# GOVERNMENT OF PAKISTAN
# CUSTOMS APPELLATE TRIBUNAL, BENCH-II,
# 3rd FLOOR, JAMIL CHAMBER, SADDAR, KARACHI

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*Before: Mr. Ghulam Murtaza Bhatti, Chairman/Member Judicial-I Islamabad*
*Mr. Muhammad Yahya, Member Technical-I, Karachi*

**Customs Appeal No K-161/2015 & K-1668/2014**

M/s. Country Care Trader
Karachi..... Applicant

VERSUS

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

The Collector of Custom,
MCC Appraisement West, Custom House,
Karachi..... Respondent

**Customs Appeal No K-416/2015 & K-361/2015**

M/s. First Look Enterprises.
Suit No. M-76, Mezzanine Floor, Glass Tower, Clifton
Karachi..... Applicant

ATTESTED

VERSUS

The Collector Of Customs (Adjudication-I),
Custom House, Karachi

The Directorate Intelligence
and Investigation-FBR Regional Office,
Karachi ..... Respondent

**Customs Appeal No K- 415/2015**

M/s. Machiyara Fabric & Manufacturing Industries.
Ground and First Floor, Plot No.CD-367
Gabol Goth, KDA Scheme No-16, Federal B Area.
Karachi ..... Applicant

VERSUS

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

The Collector of Custom
MCC Appraisement West,
Custom House, Karachi.....Respondent

Mr. Asim Munir Bajwa Advocate alongwith Mr. Farooq Talib Hussain Consultant for the Appellant
Mr. Arsalan Majeed, AC, Mr. Afsar Noor, A.O., Mr. Farhat Ullah Jafri, SIO and Mr. Anwar Farooqi, I.O. for respondents

Date of Hearing: 09.09.2015 and 30.09.2015
Date of Order: 14.12.2015

## JUDGMENT

***Ghulam Murtaza Bhatti, Chairam/Member Judicial-I Islamabad:*** This order disposes of Customs Appeal Nos.K-161/2014, K-1668/2014, K-416/2015, K-168/2015 and K-415/2015 directed against order-in-original Nos.332/2015 dated 12.01.2015, 197/2014 dated 30.10.2014, 342/2015 dated 19.01.2015, 340/2015 dated 17.01.2015 and 345/2015 dated 21.01.2015 passed by the Collector of Customs (Adjudication-I&II), Karachi and Additional Collector of Customs (Adjudication-I), Karachi. All the appeals have identical issues of law and facts, and therefore, are bring heard, dealt with and disposed of simultaneously through this common order in the light of the judgment of the Hon'ble Court of Sindh in Customs Reference No.157 of 2008 - S.M Naqi S/o Syed Muhammad Hussain, Karachi vs. Collector of Customs (Adjudication-I) and others.

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2. Brief facts of the case are that an information received that appellants were allegedly involved in clearance of fabrics imported from China by mis-declaring their description, HS code & value and claiming undue benefit of SRO 1125(1)/2011 dated 30.12.2011 and Pak-China FTA under SRO 659(1)/2007 dated 30.06.2007. In pursuance of the said information, the consignments were blocked (online) by the staff of Directorate General of Intelligence & Investigation, Karachi in order to ascertain the veracity of information. The consignments were jointly examined by the staff of Model Customs Collectorate, Appraisement (West-KICT), Karachi and Directorate

General, Intelligence and Investigation-FBR, Karachi. Representative samples were drawn and forwarded to Customs Laboratory, Karachi for their chemical analysis. Customs Laboratory reported vide letter No. CE/R/933/14 dated 16.06.2014 that the consignments were contained to woven textile fabrics composed of blended viscose rayon 85% & mercerized cotton 15% with sequin base composed of polyester 100%. The benefit of SRO 1125(1)/2011 dated 30.12.2011 and claim of FTA under SRO 659(1)/2007 dated 30.06.2007 was not available on fabrics containing to viscose rayon. The importers were attempted to deprive the exchequer of its legitimate revenue by clearing the woven textile fabric composed of blended viscose rayan 85% & mercerized cotton 15% in the garb of cotton blended / polyester having a different value, therefore, the appellants were charged for mis-declaration of description, HS Code and value of goods.

