

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Special Customs Appeal No. 149 of 2002
Special Customs Appeal No. 150 of 2002
Special Customs Appeal No. 151 of 2002
Special Customs Appeal No. 152 of 2002

DATE	ORDER WITH SIGNATURE OF JUDGE
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Hearing of case

For regular hearing

15.02.2023.

Mr. Hanif Faisal Alam advocate for the Appellant

Ms. Masooda Siraj, advocate for respondent

Through these Special Customs Appeals, filed under Section 196 of the Customs Act, 1969, the Appellant has impugned a common judgment / order dated 11.06.2002 passed in Appeal No. Cus-25 to 28/1993 by the then Customs, Excise and Sales Tax Appellate Tribunal Karachi Bench, Karachi. These appeals were admitted to regular hearing on the following two questions: -

1. Whether the show cause notice issued to the Appellant was time barred under section 32(3) of the Customs Act, 1969?

2. Whether in the absence of any proper test of the consignment and in the absence of any evidence, the customs authorities and the learned Appellate Tribunal correctly came to the conclusion that the consignment imported by the Appellant consisted of polypropylene film grade as against the injection grade?

Learned counsel for the Appellant submits that no mis-declaration was committed while filing the bills of entry; that goods were examined and assessed by the Customs Authorities and were released without any objection; that no laboratory test was carried out to determine the alleged mis-declaration; that subsequently show cause notice was issued which otherwise was time-barred in terms of Section 32(3) of the Customs Act 1969 and therefore the Tribunal as well as the forums below have erred in deciding the matters against the Appellant.

On the other hand, respondent's counsel has supported the impugned judgment and has prayed for dismissal of these Special Customs Appeals.

We have heard both the learned counsel and have perused the record. It appears that the Appellant imported various consignments of Polypropylene and declared the same on the bill of entry as Polypropylene (injection grade) and after assessment of the goods on such declaration, they were released by the Customs Authorities by assessing the same at the rate of US \$ 700 per metric ton. During post clearance scrutiny, it transpired that the goods in question were not of *injection grade*; but of *film grade* and were to be assessed at the rate of US \$ 850 per metric ton. It was further alleged that there was nothing on record to confirm the declaration of the Appellant with regard to the same being of *injection grade*. On this detection, show cause notices were issued and matter was adjudicated against the present Appellant, after which appeal was preferred before the learned Tribunal, and learned tribunal while dismissing the appeals through the impugned order has observed as follows:-

"8. The arguments advanced by the Appellant are similar to those advanced before the Adjudication authority as well. We observe that the Appellant have not given any evidence in supports of their contention and their case is based on mere denial of the assertion of the show-cause notice. The Appellant's contention is not maintainable as grade of the plastic molding compound is shown by the manufacturer on almost all the bags. The manufacturer's literature clearly indicates grade H-356-F as film grade. The certificate issued by the local indenter M/s. Tufail & Brothers also indicates that polypropylene (Plastic molding compound) of grade H1-356-F is meant for films. The Appellants on other hand have not been able to give any evidence in supports of their contention that the goods imported by them are injection grade. The Appellant's main arguments is that no laboratory test was conducted by the Customs to ascertain the grade of the impugned goods. The case record shows that the grade of the goods was mentioned on all most all the imported bags by the manufacturers by pasting labels on the bags indicating the details of the grade. The manufacturer labels, in our view are more authentic as far as the description of the ingredients is concerned than the report of any laboratory. The grade was shown on almost all the bags and there is no reason to doubt it and there was no need for the custom to have got it tested from any other laboratory. In view of this overwhelming evidence in fact it was the responsibility of the Appellants to have got their goods tested and given a contrary report if there was any. We further observe that there was no test report on the record to confirm the Appellant's plea that the declared injection grade was correct.

9. The importers plea that he was not confronted with the evidence available with the customs in the shape of labels, pasted on all the bags is irrelevant as the examination of the goods was conducted in the presence of the importers' legal representative and he did not make any objection regarding the examination at that time.

10 We have examined the contention of the Appellant on the point of limitation as well. The case record however shows that this is a case where the importers clearly concealed facts and made mis-declaration of the description on ex-bond bill on entry. The case as such is hit by provision of section 32(2) of the Customs Act, 1969 which provides for a period of three years. The show-cause notice is thus well within time and Appellants arguments lacks merit.

11. We further observe that the Appellant's plea that in respect of a consignment imported from the same source under the same letter of credit No. B/91062/RRK/89 established with M/s. Habib Bank Ltd., Karachi the Dy. Collector of Customs, Appraisement-1. Customs House, Karachi after a demand-cum-show cause notice, vacated it and hence the Collector should not have taken a different view is not maintainable as the decision of a junior forum is not binding on the senior forum.

12. We further observe that the case record shows that the Appellant have been found consistently involved in this type of mis-declaration causing substantial loss to the legitimate government revenue.

13. Considering the above we find that the impugned order is correct in law and fact and does not warrant any interference. The appeals are accordingly dismissed”

From perusal of the above as well as the record available before us it appears that the Appellant while filing the bill of entries, on its own, declared the product as injection grade, however, in the import documents including the invoice, there is no such declaration of description by the shipper. Record further reflects that the goods were examined and on perusal of the examination report also, it appears that there is no confirmation as to the goods being of injection grade rather, it has been confirmed in the findings of the Tribunal that the manufacturers literature clearly indicates that the grade H-356-F imported by the Appellant is of film grade. It has been further stated by the Tribunal that even the local indenter of the goods M/s Tufail & Brothers also confirmed that the product in question is of film grade. Notwithstanding this, all consignments were assessed on such basis and were released accordingly at a lower assessment value of US\$ 700 per metric ton. While confronted Appellant's counsel has not been able to assist as to how such declaration was made in respect of the goods as being injection grade when the commercial invoice was silent to this effect and in response he has argued that HS Code for injection grade was declared in the invoices. We are afraid this is no ground to make a declaration inasmuch as the HS Code mentioned on the invoice is always tentative and not binding for assessment purposes as it may not always be the correct HS Code as is applicable in a local jurisdiction. Moreover, the Appellant also failed to establish with any literature or supporting material from the supplier which could confirm that the imported goods were of

injection grade and not of film grade as alleged. Rather such documents are against the very arguments of the Appellants Counsel as noted above. Mere insistence for a laboratory test would not suffice in these facts when apparently the declaration by itself is not supported or justified. Record further reflects that a finding of fact has been recorded by the forums below as to the goods being of film grade against which nothing substantial has been placed on record to rebut such facts; which otherwise, in our considered view, is not within our jurisdiction to interfere with.

In view of the above, no case is made out; both the proposed questions are answered against the Appellant and in favor of the respondent. As a consequence, thereof, these Appeals are hereby dismissed.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

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