

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015



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



Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015 Dated: 29-01-2016

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

Respondents : (I) **M/s Sami Pharmaceuticals (Pvt) Ltd**
(NTN-0711973), 34-C, Block-6, PECHS Society, Karachi
(II) **M/s. Ocean Aids International (CHAL No. 48),**
Baghpatti Chambers, Altaf Hussain Road, Karachi

Date of Institution : 10-08-2015 (Show Cause Notice)

Dates of hearings : 19-08-2015, 31-08-2015, 09-09-2015, 29-09-2015, 02-11-2015
and 05-11-2015.

Date of Judgment : 28-01-2016

Present

For Respondents : Mr. Nasim Yousuf, Consultant alongwith Mr. Raees M. Khan
appeared on behalf of the respondent

For Department : Mr. Saud Hassan Khan, Mr. Shahaid & Mr. Liaquat Ali Investigating
Officer, appeared on behalf of the General of Intelligence and
Investigation-FBR (Customs Enforcement), Regional Office, Karachi

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

- 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 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 that may be 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 are reported by the Directorate General of Intelligence and Investigation-FBR (Customs Enforcement), Regional Office, Karachi vide its Contravention Report No. C.No. 65-Appg-I/DCI/Cont/2015/4230 dated 06-07-2015 dated 26-08-2015, as under:-

01. Name and address of the Importer:	M/s Sami Pharmaceuticals (Pvt) Ltd, (NTN-0711973), 34-C, Block-6, PECHS Society, Karachi
02. Name and Address of the Clearing Agent	M/s. Ocean Aids International (CHAL No.48), Baghpatti Chambers, Altaf Hussain Road, Karachi
03. Particulars of Goods Declarations (GDs):	KCSI-HC-003616-06-10-2012 / KCSI-HC-027652-29-02-2012 KCSI-HC-035159-16-03-2012 / KCSI-HC-046152-09-04-2012 KCSI-HC-046152-09-04-2012 / KCSI-HC-063028-12-05-2012 KCSI-HC-082369-21-06-2012 / KCSI-HC-001908-05-07-2012 KCSI-HC-005116-11-07-2012 / KCSI-HC-029919-01-09-2012 KCSI-HC-045074-03-10-2012 / KCSI-HC-101648-09-12-2012

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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

		KCSI-HC-118985-06-03-2013 / KCSI-HC-160281-17-05-2013 KCSI-HC-179511-18-06-2013 / KCSI-HC-001690-04-07-2013 KAPE-HC-23260-19-09-2013 / KAPE-HC-028566-04-10-2013 KAPE-HC-59504-08-10-2014 / KAPE-HC-67187-30-04-2014 KAPE-HC-81644-14-03-2014
04.	Import Value of contravening goods as per GDs on which taxes were paid:	Rs. 57,764,029/-
05.	Duty and Taxes leviable on the contravening goods:	Customs Duty @ 25% = Rs. 14,441,007/- Sales Tax @ 17% = Rs. 12,274,856/- Income Tax = Rs. 4,646,394/- Total = Rs. 31,362,257/-
06.	Duty and Taxes paid on the contravening goods:	Customs Duty @ 5% = Rs. 3,234,513/- Sales Tax @ 17% = Rs. 9,938,081/- Income Tax = Rs. 3,546,832/- Total = Rs. 16,719,426/-
07.	Differential / Evaded amount of duty and taxes (recoverable) on the contravening goods:	Customs Duty = Rs. 11,206,494/- Sales Tax = Rs. 2,336,775/- Income Tax = Rs. 1,099,562/- Total = Rs. 14,642,831/-
08.	Offence :	Mis-using SRO 567(I)/2006 dated 05-06-2006 aimed at evasion of customs duty and other taxes on Aluminum Caps which are fixed on the neck of bottles.
09.	Section of Law violated :	Sections 32(1) & 32(2) read with Sections 79 and 80 of the Customs Act, 1969, read with Sections 3, 6 and 11 of the Sales Tax Act, 1990, further read with Section 148 of the Income Tax Ordinance, 2001. punishable under clauses (14) of Section 156 (I) of the Customs Act, 1969 read with section 33 and 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001.

2. And whereas, the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi received a credible information that various Pharmaceutical companies are indulged in importing huge quantity of Aluminum Caps of bottles which are fixed on the neck of bottles under PCT 7612.9090 and 8309.9000 in the garb of Closing Lids by misusing serial 31 and 32 of category-D of SRO 567(I)/2006 dated 05.06.2006. The facility of concession of Custom Duty is available on the following category of items:

IMPORT AS PER SR.NO.31 OF ABOVE SRO UNDER (PCT-7612.9090)

- * Anodized bottle
- * Rubber plug tear off seal
- * Closing lid (aluminum Al, High density polyethylene/polypropylene) (pharmaceutical Grades)

IMPORT AS PER SR.NO.32 OF ABOVE SRO UNDER (PCT-8309.9000)

- * Stoppers for i.v. solutions
- * Tear off aluminum seals for injectables,
- * Flip of seals for injectable vials
- * Rubber plug with tear off seal,
- * Closing lid (Aluminum Al High density polyethylene/polypropylene) (pharmaceutical grades)


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

3. And whereas, the concessions of Custom duty was allowed to the Pharmaceuticals Industries to import @ 5% under the above PCT, whereas various Pharmaceuticals Companies have imported Aluminum Caps in the garb of Closing lids whereas the Closing lids are different by its nomenclature and its classification, having different function, the same classification has been taken from Google Wikipedia with images along with its function. In view of above, the said SRO does not cover this article i.e., caps are made of aluminum which do not come in the ambit of concession @ of 5% , therefore, the Pharmaceuticals Companies are required to pay statutory rate of duty @ 25% Custom duty. The import data of M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi was retrieved and scrutinized which revealed that the importer M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi in collusion with their above mentioned clearing agents have evaded huge amount of customs duty and other taxes amounting to Rs. 14,642,831/- (Customs Duty amounting to Rs. 11,206,494/-, Sales Tax amounting to Rs. 2,336,775/- and Income Tax amounting to Rs. 1,099,562/-) on import and clearance of consignments of Aluminum Caps under PCT heading 8309.9000 chargeable to Customs Duty @ 25% through misuse of SRO 567(I)/2006 dated 05-06-2006 attracting 5% Customs Duty. The consignments imported and cleared through Model Customs Collocorate of Appraisement (East), Karachi, vide Goods Declarations mentioned as above.

4. And whereas, since, prima facie, by misuse of SRO 567(I)/2006 dated 05-06-2006 attracting 5% Customs Duty, M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi in connivance with their clearing agent M/s. Ocean Aids International (CHAL No. 48), Baghpatti Chambers, Altaf Hussain Road, Karachi evaded huge amount of Customs Duty and other Taxes, hence the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi issued a notice in terms of Section 26 of the Customs Act, 1969, to the importer and clearing agents on 16.06.2015 to supply the relevant information/import documents including contract, L/C and samples of goods/images of goods/manufacturer's catalogue of under reference goods, etc.. However, in response of said notice copies of GDs/Commercial invoices/samples of caps printed with logo of Sami and other related documents were produced.

