

ORDER-IN-ORIGINAL NO. 158 OF 2015-2016

M/s. Cemi Zone (NTN-3648582-9), Karachi



**GOVERNMENT OF PAKISTAN
COLLECTORATE OF CUSTOMS (ADJUDICATION-II)
CUSTOMS HOUSE, KARACHI**



Adj-II/Coll/SCN-132/MCC-East(R&D)/Cont-503/Cemi Zone/2015

Dated:- 24-02-2016

Before : **Ch. Muhammad Javaid**
Collector of Customs
Collectorate of Customs (Adjudication-II), Karachi

Respondents : (i) **M/s. Cemi Zone (NTN 3648582-9),**
5/30-G, Liaquatabad # 3, Karachi

(ii) **M/s. Rajab Ali & Sons**
Clearing Agent (CHAL # 50),
B-1004, Saima Trade Tower, 11 Chundrigar Road,
Karachi

(iii) **Muhammad Ali Chandna of**
M/s. Pure Enterprises, (NTN 1199090),
Room # 201, 2nd Floor, Sami Chamber,
Arambagh Road, Karachi

Date of institution : **27-05-2015 (Show Cause Notice)**

Date of Hearing : 04-06-2015, 11-06-2015, 25-06-2015, 08-07-2015, 27-07-2015,
08-09-2015, 15-09-2015, 29-09-2015, 06-10-2015, 12-10-2015,
16-10-2015, 27-10-2015, 02-11-2015 and 25-11-2015,

Time Limit Extended by : The extension in time limit up to 31-03-2016 was allowed by the Board
vide C.No. 5(6)Cus.Jud/2015 dated 09-12-2015 to decide this case.

Date of judgment : **22-02-2016**

Present:

For Respondents : Mr. Farooq Talib, Consultant, appeared on behalf of M/s. Rajab Ali. Mr.
Azhar Nawab and Mr. Zain Soomro, Advocates of M/s. Jatui and
Company appeared on behalf of the M/s. Pure Enterprises. Mr. Salahuddin,
brother of respondent No.1 i.e M/S Cemi Zone, Karachi

For Department : Mr. Asfaq-ur-Rehman, Appraising Officer and Mr. Azhar Abbas,
Examiner, appeared on behalf of the department i.e., M/s. Customs
Collectorate of Appraisalment (East), Customs House, Karachi

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- 1) This copy is granted free of charge to the person to whom it is issued.
- 2) An appeal against this order lies with the Appellate Tribunal, Karachi, within 60 days from the date of communication of this order. The appeal shall be accompanied by a fee of Rs.1000/- (One thousand only) to be paid in the manner prescribed by the Board.
- 3) The appellant should state in his Appeal if he desires to be heard in person or through a pleader.

Brief facts of the case as reported by the Model Customs Collectorate of Appraisalment (East), Customs House, Karachi vide its Contravention Report No. C.No. MCC/Misc/503/2014-R&D dated 09-05-2015, as under:-

- a) Name and address of the accused importers : M/s. Cemi Zone (NTN No.3648582-9),
3/30-G Liaquatabad No.3, Karachi
- b) Name and address of the accused clearing agents : i) M/s. Rajab Ali & Sons
(CHAL # 50), B-1004,
Saima Trade Tower, I.I Chundrigar Road,
Karachi.
ii) Muhammad Ali Chandna of
M/s. Pure Enterprises, (NTN 1199090),
Room # 201, 2nd Floor, Sami Chamber,
Arambagh Road, Karachi
- c) Particulars of Goods Declaration(s) : (i) KCSI-HC-70602 dated 28.11.2012
(ii) KCSI-HC-95069 dated 16.01.2013
(iii) KCSI-HC-112844 dated 20.02.2013
(iv) KCSI-HC-154542 dated 07.05.2013
(v) KCSI-HC- 43332 dated 29.09.2012
(vi) KCSI-HC-5031 dated 11.07.2012
(vii) KCSI-HC-12548 dated 26.07.2012
(viii) KCSI-HC-16888 dated 06.02.2012
(ix) KCSI-HC-160834 dated 18.05.2013
- d) Description and PCT of the goods as per Goods Declaration : Preservative ACJC-240 & ACJC-430
(3824.9099)
- e) Found Description & PCT as per Shipping Bills : Ibuprofen (2916.3910)
Sulphamethoxazole (2935.0040)
Cefixime Trihydrate (2941.9060)
- f) Declared Total Value : US \$ 54,270 = Rs. 5,294,551/-
- g) Total offending value of goods : US \$ 1,949,950 = Rs.190,901,069/-
- h) Total Leviable Taxes : Rs. 95,840,255/-


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- i) Total Taxes Paid : Rs. 1,982,546/-
- j) Evaded / Recoverable Taxes :
Customs Duty Rs. 36,730,694/-
Sales Tax Rs. 36,421,081/-
Additional Tax Rs. 6,828,954/-
Income Tax Rs. 13,876,980/-
Total Recoverable Rs. 93,857,709/-
- k) Nature of Offence : Clearance of Banned goods by mis-declaration of description & classification besides evasion of duty & taxes.
- l) Sections of law violated :- Section 32(1), 32(2), 32(3), 32A, 79,80 & 192 of the Customs Act, 1969 punishable under Clauses 14, 14A, 45 and 86 of section 156(1) of the Customs Act, 1969, sub-section(I) of Section 3 of Import & Export (Control) Act,1950 read with Appendix-G of Import Policy Order read with Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001.

