

GOVERNMENT OF PAKISTAN
COLLECTORATE OF CUSTOMS (ADJUDICATION-I)
11TH FLOOR CUSTOM HOUSE
KARACHI

File No. COLL.ADJ-I/91/2015
Case No. PCA/3074/2015-Audit

Dated. 12.08.2015

Before: **DR. FAREED IQBAL QURESHI**
Collector of Customs (Adjudication-I)

ORDER-IN-ORIGINAL NO. 76/2015-16

N.B.

1. This copy is granted free of charge for the private use of the person to whom it is issued.
2. An appeal against this order lies under section 194-A of the Customs Act, 1969 before the Customs Appellate Tribunal, 3rd Floor Jamil Chamber, Saddar Karachi, within 60 days of the communication of this order. An appeal should bear a court fee stamp of Rs. 1,000/-
3. The appellant should state in his appeal if he desires to be heard in person or through advocate.

Sub: **EVASION OF SALES TAX AND WITHOLDING INCOME TAX BY CLAIMING INADMISSIBLE BENEFIT OF SRO 659(I)/2007 DATED 30.06.2007 ON IMPORT OF CABLE REEL, CONTROL BOX, HV CABLE / TRANSFORMER / SWITCHGEAR AND OTHER ACCESSORIES BY M/S KARACHI INTERNATIONAL CONTAINER TERMINAL, KARACHI**

1.	RESPONDENTS:	i	M/s Karachi International Container Terminal Limited (NTN No.0803538), Administration Building Berth No, 26-30, West Warf, Dockyard Road, Karachi.
		ii	M/s Ports Connection (Pvt.) Limited (CHAL No.2968), Suit No.12, Mezzanine Floor, Plots No.5, Nagina Centre, M.A. Jinnah Road, Karachi.
2.	CASE INSTITUTED BY:		Directorate General of Post Clearance Audit (Customs) Karachi.
3.	DATE OF HEARING:		16.04.2015, 28.04.2015, 12.05.2015, 21.05.2015 & 09.06.2015
4.	DATE OF JUDGMENT:		03.08.2015

5.	PRESENT:	a)	For the Respondent: i) Ms. Nim May Chan, Chief Financial Officer ii) Mr. Salman Mirza (Authorised Counsel) iii) Mr. Shaharyar (Authorised Counsel) iv) Mayher Kazi (Authorised Counsel) v) Mr. Nasrullah (Representative) vi) Mr. Shoaib (Representative)
		b)	For the Detecting Agency: i) Mr Talib Hussain, Deputy Director, Directorate of Post Clearance-Audit, Custom House, Karachi ii) Mr. Shyam Lal (Principal Appraiser)

ORDER

Brief facts of the case as reported by the Directorate General of Post Clearance Audit (Customs) Karachi vide its Contravention Report No. C. No. PCA/3074/2015-Audit/10600 dated 13.02.2015 are that on scrutiny of the import data and documents provided by M/s Karachi International Container Terminal Limited, Karachi (NTN No.0803538), it was observed that the importer, when failed to get exemption under SRO 575(I)/2006 from Board of Investment, have availed exemption of taxes on various items imported vide Goods Declaration No.KAPW-HC-25356 dated 29.08.2013 in terms of SRO 659(1)/2007 dated 30-06-2007. After detailed checking of each item of GD, the Post-Clearance Audit (PCA) reached the following conclusions:

- a) And whereas, the item i.e. Cable Reel and Control Box, diameter 5800 mm, Qty. 06 sets was declared and assessed under PCT code 7307.2900 availing concession under SRO 659(I)/2007 (Sr. No.1136) when in fact the goods were appropriately assessable against PCT Code 7326.9090 which is relevant to above item description. PCT 7307.2900 (as declared) is meant for other Tube or pipe fittings and said declared item of GD does not fall within this definition. Hence the importer misdeclared PCT classification and availed incorrect benefit of SRO 659(1)/2007 (under wrong Serial No). As the importer was not entitled to the benefit of claimed Serial No. 1136 of SRO 659(I)/2007, hence it is apparent that they have evaded taxes as under:

			(Amount in Rs.)
Item (Assessed Value: 36,995,472/-)			
	Paid	Payable	Short paid
CD @ 20%	-	7,399,094	7,399,094
Sales Tax @ 20%	7,399,094	8,878,913	1,479,819
I/Tax @ 5.5%	2,441,701	2,930,041	488,340
Total Short paid			9,367,253

- b) And whereas, the item High Voltage Cable 11 KV/3 core (Qty. 2550 Mtr.) was declared and assessed under PCT heading 7307.2900 availing concession under SRO 659(I)/2007 (Sr. No.1136 thereof) when in fact the goods were appropriately assessable against PCT heading 8544.6000 which is relevant to above item description. PCT Heading 7307.2900 is meant for other Tube or pipe fittings whereas the imported item does not fall under this PCT heading. Hence it is apparent that importer committed misdeclaration of classification and misused concession available in terms of Sr No 1136 of SRO 659(1)/2007

dated 30-06-2007. The details of evaded taxes is as under:

Item (Assessed Value: 32,585,210/-)			(Amount in Rs.)
	Paid	Payable	Short paid
CD @ 20%	-	6,517,256	6,517,256
Sales Tax @ 20%	6,517,256	7,820,707	1,303,451
I/Tax	2,150,695	2,580,833	430,138
Total Short paid			8,250,845

- c) And whereas the item HV Transformer 1250 KVA (Qty.06) was declared and assessed under PCT heading 8504.2100 availing concession under SRO 659(I)/2007 (Sr. No.1136) instead of PCT heading 8504.2200. Since the importer has availed benefit of SRO 659(I)/2007 under wrong serial number, therefore it is apparent that importer has knowingly and incorrectly manipulated the Serial number of the entry as appearing in SRO 659(1)/2007 dated 30-06-2007 in order to evade the taxes. Needless to mention that the importer is not entitled to the benefit of SRO 659(1)/2007 dated 30-06-2007 and on account of this misdeclaration the quantum of evaded duty and taxes is as under:

Item (Assessed Value: 31,707,638/-)			(Amount in Rs.)
	Paid	Payable	Short paid
CD @ 20%	-	6,341,528	6,341,528
Sales Tax @ 20%	6,341,527	7,609,833	1,268,306
I/Tax	2,092,704	2,511,245	418,541
Total Short paid			8,028,375

- d) And whereas the item HV Transformer 250KVA (Qty.06) was declared and assessed under PCT heading 8504.2200 availing concession under SRO 659(1)/2007 dated 30-06-2007 (Sr. No.1136) instead of its correct classification i.e. PCT heading 8504.2100. Since the importer has incorrectly availed benefit of SRO 659(I)/2007 (under in-applicable serial number), therefore it is apparent that importer mis-declared the description and PCT heading in order to evade the leviable taxes; quantum of evaded levies is as under:

Item (Assessed Value: 19,998,861/-)			(Amount in Rs.)
	Paid	Payable	Short paid
CD @ 20%	-	3,999,772	3,999,772
Sales Tax @ 20%	3,999,772	4,799,727	799,955
I/Tax @ 5.5%	1,319,925	1,583,910	263,985
Total Short paid			5,063,712

- e) And whereas the item HV Switchgear 11KV/630A (Qty. 06) was declared and assessed under PCT code 8504.3200 availing concession under SRO 659(I)/2007 (Sr. No.1136 thereof). The importer had in-appropriately availed benefit of SRO 659(I)/2007, under wrong serial number, with a view to evade payment of leviable taxes. Needless to mention that the importer was not entitled to the benefit of SRO 659(1)/2007 dated 30-06-2007 and on account of this misdeclaration the quantum of evaded duty and taxes is as under:

Item (Assessed Value: 52,733,075/-)			(Amount in Rs.)
	Paid	Payable	Short paid
CD @ 20%	-	10,546,615	10,546,615
Sales Tax @ 20%	10,546,615	12,655,938	2,109,323
I/Tax @ 5.5%	3,480,383	4,176,460	696,077
Total Short paid			13,352,015

- f) And whereas the items i.e. Platform, Walkways, Handrails – Qty. 06 was declared and assessed under PCT code 7307.2900 availing concession under SRO 659(I)/2007- Sr. No.1074 instead of the appropriate PCT heading 7308.9090. Since the importer has incorrectly availed benefit of SRO 659(I)/2007 through misclassification of PCT and application of in-correct serial number, therefore it is apparent that importer intentionally endorsed the wrong serial number (of SRO 659(1)/2007 dated 30-06-2007) in order to evade the taxes. The importer is not entitled to the benefit under S.No.1074 of said SRO and hence the importer has evaded the taxes as under:

Item (Assessed Value: 25,034,894/-)			(Amount in Rs.)
	Paid	Payable	Short paid
CD @ 20%	-	5,006,979	5,006,979
Sales Tax @ 20%	5,006,979	6,008,374	1,001,395
I/Tax @ 5.5%	1,652,303	1,982,763	330,460
Total Short paid			6,338,834

- g) The total evasion as elaborated above is as under:-

		(Amount in Rs.)
Grand Total of evasion / short payment:		50,401,034

2. Notice under section 26 of the Customs Act, 1969 was issued to Chief Executive Officer, Karachi International Container Terminal Limited, Administration Building Berth No, 26-30, West Warf, Dockyard Road, Karachi, for explaining and clarifying on what basis the aforesaid concessions were availed by them and to justify their declared PCT classification(s). The importers however failed to come up with any tangible reasons or evidence and were also unable to refute the charges leveled by the Department. In view of the aforesaid, M/s Karachi International Container Terminal Limited and their Clearing Agent M/s Ports Connection (Pvt.) Limited, Suit No.12, Mezzanine Floor, Plots No.5, Nagina Centre, M.A. Jinnah Road, Karachi (CHAL No.2968) were held to have intentionally & willfully caused loss to the Government exchequer amounting to **Rs. 50,401,034** /- and in the process had violated the provisions of Section 32 (1) (2) & (3A), 79 & 209 of the Customs Act, 1969, Section 3(1), 3,6,7 & 34 of Sales Tax Act, 1990 and Section 148 of Income Tax Ordinance, 2001 punishable under clause (1), (9) and 14 of Section 156(1) of the Customs Act, 1969, Section 33(5) and 7A of the Sales Tax Act 1990 read with Chapter-X of the Sales Tax Special procedure Rules, 2007(special procedures for payment of sales tax by the importers) and section 148 of Income Tax Ordinance 2001.

3. In the light of above reported facts, M/s Karachi International Container Terminal Limited, Administration Building Berth No, 26-30, West Warf, Dockyard Road, Karachi and their clearing Agent M/s Ports Connection (Pvt.) Limited, Suit No.12, Mezzanine Floor, Plots

No.5, Nagina Centre, M.A. Jinnah Road, Karachi (CHAL No.2968) were called upon to show cause as to why payment of duty and taxes amounting to Rs. 50,401,034/- may not be recovered from them and penal action as warranted under the aforementioned provisions of law may not be taken against them. The case was fixed for hearing on 16.04.2015, 28.04.2015, 12.05.2015, 21.05.2015 & 09.06.2015. To meet the requirements of natural justice, the time limit for finalizing adjudication was extended in terms of Section 179(3) of the Customs Act, 1969 by the competent authority. Ms. Nim May Chan, Chief Financial Officer appeared on behalf of the respondent i.e. M/s KICT and submitted written reply (dated 27.04.2015) to the Show Cause Notice, which is reproduced as follows:

"We take this opportunity to request your kind attention and understanding while we reiterate the facts evolving the matter.

Karachi International Terminal Limited ("KICT") is a wholly owned subsidiary of Hutchison Ports Holding Limited ("HPH"), the world leading port investor, developer and operator. The HPH network of port operations comprises 319 berths in 52 ports spanning 26 countries throughout Asia, the Middle East, Europe, the Americas and Australasia. HPH has the most advanced technology for commercial operations in the port industry. Through decades of investment and research in improving operational efficiency, HPH has pioneered innovations in its major operational areas and has become one of the most technologically advanced port operators.