5. And whereas, it is pertinent to mention that the importer with reference to notice also produced copies of images "Aluminum Caps" duly signed by representative of importer whereas on filing of GDs the description of goods mentioned i.e, Closing lids Aluminum high density polyethylene/polypropylene which is mis-declaration. It is further added that identical consignment of Aluminum Caps imported by M/s Glaxo Smith Kline Pakistan was assessed and cleared attracting 25% Custom duty under PCT heading 8309.9000 vide Goods Declaration No. KAPW-HC-113563 05.03.2014. The importer in connivance with clearing agents have, thus, deliberately mis-used SRO 567(I)/2006 dated 05-06-2006 attracting 5% Customs Duty to evade huge amount of customs duty and other taxes. The evaded amount comes to Rs. 14,642,831/- (Customs Duty amounting to Rs. 11,206,494/-, Sales Tax amounting to Rs. 2,336,775/- and Income Tax amounting to Rs. 1,099,562/-) which is recoverable from the importer.

6. And whereas, thus M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi in connivance with their clearing agent M/s. Ocean Aids International (CHAL No. 48), Baghpatti Chambers, Altaf Hussain Road, Karachi managed to clear under-reference consignments deliberately by mis-using of SRO 567(I)/2006 dated 05-06-2006 attracting 5% customs duty evading thereby customs duty and taxes to the tune of Rs. 14,642,831/- (Customs Duty amounting to Rs. 11,206,494/-, Sales Tax amounting to Rs. 2,336,775/- and Income Tax amounting to Rs. 1,099,562/-) and have thus committed offence of mis-declaration in terms of Sections 32 (1) & 32(2) read with Sections 79 and 80 of the Customs Act, 1969, read with Sections 3,6 & 11 of the Sales Tax Act, 1990, further read with Section 148 of the Income Tax Ordinance, 2001, punishable under clauses 14 of Section 156(1) of the Customs Act, 1969, read with section 33 and 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001. The evaded amount is recoverable from importer besides penal action as warranted under the afore-said provisions of

Page 3


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

law.

7. Accordingly, M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi and their clearing agent M/s. Ocean Aids International (CHAL No. 48), Baghpatti Chambers, Altaf Hussain Road, Karachi were called upon to show cause under provisions of Section 32(2) of the Customs Act, 1969 read with Sections 32(I), 32(2), 79 and 80 of the Customs Act, 1969, read with Sections 3,6 & 11 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance 2001 as to why the evaded amount of duty and taxes to the tune of **Rs. 14,642,831/- (Customs Duty amounting to Rs. 11,206,494/-, Sales Tax amounting to Rs. 2,336,775/- and Income Tax amounting to Rs. 1,099,562/-)** may not be recovered from them and penal action may not be taken against them under clauses 14 of Section 156(1) of the Customs Act, 1969 read with section 33 and 34 of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001.

8. In this case the show cause notice was issued by my predecessor on 10-08-2015. Hearings in the case were fixed **19-08-2015, 31-08-2015, 09-09-2015, 29-09-2015, 02-11-2015 and 05-11-2015** 20-10-2015, 10-11-2015, 17-11-2015 and 30-11-2015. The period of 120 days as provided in sub-section (3) of section 179 of the Customs Act, 1969, for conclusion of adjudication proceeding was set to expire on 08-12-2015 which period was further extended by the undersigned for another 60 days under section 179(3) of the Customs Act, 1969. Mr. Nasim Yousuf, Consultant appeared before the undersigned and he submitted written reply to the show cause notice, which reply is reproduced as follows:-

Subject:- Reply to the show cause notice No. Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015 dated 10-08-2015

This is with reference to the Show Cause Notice issued on the basis of Contravention Report C.No.65-Appg-I/DCI/Cont/2015/4230 dated 06-07-2015 against clearance of Aluminum Closing Lids under SRO 567(1)/2006 Dated 05-06-2006.

In this regard we do hereby authorize Mr. Nasim Yousuf, (Consultant) having CNIC No. 42301-7977200-1 to appear before you on our behalf to defend the charges framed in the subject SCN, along with the following written reply.

PRELIMINARY SUBMISSIONS:

The contents of the subject Show-Cause Notice, have been read and understood. The Respondent, most respectfully, disagrees with the allegations/charges framed in the Show-Cause Notice. The Respondent M/s. Sami Pharmaceuticals (Pvt) Ltd., is a law abiding established Pharmaceutical Concern involved in manufacturing of variety of Drugs and Medicines since last over four decades, holding No.4 Position amongst both National and Multinational manufacturers of Pharmaceutical products, as well as holds an unblemished record in all concerned Government departments i.e. Custom House Karachi, Ministry of Health, Inland Revenue departments and elsewhere.

To fulfill the requirement of manufacturing activities, the respondent regularly imports Raw Material and Packing Material from various countries in house consumption.

Imports of all such Raw Material and Packing Material are being regulated by the Drug Regulatory Authority, and are being released by the Pakistan Customs upon furnishing of ADC Certified documents, additionally the Packing Material is being regulated by the Input Output Co-efficient Organization.

In a routine course of Business the respondent has also imported consignments of impugned item namely Aluminum closing Lids and got the same released strictly in accordance with the prevalent Customs laws and procedures and absolutely never attempted to avoid payment of lawful Duty /Taxes involved in any consignment. The captioned Show-Cause, entailing demand of extra duty / taxes along with proposed imposition of huge fine /penalty, has therefore come to the Respondent as a rude shock, apart from the fact that the imported Aluminum Closing Lids

Page 4


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

were cleared in accordance with the prevailing Customs notification, the issuance of SCN on the basis of false, misleading, trifling contravention report looks not only unsound, unjustified, but also caused an unjustified reason to defame the name and integrity of the respondent as the under reference contravention report was also highlighted through the various news publications even before issuance of the SCN.

In view of the above narrated position, the Respondent requests your authority to kindly consider the following material points of fact and law favoring Respondent's stance and thereby to recall, annul, set-aside, quash, dismiss and withdraw the subject Show-Cause Notice, in line with the principles of natural Justice and fair play. Respondent's submissions are as under:-

BRIEF FACTS

1. That the allegation framed in the subject SCN is nothing but the reflection of misinterpretation of word "CLOSING LID" referred against Sub Serial No. 31 and 32 of Category D of Table III to SRO 567(1)/2006, hence allegations of 'misusing of claimed concessionary notification' and 'mis-declaration' attracting various penal provisions of the Customs Act, 1969, the Sales Tax Act 1990 and the Income Tax Act, 2001 are completely denied.
2. On careful scrutiny however, the above-noted allegations do not hold any pith or substance. In this regard, the following points are submitted for consideration:
 - i That the contents of para 3 of the SCN are very much surprising and self explanatory to the effect that the reporting agency has compared the imported lid with any other item of different nomenclature and its classification, the contents of above referred para read and reproduced below for ready reference:-

"Closing lids are different by its nomenclature and its classification, having different function, the same classification has been taken from Google Wikipedia with images along with its function."

This may be please be noted that no image or the extract from the reported source i.e. Google Wikipedia is provided with the SCN, however through this observation it is revealed that there was no concrete ground or reason to initiate the case, but the same was done on the basis of some misleading information by someone, the observation itself is sufficient to acknowledge that the imported item has been compared with entirely different item even of different nomenclature and classification under the guidance of some unknown and so called credible informer. Since the reporting agency has compared the item with entirely different item having different nomenclature and its classification, hence the reported observation is sufficient to renders the Show Cause as completely untenable, whimsical and arbitrary in nature, hence liable to be set aside on this point alone.