2. Whereas, the Model Customs Collectorate of Appraisement (East), R&D Section, Customs House, Karachi, received a credible information to the effect that certain unscrupulous importers were engaged in importing Pharmaceutical Raw Material with the vague description of "Preservative ACJC" from China / India by mis-declaring description / classification and value with an intent to circumvent the application of Import Policy Order applicable to the Pharmaceutical Raw-Material as envisaged in Appendix-G of Import Policy Order in-vogue. In order to un-earth the heinous crime by these unscrupulous elements, a broad based exercise / inquiry was undertaken and relevant record of these imports was retrieved from the database of the MCC-East, Karachi. Moreover, couple of consignments of identical goods lying at port were also intercepted and were subjected to chemical analysis which were found to be pharmaceutical raw material contrary to the declaration of importer as chemicals. Consequently, based on these results of chemical analysis, an FIR No.04/2015-R&D (East) dated 04.03.2015 was accordingly lodged against importer namely Muhammad Ali Chandna of M/s. Pure Enterprises and his Clearing Agent Muhammad Ali Ravjani of M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi and an FIR No.09/2015 against (i) Ziauddin of M/s. Cemi Zone (ii) Muhammad Ali Chandna of M/s. Pure Enterprises and their associates.


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3. Whereas, scrutiny of the data of this Model Customs Collocorate of Appraisement (East), Karachi, has indicated that M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad # 3, Karachi has cleared 09 consignments with the active connivance of Clearing Agent M/s. Rajab Ali & Sons (CHAL 50) so far while declaring fake brand of Preservative ACJC-240 & 430 as against pharmaceutical raw material. The shipping companies who had provided logistic support for en-route to Karachi Port of the impugned consignments were requested to provide documents including declaration at the time of shipment as shown in the original bill of lading surrendered at the port of loading. The documents of 09 consignments, received so far have indicated gross mis-declaration of description, classification and value. The particulars & details thereof of these consignments are elaborated as under:

S. NO.	GD NO. & DATE	DECLARED DESCRIPTION BEFORE PAKISTAN CUSTOMS	ACTUAL DESCRIPTION BEFORE INDIAN CUSTOMS	AMOUNT OF TAXES EVADED(RS) (Approximately)
01	KCSI-HC-70602 dated 28.11.2012	Preservative ACJC-430	Ibuprofen	5.53million
02	KCSI-HC-95069 dated 16.01.2013	Preservative ACJC-430	Sulphamethoxazole	6.87million
03	KCSI-HC-112844 dated 20.02.2013	Preservative ACJC-430	Sulphamethoxazole	6.93million
04	KCSI-HC-154542 dated 07.05.2013	Preservative ACJC-430	Sulphamethoxazole	6.96million
05	KCSI-HC-43332 dated 29.09.2012	Preservative ACJC-430 Preservative ACJC-240	Sulphamethoxazole Cefixime Trihydrate	5.37million 6.21million
06	KCSI-HC-5031 Dated 11.07.2012	Preservative ACJC-430 Preservative ACJC-240	Sulphamethoxazole Cefixime Trihydrate	5.20million 5.98million
07	KCSI-HC-12548 Dated 26.07.2012	Preservative ACJC-430	Ibuprofen	5.43million
08	KCSI-HC-16888 Dated 06.02.2012	Preservative ACJC-430 Preservative ACJC-240	Sulphamethoxazole Cefixime Trihydrate	4.99million 5.74million
09	KCSI-HC-160834 Dated 18.05.2013	Preservative ACJC-240	Cefixime Trihydrate	28.64million
			Total	93.85 Million

(Detail Calculation Sheet showing Description, Quantity, Value & leviable Taxes as per Shipping Bill (at Port of Loading) and the Goods Declaration (at Port of Clearance) is Annex-I which is integral part of the show cause notice.)


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4. Whereas, the documents furnished by the shipping companies have further reflected that actual description of the goods was quite contrary to the declaration as elaborated above. Moreover, the value was also grossly under stated from US\$ 0.35 - 0.45/Kg as against US\$ 9 to US\$ 143/Kg indicated in the documents provided by the said shipping companies. The attempted mis-declaration of description / value was aimed at to evade the legitimate taxes and escape from the restriction / prohibitions enshrined in Appendix-G of Import Policy Order in vogue, besides escaping from the higher tariff rate of Customs Duty @ 15% to 25% as against claimed @ 10%.
5. Whereas, it is relevant to add that during the course of inquiry and examination of documents on record, it transpired that the amount of taxes relating to clearance of all the afore-referred 09 consignments were arranged/paid by Muhammad Ali Chandna of M/s. Pure Enterprises, Karachi and this firm (M/s. Pure Enterprises) is also notified as buyer in two Shipping Bills bearing No. 1905492 dated 30.03.2014 and No. 5172241 dated 27.04.2013. The modus operandi for this organized crime was that importer used to surrender the original bill of lading at the port of shipment and delivery orders were managed via e-mail instruction from the principal with the instruction that original bill of lading has been surrendered and delivery may be given without presentation of the same.
6. Whereas, in view of foregoing irrefutable evidence on record, it is evident that M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi with active connivance of master mind Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road, Karachi has made deliberate attempt to import restricted / banned pharmaceutical raw material under the guise of ACJC Preservative and thereby caused huge revenue loss to the tune of Rs. 93.85 million beside importing the banned material. The willful mis-declaration of description, value and classification by M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi and their associates namely M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi and Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road, Karachi have, therefore, violated provisions of Section 32(1), 32(2), 32(3), 32A, 79,80 & 192 of the Customs Act, 1969 punishable under Clauses 14, 14A, 45 and 86 of Section 156(1) of the Customs Act, 1969, sub Section(I) of Section 3 of Import & Export (Control) Act, 1950 read with Appendix-G of Import Policy Order read with Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001 and allied laws.


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7. Accordingly, Importer M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi and associate firm namely M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi and Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road, Karachi were called upon to show cause under provisions of Sections 32(1), 32(2), 32(3), 32A, 79,80 & 192 of the Customs Act, 1969 as to why the evaded amount of duty and taxes to the tune of Rs. 93,857,709/- (Customs Duty amounting to Rs. 36,730,694/-, Sales Tax amounting to Rs. 36,421,081/-, Additional Sales Tax amounting to Rs. 6,828,954/- and Income Tax amounting Rs. 13,876,980/-) may not be recovered from them and penal action may not be taken against them as punishable under Clauses 14, 14A, 45 and 86 of Section 156(1) of the Customs Act, 1969, sub Section(I) of Section 3 of Import & Export (Control) Act,1950 read with Appendix-G of Import Policy Order read with Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001 and allied laws.