In the years 2008 to 2012, two flagship terminals of HPH namely Hong Kong International Container Terminal and Yantian International Container Terminal initiated the pilot project by installing the Hybrid System into their existing fleet of conventional Rubber Tyred gantry Cranes ("RTGCs"). The empirical evidence of using Hybrid system showed fuel saving in the range from 40% to 50%. Therefore, with the fuel being one of the major direct operating costs for companies worldwide but particularly so for Pakistan, HPH therefore immediately brought over this latest fuel saving technology to its 100% owned subsidiary in Pakistan. Now KICT is the only Container Terminal in Pakistan with Hybrid Technology for RTGCs.

Further to the initiative of bringing Hybrid technology to RTGCs, for reduction in fuel consumption in Quay Cranes ("QCs"), KICT built state of the art Power House equipped with re-generative power system for storing the returned energy for re-usage, which has resulted in fuel saving of around 50%.

HPH, being a social responsible corporation, understands the need of community in which it operates. Therefore, in order to reduce the carbon emission and to support the nation in its dire energy crises and to lessen the burden of fuel import (which in turn will reduce the nation's import bill), KICT initiated to modify the existing fleet of conventional QCs previously powered by on-board gensets, for connection to the new power house.

Modification of conventional QCs to electrified cranes was a technological challenge being undertaken by KICT, being previously experienced in very few ports of HPH. Therefore, for integration of the systems into the modified equipment (for their practical operation), Engineers with the know-how, past relevant industry knowledge and experience ("intangible form" come from human individuals) from the technology supplier M/s Changzhou GT Electric Company Limited ("CZGT") physically visited KICT for both Hybrid conversion of RTGCs and QC Electrification.

With the unique and exceptional nature of the two concerned projects, KICT initiated the tax concession request (under SRO 575/2006) 06 months prior to the scheduled shipment arrival. However, the response was very slow from the governing authorities, even after rigorous follow-ups and the continuous personal visits and calls. We were given the reasons that the responsible personnel in Islamabad were engaged first with

the General Elections (in May 2013), followed with the visit of Chinese Premier Mr. Li Keqiang's (May 2013) and Annual Federal Budget preparation (2013-2014).

Even at the stage of shipment arrival, KICT was not issued with proper documentation rather we were informed that principal approval had been issued by the governing department and same was therefore communicated to Customs and shipments were cleared accordingly.

We took the decision to proceed on the given understanding as shipment had already arrived in chartered vessel and was occupying one of our three berths. Any delay in clearance could cause few millions of US\$ dollar revenue loss as well as incurring huge detention charges. Please note that KICT contributes significant amount of taxes to government exchequer and nominated by FBR as one of the top tax payer corporate, therefore any loss of revenue would be in-direct loss to the country and Karachi Port Trust.

We would like to emphasize the fact that the objective of the import should be focused on and consideration shall be given to the "FINAL PRODUCTS" which are not possibly available and hence not manufactured in Pakistan, instead of looking at the individual component for the assessment of duty & taxes at import stage.

In our new Deep Sea Container Terminal at Kaemari Groyne (scheduled to be operational in 1st quarter of 2016), we have adopted the same approach and have already constructed the Power House. Also the import of Hybrid RTGCs and electrified Quay Cranes is already underway and scheduled to be arrived in end 2015. We, HPH, assure Pakistan to be pioneer, forefront in latest technology in Container handling business, not part of the problem but rather a problem solver in the nation dire energy crises.

We believe this is in line with the National Policy. That is to encourage Foreign Direct Investment to bring in the necessary technology for the overall benefits and betterment of the nation as a whole. We therefore draw the same analogy of our imports to the economic zones declared in different parts of the country such as that for Gawadar/ Infrastructure / Energy projects etc. where special tax regime / concessions are given.

Our existing equipment still has half of their useful life which would not be financially viable to dispose them off and replace them completely. All corporations including nation have financial constraints / budgets, hence money needs to be wisely spent and all areas of cost savings to be explored and all costs justified.

Nevertheless, we understand that fundamentally FBR had approved the concession, however documentary formality was somehow not fulfilled for which we request you to kindly refer these cases to FBR so that mandatory condition of "Annexure B" can be fulfilled.

We would also like to draw your attention to our earlier meeting held with Mr. Pervez Esbhani (Director Port Clearance Audit) in his office dated 16th Sep 2014, in which we gave him detailed explanation of the matter and he consented to visit our terminal to understand the functionality of the both systems imported by KICT, he also agreed on reverting the cases back to FBR for proper reassessment (KICT's request letter attached). Instead, that didn't happen and we were issued with the subject show cause notices.

We herewith enclosed also pictures of both the systems which demonstrate the scenario before and after their implementation in our equipment.

We hope the above provided explanation will satisfy the concerns and will help in amicable conclusion of the matter."

4. M/s KICT, through their Chief Financial Officer, Ms. Nim May Chan, submitted additional written reply (dated 08.06.2015) to the show cause notice, which is reproduced as follows:

"Reference to the captioned show cause No. PCA/3074/2015-Audit dated 31st March 2015, please note our response to the observations made by Directorate of Post Clearance Audit ("PCA") Customs, as below.

Import Details:

*GD Number: KAPW-25356 Dated 29th Aug 2013
Assessed Cost per GD: PKR 347,654,143/-
Proforma Invoice Number: 12ED1191 dated 07th Nov 2012
LC Number: 415010243960-G dated 19th Dec 2012
Vendor Name: Changzhou GT Electric Co. Ltd (Peoples Republic of China)
Project Description: Import for Power Conversion / Regenerative Equipment for Quay Cranes ("QC")*

Project Details:

In order to reduce both carbon emission and fuel consumption, Karachi International Container Terminal ("KICT") initiated and completed (in 2014) modification of existing fleet of conventional Quay Cranes, to run on centralized power being produced in the Power House of 16 Mega Watt capacity, specially built for this purpose. Modification of conventional QCs to "Electrified Cranes" was a technological challenge being undertaken by KICT, also experienced in very few ports of Hutchison Port Holdings.

