GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL,
KARACHI BENCH-I,
3RD FLOOR, JAMIL CHAMBERS,
SADDAR, KARACHI

Before: ***Mr. Muhammad Nadeem Qureshi, Member (Judicial-I), Karachi***

Customs Appeal No. K-733/2015

M/s. King Chemicals Corporation,
Through its duly authorized Person,
Mr. Waqas Rafiq, having registered office at
N54-K, Khushal Khan Road, PECHS, Block-2,
Karachi. .....

Versus

1. **The Additional Collector (Adjudication-I),**
Customs (Adjudication-I),
Karachi.

2. **The Collector of Customs,**
MCC Appraisement (West),
Karachi. ..... **Respondents**

Date of hearing: 24.06.2016
Date of order: 16.07.2016

Mr. Usman Shaikh, Advocate, present for the appellant.
Mr. Siddique Zia, A.O, present for the respondents.

JUDGEMENT

Muhammad Nadeem Qureshi, Member (Judicial-I) : By this judgement I intend to dispose of the Customs Appeal No.K-733 of 2015 filed by M/s. King Chemicals Corporation, against the Order-in-Original No. 444 of 2014-15 dated 09.03.2015, passed by the Collector of Customs (Adjudication-I), Karachi.

2. Brief facts of the case as reported by MCC Appraisement, (West) Karachi West are that the importer M/s King Chemicals Corporation electronically filed Goods Declaration declared to contain CYPERMETHRIN; PERMETHRIN and ESBIOTHRIN under HS code 2919.9090, at total invoice value of US$ 58400.00. The importer determined his liability of payment of applicable duty & taxes and sought under Section 79(1) of the Customs Act, 1969. In order to check as to whether the importer has correctly paid the legitimate amount of duties and taxes the under reference GD was selected for scrutiny in terms of Section 80 of

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Customs Act, 1969. Scrutiny of the Goods Declaration revealed that the importer has wrongly declared HS code as 2919.9090 by declaring goods CYPERMETHRIN; PERMETHRIN and ESBIOTHRIN under HS code chargeable to Customs Duty @ 0% Ad. Val and claimed SRO No. 1125(I)/2011-3 AST@ 1%, ST@ 2% and I. Tax @1% U/S 148 C/.9 PT-11, 2nd Sch. IT0-10 IT@ 1% under declared HS code; Whereas the goods are "CYPERMETHRIN; PERMETHRIN and ESBIOTHRIN" correctly classifiable under PCT 2926.9090; 2916.2000 & 2916.2000 respectively attracting Customs duty @ 0% Ad. Val where no exemption/benefits of SRO 1125(I)/2011-3 AST@ 1 % -ST @ 2 % and I. Tax @1% U/S 148 C/.9 PT-11, 2nd Sch.IT0-10 IT @ 1 % are applicable on aforesaid goods. However importer has mis declared the HS Code as 2919.9090 in order to avail SRO No. 1125(1)/2011-3 AST@ 1% ST@ 2% and /.Tax @1% U/S 148 C/.9 PT-11, 2nd Sch.IT0-10 IT@ 1 % under declared HS code by claiming the exemption/benefits of SR01125(1)/2011-3 -AST@ 1 % -ST@ 2 %and /.Tax @1% U/S 148 C/.9 PT-11,2nd Sch.IT0-10 -IT@ 1% which are not extendable to the subject good. The offending value of mis declared specification/classification and wrong claimed of concessionary exemption notification amounts to Rs.6,316,015/-. The aforesaid facts prove that the importer has deliberately declared / incorrect HS code in order to suppress the taxes, willfully and with malafide intention and have attempted to defraud the Government from its legitimate revenue amounting to Rs.1,299,022/-.