8. Hearing in this case were fixed 04-06-2015,11-06-2015, 25-06-2015,08-07-2015,27-07-2015, 08-09-2015, 15-09-2015, 29-09-2015, 06-10-2015, 12-10-2015,16-10-2015, 27-10-2015,02-11-2015 and 25-11-2015. The Federal Board of Revenue, vide its order 5(6)Cus.Jud/2015 dated 09th December, 2015, in exercise of the powers conferred under sub-section (4) of section 179 of the Customs Act, 1969, was please to extend the time limit for adjudication of this case up to **31-03-2016**. Mr. Farooq Talib, Consultant, appeared on behalf of M/s. Rajab Ali, Mr. Azhar Nawab and Mr. Zain Soomro, Advocates of M/s. Jatoi and Company appeared on behalf of the M/s. Pure Enterprises. Mr. Salahuddin, brother of respondent No.1 i.e., M/s Cemi Zone ,Karachi appeared and they submitted written replies to the show cause notice, which are reproduced as under:-

"REPLY TO SHOW CAUSE NOTICE SUBMITTED ON BEHALF OF RESPONDENT NO.II

Kindly refer to the subject show cause notice handed over to me by my client M/s. Rajab Ali & Sons for submitting the detailed reply to the same in accordance with law.

That the impugned Show Cause Notice No. Adj-II/Coll/SCN-132/MCCEast(R&D)/Cont-503/Cemi zone/2015 Dated: 27-05-2015 passed by the respondent as against the appellant (Clearing Agent), is bad-in-law, contrary to the facts and in violation of the principles of natural justice as the learned respondent has not applied his judicial mind while deciding the case.

That the impugned Show Cause Notice No. Adj-II/Coll/SCN-132/MCCEast(R&D)/Cont-503/Cemi zone/2015 Dated: 27-05-2015 is vexatious, whimsical,capricious, mala fide and has no basis in law or in facts.


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On the other hand, failed to rebut the factual submissions as well as the legal assertions submitted by the appellant in writing as well as argued verbally during the proceedings before the adjudication authority.

That, no mens rea, malafide or any existence of connivance of the appellant with the importer and with any other person and that no clear cut findings of the involvement of the appellant in the commission of offence has been proved as against the appellant even no direct or documentary evidence has been brought on record by the department as against the appellant. It is thus proved that the charges as against the appellant has been made only on the assumed collusion and connivance with the importer, hence in such situations, the charges leveled against the appellant is not legal, justifiable and sustainable in the eyes of law. In this regard, reliance is made on the judgment reported as PTCL 2009 CL 818, which states that unless the collusion, intentional fraud, mens rea or active connivance is proved against the accused person or solid evidence has been brought or the charge or the allegations contained in the show cause notice as against the accused are proved according to the provisions of Qanoon-e-Shahadat Order, 1984, until then the accused is absolved from any liability, responsibility and could not be penalized, punished, held responsible and charged on the assumed act of connivance.

That it was held by the superior courts of the country in the identical cases that for the application of penal provision, mens rea is mandatory which require higher degree of proof on the part of the relevant authorities which is totally absent in the subject show cause notice as against the appellant (Clearing Agent). In this regard, reliance can be placed on the Judgment passed in the case of M/s. Kamran Industries, reported as PLD 1996 KHI, 68.

That reliance can also be placed on the judgment of Hon'ble Lahore High Court reported in 2002 YL 265-1 wherein it was held that the agent liable for the acts of commission and omission on the part of the importer would require a clear finding based upon legally acceptable evidence of his being active and conscious party to the manipulation. It was further held that wherein normal course of his business, the clearing agent filed bill based upon documents and information provided by the importer, the clearing agent could not be held to be privy to any illegal arrangement which the importer might have devised or had in his mind. In the said judgment their lordships further observed that where it was not shown that the agent was directly or indirectly a beneficiary of evasion of taxes and imposition of penalty on the agent was unjustified.

That the subject show cause notice is also in clear negation of rulings of Appellate Tribunal given in identical cases, wherein it was clearly held that an action against the Clearing Agent on the part of appropriate Customs Authorities is in violation of Section 209 of the Customs Act, 1969. Reliance can be placed on the judgment passed in the case of M/s. Omalsons Corporation vs Deputy Collector, reported as SBLR 2002 Tri. 5. The operative para of the said judgment is reproduced hereunder for ready and quick reference:

"The customs have failed to bring out on record any material as an outcome of their inquiry by which it can be assumed that agent was in any way linked with a plan to defraud the government. It is surprising that in the instant case no specific charge has been leveled against the agent in the Show Cause Notice. An examination of para 3 of the Show Cause Notice reveals that rather accusing the agent for a specific act and providing the basis and evidence, the authority who did issue the notice held him guilty of the offence falling under 32 read with clauses (14) and (86) of Section 156(1) of the Act without any basis. The act in itself violated the principles of natural justice. In these circumstances applicability of section 3


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was abinitio wrong and the act of customs to malign the agent unnecessarily and to issue him a Show Cause Notice was an act of abuse of power".

That in view of the recommendations of the Hon'ble Federal Tax Ombudsman, the legality and propriety of the earlier proceedings i.e. Order-in-Original No. 10847 of 2010 was required to be examined by the Hon'ble Collector, MCC of PaCCS, Karachi. But, contrary to the said clear directions, the appellant was called upon by the respondent in the capacity of being Additional Collector (Adjudication), in the present fresh show cause notice i.e. re-adjudication proceedings, which proceedings was never recommended by the Hon'ble Federal Tax Ombudsman. Hence, the proceedings conducted and the impugned Show Cause Notice No. Adj-II/Coll/SCN-132/MCC-East(R&D)/Cont- 503/Cemi zone/2015 Dated: 27-05-2015 passed by the respondent was unlawful. That the respondent craved to leave to argue and place before this Honorable Authority further and additional grounds at the time of hearing.

