

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Custom Reference Application No. 565 of 2022

Date

Order with signature of Judge

FRESH CASE

- 1) For orders on CMA No. 3092/2023.
- 2) For orders on CMA No. 3130/2022.
- 3) For hearing of main case.
- 4) For orders on CMA No. 3131/2022.
- 5) For orders on CMA No. 3093/2023.

11.08.2023.

Mr. Irfan Mir Halepota, Advocate for Petitioner.

1) Granted.

2) Granted subject to all excretions.

3 & 4) Through this Special Customs Reference Application, the Applicant Department has impugned Judgment dated 23.06.2022 passed by the Customs Appellate Tribunal Bench-I at Karachi in Customs Appeal No. K-10/2021 proposing following Questions of Law:-

- A. "Whether the Learned Appellate Tribunal has erred in law, to ignore that the respondent mis-declared the PCT classification of item No. 1 to item No. 10 & item No. 14 to evade duty and taxes as the rate of duties and taxes as per ascertain PCTs are much higher than those under the declared PCT. The motive was to make a heavy loss in millions of rupees to the national exchequer?
- B. Whether the Honourable Appellate Tribunal has failed to consider that to determine the correct PCT classification of the imported goods an any tem is the exclusive job of the assessing officer. Who in the instant case has assessed the goods under their appropriate HS Code?
- C. Whether the Learned Appellate Tribunal has failed to consider that the PCT classification of imported items were determined on the basis of examination report scanned documents and online literature which clearly shows that the respondent has violated the provisions of Section 32(1), (2), 32A, 79(1) & 80 of the Customs Act?
- D. Whether the less payment of duty taxes made through self-assessment by mis-declaring the PCT classification of the various imported items contains industrial flouring products multi components did not constitute mis-declaration within the meaning of Section 32(1) 32(2) & 79 of the Customs Act, 1989 read with SRO 499(I)/2009 dated 12.06.2009?
- E. Whether the learned Appellate Tribunal has erred in law, not to Consider the order passed by the Honourable Supreme Court of Pakistan in the case of Collector of

Sales Tax & Central Excise, Lahore vs. Zamindara paper & Board Mills, etc (PTCL 2007 CL 260) & Supreme Court's order dated 10-11-2003, in the case of Sadruddin Alladin v/s. Collector of Customs in Civil petition No.775-k/2003, wherein it was held that merit of the case cannot be scrapped on sheer technicalities?

- F Whether in view of the established facts & relevant provisions of Law the finding of the Appellate Tribunal are not perverse for non-reading and / or mis-reading of the available record to the detriment of revenue and the consequent benefit to the respondent importer on the of leniency?"

Learned Counsel for the Applicant has contended that the Tribunal was not justified in passing the impugned order as it is a case of mis-declaration of tariff classification to evade duty and taxes; warranting imposition of fine and penalty, and therefore, the order is liable to be set aside.

We have heard the Applicant's Counsel and perused the record. It appears that the Respondent imported a consignment of Industrial Flooring Products and claimed assessment of goods under certain HS Code, whereas, after examination of the goods the Applicant assessed the goods in some other HS Codes (which for the present purposes are not relevant). A show cause notice was issued which was adjudicated against the Respondent by imposition of fine and penalty, whereas, in Appeal the said fine has been remitted with certain further directions.

At the very outset, we may observe that in fact the impugned order passed by the Tribunal is a remand order inasmuch as the matter has been referred to the Classification Committee constituted in terms of Para 2 of CGO 12 of 2022 for appropriate classification of the goods in question, and *per-se*, is not an order in favour of the Respondent. As to the order of the Tribunal whereby fine and penalty has been waived, it is settled law that mere change of classification by the Customs Department, does not, *ipso facto*, warrant imposition of fine and penalty. If a case is made out, then it is only a correct determination of HS code which matters. The learned Tribunal, to that extent has even not given its own finding; but has referred the matter to the Classification Committee of the Department.

It is settled law that classification of goods is a question based on legal and factual determination and so also of interpretation of the HS Codes and the Customs Tariff; hence, there could always be a difference of opinion in interpreting the same. It is not that it always will be a case of *mens rea* and imposition of penalty if the claimed HS Code is not accepted by the Department. Therefore, in our opinion, in the given facts and circumstances, the learned Tribunal was fully justified in remitting the imposition of fine and penalty as ordered by the Adjudicating authority. Here it has not been proved that the alleged mis-declaration was intentional and deliberate¹; hence, imposition of fine and penalty could not have been sustained. It is further settled that in cases where a wrong interpretation of a section is made and tax or duty has been short paid due to misconstruction or misinterpretation of the relevant law in good faith such shortfall cannot be termed as mis-declaration and will therefore not be liable to levy of penalty². The same view has been reiterated in the case of Yamaha Motors³.

In view of the above, we do not see any reason to interfere in the impugned order, and therefore, the proposed Questions are answered against the Applicant and in favour of the Respondent. As a consequence, thereof, this Reference Application is **dismissed** in limine. Let a copy of this order be issued to the Registrar of the Customs Tribunal in terms of Section 196 (5) of the Customs Act, 1969.

J U D G E

J U D G E

Arshad/

¹ Collector of Customs vs. Power Electronic Pakistan (Pvt.) Limited 2011 PTD 2837

² Collector of Customs vs. Shaikh Shakeel Ahmed 2011 PTD 495

³ Collector of Customs Vs. Yamaha Motors Pakistan (Pvt) Limited (2021 PTD 207)