

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Special Customs Reference Application ("SCRA") No. 796 / 2019

Date Order with signature of Judge

**Present: Mr. Justice Muhammad Junaid Ghaffar
 Mr. Justice Agha Faisal**

Applicant: **The Collector, Model Customs
 Through Additional Collector of Customs
 (Law), Model Customs Collectorate of
 Appraisalment (Wet), Customs House,
 Karachi.
 Through Mr. M. Khalil Dogar, Advocate.**

Respondents: **M/s. SG Enterprises.
 Through Mr. Ghulam Hyder Shaikh a/w
 Mr. Aamir Ali, Advocates.**

Mr. Kafeel Ahmed Abbasi DAG.

Date of hearing: **13.01.2021**

Date of Order: **13.01.2021**

Muhammad Junaid Ghaffar, J: Through this Reference Application the Applicant has impugned order dated 28.08.2019 passed by the Customs Appellate Tribunal, Karachi, in Customs Appeal No. K-395/2019 by proposing the following Questions of Law:-

- "A) Whether, in the presence of "Classification committees" decision on the same issue, the learned Appellate Tribunal has not erred law to set aside the Classification Committee Decision under Section 194-B of the Customs Act, 1969 despite the fact that the Classification Committee is competent forum for classification dispute?
- B) Whether under Section 194-A(1) of the Customs Act, 1969 the learned Appellate Tribunal has not erred in law by not considering the provisions of law under Rule 2 of Pakistan Rules which inter alia states that "For the purpose of classification in the First Schedule to Customs Act, 1969 (IV of 1969), the Board shall be the final authority to determine classification of any item meant to be imported or exported?"
- C) Whether in the light of facts and circumstances of the case, particularly in the presence of Classification Committee's decision, on the same question of facts / law, the learned Appellate Tribunal has not erred in law to set aside the correct assessment of the goods under PCT heading 8528.7219?

- D) Whether the findings of the Appellate Tribunal are perverse and mis-reading / non-reading of record and non-application of relevant provisions law?"

2. Learned Counsel for the Applicant Department has read out the impugned order and submits that the learned Tribunal as well as the Collector (Appeals) have failed to appreciate that the goods in question i.e. "LED Panels" were correctly classifiable under HS Code 8528.7219 as decided vide Public Notice No. 13/2014 dated 18.11.2014 through which the decision of the Classification Committee in respect of the subject goods was notified. According to him, the decision of the Classification Committee is binding and cannot be interfered with either by the Collector of Customs (Appeals) or by the Appellate Authorities.

3. On the other hand, learned Counsel for the Respondent has argued that after certain amendments in the Customs Tariff through Finance Act, 2018 the decision of the Classification Committee is no more valid as the tariff headings have since been amended. He has supported the impugned order and has prayed for dismissal of this Reference Application.

4. We have heard both the learned counsel and perused the record. It appears that the Respondent imported LED Panels and initially claimed assessment under HS Code 8528.7219; however, during pendency of the assessment approached the Department for amendment in the HS Code from 8528.7219 to 8528.7213 which was regretted and the assessment was finalized under claimed HS Code i.e. 8528.7219. It may be noted that 8528.7213 attracts 10% Regulatory Duty, whereas, 8528.7219 attracts 40% Regulatory Duty. The Respondent being aggrieved approached the Collector of Customs (Appeals) on the ground that assessment claimed under HS Code 8528.7219 was due to mistake as subsequently, in 2018 the tariff headings were rationalized and amended; therefore, now the correct classification of the goods in question is under HS Code 8528.7213. The Collector (Appeals) decided the matter in favour of Respondent; the Applicant being aggrieved preferred further appeal which stands dismissed vide the impugned order. For a clear understanding of the controversy in hand, it would be advantageous to refer to the HS Codes in question prior to and after promulgation of the Finance Act,

2018, whereby, the First Schedule to the Customs Act, 1969 (“Customs Tariff”) was amended. They read as under: -