PRAYER

That it is prayed that on the basis of the above narrated position of facts and law, this Hon'ble Adjudicating Authority may kindly be pleased to the Show Cause Notice No. Adj-II/Coll/SCN-132/MCC-East(R&D)/Cont-503/Cemi zone/2015 Dated: 27-05-2015 vacate being unjustified and illegal.

It is prayed accordingly

-sd/-

Farooq Talib Hussain
Consultant

"REPLY TO THE SHOW CAUSE NOTICE SUBMITTED ON BEHALF OF RESPONDENT NO.III

With reference to the referred Show Cause Notice (hereinafter the SCN) and for and on behalf of and under instructions from Muhammad Ali Chandna son of Tahir Ahmed Chandna, proprietor of M/s. Pure Enterprises, having office at 201, Sami Chamber, Aram Bagh Road, Karachi (hereinafter the answering respondent), the Reply is furnished as under: -

1. At the very outset the contents of the SCN, constituting any and all allegation(s) against the answering respondent, are vehemently denied as fabricated and malicious. There is no substance in the allegation by the officers of the R&D Wing, MCC Appraisement-East (hereinafter the Detecting Agency) that the answering respondent has got anything whatsoever to do with the imports made by M/ s. Cemi Zone. The main allegation against the answering respondent, as contained in paragraph no. 5 of the SCN under-reply, is that the Shipping Bills in respect of two (2) consignments (out of total of nine (9) consignments as mentioned in paragraph no. 3) being allegedly in the answering respondent's name also has no bearing whatsoever against him insofar as the Goods Declarations in respect thereof had not been filed by him and, therefore, no allegations as to evasion and thus accrual of liability would arise against the answering respondent.
2. Without prejudice to the answering respondent's contention in the preceding paragraph, it is submitted that whilst the Shipping in respect of the two (2) consignments out of the total nine (9)


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consignments are alleged to have been issued in his name, no justification whatsoever has been given/stated in the SCN under-reply for en-burdening him with the total liability in respect of all the nine (9) consignments viz. PKR 93.85 million. This clearly shows that the case against the answering respondent is based on conjectures and surmises and the Detecting Agency has no material evidence available to corroborate their allegation lest they would not be shooting in the dark. It is further submitted that the answering respondent has never paid any duty/taxes in respect of any imports made by M/s. Cemi Zone to the Clearing Agent and, therefore, the Detecting Agency's allegation in this regard is without any substantiation and adducing of evidence. They may be put to strict proof thereof.

3. That the malafides of the Detecting Agency in the matter are amplified by the fact that whilst making the criminal cases against all including the Clearing Agent Muhammad Hussain Ravjani (proprietor of M/s. Rajab Ali & Sons), who has since absconded from the time of initiation of such proceedings, they roped in his purported representative/manager, Dilbar Ali Goa, whose name, however, is conspicuously not present in the Show Cause Notice. If at all the duty/taxes were paid through Dilbar Ali Goa, in the manner as alleged then the same would not have been possible without his connivance and without such information having been provided by him. Why has Dilbar Ali Goa's name has been kept out of the present proceedings is the question which indicate towards maliciousness and ulterior motives of the Detecting Agency on one hand and their incompetence and inaptness on the other thereby rendering the instant adjudication proceedings unsustainable against the answering respondent.
4. Without prejudice to the foregoing, it is submitted that the subject consignments being comprising of chemicals these would not, and could not, have been cleared against the importer's mere declarations and must have been subjected to laboratory-testing, which fact alone establishes that the subject import transactions by all means have been rendered "past and closed" transactions with regards to reopening of which there is no provision in the Customs Act, 1969, and therefore, the respondents cannot be allowed to perpetrate and perpetuate their illegal and mala fide actions against anyone whosoever much less the answering respondent, against him these proceedings are even otherwise liable to be vacated.
5. That what is not mentioned in the Show Cause Notice but will be clearly appreciated by the worthy Adjudicating Authority is the fact that the Custom House Laboratory is controlled by the Custom Authority and the answering respondent could not have had any role in the matter of laboratory testing of samples drawn from consignments by the Customs officials. The fact that there could have been no foul play involved is proven by the circumstance that no disciplinary or other action has been undertaken against the concerned staff of the laboratory who processed and issued the test reports pertaining to other consignments in which the answering respondent has been roped in the by the Detecting Agency in the same slipshod and without-evidence manner.
6. In view of the foregoing it is incontrovertibly established that the actions of the Detecting Agency are mala fide, without jurisdiction and illegal and it is imperative that the learned Adjudicating Authority looks into the legality of the SCN under-reply by raising requisite queries with the Detecting Agency as to the legal and factual position as has been laid bare on the


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answering respondent's behalf in the preceding paragraphs so as to decide the matter judiciously and more particularly in terms of Paragraph 78 and onwards of CGO 12/2002. The situation, as it stands at this juncture, warrants cancellation and withdrawal of the SCN forthwith.

7. The answering respondent craves leave to adduce further grounds, either personally or through his legal representatives, at the time of hearing.

-sd/-

Advocate for

Muhammad Ali Chandna

27-10-2015

"REPLY TO THE SHOW CAUSE NOTICE SUBMITTED ON BEHALF OF RESPONDENT NO.1

Your letter Ref. No. Adj-II/Coll/SCN-132/MCC-East/R&D Cont-503/Cemi Zone/2015 dated 19-10-2015

With due respect and regards, I would like to inform you that earlier I have submitted so many letters which had been received by your office but sorry to mention here that till date no any positive response has been received from your end that whether in the absence of my younger brother who is away from Pakistan, I can negotiate the matter with you or make correspondence with you. Whereas my brother namely Ziauddin has also submitted the attested Authority letter from Pakistani Consulate in China. My brother Ziauddin has encountering such problems at abroad, which I have written in my previous letters.

Sir, We cannot hire the lawyer, such information which we have already explained to you. Further to add here such information with evidence receive to us, we shall pay our full cooperation subject to contact with me means Salahuddin S/o Jamil Ahmed having address Flat No.A-401 Erum Shopping Mall, Gulistan-e-Jauhar Block-13 Karachi. As you know our opponent party, if they utilize the legislative tactics to get rid of the case then Government of Pakistan will not get nothing in account of recovery. If you want to recover the losses which have been sustain to national treasury then consider my request.