- II. That reference / evidence in the SCN of a Goods Declaration of an identical consignment of Aluminum Caps imported and cleared at standard rate of Customs duty by another Manufacturer, has no legal position at all, the same is therefore not liable to be used as evidence against the respondent. This may please be noted that on the one hand reference of one consignment has been used as an evidence and on the other side the Manufacturer whose evidence is used has also been alleged on the same issue and ground as in the case of respondent. The respondent has no concern what others do and under what circumstances they clear their consignments at standard rate of duty, however the respondent has reasonable believe to state that there may be due to exceeding of permissible quantities under concessionary notification or non availability of ADC certified documents. Hence


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

evidence is not substantial enough to prove that under 'reference item does not qualify for the concession.

In addition to above mentioned point the respondent would like to further submit the following:-

- iii. That while making contravention report it was miserably ignored / understand that through the under reference notification the Federal Government has allowed, almost entire range of required Packing Materials for the Manufacturing of Pharmaceutical products vide concessionary SRO 567(1)/2006 as mentioned vide S. No.1 to 34 specified under the category "D" of Table III to the aforesaid notification, so much so the Raw Material for the Manufacturing of Packing Material is also allowed, hence it does not sound good to hear that essential Packing Material i.e. Lid or cap whatever we name it, is not included in the SRO.
- iv. That as per terms and conditions of the said SRO, only such Raw Material are allowed which are imported for in-house use in the manufacturing of specified Pharmaceutical substances as approved by the Drug Regulatory Agency of Pakistan, recently the concession in customs duty is allowed upon predetermination of Required quantities of every Packing Material by the Input Output coefficient organization. Through these terms and conditions, no Pharmaceutical Industry has liberty to get concession of duty without having certified documents by the DRA or without having final survey certificate issued by the IOCO, And whereas it is an established fact that no consignment was released without ADC certified documents therefore all the consignments reflected in the SCN were qualified for the legitimate concession of customs duty.
- v. That as far as under reference item is concerned, before going into further discussion, it will be appropriate to understand the imported item and it's description mentioned in the notification in the light of following:
- a) Imported item is Pharmaceutical Grade Closing Lid also known as Closing Cap, the same is made of Aluminum with inner lining either of high density polyethylene or polypropylene, used to seal/close the neck of the Glass Bottles used in Pharmaceutical products.
- b) In the notification against HS Code 8309.9000 vide Sub serial V of (Serial No. 32 the same is described as "Closing Lid (Aluminum Al, High Density Polyethylene / Polypropylene) (Pharmaceutical Grade)" for ease of reference the respondent would like to describe the same as under:

HS Code 83.09	Restricted to the following Stoppers, Caps, and Lids and other packing Accessories of base metal. Through the careful reading of Heading 83.09 it will be appreciated that this HS Code is exclusively for the base metal products, hence no Lid or cap made of other material or of composite material than the base metal is classifiable under HS Code 8309.9000
Closing	Adjective word, no need to describe or translate.
Lid	As per definition mentioned in the Wikipedia A lid, also known as a

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

	cap, is part of a container and serves as the cover or seal, usually one that completely closes the object. A lid is often a type of closure. (copy of the relevant page enclosed for ready reference)
Aluminum	Permissible Material of a Lid or cap whatever it is (Aluminum is the only Material which is allowed under concessionary notification)
High Density Polyethylene / Polypropylene	Permissible Material for the Inner lining. (High density polyethylene or Polypropylene)
Pharmaceutical Grade	Permissible Grade of the Product

In the light of above word by word interpretation, and keeping in view the scope of HS Code 83.09, there should be no confusion or hesitation to acknowledge that imported item is nothing else than covered by the under reference concessionary notification.

- vi. That there is no dispute regarding admissibility of concessionary Duty under concessionary notification on the Aluminum closing Lids, but the issue is that the reporting agency is of the view that imported item is Aluminum Cap and not Aluminum Lid and whereas the word "Cap" is not mentioned in the concessionary notification therefore concession is not available.
- vii. That with help of dictionary it is clarified that Cap is an alternate word for the Lid.

The words "Lid or Cap" are defined

- a. In the Wikipedia as:
"A Lid, also known as a cap, is part of a container, and serves the cover or seal, usually one that completely closes the object. A lid is often a type of closure".
- b. In the encyclopedia as :
"A protective lid or cover for an object such as bottle or camera lens"
- c. In the webster's New World Dictionary as:
A moveable cover, hinged or un-attached, as for a box, trunk, pot etc.
- d. In the chambers Essential English Dictionary as:
A cap on a bottle or pen is a small tight-fitting Lid.
- e. In the Oxford Dictionary as:
a cover over a container that can be removed or opened by turning it or lifting it.

In the light of above referred definitions, there should be no different opinions but to accept that "Cap" is an alternate word for the Lid as mentioned in the dictionaries, encyclopedia and Wikipedia, and there is no difference between these two words if use for the under reference item. (relevant extract of the dictionary, encyclopedia and Wikipedia attached for ready reference)


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

- viii. That product can be searched on the internet by putting name as "Aluminum Lid" or "Aluminum Cap" the result will be found in the shape of exactly same images for both the items, (for ease, printout from some webside obtained and attached for ready reference)
- ix. That everywhere in the international market or on the internet closing lid of aluminum for Bottles will be an article which is also known aluminum cap for the bottles, hence no difference in the article will be noticed if someone asked for aluminum Lid or aluminum cap.
- x. That without prejudice it is submitted that the subject show cause is without any logical or concrete reason but the same is issued on the basis of illogical, misleading and false contravention report, hence the SCN is uncalled for and liable to be annul, set-aside, quash, and withdrawn.
- xi. That in the light of above fact and grounds it is therefore requested to kindly withdraw the subject SCN under intimation to us.

-sd/-

Sami Pharmaceuticals

9. Additional comments were also submitted by the Sami Pharmaceuticals which are reproduced as follows.

Subject:- Reply to the show cause notice No. Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015 dated 10-08-2015

This is with reference to the Show Cause Notice issued on the basis of Contravention Report C.No.65-Appg-I/DCI/Cont/2015/4230 dated 06-07-2015 against clearance of Aluminum Closing Lids under SRO 567(1)/2006 Dated 05-06-2006.

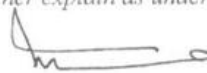
The contents of the subject Show-Cause Notice, have been read and understood, through the scrutiny of the impugned SCN it is revealed that basically the SCN is issued to the importer namely M/ s. Sami Pharmaceuticals (Pvt) Ltd., wherein they have been alleged for misusing of concession in Customs duty under SRO 567(1)/2006 by importing Aluminum Caps in the garb of Aluminum Lids, whereas we have been alleged for the connivance in clearance of impugned item under concessionary notification.

In this regard it is respectfully submitted as under:

Most respectfully, we disagree with the allegations/ charges framed in the Show Cause Notice on the following facts and grounds.

