

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman
Mr. Justice Dr. Shah Nawaz Memon

Spl. Customs Reference Application No. 1535 of 2023

The Directorate General of Intelligence and Investigation, Karachi Vs. M/s.
Cherat Packing Ltd. Modern Motor House, Karachi

Date of hearing : 21.09.2026

Date of decision : 21.09.2026

Applicant : Through Khalid Mehmood Rajper, Advocate.

Respondent : Through Bilawal, Advocate.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This reference under section 196 of the Customs Act, 1969 ("the Act") is directed against the order of the Customs Appellate Tribunal, Bench-I, Karachi dated 08.06.2023 in Customs Appeal No. K-742 of 2022, by which the Order-in-Original No. 610 of 2021-22 dated 18.02.2022 passed by the Additional Collector of Customs (Adjudication-I), Karachi was set aside.

I. FACTS OF THE CASE

2. The respondent imported goods described in the goods declaration as "Kodak Flexo Plate and Till" and filed Goods Declaration No. KPPI-HC-21761 on 23.09.2020 before the Model Customs Collectorate of Appraisalment, Port Muhammad Bin Qasim, claiming classification under P.C.T. heading 3701.2000. The declaration was assessed and the consignment was released.
3. The applicant Directorate, upon scrutiny of the clearance data, took the view that the goods are classifiable under P.C.T. heading 3701.3020 and not 3701.2000, and that duty and taxes of Rs. 2,745,335 had on that account been short-levied. A contravention report was drawn up and forwarded for adjudication, a show cause notice followed, and by the Order-in-Original dated 18.02.2022 the charge was held to be established, recovery was ordered and a personal penalty was imposed under clause (14) of section 156(1) of the Act.

4. The respondent preferred Customs Appeal No. K-742 of 2022, which was allowed by the learned Tribunal by the impugned order dated 08.06.2023, the Order-in-Original being set aside. That order was served upon the applicant on 12.06.2023, and this reference followed.

II. THE QUESTIONS PROPOSED

5. Six questions of law have been proposed, as set out in the memorandum of reference. They relate to the authority of the applicant Directorate to report a case of mis-declaration, to mens rea, to the finality of the assessment, to the classification of the goods and to the remission of the penalty. In view of the course which was agreed upon at the bar, it is neither necessary to reproduce them nor to answer them.

III. THE COURSE AGREED UPON AT THE BAR

6. When the matter was taken up, the learned counsel for the parties were at one that the controversy is at bottom a technical one. The goods are "*Kodak Flexo Plate and Till*", and the question is whether they answer the description in the sub-heading "Instant print film" (3701.2000), or whether they fall within the group "Other plates and film, with any side exceeding 255 mm", and, if the latter, which of the sub-headings 3701.3010, 3701.3020, 3701.3030 and 3701.3090 applies to them. Its resolution turns upon the physical attributes and the composition of the goods, upon the Explanatory Notes to the Harmonised Commodity Description and Coding System, and upon the General Rules for the Interpretation of the First Schedule, and it calls for the examination of samples and of technical literature.
7. Both the learned counsel accordingly submitted, and were agreed, that it would be in the interest of the parties that the controversy be referred for determination by the Classification Committee constituted by the Federal Board of Revenue, in terms of the ratio of the judgment of the Supreme Court in *K. S. Sulemanji Esmailji and Sons (Pvt.) Ltd.*¹; and that, the matter being so disposed of, the questions proposed need not be answered by this Court. We record that the course now adopted is one which the parties have themselves proposed and to which both have consented, and that we have not directed it of our own motion.

¹*Additional Collector of Customs, Model Customs Collectorate of Appraisement (West), Custom House, Karachi v. Messrs K. S. Sulemanji Esmailji and Sons (Pvt.) Ltd., Karachi* [2025 SCMR 121].

8. That the question is not free from difficulty appears from the record itself. The applicant asserts sub-heading 3701.3020 in the present matter; in the connected reference between the same parties, in respect of goods of the same description, it asserts sub-heading 3701.3090; and upon the interception of the consignment covered by Goods Declaration No. KAPE-HC-23150 dated 14.06.2021 the heading was corrected to 3701.3090. Three positions have thus been taken upon goods answering one and the same description. The submission that the controversy calls for an expert determination is, in those circumstances, well founded, and it is no reproach to any forum that a question of this nature has produced differing views.²

IV. WHY THAT COURSE IS THE PROPER ONE

9. The First Schedule to the Customs Act, 1969 provides that, for the purposes of interpretation, the Explanatory Notes to the Harmonised Commodity Description and Coding System published by the World Customs Organisation shall be the authentic source of interpretation, and that for the purposes of classification the Board shall be the final authority to determine the classification of any item meant to be imported or exported. It is in fulfilment of the commitments of Pakistan under the International Convention on the Harmonised Commodity Description and Coding System that the Board has established the Classification Centre, run and managed by the Classification Committee, and has prescribed the procedure for the issuance of classification rulings by Customs General Order No. 10 of 2001 dated 04.09.2001.
10. In *K. S. Sulemanji Esmailji and Sons (Pvt.) Ltd.* the Supreme Court explained the place which that Committee occupies:

"It is noted that classification of goods is one of the most basic functions of the procedure in the context of import or export of goods. It is a specialised job and technical in nature. It essentially requires expertise and taking of multiple factors into consideration e.g. examining the goods, all the relevant documents, understanding the classification aids and technical literature etc. The Classification Committee includes experts who possess the skills, knowledge and experience in respect of classification of goods in conformity with the Harmonised System ... The Classification Committee and its classification rulings, therefore, have crucial importance. There is a

²*Pakistan Telecommunication Company Limited v. Directorate of Intelligence and Investigation-FBR, Rawalpindi* [2018 PTD 946]; *United Refrigeration Industries Limited v. Director, Directorate of Intelligence and Investigation* [2021 PTD 1430].

presumption of regularity attached to its proceedings and findings regarding classification of goods. This presumption, however, is rebuttable if it can be demonstrably shown that the findings are arbitrary, fanciful and in violation of the Rules of Interpretation, the Explanatory Notes and other relevant guidelines or principles relating to classification of goods under the Harmonised System ... The Tribunal nor the High Court can substitute the findings of the Classification Committee unless they can be shown to be arbitrary, fanciful or in violation to the applicable rules and principles of interpretation."

11. That statement of the law has been applied by this Court. In *Lucky Core Industries Limited*³, a Division Bench of this Court, of which one of us (Muhammad Abdur Rahman, J.) was a member, held that where neither the department nor the learned Tribunal had referred the matter to the Classification Committee or sought its opinion, the orders of the forums below could not be sustained upon the question of classification; the impugned orders were set aside to that extent and the matter was remitted to the Classification Centre for a final determination. The present matter is a stronger one for that course, because here the parties themselves ask for it.
12. Two things should be said about the manner in which the reference is to be taken up. The first is that paragraph 2(v) of Chapter II of Customs General Order No. 10 of 2001 makes it obligatory upon the Classification Committee to invite the importer or its representative for discussion before a ruling is given, and a ruling rendered without that opportunity is liable to be set aside.⁴ The second is that the reference is for the determination of the classification of the goods and for nothing else; it neither curtails any right which the parties have under the statute nor displaces the functions which the officers of customs and the learned Tribunal are to discharge for themselves.⁵⁶

V. ORDER

13. Accordingly, by consent of the parties and at their request, we make the following order:

³*Lucky Core Industries Limited, Karachi v. Director, DGI&I (Customs) Karachi* [2026 PTD 1169].

⁴*Messrs Nayatel (Pvt.) Ltd. v. Appellate Tribunal Customs, Islamabad* [2019 PTD 288], on paragraph 2(v) of Chapter II of Customs General Order No. 10 of 2001.

⁵*Abdul Ghaffar Bhundi v. Collector of Customs (Appraisalment), Karachi* [2006 PTD 1566].

⁶See also *Esquire Garments v. Secretary, Revenue Division* [2002 PTD 2085]; *Messrs Crescent Art Fabrics (Pvt.) Ltd. v. Secretary, Revenue Division* [2011 PTD 1630]; *Shahid Muhammad Swabi v. Secretary, Revenue Division* [2012 PTD 1513].

- (1) The order of the learned Customs Appellate Tribunal, Bench-I, Karachi dated 08.06.2023 in Customs Appeal No. K-742 of 2022 is set aside, and that appeal shall stand restored to the file of the learned Tribunal.
 - (2) The question of the correct classification of the goods covered by Goods Declaration No. KPPI-HC-21761 dated 23.09.2020 is referred to the Classification Centre of the Federal Board of Revenue, for determination by the Classification Committee in accordance with the First Schedule to the Act, the General Rules for the Interpretation of the First Schedule, the Explanatory Notes and Customs General Order No. 10 of 2001, after notice and an opportunity of hearing to the applicant and to the respondent.
 - (3) The Classification Committee is requested to render its ruling preferably within ninety days of the receipt of a copy of this judgment.
 - (4) Upon the ruling being rendered, the learned Tribunal shall decide Customs Appeal No. K-742 of 2022 afresh in the light of it. All questions, including those decided by the learned Tribunal in the order now set aside, shall remain open before the learned Tribunal, and we express no opinion upon any of them.
14. The questions proposed are returned unanswered, and nothing in this judgment shall be construed as an expression of opinion upon any of them. There shall be no order as to costs.
15. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, in terms of section 196(5) of the Customs Act, 1969.

J U D G E

J U D G E

Karachi,
Dated: 21st day of September 2026