3. The learned Collector of Customs (Adjudication), Karachi did not agree with the contention of appellants / importers and passed an order-in-original as under:

> "I have gone through the case record and considered written/verbal arguments of the respondent and the department. At the outset it is observed that the importer is required to file a true and correct declaration in terms of section 79(1) of the Customs Act, 1969. The relevant part is reproduced as under:-
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> "79. Declaration and assessment for home consumption or warehousing:-
>
> (1) The owner of any imported goods shall make entry of such goods for home consumption or warehousing or for any other approved purposes, within fifteen days of the arrival of the goods, by:
>
> a) Filing a true and complete declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as the Board may prescribe; and
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> b) Assessing and paying his liability of duty, taxes and other charges thereon, in case of a registered user or the Customs Computerized System;"
>
> 'It is evident from a perusal of the record of the case including inter alia the lab test reports, in respect of the samples drawn from the impugned consignment, that the importer wholly mis-declared the description of the imported goods by endorsing incorrect description on respective Goods Declarations, which clearly indicates his intent to evade payment of leviable duty/taxes. It has been argued by the department that the importer mis-declared the specification/description of the impugned goods with a view to claim in-admissible benefit of concession as provided for under SRO 1125(I)/2011 dated 30.12.2011 & Pak-China FTA notified vide SRO 659(I)/2007 dated 30.06.2007. As discussed, the importer made an untrue

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declaration by deliberately concealing / mis-declaring the correct particulars of the imported goods in the Goods Declaration (G.D) filed under Section 79(1) of the Customs Act, 1969, through the WeBOC system and attempted to clear the imported goods on payment of lesser amount of duty and taxes through self-assessment. The extent of mis-declaration is apparent in the Customs Laboratory test reports which showed that the goods were found to be woven textile Fabric composed of blended viscose rayon up to 85% & mercerized cotton 15% (PCT heading 5516.1200 chargeable to Customs Duty @ 15%) whereas the description declared by the respondent was cotton blended / polyester fabric. This blatant attempt to clear a huge quantity of fabric with mis-declared description clearly reveals intent to deprive the state exchequer of its legitimate revenue. Hence, it is clear that the respondent have mis-declared the description of goods and wrongly claimed benefit of SRO 659(I)/2007 to avail the benefit of Pak-China FTA. As regard the department's contention of not allowing the benefit of SRO 1125(I)/2011 DT 30.12.2011 because respondents did not come up with clean hands, extending benefit of the said SRO may be examined by the clearance Collectorate / detecting Agency if the goods otherwise completely fulfill the conditions imposed by the said notification. In the light of above discussion, the charges leveled in the Show Cause Notice stand established. I, therefore, order for confiscation of the subject goods under section 156(1) clause 14, read with section 32 (1) (2) & 79(1) 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% Redemption Fine of the value of offending goods in terms of SRO 499(I)/2009 dated 13.06.2009 in addition to payment of duty and taxes chargeable thereon in terms of Section 32(1) & (2), 32A, 79(1) of the Customs Act, 1969 read with Sections 3, 6, 33, 34 of the Sales Tax Act, 1990, and Section 148(1) of the Income Tax Ordinance, 2001. A penalty equal to Rs.1,000,000/- (Rupees One million only) is also imposed on the importer."

4. Aggrieved, the importers / appellants filed appeals before this Tribunal on the following grounds:

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That we have a clear track record and the subject consignment was also imported against firm contract at true transaction value. Therefore, considering plothera of judgments of the superior courts the goods are required to be assessed under Section 25(1) of the Customs Act, 1969 as per declared transaction value, therefore, the enhance rent of value without proving false declaration or without any direction evidence is clearly disobedience of the superior courts judgments.

