Taxhelpline Case No. 135 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

amount of Rs. 11901422/- as customs duty, Rs.4251831/- as sales tax and Rs.10117924/- as income tax. The details of machinery imported and exemptions availed by the appellant are as under:-

B/E NO. & Date

Description
Quantity
Import value (Rs)

C. Duty (Rs)

S.Tax (Rs)

I. Tax

50192/04.12.99
Steel Ring

7500 Pcs

99268
24817
18613
7195
1541/09.12.99
Nitto Unicomb

15 Pcs

345133
51770
59536
22822
56477/27.12.99
Spindle with Bloster

1000 sets

291188
72797
54598
20930
68386/02.02.2000
Spindle with Bloster

1000 sets

291188
72797
54598
20930
79280/08.03.2000
Bobin Hanger

5000 Pcs

517344
51735
85362
32722
94475/24.4.2002
Draw Frame

02 Sets

3495871
349587
SRO 987

217358
10939/10.06.2000
Steel Ring

10500 Pcs

128351
32088
24066
9226
641/03.07.2000
Spindle with Bloster

2000 Sets

586864
176716
110037
50617
42670/07.11.2000 45238/15.11.2000

Blow Room Machine Cylinder millennium wire Doffer
07 Sets 16 Sets

1196198 343409

119620 79082

SRO 987 63386

90991 29257

3491/20.11.2000
Stolemeter Parts

01 sets

357187
53578
SRO 987

28343
46652/18.11.2000
Chute Feed & fan

09 Pcs

2998482
299848
SRO 987

4058/23.11.2000
Fibrograph colorimeter

04 Pcs

2862108
429326
SRO 987

2119677
53918/09.12.2000
High Production cards

06 Pcs

20713226
2071323
SRO 987

1572134
54411/12.12.2000
Mach Coner con Winder M/C

01 sets

9661641
946146
9661641
718139
62/14.12.2000
Cleaning ad Dud Dustin M/C

01 set

2909978
290998
SRO 987

250429
67918/22.01.2001
Fly frame parts

01 set

3299457
329945
SRO 987

250429
72402/06.02.2001
Steel ring

11500
160383
40096
30072
13833
92565/11.02.2001
Spindle with Bloster

3000
1023436
255859
191894
88217
1024/21.05.2001
Unilap Comber

07 Nos

34552411
3455241
SRO 987

2622528
106032/22.05.2001
Spindle Bloster

3000Pcs
1042302
260575
195432
89899
2124/13.07.2001 4330/14.07.2001

Nitto Unicomp High Production Draw Frame
16 Pcs 01 Set

380538 2373932

38054 2373932

62789 391698

28883 180181

82428/21.02.2002
Apron Tention Compensator

5000 Pcs

332700
33270
54896
25252

4845/31.01.2002
Satitonery Flats Cards Clothing

60 Pcs

108201
10820
17853
8213
1019/06.03.2002
Loose Boss Roller

2000 Pcs

620798
62080
102432
47119
552/04.03.2002
Caipo Slubbing Microproess

01 Set

1755357
175536
SRO 987

133232
12436/08.06.2002
Murata Mach Coner Machine

01 Set

8773924
877397
1447706
665944
6163/16.07.2002
Steel Ring

16000 Pcs

195489
39098
35188
16186

11794/29.07.2002
Bobbin Hanger

3000 Pcs

321826
32183
53101
24427
864/04.07.2002
Card Clothing

24 Pcs

360685
84185
66730
30696
5919/30.07.2002
Loose Boss Roller

2000 PCS

697554
69755
115096
52944
24142/27.08.2002
Spindle with Bloster

2000 Pcs

650480
130094
117085
53860
24143/27.08.2002
Bealer Assembly

01 Set

72889
7289
12027
5532

31813/12.09.2002
Spare Parts Cylinder Wire

402 Pcs

656311
102483
113819
52357
35542/21.09.2002
Top Roller

1600 PCS

126018
12602
20793
9565
37198/25.09.2002
Spindle with Bloster

2500 Set

734614
146928
132230
60826
1235/18.12.2002
Measuring Trumpet

02 Set

120640
12064
19906
9156
120186.01.04.2003
Cylinder Cutty Doffer Lickerin

186 Pcs

813182
99675
136899
62987

134040.13.05.2003
Steel Ring

16000 Pcs

168922
33785
30406
1824
116179/04.03.2003
New cuts Inverter

34 Sets

262798
262778
433583
198450
Total:
106202363
11901422
4251831
10117924

The appellants out of manufactured goods valuing of Rs. 1096488609/-, yarn valuing Rs. 842022687/- has been sold in the local market and only yarn valuing Rs. 254465922/- has been exported. The percentage of export and local sale comes to 23.21% and 76.79% respectively. The percentage of export is less than 60% as prescribed and required under SRO 554(I)/98 dated 12.06.1998. The figures of export and local sales are given below:-