That as far as applicability of SRO is concerned, a separate reply to the SCN covering all the facts and ground of the case, has been submitted by the respondent No. 1, namely M/ s. Sami Pharmaceuticals (pvt) Ltd., which is self explanatory and sufficient enough to establish that Aluminum Lid or Aluminum Caps are same thing, and "Cap" is an alternate word for the Lid, as defined in various English dictionaries. Therefore we prefer to adopt the same reply which may kindly be considered as part of this written reply.

In addition to the above we would like to further explain as under:-



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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi.
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

That while clearance of under reference consignment there was no ignorance, negligence or connivance of any sort from our part, as we have discharged our legal / responsibilities by correctly classifying the item under heading 8309.9000 and by declaring the item as per import related documents duly verified by the Drug Regulatory Authority, further the clearance was made in accordance with the Survey Certificate issued by the Input Output Co-efficient Department showing the item and permissible quantities of the under reference item.

It is an established fact that IOCO determines the quantities of Packing Material, required for specified finished products as approved by the Drug Regulatory Authority.

For your kind perusal copy of letter C. No. 3(89)/IOCO/Sami Pharma/13/33 dated 16-01-2014 issued by the IOCO, is annexed herewith, wherein not only the impugned item and its determined quantity is mentioned but the name of finished medicines and Drug registration Numbers are also mentioned, Trade samples of the finished products showing Name and Registration Number will be produced at the time of hearing for verification that closures (lid or cap whatever we name it) applied on the top of the Bottles are exactly in accordance with the survey certificate issued by the IOCO. After inspecting the trade samples of the finished product the position will be quite clear that impugned item is nothing else than covered by the certificate issued by the IOCO under SRO 567(1)/2006, hence the clearance was made exactly of the item as mentioned in the IOCO certificate.

It is also an established fact that almost all the consignments covered in the impugned SCN have been cleared after proper customs examination (copies of Examination reports along with images uploaded by the examination staff are attached herewith for ready reference) through the examination reports it will be appreciated that under reference item was always accepted and considered as Aluminum Closing Lid and never been disputed at any stage by any department of customs i.e. Examination and assessment.

In the light of above explained facts and position we believe that your kind honor will realize that correct and appropriate description for the impugned item is "Aluminum closing Lid", whereas "Cap" is an alternate word for the same, there is no difference meanings of these two words, the impugned goods are legally and logically qualified for the concession in Customs duty in terms of SRO 567(1)/2006, further being Customs Agent there was no ignorance, negligence, or connivance of any sort from our part as we have filed the Goods declarations exactly in the light of import related documents furnished by the importer including ADC certified Invoice, Survey Certificate issued by the IOCO, and after proper examination of Goods by the custom Staff with no contrary report to the declared description.

It is therefore prayed that the Honorable Collector (Adjudication) may be pleased to: -

- a) Declare that "Cap" is an alternate word for "Lid", both are same, having same meaning as defined in various English Dictionaries.
- b) Declare that contravention report is based on some misleading information and does not hold any substantial evidence or Material in support of charges framed against Clearing Agent.
- c) Declare that no connivance of any sort from the part of Clearing Agent is noticed, and all such consignments mentioned in the SCN are in accordance with the Survey certificate issued by the IOCO.
- d) Order for withdrawal of the impugned SCN.

-sd/-


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

For Ocean Aids International

10 The reply submitted by the respondents was forwarded to the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi for furnishing parawise comments. The Directorate submitted parawise comments, the same are reproduced hereunder:-

SUBJECT: COMMENTS ON THE REPLY OF SHOW CAUSE NOTICE SUBMITTED BY M/S. SAMI PHARMACEUTICALS PVT. LTD, KARACHI

Kindly refer to the subject cited above.

i. In pursuance of credible information, the Directorate General, Intelligence & Investigation-FBR, (Customs Enforcement) Regional Office, Karachi have retrieved and scrutinized the data of various Pharmaceuticals companies from on line system of PRAL, one of them M/s Sami Pharmaceuticals (Pvt) Ltd, Karachi is also indulged in importing huge quantity of Aluminum Caps of bottles under PCT 8309.9000 in the garb of Closing Lids by misusing serial 31 and 32 of category-D of SRO 567(1) 2006 dated 05.06.2006, the facility of concession of Custom duty available on the following category of items. Which is clearly bifurcated of each article in the said SRO of category-D for packing materials, in this sequence, it is same elaborated

in Customs Tariff against its main PCT heading.

Import as per Sr.No.31 of above SRO under (PCT-7612.9090)

Anodized bottle

Rubber plug tear off seal

Closing lid (aluminum Al, High density polyethylene/polypropylene)
(pharmaceutical Grades)

Import as per Sr.No.32 of above SRO under (PCT-8309.9000)

Stoppers for i.v. solutions

Tear off aluminum seals for injectable,

Flip of seals for injectable vials

Rubber plug with tear off seal,

Closing lid (Aluminum Al High density polyethylene/polypropylene) (pharmaceutical grades)

ii. It is submitted that the concessions of Custom duty was allowed to the Pharmaceuticals Industries to import above mentioned packing materials @ 5% under the above PCT, whereas M/s Sami Pharmaceuticals Pvt, Ltd have imported Aluminum Caps in the garb of Closing lids. In view of above, the said SRO does not cover this article i.e., Caps made of aluminum which does not come in the ambit of concession Custom Duty @ of 5%.

iii. It is submitted that the importer has himself conceded that he has imported Aluminum Caps. However his malafide is apparent from the fact, that he has declared the same as closing lids, Even in the purchase order issued by respondent, he has specifically directed the supplier M/s. Vipra Closures to give description as per attached sheet, wherein the description is mentioned as Closing Lids. However in the Bills of Lading, the description was clearly mentioned as Aluminum PILFER PROOF CAPS. This is quite evident that respondent was aware of difference of closing lids and caps and this is the reason that he did not even for the once declared the description as "Aluminum Pilfer Proof Caps".


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

iv). It is submitted that as now the tax evasion of respondent is unearthed, he in order to justify his tax evasion, is now twisting the facts and has now come up with strange justification by stating that Aluminum cap and closing lid are one and same thing. However, this justification is far from the truth. As per explanatory note and from Pakistan Customs Tariff Caps and Lids are two distinguishable goods. The relevant portion of explanatory note is reproduced below:

- 8309 - Stoppers, caps and lids (including crown corks, screw caps and pouring stoppers), capsules for bottles, threaded bungs, bung cover, seals and other packing accessories, of base metal.
- 8309.10 - Crown corks
- 8309.90 - Other

The heading covers a range of articles of base metal (often with washers or other fitting of plastic, rubber, cork, etc.) used for corking or capsuling drums, barrels, bottles, etc, or for sealing cases or other packages.