That according to Chapter Note specified in Pakistan Customs Tariff, HS Code 52.10 cover, the Woven Fabric of Cotton containing less than 85% by weight of cotton, mixed mainly or with man-made fibre weighing not more than 200 grams per sq. meters. The Customs Tariff classify that the Woven Fabric of Synthetic Filament Yarn are classifiable under HS Code The Chapter Note further clarify that woven fabric of artificial staple fibre containing 65% or attested more by weight of artificial staple fibre are classifiable under HS Code 52.16. The impugned consignment was examined by the officers of Appraisement and the declared description of the goods was confirmed by the Examination officers, however, the Customs staff arbitrarily at back of the importers, called few samples from the Examination staff and sent the same for Lab test to the Customs Laboratory for getting their desired test results, which do not represent the consignments in question.

That the main allegation against us is that we have wrongly claimed the exemption and SRO 659(I)/2007 is not applicable on our imports. The Appraisement staff on the basis of the said manipulated one or two samples drawn behind the back of the importers has assessed the entire consignment under HS Code 55.16. It is worth mentioning that even otherwise the Valuation Ruling for assessment of Woven Fabric of Artificial Fibre classifiable under HS Code 5516.940 is US $ 3.20

per Kg. fixed by the Director Valuation vide Valuation Ruling No.417 dated 26.01.2012. That the importer had correctly declared and claimed the classification of the consignment i.e. cotton blended fabrics, under HS Code 52.10 for which the benefit of FTA concessionary rates of duty and taxes are admissible under SRO 659(I)/2007 and SRO 1125(I)/2011.

That withdrawal of the samples on back of the importer is illegal, un-lawful and unwarranted and not sent to an independent Lab but to the Customs Lab for getting desired results. This was the novel procedure adopted by the customs officials to impose arbitrarily valuation of the different items on presumption of self determination basis in order to generate more and more Revenue in illegal manner to reach their revenue targets which is otherwise illegal, uncalled for, unlawful and without lawful authority.

That the adjudicating officer failed to realize that there are various judgments of the superior Courts that when theft is no mens rea of deliberate attempt of evasion of revenue in such a case there is no question of any penal action. In absence of mens rea of evasion of revenue, the adjudicating authority's action for imposition of fine & penalty is patently illegal and actually dis-obedics of the orders of the Supreme / High Courts.

That in view of the above and considering the fact that the value has been enhanced on the basis of an illegal "advise" of Director (Valuation) and the declaration of description is found correct as per naked eye examination, hence, considering the past practice the charge of "mis-declaration" the meaning of Section 32 or 32-A of the Act is not visible and un-warranted. Therefore, requested for re-assessment of the goods as per past practice

That the impugned order of the respondents is highly unjustified and same is clear misuse of the discretionary powers which is in violation of principles of natural justice as well as established departmental practice / procedure and due to the said reasons / basis same is discriminatory arm also against the ruling of the High / Supreme Courts, given in their reported judgments of 1995 SCEMR 650 - 2005 PTD 78, 1984 SCMR 4, 1989 PLD 601 (KHI), etc.

That the impugned goods were assessed by the Custom House and were still at the port and were not "out of charge". Therefore, seizure of such goods for which the "out of charge" was not allowed by the customs amounts to unauthorized interference of learned staff of DG (I&I)-FBR, Karachi.

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That it is evident that learned DG (I&I)'s staff and relevant customs authorities did not act as per instructions of FBR and did not seize the goods in authorized manner. Therefore, they acted against the principle "expressum fact cessare taciturn" upheld by the Supreme Court of Pakistan. Hence, all their actions including seizure, unauthorized assessment, determination of origin, without any respect of Rules of origin and mechanism of origin certificate, hence, are mala-fide, void, ab-initio and without any legal force.

That no notice under Section 171 was served, any act depriving the owner of goods of the vested right acquired by him, in due course of law, must be backed with sufficient reasons and grounds, failing which any such action shall always be liable to be struck off [Shahzad Ahmed Corporation v. Federation of Pakistan 2005 PTD 23].