-sd/-

Salahuddin

S/o. Jamil Ahmed

Flat No.A-401

Erum Shopping Mall,

Gulistan-e-Jauhar Block-13 Karachi

Cell # 0321-2276094"

Subject: REQUEST TO ENQUIRE THE MATTER REGARDING MISUSING OF MY NAME CNIC/NTN AND OTHER PARTICULARS FOR IMPORTATION OF THE CONSIGNMENTS Reference: FILE NO: ADI-II/COLL/SCN-132-MCC-EAST/(RED)CONT-503/CEM/ZONE/2015 DATED: 08/07/2015 FILE NO: MISC/NOTICE-SEC.82/2015-MAY2015

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Respected Sir,

With reference to the above noted subject, I had earlier submitted my letter dated 27/07/2015 (copy of the official receipt enclosed).

Sir, I hereby to submit that I never made any company in the name of M/s. CEMI ZONE and I did not know about it and I think someone made this fake/ forged company.

I and my family member do not have any financial position to import the raw material of the chemicals. All the family members are working and attached with garments jobs and employing. I had got the employment in Karachi with Muhammad Ali Chandna and did the job with them for sometime and then later on I was attached with the company of Muhammad Ali Chandna in China in the name and style M/s. Ayan Chunjing Trading Company and I was working there legally and then the company closed on 25/09/2014 and I am unemployed and I have no contact with them. I have all the proofs of the above mentioned employment.

In the light of above facts I request your kind honor to please enquire the matter whom is operating the company and bank account in my name in absence of me and whom is clearing the consignments in my absence from the customs and port authorities.

Sir, my family members are living with me and I am facing lot of problems to meet their expenses by working in a low grade company in China and I am not in a good financial position to contest the case and to buy the air ticket and! or to hire a lawyer in this regard.

Sir, someone made a false/ fake case against me in my absence and it is requested to allow to my elder brother Mr. Salahuddin to submit my case/ opinion in my absence as presently I am employing in China and living with my family members.

Furthermore I hope you will delete my name from ECI & FIR and to arrest the real culprits and to save us from the above mentioned difficulties. I shall be thankful to you and pray to God for this act of kindness.

Thanking You,
Sincerely Yours,

Ziauddin

Flat No.A-401
Erum Shopping Mall,
Gulistan-e-Jauhar Block-13 Karachi
Cell # 0321-2276094"

Subject: **REQUEST TO ENQUIRER THE MATTER REGARDING MISUSING OF MY NAME AND CNIC AND OTHER PARTICULARS FOR IMPORTATION OF THE CHEMICALS**

Reference No. ADJ-II/coll/scn132/MCC-East/ R&D Cont- 503/Cemi Zone 19-10-2015

Respected Sir,

It was nice conversation with you Mr. Ashfaq ur Rehmen by telephone and thanks for give me chance for write you email.


Collector
Collectorate of Customs (Adjudication-II)
Custom House, Karachi.

ORDER-IN-ORIGINAL NO. 158 OF 2015-2016

M/s. Cemi Zone (NTN-3648582-9), Karachi

I Ziauddin Son of Jamil Ahmed never open any company by my self in Pakistan M/s. Cemi Zone i never knew there is any company on my name in Pakistan. I hear first time this company name and come also its come in my knowledge when some custom officers went to my home address 3/30-G Liaquatabad, Karachi. for Investigation about this company.

I am poor employ of Mr. Muhammed Ali Chandna Since 2010 July in Pure Enterprises Karachi Pakistan. After some months of work in his Pakistani company Mr. Muhammed Ali Chandna transfer ID in his Chinese Company (AYAN CHUN JING CHEMICALS IMPORT & EXPORT SHANGHAI COMPANY LTD.) Since 6th of January 2011 I have been working in his company as a (Business Development Executive) as i already sent by courier my employment documents to my big brother for give evidences to your department this documents are attested by minister of foreign affairs of China and also they are attested by consulate general of Pakistan in Shanghai.

I have give authority letter to my big brother Mr. Salahuddin until i am unable to come in Pakistan due to my bad financial situation for i can not buy tickets and afford expanses of lawyer as i am a poor worker who is working this days in restaurant for take care of my family this are reasons i become late for to be there but soon Inshallah i am coming for this matter with many more prove those will help me to show i am innocent and honest person.

Before i write you something more about me i would like to inform you it was my first time job i never do any job in my all life before i was use to help in my family Garments Business to my family. Dear sir Mr. Muhammed Ali Chandna has misuses my CNIC. Before he transfer me in to his Chinese company i was use to work in his Pakistani company office and out door office work he was use to send me where ever he need me like Governments departments, Banks, Customs house, tele-commutation office, for send and received documents /letters in short where ever he order me to go for send for his work i was use to go as it was ID Job.

When i start to do job in his company he told me you have to do all my office in or out door both work and in free time set in office and learn how to do communication with your others office colleagues.

I was use to follow his orders as he was my boss one more thing would like to infirm you after i start my job sometime he infirm me i am making you authorized person for send and received the documents with out I present in Banks and some departments for this I need your CNIC card like this he take my card first time then many time he take my id card and before some days my come to china he take my CNIC card and never give it back to me when I ask him to give me back my id card he reply me sorry i don't know where I forget your CNIC card at my home i don't remember exactly but worry I am sure its in my home when i will find I will give it to you back its not lost but when my last day of flight time come i asked him last day give me my id card he reply me i forget to find it well don't worry when I will find it I will keep it save with me you have now your NICOP it will be work in china not that one so when you will back i give it to you. Like this my CNIC was left with him and also I could not make any report for this in lost ID Card

In Ayan Chun ling Shanghai Company Ltd., My work responsibility was take markets update purchasing price negotiation and update of market to . Boss about shipments /Muhammed Ali Chandna and follow up the shipments. In the light of above fact your kind honors to please enquirer the matter who is operating on my name this Cemi Zone Company this fake company by my name in my absence of Pakistan who is clearing

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shipments from port who is giving this orders for clearing and where this shipments are going who is buying who is selling from where money is transferring to exporters.