The heading includes:

- (I) Metal stoppers, caps and lids, e.g., crown corks, crown caps or crown seals; stoppers, caps and covers of the screw, clip, lever, spring, etc., types as used for corking or capping beer bottles, mineral water bottles, preserve jars, tubular containers or the like.

v. The perusal of explanatory note hence clearly indicates that Caps are distinguishable from lids, otherwise there would have been no justification to mention them separately.

vi. The crux of respondent's reply is to stress the misnomer that caps and lids are one and the same thing by relying on un authoritative sources. The contention of the importer is totally misplaced as both items are separately mentioned in Pakistan Custom Tariff and explanatory notes. Even in the standard literature lids and caps are defined separately. The perusal of industry literature makes this distinction clear. Some of the extracts taken from the book "Packaging Closures and Sealing Systems" by Nigel Theobald & Belinda Winder are reproduced for the perusal of adjudicating authority

6.5.3 Type sub-closures fitted to GL decorative containers

Slip, Plug, lever or dispensing lids may be fitted to containers of all cross sections whereas hinge lids may be fitted only to square or rectangular shapes. It will be seen that many of these closure systems are also used on GL performance containers where the standard of the closure will be more demanding. Although GL non performance containers are also thought of as non-precision the fit between lid and body is very important, if, the system is to perform correctly.

6.5.3 Slip lid

This is probably the most common design of closure used on GL non-performance containers. Figure, 3.17a illustrates the range o design combinations in use. For both lid and body, the raw cut edge of the metal is hemmed or curled to made the metal edge safe, and to add strength to the component. In practice, a hem (folded edge) provides only a safe edge, whilst a fully curled edge provide both edge safety and strength. The variations in design are produced by altering the position of the hem or curl from the inside to the outside of the components. Further strength may be added to the top wall of the body by forming an external bead around all the side. This beads also provides a surface for the lid to rest on when closed. For a slip lid to operate satisfactorily, there must be a


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

slight interference fit between lid and body. The various design combination are used to influence the outward appearance of

vii. In the above passage, the various types of lids are explained. In the same book, caps are defined separately. The portion of the same is reproduced for the kind perusal of learned adjudicating officer:

4.4.6.1 Push on twist off caps

These caps are tinplate, aluminum or plastic based, but all have similar attributes and modulus of elasticity. The basic principle is that the caps have flowed in liners that allow the caps have flowed in liners that allow the cap to be pushed on in the filling and closing of the container on the production line, but can be twisted to remove during use. The cap can then be reapplied in use by twisting it back on. Special requirement for this type of cap are concerned with the thread formation and the position of the flowed-in-liner. The thread on the bottle is not a continuous thread, but a series of short angled protrusions on the outer surface of the bottle neck. The cap has a flowed in liner that is placed partially down the side of the inner surface of the cap- and over the area that will come in contact with the upper surface of the container. It must be sufficiently thick to take up the bottle thread protrusion. During production (on the filling line) the cap is pushed on to the bottle and the liner of the cap deforms around the bottle thread and across the top of the bottle. This retains the cap in place. To remove during use, all that is required is that the cap is twisted off in exactly the same way as if the full threaded cap and bottle were being used. Reapplying the cap is by twisting it back on as if it were a normal thread, usually the screwing action to remove or reapply is less than

A single turn. Different materials, however, can have different systems for sealing and these are discussed below.

4.4.6.2 Tinplate caps

Tinplate is used extensively for the sealing of glass containers, mainly for products in the food trade- items such as jams and preserves. Additionally, wet baby foods and sterile products may use tinplate caps. Most of the applications are for hot filled products where on cooling a vacuum forms within the container headspace. The advantage of the tinplate cap is that it has the ability (if properly designed) to deform as the vacuum increases. Thus when initially applied the cap cross section is one of a convex nature. With the cooling of the product and the resultant increase in vacuum within the head space the cap is forced into a concave cross section. When the cap is removed the release of the vacuum in the head space allows the cap to resort to its original convex shape and the familiar "pop" is heard (Fig. 4.2)

Figure 4.2 Sketch of tinplate cap.

Most of the cap profile are crew caps, since the caps are required to be replaced during use. The majority of the crew caps have flowed-in liners around the area where the seal is to be made, this allows for any minor imperfections of either container or cap to be negated and give a good seal. It should be remembered that the contact of the flowed-in liner must be compatible with the product and adhere well to the tinplate of the cap. Hence, most tinplate caps have a lacquer applied to the inner surface of the cap to stop any interaction between the tinplate and the product. Different liner materials may be used, depending on the nature of the product inside. Since the containers are usually capped whilst the product is still hot

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

(so that a headspace vacuum is created on cooling), the tinplate cap and the flowed-in liner must be capable of resisting the effects of hot steam and the condensate that results on cooling.

- viii) Similarly in FDA Book consider for Industry container closure systems for packaging Human Drugs and Biologies published by Food & Drug Administration USA, it is mentioned A bottle is usually glass or plastic, often with a screw cap with as liner and possible with a tamperresistant seal or an overcap that is welded to a bottle.
- ix) From the above submission it is crystal clear that the contravention of respondent that the "Cap" is an alternate word for the "Lid" is incorrect and the same has been proved conclusively above. Hence the contention of importer is untrue and contrary to the facts and may be dismissed.

-sd/-

Liaquat Ali
Intelligence Officer

11. In this regard this Collectorate approached to the Input Output Co-Efficient Organization (IOCO), for their opinion, which letter is reproduced

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

Dated: 07-10-2015

The Director,
Input Output Co-Efficient Organization (IOCO),
5th Floor, Customs House,
Karachi

Subject:- **DETERMINATION OF REQUIREMENT OF PACKING MATERIAL FOR PHARMACEUTICAL PRODUCTS UNDER SRO 567(1)/2006 READ WITH SRO 497(1)/2013**

Kindly refer to the subject noted above.

2. Your kind attention is drawn towards letter C.No. 3(89)IOCO/Sami Phama/13/33 dated 16-01-2014 issued by the Deputy Director-1, Input Output Co-Efficient Organization (South), Karachi to M/s. Sami Pharmaceuticals (Pvt) Ltd, (NTN-0711973), 34-C, Block-6, PECHS Society, Karachi (copy enclosed). The letter enclosed a Certificate whereby provisional determination of the requirement of packing material for the subject company has been made under SRO 567(1)/2006 dated 05-06-2006 read with SRO 497(1)/2013 dated 12-06-2013. S.No. 16 of the above referred Certificate has determined certain quantity of "Closing Lids" (Aluminum Al, High density polyethylene pharmaceutical Grades) for M/s. Sami Pharmaceuticals (Pvt) Ltd, (NTN-0711973), 34-C, Block-6, PECHS Society, Karachi to be imported as packing material.

3. It may be mentioned that the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi has made out a case against M/s. Sami Pharmaceuticals (Pvt) Ltd, (NTN-0711973), Karachi whereby the physical attributes and nomenclature of "Closing Lids" imported by the company on the strength of the Input Output Co-Efficient Organization (IOCO) Certificate has been challenged and the case is subjudice before the undersigned. In order to arrive at a just decision the exact physical description/nature of the "Closing Lids" as determined by Input Output Co-Efficient Organization (IOCO) is required to be ascertained.

4. In the light of above it is requested that the term "Closing Lids" as mentioned in serial number 16 of the Certificate issue by Input Output Co-Efficient Organization (IOCO) under SRO 567(1)/2006 dated 05-06-2006 read with SRO 497(1)/2013 dated 12-06-2013, may kindly be explained in detail with reference to


Collector

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

Page 13

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

pharmaceutical packing material. It may also be mentioned whether the term "Closing Lids" so used also includes Aluminum Caps or not. As the adjudication proceedings are time bound in terms of Section 179 of the Customs Act, 1969, therefore, reply to above query may kindly be communicated at the earliest.