3. The Additional Collector of Customs (Adjudication) Karachi vide Order-in-Original No. 444/2014-15 dated 09.03.2015.The operative part of the impugned order reads as under:-

> *"I have gone through the case record and considered written/verbal arguments of the respondent and the department. The respondent imported the consignment by declaring the goods as CYPERMETHRIN; PERMETHRIN and ESBIOTHRIN under HS code 2919.9090. The samples of the goods were sent to Custom House Laboratory for chemical analysis to determine the actual description. As per Custom House Lab test report the sample on test was found to be "nitrogen and chloro function insecticidally active organic chemical", therefore, the department appropriately classified the goods under PCT 2926.9090, 2916.2000 & 2916.2000. During the course of hearing the DR provided past clearance data confirming the clearance of subject goods under PCT headings as determined by the department. The DR also submitted a copy of GD No. KAPW-HC-120569 dated 06.02.2015, under which the same goods of the same importer were declared and cleared under PCT heading 2916.2000. It is evident that the respondent have mis-declared the classification of the impugned goods and wrongly claimed the benefit of SRO 1125(I)/2011 dated 31.12.2011, to deprive the government from it legitimate revenue to the tune of Rs.1,299,022/-. The respondent failed to discharge his legal obligation as required under section 79(1) of the Customs Act, 1969. Accordingly, charges levelled in the Show Cause Notice stand established. I, therefore, order for confiscation of the offending*

goods under section 156 (1) clause 14, read with section 32 (1) & (2) of the Customs Act, 1969. However, an option under Section 181 of the Customs Act, 1969 is given to the importer to redeem the confiscated goods on payment of 20% Redemption Fine in terms of SRO 499(I)/2009 dated 13.06.2009 of the value of offending goods as determined by the department in addition to payment of duty and taxes chargeable thereon. A penalty equal to 5% of the value of offending goods is also imposed on the importer."

4. Being aggrieved and dis-satisfied with the impugned Order-in-Original, the Appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal.

5. On the date of hearing Mr. Usman Shaikh, Advocate appeared on behalf of the appellant reiterated the facts and contents of the grounds mentioned in the Memo of Appeal and further contended that, the respondent did not apply his judicial mind while determining the issue involve in this, appeal and ignored the mandatory provisions of law and such impugned Order is liable to be set aside. That with utmost respect it is most respectfully that the said three raw material, impugned goods which had been imported by the Appellant are, Cypermethrin is a synthetic pyrethroid used as an insecticide in large-scale commercial agricultural applications as well as in consumer products for domestic purposes. It behaves as a fasts-acting neurotoxin in insects. It is easily degraded on soil and plants but can be effective for weeks when applied to indoor inert surfaces. Permethrin is a common synthetic chemical, widely used as an insecticide, acaricide, and insect repellent. It belongs to the family of synthetic chemicals called pyrethroids and functions as a neurotoxin, affecting neuron membranes by prolonging sodium channel activation. It is not known to rapidly harm most mammals or birds, but is dangerously toxic to fish and to cats: in cats it may induce hyperexcitability, tremors, seizures, and even death. In general, it has a low mammalian toxicity and is poorly absorbed by skin. Bioallethrin is a brand name for an ectoparasiticide. It consists of two of the eight stereosiomers of allethrin in an approximate ratio of 1:1.[1][2] The name Bioallethrin is a registered trademark of Sumitomo Chemical Co., Ltd. [3] Esbiothrin is a mixture of the same two stereosiomers. The said three chemicals had been rightly been placed under PCT 2919.9090 as the same falls under the heading "Esters of inorganic ac .des of non metals and their sales and: their halogenated. sulphonated, nitrated or nitrosated derivatives, the said PCT heading 29090.9090, Code "Others". It is respectfully submitted chat the said raw material can only be treated as Nitrogen based whereas the issue of chloro based as per test report is not clear as only one sample was sent to the customs lab,

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whereas three different chemicals had been imported by the Appellant, as evident from the test report so submitted by the Customs Authorities. It is also matter of record that no method of test has been shown in the Bid test report, which, itself make the entire process of as adopted by the Customs Lab against the set norms. It is a settle law the whenever there is test report the method is to be shown that using which method a particular result has been achieved.