Before promulgation of Finance Act 2018-2019 it was under:-

---	Television Set
8528.7211	---- LCD & LED
8528.7212	---- Others

After Finance Act, 2018-2019 it is as under:-

---	Television Set
8528.7211	---- LCD, LED & OLED
8528.7213	---- In CKD / SKD Condition
8528.7219	---- Others

5. Perusal of the aforesaid HS Codes of the Customs Tariff reflect that Television Sets which are to be classified under Chapter 8528 were previously bifurcated into two 4-dash (----) headings. One was 8528.7211 for LCD & LED and the other was 8528.7212 for Others. Thereafter, through Finance Act, 2018 these headings were rationalized and amended. Now the HS Code of Television Sets (Pakistan Customs own local heading as no such 3-dash (---) heading exists internationally which are confined only to 6-digit HS codes or two (2) dash (-) sub headings) is broken / bifurcated into 3 (three) 4 dash (----) sub-headings. The first one is 8528.7211 for **LCD, LED & OLED**; the second one is 8528.7213 classifying all Television Sets **in CKD / SKD Condition**; and the third is 8528.7219 for **“Others”**. It appears that pre 2018, a dispute arose for correct classification of LCD and LED display monitors imported in CKD & SKD condition. The importers were claiming these as **parts** suitable for use solely or principally with the apparatus of heading 8525 to 8528, whereas, the Department’s stance was that these are having essential character of LCD / LED TV and as such cannot be classified as **parts** and instead in view of Rule 2(a)¹ of the General Rules of Interpretation notified by World Custom Organisation (“WCO”) and adopted locally in our

¹ 2. (a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or un-finished, provided that, as presented, the incomplete or unfinished article has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or failing to be classified as complete or finished by virtue of this Rule), presented unassembled or disassembled.

Customs Tariff, the Customs Act, the goods are correctly classifiable under HS Code 8528.7212 as complete or finished Television sets. It is in the light of this and the headings then prevalent that the Classification Committee came to the conclusion through Public Notice No. 13/2014 dated 18.11.2014 in the following terms:-

“7. The entire issue has been examined in light of rule 2(a) to General Rules for Interpretation and based on this rule, the sample as presented was clearly akin to a complete television set in terms of essential character. Moreover, in terms of value component of impugned item as compared with the value of missing parts, it could be conveniently gathered that LED/LCD panel occupies major portion of the value as juxtaposed to built-in System card, ribbon, wires and back over.

8. After detailed deliberations, the committee has reached the conclusion that the item declared as LCD/LED Panels in retail packing, as presented, are appropriately, classifiable under PCT sub-heading 8528.7212 in terms of rule 2(a) to the General Rules for Interpretation.”

6. The issue at the relevant time arose precisely due to the fact LCD / LED Panels were imported in CKD/SKD condition and were in fact not in complete form; but certain parts were missing or were not imported along with these LCD / LED panels. As noted, at the relevant time there were only two HS codes available. When the issue of classification of LED & LCD Panels in CKD or SKD condition is examined prior to 2018 amendment, it appears that at the relevant time the correct classification was to be made under HS Code 8528.7211 and not under HS code 8528.7212 as opined in the Public Notice, as the issue was that whether, by virtue of Rule 2(a) of the General Rules of Interpretation, LED & LCD Panels in CKD or SKD condition are to be classified as complete units or as parts. And to that extent perhaps there couldn't be any cavil (except that the final conclusion of classification in HS Code 8528.7212 instead of 8528.7211 is somewhat debatable). Since the Public Notice is directly not under challenge before us in these proceedings; therefore, we have restrained ourselves from examining it in any details, however, as a passing remark we may observe that in the given facts and the issue raised and recorded therein, perhaps the appropriate classification for the goods then under discussion before the Classification Committee ought to have been done under HS Code 8528.7211 as LCD / LED in CKD and SKD condition and not under 8528.7212 in “*Others*”. This is for reason that as per Applicant's own case it remained a TV set be it in CKD/SKD condition. Nonetheless, in this case it is not the issue directly in consideration but only to the

extent that in the given facts and circumstances could this Public Notice still hold field when the structure and very genesis of the classification entries stands substituted.