Encl:- (As above)

-sd/-
(Ch. Muhammad Javaid)
Collector

12. The reply submitted by IOCO is reproduced as follows.

INPUT OUTPUT CO-EFFICIENT ORGANIZATION (IOCO),
5th Floor, Customs House, Karachi

C.No. 3(40) IOCO/Sami-Pharma/2015-16/1240 dated 13-10-2015

The Collector,
Collectorate of Customs (Adjudication-II),
11th Floor, Customs House,
Karachi

Subject:- **DETERMINATION OF REQUIREMENT OF PACKING MATERIAL FOR PHARMACEUTICAL PRODUCTS UNDER SRO 567(1)/2006 READ WITH SRO 497(1)/2013**

Please refer to Collectorate of Customs (Adjudication-II), Karachi's letter C. No. Adj-II/CoII/SCN-158/DIT-KHI/Cont. Rep/65-Appg-I/Sami Pharmaceutical/2015 dated 07.10.2015 on the above noted subject.

2. The ambit of IOCO is to allow quota to the Pharmaceutical Manufacturing Sector as per Quantitative requirement in terms of Part-II of Table-D of the Fifth Schedule of the Customs Act, 1969 and the quota was allowed according to the description available in Table-D.

3. The actual description of the product is ascertained by the clearance Collectorate at the time of import. Therefore, further inquiries may be directed to that quarter

-sd/-
(Shahnaz Maqbool)
Director

13. During course of hearing it was agreed to approach the Drug Regulatory Authority of Pakistan, Islamabad for expert opinion of the impugned goods. Therefore, the undersigned wrote a letter to the said authority for clarification regarding admissibility of exemption to closing lid vis-à-vis roll-on caps, which letter is reproduced as under:-

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015 Dated: 11-11-2015

The Chief Executive Officer,
Drug Regulatory Authority of Pakistan

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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

2nd Floor, Block-C, Pakistan Secretariat,
Islamabad

Subject:- DETERMINATION OF CORRECT DESCRIPTION / NOMENCLATURE OF ATTACHED SAMPLES

Kindly refer to the subject noted above.

2. It is brought to your knowledge that undersigned working in the capacity of Collector of Customs, Collectorate of Customs (Adjudication-II), Karachi, is hearing a case framed out by the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi against certain pharmaceutical companies. Briefly stated facts of the case are that Federal Board of Revenue has granted concession of Customs Duty vide SRO 567(1)/2006 dated 05-06-2006 on import of certain pharmaceutical raw materials for the pharmaceutical industry. Serial number 31 and 32 of category-D of the above SRO allows import of "Closing Lids (Aluminum Al, High Density Polyethylene/polypropylene (pharmaceutical grade))" on concessionary rate of Customs Duty. However, the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi has made out a case against certain pharmaceutical companies on the ground that they have been importing Aluminum caps of bottles in the garb of closing lids by misusing Serial Number 31 & 32 of category-D of SRO 567(1)/2006 dated 05-06-2006 whereas the pharmaceutical companies are of the view that both the Aluminum caps and the closing lids are one and the same thing and there is no difference in their nomenclature.

3. The case is subjudice before the undersigned on this particular issue and its judgment rests on the correct determination of the description of the items imported by the pharmaceutical companies. The representative samples of the items imported by the accused pharmaceutical companies are being attached herewith. You are, therefore, requested to kindly guide and enlighten this office whether these attached samples are specifically termed and known as "Closing Lids (Aluminum Al, High Density Polyethylene/polypropylene (pharmaceutical grade))" or their nomenclature/description is something else. The adjudication proceedings under Section 179 of the Customs Act, 1969 are time bound and, therefore, an early response to the above query will help in deciding the case within the stipulated time frame.

-SD/-

Encl:- (As above)

(Ch. Muhammad Javaid)
Collector

14. The reply submitted by the Drug Regulatory Authority to the undersigned is reproduced as follows.

NO. F-3-40/2015-I&E
GOVERNMENT OF PAKISTAN
DRUG REGULATORY AUTHORITY OF PAKISTAN
M/O NATIONALS HEALTH SERVICES REGULATION AND COORDINATION

Ch. Muhammad Javaid (Collector)
Collectorate of Customs (Adjudication-II),
11th Floor, Customs House,
Karachi

Subject:- DETERMINATION OF CORRECT DESCRIPTION / NOMENCLATURE OF ATTACHED SAMPLES

I am directed to refer to your letters dated 11-11-2015, 30-11-2015 and 11-12-2015 on the subject cited above it is submitted that the attached samples seems to be Closing Lids made from Aluminum

Page 15


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016
M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

Al. to be used for the purpose of closing the bottles/containers containing the pharmaceutical product; as caps and lids are used interchangeably in English literature.

2. *However it is to inform you that as per conditions (i) and (ii) for the Import of Active Pharmaceutical Ingredients, Exceptions/Chemicals, Drugs, Packing Material/ Raw Materials for Packing and Diagnostic Kits and Equipments, Components and other Goods under part-II of the Fifth Schedule to of the Customs Act, 1969 (IV of 1969) the requirement for active pharmaceutical ingredients and Expedients /chemicals, drugs as specified in Table A, 13 & C, shall be determined by the Drug Regulatory Agency of Pakistan (Now Drug Regulatory Authority of Pakistan). The requirement for packing materials/raw materials for packing, as specified in Table-D, shall be determined by Input Output Coefficient Organization.*

3. *This is for your information as requested. For Drugs*

-sd/-

(Atiq-u-Bari)

Assistant Drugs Controller

15. I have gone through the case record and arguments put forth by the respondents and the Department as well. That Federal Board of Revenue has granted concession of Customs Duty vide SRO 567(1)/2006 dated 05-06-2006 on import of certain pharmaceutical raw materials for the pharmaceutical industry. Serial number 31 and 32 of category-D of the above SRO allows import of "Closing Lids (Aluminum Al, High Density Polyethylene/polypropylene (pharmaceutical grade))" on concessionary rate of Customs Duty. However, the Directorate General of Intelligence and Investigation (FBR), Regional Office, Karachi has made out a case against certain pharmaceutical companies on the ground that they have been importing Aluminum caps of bottles in the garb of closing lids by misusing Serial Number 31 & 32 of category-D of SRO 567(1)/2006 dated 05-06-2006 whereas the pharmaceutical companies are of the view that both the Aluminum caps and the closing lids are one and the same thing and there is no difference in their nomenclature.

16. Mr. Naseem Yousuf, consultant alongwith Mr. Raees M. Khan, appeared on behalf of the respondents and contested the charges leveled in the show cause notice mainly on the following grounds.

- i). That the both types of goods aluminium caps as well as closing lids are classifiable in the same HS i.e. 8309.90 (sub-heading 8309.9090), hence, even if the term 'caps' is not mentioned in the SRO yet implies to be used as closing lids,
- ii). That the respondents are recognized manufacturers of pharmaceutical products and import pharmaceutical raw-materials as per requirement determined by the Drug Regulatory Authority and packing materials as determined by the IOCO who determined such requirement vide their certificate dated 16.01.2014,
- iii). That the terms 'closing lids' and 'roll-on caps' are meant for similar articles used for closing the bottles necks and that cap is an alternate word for lid.