Month
Value of Export Sales

Value of local value

Total Value

Percentage of Export Sale

March,2002
15314350
31666890

76981240
32.60%
April,2002
21861392
3074380
52605282
71.10%
May,2002
22868861
23728852
46597713
49%
June,2002
18239653
18841225
37080878
49.18%
July,2002
7118692
33946345
41065037
17.33%
August,2002
6998662
33259210
40257872
17.38%
September,2002
-
35950027
35950027
0%
October,2002
4252900
23876720
28129620
15.11%
November,2002
4865110

21661552
25526662
18.34%
December,2002
3139300
34458967
37598267
8.35%
January,2003
21921028
44637713
66558741
32.93%
February,2003
6862050
31405878
38267928
17.93%
March,2003
16808115
31658426
48466541
34.68%
April,2003
16170704
35520492
51691196
31.28%
May,2003
15740880
34134797
79875677
31.56%
June,2003
6626862
32407396
39034258
16.97%
July,2003

9320112
38091414
47411526
19.65%
August,2003
9445316
44246664
53691980
17.59%
September,2003
6114197
18231978
2434615
25.11%
October,2003
-
48372404
48372404
0%
November,2003
5476898
37142880
42619778
12.85%
December,2002
6088424
59610822
6599246
9.26%
January,2004
13290015
52344636
65634651
20.24%
February,2004
15942419
46083509
62025928
25.70%

Total:
254465922
842022687
1096488609
23.21%

And whereas according to the figures provided by the unit, a total 205618 bags of cotton yarn were produced, out of which only 41499 bags were exported and 169831 bags were sold locally. The total sales during the period under audit are 211330 bags. The ratio of export and local sale items of bags comes to 20.18% and 79.82% respectively. The percentage of export in terms of bags was also checked and found less than 60% of the value of actual production. Whereas as per provisions of SRO 554(I)/98 dated 12.06.1998 the appellants were required to export 60% of the value of actual production for the first two years whereas they have failed to fulfill the requirement of clause C of SRO 554(I)/98 dated 12.06.1998. As appellants have availed amnesty under SRO 554(I)/98 dated 12.06.1998 and deposited the due amount of duty at Custom House, Karachi. The appellant is not entitled to claim refund as per clause (b) of the SRO 554(I)/98 dated 12.06.1998 due to falling under category "C of the said SRO.

4. A show cause notice dated 01.03.2005 was issued to the appellant by the department. During the proceedings of the case the appellant paid 5% customs duty on the import value by availing the amnesty scheme announced by the government under SRO 544(I)/98 dated 12.06.1998. The case was heard by the adjudicating officer who after hearing both the parties passed order in original No.01/2010 dated 03.06.2010 and the operative part is reproduced as under:-

"I have examined the case record duly considered the arguments put forth by the learned counsel for the respondents. The order in original No.32/2009 dated 26.11.2009 passed by the learned Additional Collector Customs, MCC, Faisalabad, suffers from certain incongruities insofar as entitlement of refund is concerned. As regards category of the unit it has been observed by the under signed that the learned Tribunal has already determined the issue of

category in unequivocal terms, vide paragraph 8(i) of the judgment and accordingly the case was remanded to the learned adjudicating officer for denovo consideration and fresh decision on merit vide paragraph 9 of its judgment. The learned adjudicating officer has also placed the unit under category "B" of the table to SRO 554(I)/98 dated 12.06.1998 (expansion of existing units)"

In pursuance of the learned Tribunal, the departmental committee with regard to increase in production has concluded as under:-

"As per reconciliation and scrutiny of the sales tax and customs record, actual increase in production due to expansions was 27 bags per day. This nominal increase does not reflect increase in production on annual basis therefore worked out to 9855 bags per annum".