That the superior courts have time and again ruled that the service of the notice under section 171 is mandatory. In the case of Muhammad Farooq v. Muhammad Maubeen Akhtar PTCL, 2004 CL. 584, the Lahore High Court categorically stated, that where notice under Section 171, showing seizure of smuggled goods was not served properly, the proceedings under the Act cannot sustain, since the notice was a mandatory provisions.

That a Division Bench of the Sindh High Court relying on the earlier decisions in Muhammad Mahfooz Khan and Shoukat Hussain (supra) took the view, if no grounds of seizure have been served as required under Section 171 of Customs Act, 1969 the order under Section168, Customs Act, 1969 is rendered ineffective [Zeb Traders v. Federation of Pakistan 2004 PTD 369]"

That the provisions of Section 163 and 171 of the Customs Act, 1969, have to be read, according to its plain language and interpreted accordingly and no hidden hypothetical meaning or interpretation contrary to plain language of the these section has to be made the basis to implement. Therefore, the search and seizure had to be effected by the prescribed procedure under provisions of Section 163 and Section 171 of the Customs Act, 1969, but the same was not done as per law. The Honorable High Court of Sindh held in 2002 PTD 2457 that "the thing should be done as they are required to be done, or not at all". Whereas, the Apex Court held in judgment PLD 1971 Supreme Court 61 "neglect of plain requirement of an absolute statutory enactment prescribing how something is to be done would invalidate thing being done in some other manner".

That the goods were initially examined and assessment sheet was issued. However, the invoice of goods was not available to the examiner at the time of initial examination, which was provided by the appellant again to the examiner. This led to changes in the examination report revised assessment sheet. The examining officer is authorized to change, alter and modify the examination report on access to additional or correct information about goods. The learned staff of DG (I&I)'s office examined the goods after seizure when these were neither out of charge nor any gate pass was issued by the custodian. The examination report of the staff of DG (I&I) invoked Section 18(C) of the Customs Act, 1969, illegally as the powers to determine origin is not vested in them and it has resulted into assessment of goods.

5. The respondent/department filed para wise comments as under:

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That were involved in clearance of fabric imported from China by mis-declaring quantity, HS Code and value thereof and claiming undue benefit of SRO 659(I)/2011 and Pak-China FTA under SRO 659(I)/2007 dated 30.06.2007. In order to ascertain the veracity of the information, the said consignments were jointly examined by the staff of Model Customs Collectorate Appraisement (West-KICT), Karachi and the Directorate General, Intelligence and Investigation, Karachi. Representative samples were drawn from the consignments which were forwarded by the Directorate General to the Customs Laboratory, Customs House, Karachi for their chemical analysis. As per customs lab reports the consignments were found to contain woven textile fabric composed of blended viscose rayon upto 85% & mercerized cotton 15%. As such, the benefit of SRO 1125(I)/2011 dated 30.12.2011 in the wake of mis-declaration to evade duty / taxes and Pak-China FTA under SRO 659(I)/2007 dated 30.06.2007 was not available on fabric containing viscose rayon.

The order in original passed by the adjudicating authority is in accordance with the law as the importer is involved in the import and clearance of fabric imported from China by mis-declaring quantity, HS Code & value thereof.

The assessable value of Cotton Fabrics falling under PCT heading 5211 notified by the Collectorate @ US $ 4/kg is not denied however such value is not applicable to 85% viscose rayon 15% cotton blended fabric which falls under PCT heading 5516, imported by appellants. It is pertinent to mention that on reference from Directorate General of

Intelligence & Investigation-FBR, The Directorate General of Customs Valuation provided import value of aforesaid category of blended fabric @ of US $ 7.11/kg on the basis of market inquiry vide its letter No.92(1)-Estt/2014/6945 dated 11.06.2014. The law of Estoppel is not involved in the matter. It is a clear case of mis-declaration of description and PCT aiming at evasion of duty and taxes.