7. In our view the said Public Notice would not apply post 2018 as the position has entirely changed after Finance Act, 2018 when the heading of Television Set was broken into **3 (three) distinct 4dash (---)** sub-headings. Now if a Television Set (LCD, LED & OLED) is imported in complete form then it would be classified under **8528.7211**. Similarly, any Television Set including LCD, LED & OLED is imported in CKD / SKD condition, then it is to be classified under heading **8528.7213** and if anything is imported which is not classifiable under any of these two headings, then it would fall in HS Code **8528.7219**. As of today, the HS code arrived at by the Classification Committee in the said Public Notice no more exists in the Customs Tariff; nor by implication it could be held that the heading of “Others” as per pre-2018 Tariff would ipso fact apply on the heading of “Others” post 2018 as well. They in fact do not correspond or complement each other in any manner. The reason for this is unlike the International Harmonised Coding System and the Explanatory Notes² issued by WCO we have locally made changes in the sub-heading of 8528 and specially 8528.7000. For a better understanding of this issue it would be advantageous to refer to the International HS coding of 8528 which is as under;

85.28 - Monitors and projectors, not incorporating television reception apparatus; reception apparatus for television, whether or not incorporating radio-broadcast receivers or sound or video recording or reproducing apparatus.

- Reception apparatus for television, whether or not incorporating radiobroadcast receivers or sound or video recording or reproducing apparatus:

8528.71 - - Not designed to incorporate a video display or screen

8528.72 - - Other, color

8528.73 - - Other, black and white or other monochrome

8. As could be seen from the above that internationally TV sets have not been specified in the two (2) dash (--) heading of 8528.72 (Other, Colour). Over here we have bifurcated it into a (3) dash (---) heading of Television Set with a further bifurcation into three new

² Followed as an authentic source of interpretation and guidance judicially. See Colgate Palmolive (Pakistan) Limited v Federation of Pakistan (2004 PTD 2516)

and local (4) dash (----) sub-headings as noted in preceding paras. It has always been the case of the Department that LED or LCD Panels imported with or without parts is to be classified as a complete set; then merely by placing reliance on a Public Notice which has no relevance with the present tariff headings would not suffice. Now they have by themselves created a new sub-heading for LCD / LED in CKD & SKD condition; hence, LCD and LED Panels would not then fall in a residuary heading of Others (**8528.7219**). Perhaps, the Department has by itself now decided the issue in favour of the Respondents / importers by creating a new (4) dash (----) sub-heading; rendering the Public Notice as above of no relevance; rather making it infructuous post 2018.

9. In view of hereinabove facts and circumstances of this case, on 13.01.2021 we had re-phrased the Questions of Law in the following terms and had dismissed the Reference Application by means of a short order which reads as under: -

“We have heard learned counsel for the applicant. The Applicant department has proposed various questions of law purportedly arising out of the order of Customs Tribunal dated 28.8.2019 in Customs Appeal No.K-395/2019; however, we would like to rephrase the questions as under:

1. Whether in the facts and circumstances of the case. the Appellate Tribunal was justified in upholding the order of Collector (Appeals), whereby the classification of the goods in question was determined under HS Code 8528.7213?
2. Whether in the facts and circumstances of the case, the classification of goods in question could have be determined in terms of Public Notice No.13/2014 dated 18.11.2014?

For the reasons to be recorded later on this Reference Application is dismissed. Question No.1 is answered in the affirmative against the applicant and in favour of the respondent, whereas, question No.2 is answered in negative against the Applicant and in favour of Respondent.”

10. Above are the reasons for the same. Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

J U D G E

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Arshad/