17. Mr. Saud Hassan Khan, Intelligence Officer, alongwith Mr. Shahid and Liaquat Ali, IOs, appeared on behalf of the Directorate of Intelligence & Investigation-FBR, Regional Office, Karachi and put forth detailed arguments in support of the contravention case gist of which is given as under:


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

- i). That investigation in the instant case was initiated by the Directorate on receipt of complaint of indigenous industry involved in manufacturing of "aluminum caps" received through the Federation of Pakistan Chambers of Commerce and Industry during March, 2014. According to the complaint the aluminum caps were being imported by pharmaceutical industry in the garb of closing lids to avail concessionary regime of customs duty @ 5% instead of standard rate of 25% (now 20%) and that mis-declaration was causing severe damage to the indigenous industry.
 - ii). That the main grievance of the indigenous industry of aluminum caps was that due to higher rate of duty on import of raw-materials for manufacturing caps i.e. aluminum sheets @ 10% and polyethylene sheets @ 20%, their industry was suffering severe losses due to the import of finished products aluminum caps for bottles by the pharmaceutical industries in the garb of closing lids @ 5% customs duty.
 - iii). That the concession of duty is strictly restricted to the closing lids which are quite distinguishable from roll-on caps and are particularly meant for sealing of bottles containing medicines and normally remain no more useable once torn off for use of the medicine whereas the roll-on caps remain usable permanently. The closing lids are made of A-one quality of aluminum foil lined with high density polyethylene of pharmaceutical grade which is permanently fixed on mouth of the bottle through strong adhesive and heating, etc,
 - iv). The closing lids which are particularly used for sealing bottles of medicines are distinguishable from normal closing lids used for sealing of beverages cans, jars, and kitchen utensils, etc,
 - v). That the roll-on caps being a locally manufactured item is not covered for concessionary regime and is not ought to be of pharmaceutical grade even. Further, it is manufactured from aluminum sheets while closing lids of pharmaceutical grade with polyethylene lining are manufactured from aluminum foils.
 - vi). That the respondents have through out been well aware of the fact that roll-on caps are not covered for concessionary regime hence they resorted to import the same through mis-declaration in GDs declaring the caps as closing lids. That although the invoices, BLs, examination reports and images of the goods actually imported duly confirm the fact that these are roll-on caps yet the respondents deliberately mis-declared the description in GDs as closing lids to claim the benefit of SRO,
 - vii). That the Drug Regulatory Authority and IOCO are responsible to determine the annual requirement of pharmaceutical raw-materials and packing materials respectively and are not competent to determine admissibility of concessionary SROs. The same position has been confirmed by the afore-said departments on query by the Adjudication Collectorate. Furthermore, as categorically confirmed by the IOCO that they only determine the quantitative requirement / quota of the item mentioned in the SRO. As such, they determine the quota of closing lids for respondents company and it is upto the clearance Collectorate to check whether or not the closing lids were imported or otherwise. Accordingly, the admissibility of the SRO is to be determined by the Customs and not IOCO.
18. The departmental representative ably demonstrated that both types of samples i.e. roll-on caps for bottles with inner plastic padding vis-à-vis closing lids meant for sealing of contents of the medicine bottle are quite distinguishable from each other. The closing lids of the bottles once torn off can not be re-used for sealing of contents of the bottle and that these are ought to be lined with high density polyethylene of pharmaceutical grade to keep the contents safely sterilized. On the contrary roll-on caps fixed on the neck of the bottle besides the closing lids remain useable even if the flip on seals are once broken. The departmental


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi

Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

representative emphasized that the provisions and language of the exemption notification are strictly construed in department's favour and for instance for the words "closing lids" the words "caps or roll-on caps" can not be implied by any stretch of imagination. The respondents' consultant when confronted with the BLs, invoices, examination report and images of under-reference goods at the time of import showing description of goods as aluminum caps could not justify as to why the declaration in the GDs were made as "closing lids".

19. Mere perusal of S. No. 31 and 32 of Category D of SRO-567(I)/2006 dated 05.06.2006 (now Fifth Schedule to the Customs Act, 1969) reveals that the afore-said provisions provide for concessionary regime of 5% customs duty to the different types of packing materials for pharmaceutical industry including Stoppers for i.v. solutions, Tear off aluminum seals for injectables, Flip of seal for injectable vials and Closing Lids (aluminum Al high density polyethylene / polypropylene) (pharmaceutical grads). The words "aluminum caps" or "roll-on caps" of Aluminum caps with polyethylene are nowhere mentioned in the SRO. The caps and lids are not one and the same thing as claimed by the respondent for availing the benefit of taxes under SRO-567(I)/2006. The submitted sample is most aptly corresponding to the definition of Roll-on Pilfer Proof (ROPP) Aluminum alloy metal Cap. The ROPP cap (with a cylindrical cross section and no threads) when it is applied as closure it is heated or pressed to mould according to the grooves of the container on which it is used for closure. The Pilfer Proof bank is by no means an attachment and even when the container is resealed it doesn't re-attach to the covering, therefore it cannot be termed "lid" and hence is categorized as ROPP, Aluminum Alloy Cap. The lid is by definition: "A lid is removable or hinge cover for closing the opening of a jar or box". The closure systems which have been defined in various books, articles and guidelines of the WHO, FDA and others are as follows:

"Aluminum alloy metal caps consist of a plain metal shell containing wadding or flowed in system which is placed over the container neck and pressure is applied on top to give a good impression on the wad. In case of Pilfer Proof closure, an additional perforated collar is ruled under a lower bead. This type of closure system is capable of maintaining an excellent seal and does not suffer from the occasional tearing of the wad, when conventional screw cap is applied to a substandard bottle finish.

Packaging Terminology:

US FDA defines container closure system as the sum of packaging components which typically are containers (eg ampoules, vials, bottles), container liners (eg tube liners), closures (eg screw caps, stoppers), closure liners, stopper overseals, container inner seals, administration ports (eg. on large volume parenterals (LVPs)), overwraps, administration accessories and container labels, that together contain and protect the dosage form this include primary packaging components and secondary packaging components. The later are intended to provide additional protection to the drug product.

20. According to WHO defines packaging as 'the collection of different components (eg) bottle, vial, closure, cap, ampoule, blister which surrounds the pharmaceutical product from the time of production till actual consumption or use. WHO guideline mentioning Aluminum cap as closure to be used are as follows

- Polypropylene Screw/ CRC Caps
- Inner Seal (eg) Induction Seal/Heat Sealed
- Aluminum Cap
- Filler Absorbents and Moisture Absorbents
- Absorbent Cotton
- Rayon Fibres
- Silica Gel Disinfectant

Closures that form part of the container closure system are an important component in the packaging


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

of sterile products (Tim Sandle 2012). They are also known as stoppers or bungs. Most commonly an elastomeric closure is used. An elastomer is any material that is able to resume its original shape when a deforming force is removed which is known as viscoelasticity (Rockville 2009).

Function of closure is to retain or contain the content's safety and security may be necessary prevent hazards resulting in leakages, seepages, spillages, pilferages loss of quality purity etc. Types of closure include

Thread Screw:

This provides physical and chemical barrier to the contents in the container. They are either made of plastic or made of metal.

