and the responding Collectorate pivots around the jurisdiction and power of the adjudication officer, as the amount of duty and taxes involved in the case is to the tune of Rs.3.36 million. The appellant importer seeks setting aside the order in toto as beyond jurisdiction of Deputy Collector as provided under section 179 of the Customs Act, 1969. The responding as well as appellant Collectorate seeks remand of the order as it has been passed by officer without jurisdiction because error in the system mis directed contravention. I have examined the scenario. It is admitted and established position that the officer issuing show cause notice and passing order was working beyond jurisdiction. As there is no factual controversy involved, therefore remanding the case is not

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required. Even otherwise remand will go to the same officer as it can not be remanded to another officer, yet to a senior officer whose appeal would not lie before this forum. Accordingly without disturbing the assessment, fine and penalty imposed under the impugned order is set aside. The appeal by importer is allowed to this extent only. The appeal by the responding Collectorate for remand of case is not allowed."

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Being aggrieved and dissatisfied with the vide Order-in-Appeal No.1/1099 to 10499/2015 dated 11.08.2015, passed by the Collector of Customs (Appeals), Karachi, the appellant filed instant appeal before this Tribunal. Notices were issued against the respondents. Mr. Arsalan Majeed, Assistant Collector and Mr. Ghulam Musafa, Appraising Officer, appeared on behalf of the respondents No.1 & 2 and have stated that the memo of Customs Appeal No.K-1388 of 2015 preferred by the respondents be treated as comments against the above appeal. Initially the above appeal was entrusted to Special DB-II Karachi but later on the same was entrusted to this Single Bench as the value of Rs.3,361,865/- involved in above appeal falls within the jurisdiction of Single Bench,

7. I have heard Mr. Nadeem A. Mirza, Consultant for the appellant, Mr. Ghulam Mustafa, A.O. and Mr. Arsalan Majeed, Assistant Collector, for the respondents and perused R&Ps carefully.

8. The Consultant for the appellant has contended that the respondent No.2 who had issued show cause notice had no jurisdiction as provided under section 179 of the Customs Act, 1969 and the order-in-original passed by him is coram non judice. He further contended that the

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respondent No.3 while passing impugned order-in-appeal has also admitted the above facts that the Deputy Collector of Customs

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respondent No.2) acted beyond his jurisdiction but erred in allowing the appeal preferred by appellant partly with mala fide intention to cover the illegal and gross negligence which is liable to be set aside. He has further contended that the respondent No.2 since lacking jurisdiction to issue show cause notice and adjudicate upon it, hence the above acts of respondent No.2 being without jurisdiction as held by the respondent

No.3, hence the order passed by respondent No.2 would be coram non iudice and void. Thereby order-in-appeal passed by the respondent No.3 is liable to be set aside. In support of his contention he has relied upon following case laws:-

- 1) PLD 2004 Supreme Court 600 (All Pakistan Newspapers Society and others Vs. Federation of Pakistan and others.
- 2) 2001 SCMR 1822 (Ali Muhammad through Legal Heirs and others Vs. Chief Settlement Commissioner and others.
- 3) 2012 PTD (Trib.) 619 (Commissioner of Inland Revenue Zone-III, Faisalabad Vs. Messrs Kamal Fabrics, Faisalabad.
- 4) PLD 2005 Supreme Court 842 (Khyber Tractors (Pvt.) Ltd. Through Manager Vs. Pakistan through Ministry of Finance, Revenue and Economic Affairs, Islamabad.
- 5) 2010 PTD 465 (Collector of Customs, Model Customs Collectorate of PaCCS, Karachi Vs. Messrs Kapron Overseas Supplies Co. (Pvt.) Ltd., Karachi.
- 6) PTCL 1983 (CL) 280 (Ilam Khan Vs. Government of Pakistan and 3 others).

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- 7) 1983 P Cr. L J 623 (Noor Dad and 10 others Vs. The State).
- 8) 2003 PTD 777 Engro Chemical Pakistan Ltd. Vs. Additional Collector of Customs and others.
- 9) PTCL 2007 CL. 260 (Collector of Sales Tax & CE, Lahore Vs. Zamindara Paper & Board Mills etc.

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Mr. Ghulam Mustafa, A.O. and Mr. Arsalan Majeed, Assistant Collector, have contended that the appellant was found making deliberate misdeclaration of value for which he was liable to pay the duty and other taxes to the tune of Rs.3,361,865/- which he suppressed with mala fide intention and have attempted to defraud the state exchequer, therefore, he was rightly punished/penalized by the Deputy Collector Adjudication but so far the Deputy Collector Adjudication was not competent was mere technicality, for which, the appellant could not be exonerated and the matters are to be decided on merits. In support of his contention he has relied upon order passed in unreported CP No.D.1002/03 [The Collector of Custom (Appraisement) Karachi Vs. Sadruddin Alladin & 3 others].