5. In the context of the report by the Committee the undersigned has observed that imports by the party under SRO 554(I)/98 dated 12.06.1998 against 41 bills of entries consist of textile machinery as well as spare parts, and being so, the respondent ab-initio was not entitled to exemption under SRO 554(I)/98 dated 12.06.1998 on the import of spare parts meant for use in the machinery not imported/covered under the said notification. In this regards Board's clarification vide letter C.No.1/53/Mach/90 dated 26.06.2005, the spirit and substance of the SRO 554(I)/98 dated 12.06.1998, viewed in proper perspective, allow exemption of customs duty and sales tax to such machinery or spare thereof, as are not manufactured locally, imported for setting up a manufacturing unit, or for the expansion, balancing, modernization and replacement of existing unit in bond. It will be pertinent to mention here that the words "spare thereof" in the said notification were subsequently deleted vide amending notification 479(I)2003 dated 07.06.2009. The notification SRO 554(I)/98 dated 12.06.1998 further specifies export target in terms of certain percentage of additional capacity due to expansion. Spare parts imported for the machinery existing prior to the notification and license there under, is a normal requirement for functioning of that machinery in order to replace the non-functioning, malfunctioning or defective parts due to wear

and tear. Such replacements do not result into expansion of reduction capacity, nonetheless, slightly improves the efficiency. That is why in the subject case the paltry increase from 259 bags of yarn to 286 bags (net increase 27 bags per day) owes no efficiency in manufacturing and not resulted out of increase in production capacity as has been rightly observed by the committee. Import of spares in the subject case cannot be treated as BMR, as the concept and process of BMR requires replacement of obsolete and outdated plant/machinery with the modern, advances and sophisticated technology in order to substantially boost up the production. Definitely this has not been done by the unit. So, the pares imported availing exemption under the notification SRO 554(I)/98 dated 12.06.1998, in fact, do not qualify for exemption at the first instance. The undersigned is of the considered view that only those spares of machinery identifiable for use in or with the machinery imported under SRO 554(I)/98 dated 12.06.1998 are entitled for exemption in the light of clause (d) of the Explanation to the said notification.

Not withstanding the above observation, since the respondent subsequently availed relief under 554(I)/98, and deposited customs duty @ 5% which shall be considered as full and final discharge of entire liabilities in this regard, as provided in the said notification. As regards the entitlement of refund, the learned adjudicating officer has not kept in view that legal/statutory provision of SRO 554(I)/98 dated 12.06.1998 according to which one time relief shall not entitle anyone to claim refund. This not only includes imports made under any other notification but this one as well. The appellants unit availed the relief and deposited customs duty @ 5% in March, 2005, although" under protest" while the case (show cause notice dated 01.03.2005) was pending before the then Collector (Adjudication). The leaned Collector (Adjudication) vide order in original No. 04/2005 dated 30.06.2005 vacated the show cause notice subject to verification of deposit 5% customs duty as the unit has opted to come out of the scheme. It is pertinent to mention here that show cause notice dated 01.03.2005 raised a demand of Rs. 26271177/- (Rs. 26.271 million) as per statutory rate of duty/taxes. I am inclined to observe that the appellants voluntarily opted out of the scheme by availing the relief and their

plea of protest is not maintainable in the eye of law as there was no mandatory requirement or legal constraint to avail the option/relief. It was purely on the voluntary decision on the part of the importer to choose and avail the option. The respondents contention that they had to deposit the customs duty as there was then a cut-off date i.e. 31.03.2005 to avail the relief, can be treated/equated as "compulsion" or "duress", as the respondent had obviously another option to contest his case before the adjudicating officer. The availing of relief, although, under protest, cannot be rolled back subsequently. There is another aspect of the matter. That if the respondent held firm belief regarding achievement of the prescribed export target, then there was obviously non compulsion or imperative need to deposit the 5% customs duty under the relief option. This reflects the respondents doubt and ambivalence in their own stance particularly in a factual matter of production and export of goods for which the respondent is supposed to have more accurate knowledge than any other person. There is valid question as to why the respondent did not contest their case at the adjudication forum instead of depositing 5% customs duty, if they were of the firm belief that they were fulfilling the conditions of SRO 554(I)/98. Once they have opted out of the purview and scope of the SRO 554(I)/98 dated 12.06.1998, they cannot re-enter at any demand in the same way. The matter stands past and closed and cannot be disturbed either way. Refund in the subject case is not only inadmissible as per statutory provision of SRO 554(I)/98 dated 12.06.1998 but also as per inherent provisions of Section 33 of the Customs Act, 1969 which provides for refund of duty paid through error, inadvertence or misconstruction, none of which is the matter in the subject case. The respondent had since voluntarily deliberately opted out of the scheme, having availed the relief, therefore, achieving of the export target or non-achieving or export target for the matter, had been rendered inconsequential and immaterial. The respondent has in this way discharged their entire liabilities fully and finally. Therefore, neither the respondent is required to pay any duty nor they are entitled to refund in this regard in terms of provision of SRO 554(I)/98 dated 12.06.1998. The undersigned has come to the conclusion that the respondent is not entitled to claim refund for the foregoing valid and legal reasons.