I would like to request to honorable custom collector & Investigation Officers kindly check my family record and my and my family-worth in Pakistan we are very simple and ordinary peoples we are belong from decent families of Pakistan we never do cheating or crime in our life in Pakistan you can check this all things and after become sure who is real guilty arrest them and remove my name from this case and finishes this wrong FIR on me by its total misunderstanding. And what ever my Pakistani Government need corporate from me i am ready to do.

Thanks

-sd/-

Salahuddin"

9. The above mentioned replies of the Respondents were handed over to the departmental representative with the direction to submit parawise comments against the said replies as early as possible. Mr. Ashfaq-ur-Rehman, Appraising Officer appeared before me on the last hearing and submitted parawise comments, which are reproduced as follows:-

Subject: PARA WISE COMMENTS ON REPLY OF THE CLEARING AGENT MIS RAJAB ALI & SONS TO THE SHOW CASUSE NOTICE NO. ADJ-IICOLL/SCN-132IMCC-EAST(R&D)/CONT - 503/CEMI ZONE/2015 DATED 27-5-2015.

As desired parawise comments on reply of the clearing agent to the subject Show Cause Notice are as under:

Back Ground.

At the outset it is submitted that on the basis of credible information regarding clearance of restricted/banned pharmaceutical raw materials under the garb of engineered brands like SDO and ACJC Preservatives an exercise was started. The suspected consignments lying at port were intercepted and placed on hold by R&D East beside retrieval of data from the system pertaining to similar consignments released previously by this Collectorate. The initial investigation and information received from the shipping companies it transpired that the same group of persons were involved in this act of mis-declaration by adopting same modus operandi in the name of three different importing firms namely M/s Pure Enterprises, M/s CemiZone and Mis Zam Trading Co, Karachi. The three consignments lying at port including two imported by M/s Pure Enterprises comprising of 4 containers on test at Lab found carrying Paracetamol Powder against declared SDO 444 & 777. Whereas 10 consignments were imported from India in the name of M/s CemiZone documents of which provided by the shipping companies on the basis of which Bs/L were issued including declarations made to Indian Customs Authorities. The documents clearly established without iota of doubt that actually pharmaceutical raw material comprising of Ibuprofen, Sulphacethoxazole & Cefixime- Trihydrate etc was imported which otherwise is not importable from India in terms of Appendix G of IPO beside the fact that all aforesaid importing firm are commercial importers whereas pharmaceutical raw materials can only be imported by manufacturers of drugs holding valid manufacturing license on certain terms & conditions laid down in IPO in vogue. Two FIRs against M/s Pure Enterprises involving tax evasion amount of Rs. 35.445


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million and M/s CemiZone involving amount of Rs. 122.23 million have been lodged before the court of competent jurisdiction and the same are under active trial. Rest of the import pertains to China for which Commercial Councilor, Embassy of Pakistan in China has already been request to provide necessary declarations made to Chinese Customs Authorities which are still awaited despite a reminder. This criminal act has resulted anticipated approximate loss to government exchequer to the extent of Rs. 800 million in aggregate. It is further added that an identical case of M/s Cemizone has already been decided by this adjudication forum vide O-in-O No.107 of 2014-2015 pertaining to one GD involving tax evasion of Rs. 28.973 million whereas the case of rest 9 GDs is under adjudication vide SCN Adj-II/Coll/SCN-132/MCC-East(R&D)Cont-503/Cemi Zone/2015.

The reply of the clearing agent has no nexus with the facts of the case and comprises of mere technicalities of the law and reproduction of some decision of the other appellate forum. Further it appears that particulars of the Show Cause Notice have been fitted in a reply to any appellant authority of any other case through cut and paste hence warrants no reply however the role of the clearing agent is defined below:

There are total 83 consignments imported and cleared by adopting same modus operandi through this Collocorate in couple of years from China and India. All the consignments were invariably cleared by this clearing agent. Out of 83 consignments 10 each were imported in the name of M/s Pure Enterprises, firm registered in the name of the principal accuse & actual importer of all the consignments and M/s CemiZone, a firm registered in the name of an employee of the principal accuse whereas the rest all the 63 consignments were imported in the name of M/s Zam Trading Co. a firm registered in the name of Muhammad Hussain Rayjani who is also owner of the clearing agency in question. The clearing agency M/s Rajab Ali & Sons has a vast experience and known as specialist of chemical clearances and has many multinational companies on their customer list including pharmaceutical manufacturers. It is submitted that sales tax invoice were issued by the administration of the clearing agency in the name of fake buyers mainly in the name of an individual of Swat to provide unverifiable dead end to these goods as the Sales tax Act, 1990 has not been extended on Swat being part of Malakand Agency. The investigation carried out by R&D in this regard revealed that the person shown as buyer never visited Karachi or met to importer or the clearing agent but is a poor employee / servant of M/s Convell Laboratories. Swat having no resources to buy such goods. On investigation the manager of the clearing agency admit that the copy of CNIC of the person was handed over to them by the importer and sales tax invoices were accordingly issued accordingly. The record provided by themselves to investigating officer reflects that all the goods were imported, handed over after release to representatives of the importer on road and their bills including amount of duty and taxes were paid by the principal accuse.

Keeping in view above said position the clearing agent was fully aware of the facts, wrong doings of the importers and was receiving his share as without his active connivance this game could not last for years being well versed with the Lab reports, images of the examination reports and being aware of post clearance activities hence the role of the clearing agent is obvious.