Conventional QCs were equipped with the "on-board" individual "Generating Sets", any excess regenerative energy (re-usable) produced during the crane operation, was dissipated/ lost. Therefore, in order to re-use the excess regenerative energy, power supply source of all QCs were modified from the de-centralized (individual "on-board" generating set for each QC) mode to the "centralized" source, so that regenerative power can be stored and reused.

Under cranes electrification, electric drive is replaced with the original diesel drive, to achieve the advantages of clean energy, environmental protection and lower consumption of fuel. The mechanic / electric components required for electrification / modification of cranes consists mainly of (i) Cable Reeling System, (ii) Step-down HV Transformers, (iii) Switchgears, (iv) LV Control (v) Circuit Breaker, (vi) Cabling, (vii) Harmonic distortion suppression system and (viii) Re-regenerative Power absorption system.

MECHANISM OF POWER CONVERSION / REGENERATION FOR QUAY CRANES:

Step 1: When Quay Cranes lift-up the containers, the required energy is supplied by Power House ("centralized" source for every QC).

Step 2: When Quay Cranes lower-down the containers, excess regenerative energy (otherwise dissipated in case of conventional QCs) of crane get returned and stored in the main supply of Power House.

Step 3: In the next crane lift-up, both (i) excess regenerative energy and yet stored (hence re-usable) (from Step 2) and (ii) any further power requirement, will be supplied from Power House (hence fuel saving).

Due to the electrification of Quay Cranes, 35% - 40% reduction / savings in fuel consumption has been evidenced.

RESPONSE TO THE OBSERVATIONS RAISED BY PCA:

1. Per paragraph 1st of the Show Cause notice PCA/3074/2015-Audit, it was mentioned that Karachi International Container Terminal Limited ("KICT"), failed to get exemption from Board of Investment ("BOI") under SRO 575(I)/2006.

Please note KICT applied for the exemption against the said SRO for total of six items to be imported under the project, KICT WAS ALLOWED FOR THE EXEMPTION on three items per BOI letter U.O.No.1(254)/2013-PP dated 24th Jul 2013, detailed as below.

Extract of Annexure-B related to "QC Modification Project"						
S. N	Item Description	Exemption Allowed / Disallowed	Custom Duty Rate (Applicable)	Sales Tax (Applicable)	Income Tax (Applicable)	Collectorate
1	Frequency Conversion Cable Reel and Control Box	Disallowed	5%	0%	5%	KAPR
2	Cable Reel High Voltage 11KV 3 core 35 mm	Disallowed	5%	0%	5%	KAPR
3	AC Re-generative Power Unit and Aux Component	Allowed	5%	0%	5%	KAPR
4	Cable Reel Platform, Walkway, handrails	Disallowed	5%	0%	5%	KAPR
5	AC Re-generative Power Unit and Aux Component 340KW	Allowed	5%	0%	5%	KAPR
6	Material for installation on site and accessories	Allowed	5%	0%	5%	KAPR

Benefit under SRO 575(I)/2006 as allowed by BOI per Annexure-B, was claimed on GD KAPW-25356 Dated 29th Aug 2013.

2. Per point (a) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "Cable Reel and Control Box, diameter 5800mm", QTY 06 sets was wrongly declared under Pakistan Custom Tariff ("PCT"), and claimed PCT 7326.9090 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	7326.909	Other articles of iron or steel

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 36,995,472/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	7,399,094	7,399,094
ST @ 20% (GST 7%+AST3%)	7,399,094	8,878,913	1,479,819
I/Tax @ 5.5%	2,441,701	2,930,041	488,340
Total Short Paid / (Excess)			9,367,253

KICT'S RESPONSE:

Please note, the subject item "FREQUENCY CONVERSION CABLE REEL AND CONTROL BOX" IS AN INTEGRAL PART OF THE CRANE. IT IS A COMBINATION OF CABLE SPOOL, GEAR BOX, CONTROL BOX AND MOTOR.

IT IS NOT MERELY A PIECE OF "IRON OR STEEL", AS SUGGESTED BY PCA.

SAME SHOULD BE TREATED AS CRANE PART UNDER PCT 8431.49 "PARTS SUITABLE FOR USE IN OF MACHINERY OF HEADING 84.26 (SHIP CRANES)".

IMPERATIVE TO MENTION THAT CHAPTER 73 OF PAKISTAN CUSTOMS TARIFF MAINLY COVERS "CAST IRON" PRODUCTS.

Details of HS Codes as requested by KICT			
Remarks	HS Code	HS Code Description	
As per KICT's request	8431.4900	Parts suitable for use in of machinery of heading 84.26 (Ship Cranes)	
Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 36,995,472/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 0% (SRO 659%)	-	-	-
ST @ 17%	7,399,094	6,289,230	(1,109,864)
I/Tax @ 5.5%	2,441,701	2,380,659	(61,042)
Total Short / (Excess) Paid			(1,170,906)

3. Per point (b) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "High Voltage Cable 11KV/3 Core", was not properly assessed under Pakistan Custom Tariff ("PCT"), and claimed PCT 8544.600 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	8544.600	Insulated Wire, cable including Co-axial Cable

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 32,585,210/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	6,517,256	6,517,256
ST @ 20% (GST17%+AST3%)	6,517,256	7,820,707	1,303,451
I/Tax @ 5.5%	2,150,695	2,580,833	430,138
Total Short / (Excess) Paid			8,250,845

KICT'S RESPONSE:

We understand the appropriateness of PCT as advised by Post Clearance Audit, HOWEVER AVAILABLE DUTY CONCESSION UNDER SRO 659 ("FREE TRADE AGREEMENT WITH CHINA") SHOULD BE ALLOWED.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 32,585,210/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 16% (SRO 659)	-	5,213,634	5,213,634
ST @ 17%	6,517,256	6,425,803	(91,453)
I/Tax @ 5.5%	2,150,695	2,432,356	281,660