6. He further contended that, the Customs in their contravention report has assessed the three chemicals under, the following PCT 2926.9090, 2916.2000 & 2916.2000. It is respectfully referred that, PCT Code 29.26 is specifically used for Nitrile Function Compounds, where as the Appellant goods are Nitrogen based. The PCT Code 29.16 is for "Unsaturated acyclic mono carboxylic acids, cyclic monocarboxylic acid their anhydrides, halides, peroxides, and peroxyacids, their halogenated sulphonated, nitrated nitro sated derivatives, and the said to do not cover the nitrogen based slats. As per the explanatory notes of Chapter 29, Nitro and nitrosogroups are not to be taken as nitrogen functions. The Customs assessed the subject goods under PCT 2926.9090, 2916.2000 and 2916.2000 so it means however these specific PCT are for Others, However it is admitted fact they are 'Ingredients for Pesticides' so even if Customs version for classification is accepted they would be classified under the Ingredients for Pesticides Heading. It is pertinent to mention that if for the sake of arguments it is assumed that our goods do not fall under the declared PCT heading and Customs Classification is correct, even then we are entitled for exemption provided under SRO 536 (I)/2008. All this is being done for extraneous purposes. Therefore it is referred that the show cause notice is otherwise has been issued in violation of section 81 of the customs Act 1969 read with Rule 439 of the customs rules 2001. He further referred that considering the exemption provided to the goods under SRO 536(I)/2008, the active ingredients/ subject goods also falls within the said benefit provided in the SRO, hence no loss shall be suffered by the government. He further contended that, it is clear that our rights should be regarded under the statutory rules and notifications. Moreover it is proved that it is not a case of willful mis-declaration and wrongly contravention was made due to which we suffered heavy losses. In view of above, he respectfully prayed to accept this appeal and declare that the impugned order issued by respondent is illegal and void and declare that the additional duty demanded by respondents on the basis of impugned order is illegal. Any other reliefs deem fit in the circumstances of the case may also be allowed accordingly.

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7. On behalf of the respondent, Mr. Siddique Zia, A.O, appeared and contended that the no violation of any spirit of law in impugned orders passed by Adjudicating authority. He further contended that the appellant M/s. King chemical Corporation imported a consignment declared to contain Cypermehrin, Permethrin & Esbiothrin falling under HS Code 2919.9090, chargeable to Customs Duty @ 0% with benefit of sales tax under SRO 1125/2011. The goods were examined by the shed staff and representative sample were referred to Customs House lab for test to ascertain the actual description. As per TR of Customs Lab the goods are, "the sample on test in found to be nitrogen and chloro function insecticidally active organic chemical". On scrutiny of import documents in the light of test report it is revealed that the goods are classifiable under HS Code 2916.2000. (Being compounds), respectively attracting CD @ 0% with no exemption/ benefit of SRO 1125/2011 in terms of Sales Tax. It is further added that the same goods of same importer were cleared vide GD No. KAPW-HC-12569 dated 06.02.2015 under HS Code 2916.2000 and since the assessment was found in order. The Collectorate released the goods accordingly. He further contended that the appellant imported the consignment by declaring the goods as Cypermethrin, Permethrin and Esbiothrin, under HS Code 2919.9090. The samples of the goods were sent to Customs House Laboratory for chemical analysis to determine the actual description. As per Customs House Lab test report the sample on test was found to be "nitrogen and chloro function insecticidally active organic chemical", therefore the department appropriately classified the goods under PCT 2926.9090, 2916.2000 & 2616.2000. He also prayed to kindly dismiss the subject appeal and grant any other and / or better relief as may be deemed appropriate in the circumstances of the case and larger interest of justice.