Lug Cap:

This differs from the thread screw closure due to the presence of continuous thread on the container. It is more commonly used in food industries rather than pharmaceutical industry.

Crown Cap:

it is crimped closure more commonly used in Beverage Industry.

Rubber Closure:

Rubber consists of several ingredients one of which is elastomer. Rubber compounds used in pharmaceutical Packaging contain only limited ingredients which are difficult to extract. These can be used in drug preparations.

Roll on Closures:

Pilfer proof resealable and non resealable types of roll on closures are available. These are dimension specific. Roll on closure hence require an easy to mould material such as Aluminum.

Pilfer Proof Closure:

This differs from standard roll on closure in that it has a longer skirt length. When this closure breaks at the bridge the bank remains at the neck of the container. The closure can be resealed but the broken bank indicates the seal has been broken. It requires torque to remove the cap.

Temper Evident Closure:

various types of tamper evident packaging are used in pharmaceutical industries are: Bottles with inner mouth seals, tape seals, Breakable cap ring system.

Child Resistant Closure:

Child Resistant Packaging or CRC packaging is special packaging used to reduce the risk of children ingesting dangerous items. This is often accomplished by the use of a safety cap. It is required by regulation for prescription drug, over the counter medications, unit packaging such as Blister Pack is also regulated for child safety (Smith 2005).

Lid:

According to the US patents office, Lid is a closing mechanism of the invention for an opening of a


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

container is characterized in that the joining means closely joins the supporting body and the lid body at their end portions by a hinge. The end portion of the supporting body and the lid body has a socket penetrating in the thickness direction, and the end portion of the other supporting body and the lid body has a hook which is fitted to the socket. Both of the supporting body and the lid body are fitted and joined each other.

A closing mechanism of the invention of an opening of a container is characterized in that the supporting body or the lid body has a holding guide there around.

Metal foil is used to provide heat-sealed closures for both food and drink container. The foil may provide the complete closure, where the foil is sealed directly onto the can body. Alternatively, the foil may heat sealed to cover a pre-formed aperture in a metal end, which will be eventually double seamed onto a metal container or container made of other materials such as coated board or plastic bodies.

Some type of lids used for Covering of Plastic Bodies

Lid Heat Sealed directly onto light-gauge metal can from the container, provide an open aperture equal in size to the full cross section of the top of the container. It is used to close shallow drawn containers made from light gauge aluminum or tin plate/tin free steel for fully heat processed food such as Pet Food or human food snacks

Easy-open/re-close fitments: The first series of fitments were designed to lie flat and have a lift lid which clicks back into place, two main approaches:

Tetra system (recap) has a pre-punched hole which is sealed with a tab of Alufoil/Polyethylene to maintain sterility a high density polyethylene fitments is positioned over the hole and sealed in place with hot metal adhesive.

21. At the point of opening, the lid is lifted to expose the tap which then peeled back to open the punched hole. The lid is replaced to re-close the pack for storage.

22. It is evident from the above discussion that in the pharmaceutical field both the caps and lids are used distinctly for special purposes and in no way these are one and the same thing. Further, I have also perused letters of Drug Regulatory Authority and IOCO both of which have shown their inability to confirm admissibility of SRO to any of these goods and rather stated that they only determine the quantitative requirement / quota of the goods description of which is mentioned in the relevant Notification. The complaint of the indigenous industry of aluminum caps also carries weight. The respondents when confronted with the factual position could not substantiate their claim that they actually imported closing lids and not the aluminum caps as the invoices, BLs, examination reports, images and representative samples of both types of good duly prove the fact that actually aluminum caps were cleared in the garb of closing lids to unduly avail the exemption as admissible to closing lids.

23. In view of fore-going position it becomes evident that the respondent has grossly misused the Serial No. 31 and 32 of Category D of SRO-567(I)/2006 dated 03.06.2006 to his benefit through misdeclaration and, therefore, the charges leveled in the show cause notice stand established. In exercise of the powers conferred upon me under Section 32(1) and 32(2) and 32A of the Customs Act, 1969, the respondents namely importer M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi are directed to deposit the duty / taxes amounting to Rs. 14,642,831/- (Customs Duty amounting to Rs. 11,206,494/-, Sales Tax amounting to Rs. 2,336,775/- and Income Tax amounting to Rs. 1,099,562/-) which were evaded through un-due claim of exemption on under-reference consignments of aluminum roll-on caps cleared through Customs Computerized Clearance System of erstwhile Model Customs Collectorate of PaCCS, / Model


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

ORDER-IN-ORIGINAL NO. 153 OF 2015-2016

M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973) Karachi
Adj-II/Coll/SCN-158/DIT-KHI/Cont.Rep/65-Appg-I/Sami Pharmaceuticals/2015

Customs Collectorate of Appraisement (East), Karachi, vide GDs mentioned in column (3) of this order. A penalty of **Rs. 3,000,000/- (Rupee Thirty Lacs Only)** is also imposed on the respondent namely M/s Sami Pharmaceuticals (Pvt) Ltd (NTN-0711973), Karachi in terms of clause (14) of Section 156 (1) of the Customs Act, 1969. Similarly, the clearing agents in the instant case M/s. Ocean Aid International (CHAL No. 48), Karachi apparently connived with the importer to facilitate his clearances through deliberate mis-declaration and failed to discharge their responsibility to file a true and correct declaration for their client. Therefore, a penalty of **Rs. 500,000/- (Rupee Five Hundred Thousands Only)** is also imposed on the clearing agent namely M/s. Ocean Aid International (CHAL No. 48), Karachi.

24. Moreover, it is ironical to note that how the assessing officers of the clearance Collectorates failed to distinguish between closing lids and caps to be used as pharmaceutical packing material in the presence of huge literature on this account. Nobody ever bothered to determine that the product which they were qualifying for concession under the SRO 567(I)/2006 was really the same product which was entitled for concession under the SRO ibid. It was due to their sheer slackness and negligence that this process of inadmissible concession to a wrong product remained continued unabated. This is very serious and this aspect needs to be properly investigated by the Directorate General Intelligence and Investigation and should recommend the appropriate action against the negligent officials to ward of such casual application of mind in future. The Directorate General Intelligence and Investigation is also directed to ensure that an Assessment Alert is issued to all the clearance Collectorates in the country on this account so that no such inadmissible concession is allowed to anyone who is not entitled for it.


25. This order consists of (21) twenty one pages and each page bears my initial as well as official seal with full signature on the last page.


To,

- (I) **M/s Sami Pharmaceuticals (Pvt) Ltd**
(NTN-0711973), 34-C, Block-6, PECHS Society, Karachi
- (II) **M/s. Ocean Aids International (CHAL No. 48),**
Baghpatti Chambers, Altaf Hussain Road, Karachi


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

Copy for information to:

1. The Director, Directorate General of Intelligence and Investigation-FBR (Customs Enforcement), Regional Office, 81-C, Block- 6, P.E.C.H.S., Karachi
2.  The Collector of Customs, Model Customs Collectorate of Appraisement (East), Mezzanine Floor, Customs House, Karachi
3. Notice Board
4. Guard Copy.


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