Total Short / (Excess) Paid	5,403,842
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4. Per point (c) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "HV Transformer 1250 KVA", was not properly assessed under Pakistan Custom Tariff ("PCT"), and claimed PCT 8504.220 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	8504.220	Electric Transformer, Converters, Inductors

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 31,707,638/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	6,341,528	6,341,528
ST @ 20% (GST17%+AST3%)	6,341,527	7,609,833	1,268,306
I/Tax @ 5.5%	2,092,704	2,511,245	418,541
Total Short / (Excess) Paid			(c) 8,028,375

KICT'S RESPONSE:

We understand the appropriateness of PCT as advised by Post Clearance Audit, HOWEVER AVAILABLE DUTY CONCESSION UNDER SRO 659 ("FREE TRADE AGREEMENT WITH CHINA") SHOULD BE ALLOWED.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 31,707,638/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 16% (SRO 659)	-	5,073,222	5,073,222
ST @ 17%	6,341,527	6,252,746	(88,781)
I/Tax @ 5.5%	2,092,704	2,366,848	274,144
Total Short / (Excess) Paid			5,258,585

5. Per point (d) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "HV Transformer 250 KVA", was not properly assessed under Pakistan Custom Tariff ("PCT"), and claimed PCT 8504.210 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	8504.210	Electric Transformer, Converters, Inductors

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 19,998,861/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	3,999,772	3,999,772
ST @ 20%	3,999,772	4,799,727	799,955
I/Tax @ 5.5%	1,319,925	1,583,910	263,985
Total Short / (Excess) Paid			(d) 5,063,712

KICT'S RESPONSE:

We understand the appropriateness of PCT as advised by Post Clearance Audit, HOWEVER AVAILABLE DUTY CONCESSION UNDER SRO 659 ("FREE TRADE AGREEMENT WITH CHINA") SHOULD BE ALLOWED.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 19,998,861/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20% (SRO 659 16%)	-	3,199,818	3,199,818
ST @ 17%	3,999,772	3,943,775	(55,997)
I/Tax @ 5.5%	1,319,925	1,492,835	172,910
Total Short / (Excess) Paid			3,316,731

6. Per point (e) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "HV Switchgear 11KV/630A", was not properly assessed under Pakistan Custom Tariff ("PCT"), and claimed PCT 8504.220 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	8504.220	Electric Transformer, Converters, Inductors

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 52,733,075/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	10,546,615	10,546,615
ST @ 20% GST17%+AST3%)	10,546,615	12,655,938	2,109,323
I/Tax @ 5.5%	3,480,383	4,176,460	696,077
Total Short / (Excess) Paid			(e) 13,352,015

KICT'S RESPONSE:

We understand the most appropriate PCT for subject item as 8536.201, Circuit Breaker above 10 amp"

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per KICT's request	8536.201	Circuit Breaker above 10 amp

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 52,733,075/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 5%	-	2,636,654	2,636,654
ST @ 17%	10,546,615	9,412,854	(1,133,761)
I/Tax @ 5.5%	3,480,383	3,563,042	82,659
Total Short / (Excess) Paid			1,585,552

7. Per point (f) of the Show Cause notice PCA/3074/2015-Audit, it has been mentioned that item "Platform, Walkways, Handrails", was not properly assessed under Pakistan Custom Tariff ("PCT"), and claimed PCT 7308.9090 as relevant to the item.

Details of HS Codes as used by PCA		
Remarks	HS Code	HS Code Description
As per Post Audit observation	7308.9090	Structures (pre-fabricated building) & parts of structures - Others

Duty Taxes Claimed per Post Clearance Audit as below			
(Amount in PKR)			
Item(Assessed Value PKR 25,034,894/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	5,006,979	5,006,979
ST @ 20% (GST17%+AST3%)	5,006,979	6,008,374	1001,395
I/Tax @ 5.5%	1,652,303	1,982,763	330,460
Total Short / (Excess) Paid			(f) 6,338,834

KICT'S RESPONSE:

We understand and accept the appropriateness of PCT as advised by Post Clearance Audit on above mentioned item "Platform, Walkways, Handrails".

Duty Taxes Claimed per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 25,034,894/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 20%	-	5,006,979	5,006,979
ST @ 17%	5,006,979	5,107,118	100,139
I/Tax @ 5.5%	1,652,303	1,933,195	280,892
Total Short / (Excess) Paid			5,388,010

BELOW IS THE SUMMARY OF TOTAL CLAIM PER POST CLERARNACE AUDIT

SUMMARY OF Total Demand as raised by Post Clearance Audit			
(Amount in PKR)			
	Paid	Payable	Short / (Excess) Paid
CD	-	39,811,244	39,811,244
ST	39,811,243	47,773,492	7,962,249
I/Tax	13,137,711	15,765,252	2,627,541
Total Short / (Excess) Paid			(a to f) 50,401,034

BELOW IS THE SUMMARY OF TOTAL CLAIM PER KARCHI INTERNATIONAL CONTAINER TERMINAL:

summary of total payable per KICT's working			
(Amount in PKR)			
	Paid	Payable	Total Short Payable/ (Excess) Paid
CD	-	21,130,306	21,130,306
ST	39,811,243	37,431,528	(2,379,715)
I/Tax	13,137,711	14,168,934	1,031,223
Total Short Paid / (Excess)			(A to F) 19,781,814

Further to the items as mentioned by PCA above, we would like to request to kindly review the PCTs of other items claimed by us in GD and which should be allowed to reclassify in more appropriate tariff headings, detailed as below:

8. Item # 2 per GD "HV Connecting Cable 11KV/3 Core", was rightfully classified as PCT 8544.600, however available benefit under SRO 659 WAS NOT AVAILED. We request to allow us the said concession under this request.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 8,334,383/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 16% (SRO 659)	1,666,877	1,333,501	(333,376)
ST @ 17%	2,000,252	1,643,540	(356,712)
I/Tax @ 5.5%	660,083	622,128	(37,955)
Total Short / (Excess) Paid			(728,043)