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8. Arguments heard and concluded. After perusal of the record as well as the arguments extended by both the parties, it has been observed and noticed that, the appellant imported the subject goods and filed the Goods Declaration (GD). declared to contain Cypermethrin, Permethrin and Esbiothrin under HS code 2919.9090 and sought clearance under Section 79(1) of the Customs Act, 1969. After scrutiny of the Good Declaration it reveals that the importer has wrongly declared HS code 2919.9090, whereas the subject goods were correctly classifiable under PCT 2926.9090, 2916.2000 & 2916.2000 respectively. Respondents also attributed the allegation against the appellant that for availing the benefit of SRO-1125(I)/2011 dated 31.12.2011, the importer/appellant declared the subject goods under HS code 2919.9090 which are not extendable to

the subject goods. On the subject ground the show cause notice was issued contravening the section 32 (1), 32 (2) and 32(A) and 45 of Section 156(1) of the Customs Act, 1969 along with Provisions of Sales Tax Act, 1990 and Income Tax Ordinance 2001. The appellant contested the show cause notice during the hierarchy of the customs, taken the plea that there is no deliberate mis-declaration nor any element of mens-rea to defraud the government exchequer. In fact in the instant case the declared PCT and PCT assessed by the respondent having the same rate of duty, so there is no need to avoid any taxation deliberately when according to the procedure Sales Tax is paid at import stage, it is just input and the sales tax is charging tax on supplies and whatever is payable after adjustment of input tax from output tax, in presence of that benefit the appellant need not to avoid any legitimate taxation. Under the circumstances, it is clear that appellant for lesser taxes at filing the Goods Declaration is not intentional and possibility of deliberate mis-declaration ruled out as Section 32 of the Customs Act, 1969 can only be invoked when there is nebs-rea for evading government revenue. It is also evident from the record of the case that out of three items / goods imported by the appellant the department has ultimately settled the issue in accordance with the law out of which only item Esbiothrin has been disputed with effect of PCT heading. In support of that issue the respondent's representative submitted a copy of GD No. KAPW-XC-120569 dated 06.02.2015 under which the same goods of the same importer were declared and cleared under PCT heading 2916.2000. Relying on that fact, the department has issued the show cause notice and allegedly appellant that the appellant mis-declared the classification of impugned goods and wrongly claimed the benefit of SRO-1125(I)/2011 dated 31.12.2011. Now, question arises whether the importer has the intention to defraud with the government exchequer and the same has been established by the department / seizing agency through any iota of evidence which could establish the element of mens-rea against the importer and secondly whether the Provision of Section 32 can be invoked in case of any dispute arises with effect of PCT heading? The perusal of the record file as well as the proceedings conducted during the hierarchy of the customs transpires that the element of mens-rea and intentional deliberation to defraud with the government exchequer has not been produced, found or available on record. It is important to mention here that there is no difference in the weight in the whole consignment. It is the mandatory responsibility of the customs department to examine such kind of goods 100% for making the clarity before issuing any show cause notice. Evidently, this is a case of first examination of goods, therefore, in terms of Para 101 (B) of CGO 12 of 2002 Section 32 cannot be invoked against the appellant as no case of *"mens-rea"* made out. Even otherwise if there is mis-declaration of physical description of goods in question, we prefer to place here relevant portion of CGO No. 12 of 2002 for clarification of subject controversy which is as under:-

"(B) Question of taking cognizance of mis-declaration of description, value and PCT headings, --- For invoking Provisions of mis-declaration under section 32 of the Customs Act, 1969 prima facie, an element of "mens rea" should be present i.e. there should be an attempt of willful and deliberate false declaration. The importers may not be charged for mis-declaration under Section 32 of the Customs Act, 1969, in the following situation.

(i) Where an importer makes a correct declaration on bill of entry or opts for 1ST appraisement for determination of correct description, PCT heading of quantity of goods.

(ii) When a consignment is found to contain goods of description other than the one declared falling under separate PCT heading but chargeable to same rate of duty. (Emphasis supplied)

(iii) Where the description of goods is as per declaration but incorrect PCT heading has been mentioned in the bill of entry no mis-declaration case under section 32 of the Customs Act, 1969, be made out provided there is no change in the rate of customs duty as a result of ascertained PCT heading.