6. In view of the above, the order in original No.32/2009 dated 26.11.2009 passed by the Additional Collector, MCC, Faisalabad is modified to the extent stated above. Being aggrieved with the order of the adjudicating officer the appellants filed this appeal with this forum.

7. Mr. Akhtar Ali, Advocate along with Mr. Iqtidar Alam, A.R appeared on behalf of the appellants and reiterated the following grounds of appeal:-

a) The order dated 03.06.2010 is illegal, void ab-initio and has been passed without application of independent judicial mind and lacks credentials of a judicial order.

b) Order of respondent No.1 is illegal as the same has been passed beyond the four corners of the show cause notice.

c) Order of re-opening by respondent No.1 is illegal and without jurisdiction. Hon'able Appellate Tribunal remanded the case only to the extent finding out the figures regarding export target as fixed for the category "B" of the table to the exemption notification. Therefore, imports and category of the appellant by no stretch of imagination were open to any exception.

d) Power of the Collector under Section 195 are supervisory in nature and are limited to ascertain the legality to the orders of the officer subordinates to him. He was not empowered to re-open issues settled by the Collector (Adjudication) and by the Appellate Tribunal.

e) Order by the adjudicating officer was passed in strict compliance of the directions of Honourable Appellate Tribunal dated 14.10.2008.

f) Show cause notice dated 15.01.2010 and order dated 03.06.2010 by the respondent No.1 are in negation to his earlier order dated 06.11.2008, wherein he elaborated the parameters of the

reconciliation committee and scope and extent of remand order.

g) Order dated 03.06.2010 is self contradictory and blowing hot and cold in the same breath. Attention is invited to para 17 of the impugned order wherein adjudicating officer on the one hand held that parts imported by the appellants do not ab-initio qualify for exemption under concessionary notification. However, in the same para he held that as appellants have availed the benefit of SRO 554(I)/2005 and deposited customs duty @ 5% the same shall be considered as full and final discharge of liability. Respondent No.1 was unable to assign any plausible reason for extending the benefit of SRO 554(I)/2005 if appellants were not entitled to import parts under concessionary notification, how the benefit of notification can subsequently be extended to the appellants. The order is therefore, illogical, whimsical and arbitrary.

h) The appellants have achieved the targets under the exemption notification and benefit of SRO 554(I)/2005 was never foregone. Payment was only made by the appellants to protect them from any adverse decision. Therefore, reliance of adjudicating officer on the proviso to SRO is totally misconceived. It is pertinent to mention that the same argument was also advanced before the Honourable Appellate Tribunal; however, the same was not entertained by the Tribunal. It was held by the Tribunal that appellant will be entitled for refund if they had achieved the targets fixed for category "B" of the table of exemption notification.

i) The respondent No.1 held that nominal increase in the production of appellant can not be termed as additional capacity is totally misconceived. If for the sake of discussion it is assumed that this alleged nominal increase is due to increase in plant efficiency. Even then case of the appellant is covered under the notification. Attention is invited to Q.No.1 of Board's clarification dated 26.06.2005, wherein it is categorically stated that if production is not increased after import by an existing unit under the concessionary notification and only improve the quality of product, the capacity will be bet assessed with the held of value of goods produced before and after an expansion has taken place.

j) That respondent No.1 with ulterior motive illegally placed reliance on Q.3 of the clarification of the FBR, which is not applicable in the case of appellants. Malafide of respondent No.1 is not applicable in the case of appellants. Malafide of respondent No.1 is evident from the fact that he avoided to reproduce Q.No.1 and only reproduced / Q.No.2 and Q.No.3 only. It is pertinent to mention that appellants imported aforementioned machinery, alongwith parts which are covered vide Q.No. 2 of the clarification. Q.3 relates only to the importers who intend to or import spares only.