-sd/-

Principal Appraiser
(R&D) Section"

10. I have gone through the record of the case, and considered the written and verbal submissions of the respondents and the department. The case of the Department is that the Model Customs Collectorate of



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Appraisement (East), R&D Section, Customs House, Karachi, received a credible information to the effect that certain unscrupulous importers were engaged in importing Pharmaceutical Raw Material with the vague description of "Preservative ACJC" from China / India by mis-declaring description / classification and value with an intent to circumvent the application of Import Policy Order applicable to the Pharmaceutical Raw-Material as envisaged in Appendix-G of Import Policy Order in-vogue. In order to un-earth the heinous crime by these unscrupulous elements, a broad based exercise / inquiry was undertaken and relevant record of these imports was retrieved from the database of the MCC-East, Karachi. Whereas, scrutiny of the data of Model Customs Collocorate of Appraisement (East), Karachi, has indicated that M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad # 3, Karachi has cleared 09 consignments with the active connivance of Clearing Agent M/s. Rajab Ali & Sons (CHAL 50) so far while declaring fake brand of Preservative ACJC-240 & 430 as against pharmaceutical raw material. The shipping companies who had provided logistic support for en-route to Karachi Port of the impugned consignments were requested to provide documents including declaration at the time of shipment as shown in the original bill of lading surrendered at the port of loading. The documents of 09 consignments, received so far have indicated gross mis-declaration of description, classification and value as mentioned in para 3 above. Whereas, the documents furnished by the shipping companies have further reflected that actual description of the goods was quite contrary to the declaration as elaborated above. Moreover, the value was also grossly under stated from US\$ 0.35 - 0.45/Kg as against US\$ 9 to US\$ 143/Kg indicated in the documents provided by the said shipping companies. The attempted mis-declaration of description / value was aimed at to evade the legitimate taxes and escape from the restriction / prohibitions enshrined in Appendix-G of Import Policy Order in vogue, besides escaping from the higher tariff rate of Customs Duty @ 15% to 25% as against claimed @ 10%. The Department has also alleged that during the course of inquiry and examination of documents on record, it transpired that the amount of taxes relating to clearance of all the afore-referred 09 consignments were arranged/paid by Muhammad Ali Chandna of M/s. Pure Enterprises. In the light of these facts Department has come to the conclusion that that M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi with active connivance of master mind Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road, Karachi and clearing agent M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi has made deliberate attempt to import restricted / banned pharmaceutical raw material under the guise of ACJC Preservative and thereby caused huge revenue loss to the tune of Rs. 93.85 million beside importing the banned material. The willful mis-declaration of description, value and classification by M/s. Cemi Zone (NTN



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3648582-9), 3/30-G, Liaquatabad#3, Karachi and their associates namely M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi and Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road, Karachi have, therefore, violated provisions of Section 32(1), 32(2), 32(3), 32A, 79,80 & 192 of the Customs Act, 1969 punishable under Clauses 14, 14A, 45 and 86 of Section 156(1) of the Customs Act, 1969, sub Section(I) of Section 3 of Import & Export (Control) Act,1950 read with Appendix-G of Import Policy Order read with Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001 and allied laws.

11. The principal accused in the case one Mr. Ziauddin i.e the proprietor of M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi never appeared in person and rather submitted his reply through his brother Mr. Salahuddin. In his reply the proprietor of the firm categorically denied ownership of the company and stated that he was the employee of Mr. Muhammad Ali Chandna who used his NIC card for opening the firm and he operated the firm and he has nothing to do with the company and he was not liable to pay any amount detected against M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi and the same to be recovered from Mr. Muhammad Ali Chandna. During the course of hearing Mr. Salahuddin, representing his brother Mr. Ziauddin, Proprietor of M/s. Cemi Zone, was asked that what criminal action such as registering a FIR or lodging a criminal plaint with any authority has been taken by them against Mr. Mr. Muhammad Ali Chandna for misusing their name and NIC and committing the alleged fraud with them. The reply to this query was negative. However, Mr. Salahuddin kept insisting that his brother was innocent. Similarly, the Clearing Agent M/s. Rajab Ali & Sons (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi never appeared in person. However, one person Mr. Dilbar Ali introduced himself as his Manager appeared once and stated that he will bring forth evidences to prove that payments for the imports of M/s. Cemi Zone were arranged by Mr. Muhammad Ali Chandna. But he never appeared again and no evidences whatsoever were produced either by Mr. Salahuddin or Mr. Dilbar Ali to suggest that the firm was actually being managed by Mr. Muhammad Ali Chandna except their verbal assertions. The counsel for Respondent No.III (Mr. Muhammad Ali Chandna) vehemently denied the charge that he was in any way involved in the management of M/s. Cemi Zone and due to ulterior motives he was being roped in by the detecting agency and he was not responsible for the acts of some other person.

12. It is an admitted fact that Mr. Ziauddin is the proprietor of M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad#3, Karachi which is registered in the Customs Computerized System (WeBOC) for the purposes of


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imports against allocation of Unique User Identifier and a secret password which is communicated to the Registered User on his provided email address along with a secret password which can only be used by the Registered person for filing of GDs. Other persons will only use his User ID and password only after his permission and knowledge and in that case the Registered Person must be aware of the chances of misuse and the ensuing legal consequences. Under the Customs Act, 1969 the person whose User ID is used for filing of GD is legally responsible for payment of duties and taxes in terms of Section 18(1) and sub clause(b) of Sub Section(1) of Section 79 of the Customs Act, 1969. After the usage of User ID and clearance of imported goods and at any belated stage the Registered Person cannot legally claim that he does not know who used his User ID and he is not responsible for anything. If this plea is allowed to be accepted then every registered person would take refuge behind his innocence and would say that recoverable taxes should be recovered from someone else who was the investor/financer/facilitator and not from him and that someone would pass the responsibility to some other and so on so forth with no end. Therefore, the Customs Act, 1969, places responsibility of payment of duties and taxes on the person who imported the goods after he files the GD because he is considered as owner of the goods and he will be held responsible for all the legal actions which may be taken under the Customs Act, 1969 and the rules made thereunder. Therefore, the plea of the proprietor of M/s. Cemi Zone (NTN 3648582-9) that he is not responsible for the acts of his company is not acceptable. Similar plea has also been taken by the Clearing Agent M/s. Rajab Ali & Sons (CHAL # 50), by placing the burden of all his actions on Mr. Mr. Muhammad Ali Chandna without providing any evidence to suggest how it happened. He can not be absolved of his responsibilities by just passing the allegation to some other person. Without connivance of clearing agent M/s. Rajab Ali & Sons (CHAL 50) the importer M/s. Cemi Zone (NTN-3648582-9), Karachi could not have been successful in clearance of the consignment of "Cefixime Antibiotic" in the garb of chemical SDO 222. As an agent he handled all the documents on behalf of importer and after clearance delivered goods to importer. In terms of Section 32(1) of the Customs Act, 1969 read with Rule 102 Chapter VIII, Customs Agents Licensing Rules issued vide SRO 450(1)/2001 dated 18-06-2001 (Customs Rules, 2001) agent is required to make true declaration and submit true documents to Customs Authorities which he did not resulting in colossal loss of government's legitimate revenue and to the advantage of the importer. Therefore, there is no doubt that the Customs Clearing Agent has connived in the clearance of the subject consignments.