The PCT 5210.5900 deals with woven fabric of cotton containing less than 85% by weight of cotton mixed or solely with man-made fiber. The PTA was also applicable to the instant PCT beside the PCT 5216.1200 covered the woven fabric of artificial staple fibers containing 85% or more by weight of artificial staple fiber. The declared PCT 5210.5900 attract FTA concession of customs duty while no FTA is admissible to 5516.1200 hence the malafiedly on part of importer to claim un-due benefit of FTA and avoid higher rate of duty is evident and established. It is denied that there is any practice for misdeclaration of PCT. The misdeclaration of PCT aimed at evasion of duty and taxes is established which call for penal action to the importer besides recovery of evaded amount of duty and taxes. It is pointed out that the lab test report of the appellant's goods clearly suggested that PCT was mis-declared.

That after the joint examination the representative samples were drawn from the consignments which were forwarded by the Directorate General to the Customs Laboratory, Customs House, Karachi to ascertain actual composition of the imported fabric through chemical analysis. As per Customs Lab's reports the consignments were found to contain woven textile fabric composed of blended viscose rayon more than 85% & mercerized cotton 15%. In view of the above, misdeclaration of description, HS Code, & Value has been established beyond any shadow of doubt against the above named importer, therefore the invoking of section 32(1) & (2), 32A of the Customs Act, 1969 is justified.

The assessable value of cotton fabrics falling under PCT heading 5211 notified by the Collectorate @ US $ 4/kg is not denied, however such value is not applicable to 85% viscose rayon 15% cotton blended fabric which falls under PCT heading 5516, imported by appellants. It is pertinent to mention that on refence from Directorate General of Customs Valuation provided import value of aforesaid category of blended fabric @ of US $ 7.11/kg on the basis of market inquiry vide its letter No.92(I)-Estt/2014/6945 dated 11.06.2014. Sub-sections (1) & (2) of Section 32 of the Cusotms act, 1969, are read together. The adjudicating authority has passed the order in accordance with law as mis-declaration on the part of the importers has been established.

In view of facts and law points as stated herein above, it is respectively prayed that this Honbourable Tribunal may be pleased to dismiss the appeals being devoid of law and without any substance.

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6. Both parties heard and record perused. We are of the opinion that the importers were involved in clearance of fabric imported from China by mis-declaring quantity, HS code and value by claiming benefit of SRO 659(I)/2011 and Pak-China FTA under SRO 659(I)/2007 dated 30.06.2007. It is apparent from record that the consignments were jointly examined by the staff of Model Customs Collectorate Appraisement (West), Karachi and Directorate General, Intelligence and Investigation, Karachi and

Samples wer drawn and forwarded to the Customs Laboratory, Customs House, Karachi for chemeical analysis. As per report, the consignments were found to contain woven textile fabric composed of blended viscose rayon upto 85% & mercerized cotton 15%. In such state of affairs the benefiot of SRO 1125(I)/2001 dated 30-12-2011 and Pak-China FTA under SRO 659(I)/2007 dated 30-06-2007 are not available as claimed by the importers. The importers were clearly involved in clearance of fabric imported from China by mis-declaring quantity, HS code & value. The Directorate General of Customs Valuation provided imort value of faforesaid category of blended fabric @ of US $7.11/kg on the basis of market inquiry vide its letter NO.92(I)-Estt/2014/6945 dated 11-06-2014. The PCT Heading 5210.5900 deals with woven fabric of cotton contain ing less than 85% by weight of cotton mixed or solely with man-made fiber and PCT 5216.1200 covered the woven fabric of artificial staple fibers containing 85% or more by weight of artificial staple fiber. The misdeclaration of PCT is clear evasion of duty and taxes which calls for penal action and recoveryof evaded amount of duty and taxes . In view of the above misdeclaration of description, HS code and value is beyond any doubt, therefore, the invoking of section 32(I) & (2), 32A of the Cusstoms Act, 1969 is justified. The adjudicating authority has passed the orders in accordance with law as mis-declarations on part of the importers are evident.

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7. In view of the facts, all appeals are devoid of any merits and without any substance hereby dismissed and impougned orders are upheld.

8. The appeals are disposed of accordingly.

- Sd -

*( Muhammad Yahya )*
*Member Technical-I Karachi.*

- Sd -

*( Ghulam Murtaza Bhatti )*
*Chairman/Member Judicial*