9. When the aforesaid provision of SRO-499(I)/2009 as well as Para 9 of CGO 12 of 2002, are read in juxtaposition, it reflects that though a fine can be imposed in terms of SRO-499(I)/2009, on the alleged mis-declaration of physical description of goods, however, the executive or the Collectorate who is responsible for assessment of goods, has to ensure before invoking the provisions of 32 of the Customs Act, 1969, that prima facie an element of "*Mensrea*" is present, *i.e.* there should be an attempt of willful and deliberate false declaration. The directions contained in CGO 12 of 2002, though not binding upon the authorities performing Quasi Judicial functions, but are mandatory in nature and are binding upon the field officers of the Collectorates in terms of section 223 of the Customs Act 1969. The field officers are required to follow such directions and or guidelines before making any contravention report / case against an Importer. The field officers are not authorized to act as per their own discretion in a situation wherein, FBR has already issued directions and or guidelines. after considering the issue in depth in line with settled principles of law, and any act of the field officers in violation of such directions would be illegal and of no consequence. Reliance in this regard may be placed on the case of *Akhtar Hussain Vs. Collector of Customs (Appraisement), and 3 Others (2003 PTD 2090)*, wherein a leanred Division Bench of Honorable High Court, speaking through Mr. Mujeebullah Siddiquie, J, has observed that it is undeniable proposition of law that instructions issued by CBR under section 219 of the Customs Act, 1969 are binding on all the officers of the Customs employed in the execution of Customs Act by virtue of provision contained in section 223 of the Customs Act, if there is any conflict in

the instructions issued by CBR and the instructions/orders issued by the Officer subordinate to the CBR, that [ic] the instructions/orders issued by the subordinate official are invalid and inoperative to the extent of conflict. Insofar as the contention of the learned Counsel for the respondent to the effect that after introduction of PaCCS / electronic assessment, CGO 12 of 2002 is no more applicable, we are of the view that such contention appears to be misconceived, as it has been conceded by the learned Counsel as well as by the departmental representative present before us, that CGO 12 of 2002 [Para101 (B)] still exists and is available on the Statute Book. Therefore, in such a situation, and in absence of any clarification and or amendment, to that effect, we have not been able to persuade ourselves to observe that the same would not be applicable in case of assessment of Goods Declarations under PaCCS or Electronic Processing of the same. It is also necessary to point out that according to Rule 439 of Customs Rules 2001, if there is any dispute of classification or exemptions, the goods shall be provisionally cleared. So when goods have to be assessed provisionally and final determination has to be done so how can allegations be leveled and the contravention be made? Such action is arbitrarily and abuse of power of law.

10. After giving the anxious thought on the controversy, it is also evident from the contents of the Show Cause Notice, which does not speak that appellant made declaration/statement knowingly or having reason to believe that they were untrue/false in any particular substance. There is also no element of collusion made so to avoid the payment of duty and taxes, it is well settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as described by law are not to be done at all. Show Cause Notice under sub-section (1) and Sub-section (2) of the Section 32 of the Customs Act, 1969 are two distinct and separate type of notices as different grounds and period for service of notice has been described. Sub-section (1) of Section 32 is based on the existence of "knowledge" or "reason to believe" in lieu of the declaration falls in a "material particular" are requires the substantive documentary evidence in proof thereof and the person would be held guilty of the said offence but sub-section (2) of Section 32 of the Customs Act, 1969, reasons of some collusion is the mandatory element to establish the charge. In this case respondents hopelessly failed to act in accordance with law and mandatory requirements.

11. Now, it is important to point out that in the subject Show Cause Notice the element of "mens rea" and "existence of knowledge" or "reason to believe" as