k) The judgment of the Appellate Tribunal Dated 14.01.2008 was very comprehensive and leaves no room to interfere into the point already settled by the Honourable Appellate Tribunal regarding category of the exporter and entitlement of refund.

l) The Appellate Tribunal categorically entitled appellants to claim refund if they had achieved the targets of category "B". Adjudicating officer passed order to the extent of achievement of targets only which order was not open to any exception, being factually correct.

m) Adjudicating officer passed order strictly in compliance of the parameters set out by the Appellate Tribunal.

n) Action of Respondent No.1 to withhold the due amount of appellants is to vitiate the orders of the Appellate Tribunal, therefore, illegal and void ab-initio.

o) Orders of the adjudicating officer are contradictory, confusing and contrary to the legal provisions of the Act and Rules made thereunder.

p) In view of the foregoing grounds the appellants prayed that impugned order in original No. 01/2010 dated 03.06.2010 may be set aside and order may kindly be passed to refund amount withheld and order of Additional Collector (Adjudication) may be sustained.

8. On the other hand, Mr. Sultan Mehmood, Advocate alongwith Mr. Mehmood Dogar, Inspector appeared on behalf of the respondent and rebutted the contentions raised by the counsel for the appellant and duly supported the impugned order dated 03.06.2010 on the following grounds.

i) As earlier submitted, the order dated 03.06.2010 is lawful in terms of Section 195 of the Customs Act, 1969. The counsels of the appellants were heard at length on various dates of hearing. Complete record of the case was examined to ascertain the legality/ propriety of the order in original No. 32/2009 passed by the Additional Collector.

ii) The show cause notice dated 15.01.2010 issued by the Collector vide para 9 to 11 determined the issues in terms of sub-section (1) of Section 195 of the Customs Act, 1969 vis-a-vis order in original No.32/2009. Accordingly, the respondent No.1, passed orders on the said issues in the proper prospective and history of the case as per record, merits and relevant law, in a detailed and comprehensive manner.

iii) The crux of the learned Tribunal's remanded judgment dated 14.10.2008 is the determination by the reconciliation committee of actual production due to expansion and increase in export of the appellant due to expansion of capacity after availing benefit of concessionary SRO for the import of machinery and spare parts under SRO 554(I)/98 as well as entitlement of refund of amount deposited by the party, if it is established as a result of reconciliation that the unit has exported the goods produced as per target fixed for category "B" of the table of exemption notification SRO 554(I)/98. The order by respondent No.2 has been passed on these issues and it has been held that partly increase of 27 bags per day owes to efficiency in manufacturing and not resulted out of increase in production capacity as has been rightly observed by the committee. Further, as regards issue of refund entitlement, it has been held that since the appellant has discharged their entire liabilities fully and finally having availed the relief and voluntarily and deliberately opted out of the scheme therefore, they are not

required to pay any duty nor they are entitled to refund in this regards in terms of proviso of SRO 554(I)/98 dated 12.06.1998. Moreover, in this factual and legal context achieving of the export target or non achieving of export target has been rendered in consequential and immaterial as far as entitlement of refund is concerned. Therefore, the order passed on the pertinent issues by the respondent No.1 are not in conflict with the judgment passed by the learned Tribunal. However, the Collector, after having examined the case record in terms of Section 195(1) of the Customs Act, 1969 made valid observation that the appellant was not entitled to exemption under SRO 554(I)/98 dated 12.06.1998 on the import of spare parts meant for use in the machinery not imported/covered under the said notification. Nonetheless, the said observation can be termed as "Obiter dicta" and no a "Ration decidendi". The Collector MCC, Faisalabad vide order dated 03.06.2010 has not disturbed the category of the unit. Therefore, the impugned order is lawful and within jurisdiction.

iv. It is further submitted that the respondent No.1 has initiated the proceedings strictly in accordance the provision of Section 195(1) of the Customs Act, 1969 to ascertain the legality and proprietary of the order passed by an officer (i.e. the Additional Collector) subordinate to him, and passed order accordingly to that extent without prejudice to the orders by the Collector (Adjudication) and the Appellate Tribunal.

v. The order passed by the Additional Collector suffers from illegality and proprietary, and being so, the Collector called for and examined the record in terms of Section 195(1) of the Customs Act, 1969.