13. Both the importer(M/s. Cemi Zone (NTN 3648582-9) and the Customs Clearing Agent(M/s. Rajab Ali & Sons (CHAL # 50) have stated that some Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2nd Floor, Sami Chamber, Arambagh Road is the master mind of all such fake imports


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of banned chemicals. This view is also endorsed by the detecting agency. It has also been stated that some FIR has also been lodged against him and the case of his criminal involvement is pending trial in the Customs Court. However, as far as this forum is concerned then it is obvious that his guilt for contravening provisions of Customs Act, 1969 such as for misdeclaration or unlawful clearances has to be established for penalizing him. Apparently in the presence of importer and his clearing agent he did not file any document with the Customs with respect to the impugned consignments and the only role which can be attributed is of abetment. However, in this regard neither the importer's representative nor the Clearing Agent came up with any evidence to prove the abetment except the allegations. The Department has referred to some outside payments managed by some persons allegedly related to Mr. Muhammad Ali Chandna in respect of consignments of M/s. Cemi Zone but as per the contents of Interim Challan submitted with the Customs Court these persons have denied any involvement in these transactions. Moreover, in order to prove this aspect all the witnesses has to be summoned and cross-examined and records of payments to be thoroughly investigated for establishing his guilt. This is beyond the scope of this forum and the Honorable Customs Court is already seized with the same subject matter with pending trial for alleged criminal involvement. Therefore, detecting agency should pursue its case before the competent forum to get him penalized through proper trial.

14. Therefore, in view of the above stated facts and foregoing discussion the undersigned is convinced that the charges of mis-declaration of description, PCT Classification and restricted import status of goods as leveled in the show cause notice stand established in terms of Sections 16, 32, 32A & 192 of the Customs Act, 1969, Sections 3(1) of Import and Export (Control) Act, 1950 read with Appendix - G of Import Policy Order 2013 further read with Section 33 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001. The impugned goods are not importable from India in terms of Import Policy Order 2013 as goods have already been released hence can not be confiscated at this stage as required by the law, yet it is fact that these pharmaceutical goods (confixime, Sulphamethoxazole, Ibuprofen) otherwise are importable from other countries except India, therefore, I hold that a huge amount of duties and taxes have been evaded on import and clearance of consignments which is subject matter of this order. Accordingly, in terms of Section 32(2) of the Customs Act, 1969, I order M/s. Cemi Zone (NTN-3648582-9), 3/30-G, Liaqatabad No. 3, Karachi to deposit the amount of duty and taxes to the tune of **Rs. 93,857,709/- (Customs Duty amounting to Rs. 36,730,694/-, Sales Tax amounting to Rs. 36,421,081/-, Additional Sales Tax amounting to Rs. 6,828,900/- and Income Tax amounting Rs. 13,876,980/-)** into the government treasury immediately. A penalty of **Rs. 3,500,000/- (Rupee Three Million and Five Hundred Thousand Only)** is also imposed on the Respondent.


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No. (i) M/s. Cemi Zone (NTN-3648582-9), 3/30-G, Liaqutabad No. 3, Karachi in terms of clauses 14 & 14A of Section 156(1) of the Customs Act, 1969. A penalty of **Rs. 2,000,000/- (Rupee Two Million Only)** is also imposed on clearing agent i.e., M/s. Rajab Ali and Sons, (CHAL No. KCSU-50), A-618, 6th Floor, F1, Saima Trade Tower, I.I. Chundrigar Road, Karachi, in terms of clauses 14 & 14A of Section 156(1) of the Customs Act, 1969, for connivance in committing offence of mis-declaration and clearance of restricted goods.

15. This Order-in-Original consists of (19) nineteen pages and each page bears my seal and initials.

To.


(Ch. Muhammad Javaid)
Collector
Collectorate of Customs (Adjudication-II)
Custom House, Karachi

M/s. Cemi Zone (NTN 3648582-9), 3/30-G, Liaquatabad # 3, Karachi	M/s. Rajab Ali & Sons Clearing Agent (CHAL # 50), B-1004, Saima Trade Tower, I.I Chundrigar Road, Karachi
Muhammad Ali Chandna of M/s. Pure Enterprises, (NTN 1199090), Room # 201, 2 nd Floor, Sami Chamber, Arambagh Road, Karachi	

Copy to:-

1. The Collector of Customs, Model Customs Collectorate of Appraisement (East), Mezzanine Floor, Customs House, Karachi
2. The Collector of Customs, Model Customs Collectorate of Appraisement (West), Second Floor, Customs House, Karachi
3. M/s. Jatoi and Company, 603, 6th Floor, Al-Ameera Centre, Shahrah-e-Iraq, Saddar, Karachi.
4. Mr. Farooq Talib, Consultant, A-618, 6th Floor, F1, Saima Trade Tower, I.I. Chundrigar Road, Karachi.
5. Notice Board
6. Guard Copy.

(Ch. Muhammad Javaid)
Collector
Collectorate of Customs (Adjudication-II)
Custom House, Karachi