well as any collusion and in support thereof no evidence substantiated the said alleged offence brought on record by the respondent. The subject impugned goods were examined under the First Appraisement System, in compliance of Section 79 (1) of the Customs Act, 1969, where the said option was given, the provisions of Section 32 cannot be invoked the language of Section 32 can only be applied on the basis of documents delivered or furnished by the importer or the statement given by him before the Customs authorities, in this particular case while making the declaration the same was in support of the import documents and the description given on said documents the declaration made thereon are of same details. The language of that Section gives a very clear impression that the person who in action with any matter of customs makes or signs or causes to be made sign, or deliver causes to be delivered to an officer of customs any declaration, notice, certificate or other documents in any form *or gives statement in reply to a question before the customs authorities knowingly and intentionally,* having the reasons to believe that such documents and statements are falls under any material particular and he shall be guilty by an offence under this Section the question to giving the reply to an officer in this particular case in presence of the compliance of Section 79 (1) of the Customs Act, 1969 does not arise and element of "mens rea" having "fraudulent intention", "knowledge" and "reason to believe" about the declaration in a material particular has no legal warrant of charge, in absence of the subsequent and specific evidence, which constitutes a sufficient cause in favour of the appellant. It is also a settled law that if such specific particulars are not stated in the Show Cause Notice, the notice would be vague and would not be in consonance with the requirement of sub-section (2) of Section 32 of the Customs Act, 1969.

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12. A perusal of section 32 of the Act reveals, that in addition to declaration any communication, or answers to questions, put by customs officers and found wrong in material terms, constitute an offence within the framework of the said section."So, in order to bring an act, or action within the framework of the word 'false', as used in section 32 of the Act, the act should either be a conscious wrong, or culpable negligence and should be untrue either knowingly or negligently. [Omalsons Corporation v. The Deputy Collector of Customs (Adjudication) Karachi-SBLR 2002 Tribunal 57]. Mala-fide and mens-rea are necessary ingredients for committing any offence, including that of smuggling. [Moon International v. Collector of Customs (Appraisement) Lahore PTCL 2001 CL 133]. There are two questions which need to be addressed before invoking

section 32 of the Customs Act, 1969, for mis-declaration (a) whether mens-rea which is essential element for the purpose of sub-section (1) of section 32 has been proved and (b) whether a demand for short recovery can be made under the provisions of sub-section (2) of section 32, without proving any guilty intention, knowledge, or mens-rea on the part of the maker of the statement. If element of mens-rea is not visible and guilty intention is not proved then provisions of Section 32 cannot be invoked as held in the judgments. Union Sport Playing Cards Co. v. Collector 2002 YLR 2651, Al-Hamd Edible Oil Limited v. Collector 2003 PTD 552 and A.R. Hosiery Works v. Collector of Customs (Export) 2004 PTD 2977. This celebrated principle of law in customs jurisprudence that mis-declaration charges under Section 32 of the Customs Act, 1969, shall not be invoked has now been well settled in large number of cases, i.e. Ibrahim Textile Mills Limited v. F.O.P. PLD 1989 Lahore 47, Central Board of Revenue v. Jalil Sheep Co. 1987 SCMR 630, State Cement Corporation v. G.O.P. C.A. No.43 of 1999 and Cargill Pakistan Seeds (Pvt.) v. Tribunal PTCL 2003 CL.671.

13. Now, the principal question involved in this case is whether the penal provision of act read with notification vide SRO-499(I)/2009 dated 13-06-2009 are attracted in situations where final assessment in the context of automatic clearances under PaCCS are subject to compulsorily first examination of the consignments for the purposes of ascertaining correct description of goods and determining customs value thereof. Superior Judicial Fora have clearly held that when first examination of goods, for whatever reasons is carried out it is the responsibility of the customs officer concerned to determine HS Code, description, value etc of the goods and if, as a consequence of determining particulars of the goods, any discrepancy is found vis-à-vis the declaration made by the importer penal provisions of the Act would not be pressed against the importers. The Appellate authorities and Superior Courts of the country have held that where determination of description/specification and value in respect of a category of goods particularly old and used goods, is manually done as a matter of pre-condition, it cannot be said that the goods are cleared automatically for all practical purposes the same are manual clearances and the automated system of PaCCS is involved only to the extent of filing of goods declarations and up-front payment of duty/taxes as assessed by the importers. Therefore, the chances of any revenue loss and that of getting away with any misdeclaration becomes practically non-existent for the principle reason that the goods have to be examined first and the assessment finalized later. The subject case squarely falls under the above

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category, the subject impugned consignment was subject to first examination for the purpose of determining description, specification of the goods as per laid down procedure and general practice, such activity has not been initiated by the respondents in this case, for reasons better known to the respondents.