9. Item # 4 per GD "Multicore Control Cable", was rightfully classified as PCT 8544.600, however available benefit under SRO 659 WAS NOT AVAILED. We request to allow us the said concession under this request.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 13,074,801/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 16% (SRO 659)	2,614,960	2,091,968	(522,992)
ST @ 17%	3,137,952	2,578,351	(559,601)
I/Tax @ 5.5%	1,035,524	975,981	(59,543)
Total Short / (Excess) Paid			(1,142,136)

10. Item # 8 per GD "Lower Voltage MCCB Panel", was mistakenly classified as PCT 8537.109 "Boards, panels, consoles, desk, cabinet and other base equipped with two or more apparatus of heading 85.35 & 85.36 for electric control or distribution of electricity", however SAME SHOULD HAVE BEEN CLASSIFIED AS PCT 8536.201 "CIRCUIT BARKERS ABOVE 10 AMP". We request to allow us to correctly classify the item per Customs Tariff.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 11,815,308/-)			
	Paid	Payable	Short / (Excess) Paid
CD @ 5% (SRO 659)	2,363,062	590,765	(1,772,297)
ST @ 17%	2,835,674	2,109,032	(726,642)
I/Tax @ 5.5%	935,772	798,331	(137,441)
Total Short / (Excess) Paid			(2,636,380)

11. Item # 9 per GD "Harmonic Compensation Panel", was mistakenly classified as PCT 8537.109 "Boards, panels, consoles, desk, cabinet and other base equipped with two or more apparatus of heading 85.35 & 85.36 for electric control or distribution of electricity", however SAME SHOULD HAVE BEEN CLASSIFIED AS PCT 8504.320 "ELECTRIC TRANSFORMER, STATIC CONVERTERS & INDUCTORS NOT EXCEEDING 16 KVA". We request to allow us to correctly classify the item per Customs Tariff.

Duty Taxes per KICT as below			
(Amount in PKR)			
Item(Assessed Value PKR 14,962,828/-)			
	Paid	Payable	Short / (Excess) Paid

CD @ 16% SRO 659	2,992,566	2,394,052	(598,514)
ST @ 17%	3,591,079	2,950,670	(640,409)
I/Tax @ 5.5%	1,185,056	1,116,915	(68,141)
Total Short / (Excess) Paid			(1,307,064)

SUMMARY OF TOTAL NET PAYABLE PER KICT'S WORKING
UNDER THE GD KAPW-25356 DATED 29TH AUG 2013

	Paid	Payable	Total Short Payable / (Excess) Paid
Custom Duty	9,637,464	27,540,591	17,903,127
Sales Tax	51,376,201	46,713,121	(4,663,080)
Income Tax	16,954,146	17,682,290	728,144
Total	77,967,811	91,936,004	(A to F) minus (G to J) 13,968,191

We hereby sum up our request by reiterating the facts as below:

- Item # 1 of the GD KAPW-25356 "Frequency Conversion Cable Reel and Control Box" should be rightfully treated and classified in PCT AS CRANE PART INSTEAD OF ARTICLE OF IRON OR STEEL.
- Available benefits under SRO 659 should be allowed.
- Sales Tax should only be charged at standard rate, as ADDITIONAL SALES TAX IS NOT APPLICABLE ON KICT PER THE CONDITIONS OF SRO 367(I)/2013 dated 08th May 2013.
- Other items not appropriately classified should be treated per available PCT codes.

We hope the above provided explanation will satisfy the concerns and will help in amicable conclusion of the matter."

5. Subsequently counsel for M/s KICT, submitted Synopsis of legal arguments (dated 16.06.2015), which are reproduced as follows:

"Introductory facts:

1. This synopsis is supplemental to the reply to the above show cause notice and supporting documents already submitted by KICT.
2. KICT is a subsidiary of Hutchison Ports Holding Limited ("HPH"), the world leading port investor, developer and operator. The HPH network of port operations comprises 319 berths in 52 ports spanning 26 countries throughout Asia, the Middle East, Europe, the Americas and Australasia. HPH has one of the most technology-intensive commercial operations in the port industry. Through decades of investment and research in improving operational efficiency, HPH has pioneered innovations in all its operational areas and has become one of the most technologically advanced port operators.
3. Pursuant to a concession granted by the Karachi Port Trust, KICT established and operates Pakistan's leading container terminal at Karachi Port. The terminal has been in operation since 1998. It is located within the Port of Karachi, a natural deepwater harbour west of the Indus Delta on the Arabian Sea. The facility has five berths equipped with modern container-handling equipment.

4. KICT is built over 26 hectares and offers 5 berths. It is equipped inter alia with 11 container cranes and 29 rubber tyred gantry cranes.
5. In year 2012 KICT planned to import 16 sets of hybrid control systems ("HCSs") for rubber tyred gantry cranes ("RTGCs") from Changzou GT Electric Co. Ltd. of the People's Republic of China. The HCS were imported in four shipments with each composed of 4 sets of HCA. Hybrid system is the combination of two sources of power (Diesel Generator and Battery) to achieve efficiency and conserve fuel.
6. HCSs consists of (i) Specialized Batteries, (ii) Boost-up Battery Inverter, (iii) Discharging inverter and (iv) discharge control system for RTGCs which work together with SMALLER diesel generator.