vi. The officer order dated 06.11.2008 is executive one, issued in compliance with the Tribunal's directions constituting a committed to find out actual production due to expansion and increase in export of the appellant company due to expansion of the capacity after availing the benefit of the concessionary SRO for the import of machinery and spare parts under SRO 554(I)/98 dated 12.06.1998. Therefore, the Additional Collector passed the order in original No. 32/2009 whereby it was held that export target under category "B"

of the table of SRO 554(I)/98 dated 12.06.1998 has been met and the unit is entitled to refund of duty deposited by it. The said order apparently suffers from legal and factual inaccuracies which led to initiation of lawful proceedings in terms of Section 195 of the Customs Act, 1969 by the respondent No.1. Therefore, the above referred office order can not restrict circumscribe or extinguish the statutory powers of the Collector conferred by Section 195 of the Customs Act, 1969. Further submitted that the show cause notice dated 15.01.2010 and subsequent order dated 03.06.2010 by the respondent No.1 relate to pertinent issues which were before the learned Appellate Tribunal and the Additional Collector as well.

vii. As per committee's report nominal increase in production does not reflect increase in capacity, however it shows increase in plant efficiency. Only on this finding the appellant is not entitled to exemption. Secondly, the appellant voluntarily opted out the regime of the SRO 554(I)/98 dated 12.06.1998 in order to avail the relief. There was absolutely no compulsion on the appellant in this regard. It was merely a matter of choice and option for the appellant. The arguments given in para 18 of the impugned order in original dated 03.06.2010 are reiterated which are worth consideration by the learned Tribunal.

viii. It is submitted that the appellant falling in the category "B" relates to the Q.2 of the Board letter dated 26.06.2005 as the existing unit of the appellate imported machinery as well spares. The appellants' reliance on Q.No.1 is misplaced as the Q.No.1 relates to such cases where only machinery is imported which does not increase the production though improved the quality of product. It is pertinent to reproduce table to SRO 554(I)/98 dated 12.06.1998 relating to type of unit "B".

Type of Unit

Period
Export target

B. Expansion of existing units First Three Years 50% of additional

capacity due to expansion After three years 60% of additional capacity due to expansion.

From the above it becomes crystal clear that the export target prescribed for category "B" units is not in terms of value of goods. That is why the committee did not take into account the value of goods. The committee arrived at the conclusion that nominal increase of 27 bags of yarn per day owes to plant efficiency and not to increase in capacity of unit. Therefore, the appellants assertion regarding improvement in quality and value of goods is irrelevant in view of the prescribed export target vide clause "B" of table to SRO 554(I)/98 dated 12.06.1998.

vii. As earlier submitted, category of the unit has not been disturbed by the impugned order. However, the importer has not only failed to meet the condition against category "B" as the nominal increase in production does not commensurate with the value of imports to justify and to prove additional capacity due to expansion, as laid down in table SRO 554(I)/98 dated 12.06.1998. Entitlement of refunds is subjected to law, and the appellant is not entitled to any refund under the law, as explained in preceding paragraph.

On the above submissions the learned representative of the respondents prayed that the appeal of the appellants may be dismissed being void of any merits or substance.

9. We have seen the case record and heard the arguments advanced by the learned counsel for the appellant as well as by the departmental representative. We find that the Collector of Customs, Faisalabad has passed a speaking order, keeping in view all aspects of the case and threshed out each and every contentions raised by the appellant. It is established that the appellant has voluntarily opted to avail the scheme for relief under SRO.554(I)/98 dated 12.6.1998. There was no mandatory requirement of law or legal constrain to avail the option for relief. It was purely on the voluntary decision on the part of the importer to choose and avail the option either to claim the benefit under SRO 554(I)/98 or to contest his case before the adjudicating officer. Availing of relief, although under protest, can not be rolled back subsequently. The

appellant is supposed to have more accurate knowledge than any other person. As he did not contest the case before the adjudicating officer and instead decided to deposit 5% customs duty and availed the benefit under the above said SRO, therefore, they can not raise any demand for refund at a latter stage. The matter is a past and closed transaction and cannot be disturbed in either way. Refund in the instant case is not only inadmissible under the above said notification which provides for refund of duty paid through error, inadvertence or misconstruction. None of which is matter in the instant case, hence, we find no reason to interfere with the impugned order in original No.01/2010, dated 3.6.2010 passed by the learned Collector of Customs, Faisalabad. Consequently the instant appeal is dismissed.

10. The appeal stands disposed of as above

0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0-0