14. The option of Section 181 of the Customs Act, 1969 does not specify the amount or value on the basis of which the owner of the goods may be given an option to pay in lieu of the confiscation of the goods such fine as the officer thinks fit. However, through 1st proviso the Board through an order can specify the goods or class of goods where such option shall not be given, whereas 2nd proviso of Section 181 refers to the amount of fine which the Board may fix through issuance of an order be imposed on any goods or class of goods imported in violation of the provisions of Section 15 or a notification issued under Section 16, or any other law for the time being in force. The 1st proviso limit the powers of the adjudicating authority in regards to certain goods or class of goods, wherein, no option for redemption of the goods be given, instead be outrightly confiscated. In 2nd proviso the Board can notify the pitch of fine through a notification on the goods imported in violation of the provision of Section 15 or notification issued under Section 16. Confirming that the Board cannot fix any pitch of fine on any goods or class of goods not falling within 1st and 2nd proviso of Section 181 of the Customs Act, 1969. The goods imported through the instant consignment by the appellant are not those of Section 15 nor of those where any notification has been issued under Section 16 of the Customs Act, 1969 or any other law for the time being in force. Instead a case of Section 32 and 32A of the Customs Act, 1969, for which Board is not empowered to issue notification with fixation of pitch of fine under Section 181 ibid. The legislature intentionally left the imposition of fine on the discretion of the Adjudicating Authority, who has to use that sparely and in the benefit of the tax payer as held by Superior Judicial Fora in plethora of reported judgment, rendering the fixation of redemption fine on the goods or class of goods other than of Section 15 and 16 ibid through notification No. 499(I)/2009 dated 13.06.2009 as ultra vires to the provision of Section 181 of the Customs Act, 1969 and as such without lawful authority as held in reported judgment 2000 PTD 399 Superior Textile Mills Ltd v/s FOP, PLD 2001 SC 600 the Collector of Sales Tax and other vs. Superior Textile Mills Ltd and others, 2012 PTD 302 Saleem Raza v/s FOP & Others. Notwithstanding to the fact, that it is for the legislature or the Board to revisit the provision of Section 181 or the notification No.499(I)/2009 dated 13.06.2009 in the light of observation made in

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the instant judgment. The Tribunal also intend to resolve the bone of contention that what does the word " custom value" mean in the notification. Although this controversy already has been laid to rest by the Hon'ble Division Bench of the High Court of Sindh in reported judgment PTCL 2005 CL 343 M/s. Weave and Knit (Pvt) Ltd v/s Additional Collector of Customs, (Adjudication) Karachi & others. In the said case the fine was imposed on the basis of total amount of duty and taxes of the consignment instead of the amount of duty and taxes evaded.

15. By getting the strength, what has been stated and observed herein above particularly the interpretation of law and legal prepositions in the light of prescribed law and to follow the ratio decidendi from the judgments of Superior Courts along with my additional observations made thereon, the orders passed during hierarchy of the customs are completely suffers from grave legal infirmities hereby declared illegal, ab-initio and of no legal effect on various accounts as detailed above, appeal accordingly allowed with no order as to cost.

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16. Judgment passed and announced accordingly.

Sd/-

(MUHAMMAD NADEEM QURESHI)
Member (Judicial-I)
Karachi

2003
21/07/16.

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
BENCH-I, KARACHI

Appeal No. Old ____ dated ____
Appeal No. New K-733/2015 dated 07/05/2015
M/s King Chemicals Corporation against
Order-in-O/A 444/2014-15 dated 09/03/2015
by Addl. Collector Adj-I Karachi

Copy forwarded to:

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K-APW-HC-85089 (WeBOC)

21/7/16

Asstt. Registrar
Customs Excise & Sales Tax
Appellate Tribunal
Karachi Bench