Import Details:

7. The details of the goods declarations and commercial invoices are as follows:
 - a. KAPW-154919 dated 08.05.2013; Commercial Invoice no. 13ED03013 dated 25.03.2013;
 - b. KAPW-6001 dated 19.07.2013; Commercial Invoice no. 13ED05042 dated 06.06.2013
 - c. KAPW-26938 dated 03.09.2013; Commercial Invoice no. 13ED07065 dated 12.08.2013
 - d. KAPW-40576 dated 01st Oct 2013; Commercial Invoice no. 13ED07066 dated 11.09.2013
8. Payment for each of the above four shipments was made through a single Letter of Credit bearing no. 415010241917-G established on 06.12.2012, prior to the arrival of the first of four shipments.
9. The HCSs fell within the scope of item no. 16 of SRO 575(I)/2006 (as amended) ("SRO 575"), under which the Federal Government exempted plant, machinery, equipment and apparatus, including capital goods, specified therein from customs duty in excess of 5% and the whole of sales tax subject to certain conditions. Item 16 covers "machinery, equipment and other capital goods inter alia for transportation, storage communications and infrastructure projects." In case of goods falling under item 16(i) – (v) of SRO 575, the conditions specified in SRO 575 shall apply as under:
 - a. Condition listed at number (i) of SRO 575 (the "Not Locally Manufactured Condition") : the goods sought to be imported should not fall within the list of locally manufactured items as notified through a Customs General Order or be certified as locally manufactured by the Engineering Development Board. The condition that the imported goods should not be locally manufactured was applicable to the HCSs given that their total C&F value was less than US\$ 50 million.
 - b. Condition listed at number (ii) of SRO 575, namely production of a certificate from the importer in the form of Annexure A stating that goods are "the company's bona fide requirement", is expressly stated not to be applicable to goods falling within item 16 of SRO 575.
 - c. Condition listed at number (iii) of SRO 575: such condition is applicable in case of partial shipments of machinery and equipment for setting up of a plant. Prior to the arrival of the first shipment, KICT submitted complete details of the 16 HCSs to be imported through partial shipments and a single letter of credit. Furthermore, in its application for the issuance of Annex B, KICT provided details of the proforma invoice which set forth the total number of HCSs to be imported by KICT.
 - d. Condition listed at column no. 5 of item 16 of SRO 575: Importer is required to produce certificate from Board of Investment certifying in the prescribed

format as per Annex B that "the imported goods are bonafide project requirement."

10. KICT made a request to the BOI for issuance of the certificate as per Annex B in February 2013, 3 months prior to the arrival of the first shipment.
 11. Through BOI's letter no. U.O.No.1(254)/2013-PP dated 24.07.2013, the BOI was pleased to issue Annex B in respect of all items comprising the 16 HCSs. It may be clarified here that by the time Annex B was issued, two shipments of HCSs had already arrived. However, the Annex B issued by BOI covered all the constituent parts and equipment comprised in all 16 of the HCSs imported by KICT.
 12. The show cause notice alleges that KICT is not entitled to the benefit of SRO 575 in respect of the first two shipments of the HCSs on the sole pretext that Annex B was issued by BOI following the arrival of the said shipments. Such allegation does not take into account that KICT in its application to the BOI in February 2013 for grant of Annex B disclosed the fact that the 16 HCSs were going to be imported through partial shipments and were in fact paid for through a single Letter of Credit. KICT thus made substantial compliance of the condition listed at number (iii) of SRO 575, under which the aggregate amount of goods being imported through partial shipments are required to be disclosed to BOI. The refusal to grant KICT the benefit of SRO 575 in respect of the first two shipments of HCSs despite the issuance of Annex B in respect of all four shipments shall be illegal on the following grounds:
 - a. Such refusal would essentially KICT is being penalized for delay by BOI, the governmental authority responsible for processing exemption applications under SRO 575.
 - b. Such refusal will not take into account the fact that the import of HCSs was going to be made through partial shipments was disclosed by KICT in February 2013, in satisfaction of the conditions listed at number (iii) of SRO 575.
 - c. Such refusal shall be contrary to the object of SRO 575, namely to grant exemption on import of specified goods provided such goods are the bona fide requirement of the importer and are not manufactured locally. The superior courts of Pakistan in a case 2003 SCMR 318 (Mst. Arshan Bi versus Maula Baksh) PLD 1986 SC 35 that court is empowered to grant such relief as justice of case may be demand and for determining relief asked for, the substance rather than form should be examined. The fact that Annex B, which certifies the foregoing, was granted after the import of the first two shipments does not take away from the fact that the HCSs are a bona fide project requirement and are not manufactured locally. The Honorable High Court in Lahore confirmed in PTD 2009 722 confirmed that any doubt in exemption is to be resolved in favour of tax payer.
 - d. Such refusal shall be premised on a hyper technical interpretation of SRO 575 and deny KICT the benefit of SRO 575 when KICT is otherwise fully entitled to such benefit. This was reaffirmed by the Honourable Supreme Court of Pakistan in the case of Mst. Arshan Bi versus Maula Baksh) 2003 SCMR 318."
6. Mr. Shyam Lal (Principal Appraiser) was present on behalf of the detecting Agency and stated that an audit observation was issued to M/s KICT vide C.No.PCA/3074/2014/Audit/ 10589A dated 09.02.2015 and while a response was received, the importer failed to produce the mandatory certificate or any other documentary evidence to justify their position for availing the benefit of Serial No.16 of SRO 575(I)/2006 dated

05.06.2006. He further reiterated the fact and legal position as outlined by the detecting Agency in the contravention report.

7. 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) the Customs Act, 1969. The relevant part is reproduced as under:

"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
- (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 that the importer mis-declared the PCT heading of the imported goods and in the process deprived the exchequer of the leviable duty / taxes. Moreover the importer made an untrue 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 cleared the imported goods on payment of lesser amount of duty and taxes through self-assessment. As per literature provided by the respondent, imported goods collectively referred to as a "Hybrid System" comprise power conversion / regenerative equipment (with std accessories) whose primary function is to reduce carbon emission and fuel consumption. This objective was to be achieved by modifying the existing Quay Cranes to run on electricity being produced in KICT's 16 MW power house rather than on using individual generators installed on each Quay crane. To this end the suggested / declared PCT heading of the imported items appears to be inconsistent with the General Rules of Interpretation (GIR) as provided for in the 1st Schedule to the Customs Act, 1969 (Pakistan's Custom Tariff) as rule 1 stipulates that classification shall be determined according to the terms of the heading and any related Section or Chapter Notes. If however classification is not possible according to this Rule, then the GIR provide for a sequential, step-wise methodology to arrive at the most appropriate heading applicable to the goods under consideration. The issue of classification was also discussed threadbare during the course of hearings and the respondents expressed their inability to provide a rational/lawful basis for the declared PCT heading. In the light of the respondents position and based on the individual function of the impugned items and relevant literature, the appropriate tariff heading of the Pakistan Custom Tariff (Vol.1) in respect of the imported goods, as individually declared in the relevant invoice / GD, is as follows:

- i) The Cable Reel and Control Box, Diameter 5800 mm. (Qty 06) whose PCT was declared as 7307.2900 is in-appropriate as the said heading relates to tubes / pipe fittings whereas the instant equipment consists of a HV control box, Cable / reel motor / Gear box and therefore, in view of its description / functionality, is appropriately classifiable against PCT 8544.4990 attracting Custom Duty @ 20% ad. Val.