10. I have examined the entire record and given due consideration to the arguments made before me. It would be pertinent to mention that the respondent No.3 while passing impugned order-in-appeal No.10498 to 10499/2015 held the jurisdiction of Deputy Collector beyond the provisions of section 179 of the Customs Act, 1969. I would like to thresh out that said relevant provision of the Customs Act, 1969 as under:-

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"179. Power of adjudication.---(1) Subject to subsection (2), in cases involving confiscation of goods or imposition of penalty under this Act or the rules made thereunder, the jurisdiction and powers of the Officers of Customs in terms of amount of duties and other tax involved, excluding the conveyance, shall be as follows:-

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Additional Collector	without limit
Deputy Collector	not exceeding {eight} Hundred thousand rupees.
Assistant Collector	not exceeding {three hundred} thousand rupees.

Admittedly the show cause notice was issued for amount of Custom Duty and other Taxes to the tune of Rs:3,361,865/- by Deputy Collector Adjudication who had no jurisdiction to issue such show cause notice as the Deputy Collector could not issue a show cause notice and adjudicate upon for an amount exceeding eight hundred thousand rupees and subsequently passing of order-in-original was null and void. I am fortified with a case law reported in Abida Rashid v. Secretary PLD 1995 Karachi 587, wherein, it was held that the power vested in any authority can only be exercised by the authority, in default whereof, the entire action would be without jurisdiction, void *ab initio* and of no legal effect. It is well settled law that where the mandatory condition of exercise of jurisdiction by a Court, Tribunal or Authority was not fulfilled, then the entire proceedings would become illegal and all subsequent orders would be without jurisdiction. In Abdul Razzaq v. Muhammad Sharif PLD 1997 Lahore 01 it has been held that where power is given to do a certain thing in a certain way, then that thing must be done in that way or not at all and

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all other methods of performance not so prescribed are necessarily forbidden likewise in above case in hand where the Deputy Collector oust

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jurisdiction and the impugned order passed by respondent No.3 would also become illegal and without jurisdiction. The question regarding jurisdiction is a foundation stone for a judicial or a quasi-judicial functionary to exercise its power/ authority and no sooner the question of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings is bound to crumble down as held by Full Bench of Hon'ble Supreme Court of Pakistan reported in Khyber Tractors (Pvt) Ltd. through Manager v. Pakistan through Ministry of Finance, Revenue & Economic Affairs, Islamabad PLD 2005 Supreme Court 842. Mr. Ghulam Mustafa, Appraising Officer, on behalf of the respondent during the course of argument has not denied that the findings of Deputy Collector of Customs being beyond his jurisdiction but has contended that the same act was technical. In this regard he has relied upon PTC 2007 CL 260 wherein sub-rules 2 & 3 of Rule 10 the Central Excise Rules, 1944 have not been mentioned for which it was held that the notice could not be declared illegal merely for the reason that the said sub-rules and rule were not mentioned whereas in above case in hand the Authority (Deputy Collector Customs) who issued show cause notice and passed order-in-original was not competent, having no jurisdiction to adjudicate upon the act of appellant of concealing and filing untrue declaration in order to get the goods released. In this regard the consultant for appellant

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has rightly relied upon the above case law 2010 PTD 465 wherein it has been held the pecuniary jurisdiction of customs officers has been described in section 179 (1) of Customs Act, 1969 and the exercise of jurisdiction by an authority is mandatory requirement and its non-fulfilment would entail the entire proceedings to be coram non judge and such defect would not be technical but render entire exercise of authority to be *ab initio*, void and illegal.

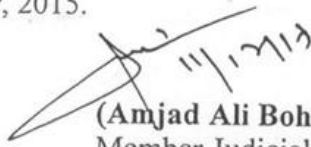


12. In view of my above observation supported with above case law of our superior courts the impugned order-in-appeal dated 11.08.2015 and order-in-original dated 08.05.2015 being without jurisdiction *ab initio*, void and illegal are set aside and the above appeal No.K-1312 of 2015 is allowed as prayed with no order as to cost.

13. Let the copy of this order be also sent to the Chairman, Federal Board of Revenue with the direction to take disciplinary action against the delinquent officials upon whose negligence the exchequer has suffered the loss of duty/ taxes.

Announced in open court

On this 11th December, 2015.


(Amjad Ali Bohio)
Member Judicial-III
Karachi