- ii) The item High Voltage Cable 11KV/3 core (Qty. 2550 Mtr.) was declared at 7307.2900 whereas the item being a 3-core High Voltage Cable is more appropriately classifiable in its proper specific heading i.e. 8544.6000.
- iii) The item HV Transformer 1250 KVA (Qty.06) was assessed at PCT heading 8504.2100 which as per description in the relevant sub-heading relates to "*Dielectric Transformers* ...". As per invoice / packing list, the imported item is not a Di-electric transformer and hence its appropriate classification would be 8504.3400 attracting Custom Duty @ 20% ad Val.
- iv) The item HV Transformer 250 KVA (Qty.06) is appropriately classifiable at PCT heading 8504.3300 attracting Customs Duty @ 20% ad Valorem as the declared / assessed heading is inappropriate keeping in mind its description as available on the GD /Invoice.
- v) The item HV Switchgear 11KV/630A (Qty.06) is basically electrical / controlling equipment and is appropriately classifiable in the heading specified for such goods i.e. 8537.2000, whereas the importer has mis-declared the PCT heading as 8504.3200.
- vi) The item Platform, Walkways, Handrails (Qty.06) were in-correctly classified under PCT heading 7307.2900 whereas its correct classification is at 7308.9090, being structures and part thereof.

8. On the issue of whether concession under the Pak-China FTA, as notified vide SRO 659(I)/2007 was admissible or not considering that the relevant FTA certificate (supplied with the GD) indicated a single PCT heading i.e. 8537.10 whereas, in the respective goods declaration, the importer had declared the items individually alongwith respective PCTs. In the respondents opinion, their stance merited consideration as the goods did originate in China for which the Chinese authorities had issued a FTA certificate. However it is a fact that concession under FTA are to be strictly regulated and in this case the declaration(s) on FTA and its respective GD was patently different and hence concession in terms of SRO 659(I)/2007 dated 30-06-2007 could not be allowed. Moreover a notification which grants exemption of levies in excess of the tariff rates, needs to be strictly construed as has been held by the Honorable Supreme Court of Pakistan (2006 SCMR 1577, 1992 SCMR 1652) and therefore it is the finding of this forum that the concession under the FTA (vide SRO 659(I)/2007 dated 30-06-2007) was unlawfully availed. In addition the invoice indicated 14 different imported item on the basis of which the Goods Declaration was filed, whereas the FTA certificate only indicates a single item which fact alone is adequate to deny any concession under the aforesaid notification.

9. On the issue of Additional Sales Tax, respondents placed on record copy of SRO 367(I)/2013 dated 08.05.2013, which amended Rule 58-B of the the Sales Tax special procedures Rules, 2007. By virtue of the said amendment, the said Rule stood amended (by insertion of clause (iii)). Prior to this amendment service providers, importing goods for in-house use were liable to this value addition tax. After this amendment dated 08.05.2013, registered service providers importing goods for their in-house business use or for furtherance of their taxable activity were exempt from value addition tax at the time of import of goods provided that these goods are not intended for further supply/sale. As the instant goods were imported after issuance of SRO 367(I)/2013 dated 08.05.2013 and for in-house use, a fact not controverted by the department, the impugned goods stood excluded from of levy additional Sales Tax @ 3%.

10. Based on the ~~facts and circumstances~~ and scrutiny of the record as available on file, the charges of mis declaration are ~~not~~ established. Accordingly it is ordered as follows:

- i). The ~~detection~~ ~~is directed to~~ work-out the recoverable amount as per the tariff classification ~~in para 7~~ without benefit of SRO 659(1)/2007 dated 30-06-2007 (i.e. ~~the~~ concession).
- ii). The ~~element~~ ~~of~~ Sales Tax is not leviable as the goods were meant for in-house consumption and hence not recoverable.
- iii). Based on ~~the~~ directions at (i) & (ii), the recoverable liability of duty and taxes, ~~as~~ ~~is~~ to be deposited immediately by the respondents upon receipt of demand ~~from~~ the relevant customs authorities.
- iv). As the ~~facts~~ ~~of~~ declaration is established, a penalty of Rs.1,000,000 (Rupees One Million) ~~on~~ M/s Karachi International Container Terminal in terms of clause (14) of ~~Section~~ 156(1) of the Customs Act, 1969. I also impose a penalty of Rs.100,000 (Rupees one hundred thousand) on the clearing agent M/s Ports Connection (Pvt.) in terms of clause (14) of Section 156(1) of the Customs Act, 1969, as their role ~~cannot~~ be ignored considering that they acted in connivance with the importer ~~for violating~~ the aforementioned provisions of law.

11. This order consists of (19) pages and each page bears my initial as well as official seal with full signature on the last page.


(Fareed Iqbal Qureshi)
Collector

To:

1. M/s Karachi International Container Terminal Limited, Administration Building Berth No, 26-30, West Warf, Dockyard Road, Karachi.
2. M/s Ports Connection (Pvt.) Limited, Suit No.12, Mezzanine Floor, Plots No.5, Nagina Centre, M.A. Jinnah Road, Karachi (CHAL No.2968).

Copy to:

1. Member (Legal), Federal Board of Revenue, Islamabad.
2. Director, Directorate General of Post Clearance Audit (Customs), Karachi.
3. Collector, Model Customs Collectorate of Appraisement (West), Custom House, Karachi.
4. M/s RIAALAW, D-67, Block 4, Clifton, Karachi.
5. Guard File.


(Fareed Iqbal Qureshi)
Collector