

THE HIGH COURT OF SINDH KARACHI
[Special Appellate Court Customs]

Spl. Cr. Acq. Appeal No. 22 of 2022
[Collector of Customs v. Azam Waheed & another]

Appellant : Collector of Customs, Collectorate of Customs Appraisement (West), Customs House, Karachi, through Mr. Muhammad Khalil Dogar, Advocate.

Date of hearing : 21-11-2023

Date of judgment : 21-02-2024

JUDGMENT

Adnan Iqbal Chaudhry J. - This appeal under section 185-F of the Customs Act, 1969 is against the order dated 28-03-2022 passed by the Special Judge (Customs, Taxation & Anti-Smuggling), Karachi, acquitting the Respondent No.1 under section 265-K CrPC.

FIR No. 12/2021 lodged on 09-07-2021 alleged that between the period 30-07-2019 and 28-06-2021, the Respondent No.1, sole proprietor of M/s. Agility & Co. and M/s. M.A.W. & Co., had committed offences of mis-declaration and tax fraud under sections 32(1) and 32A(1) respectively of the Customs Act, 1969 in the importing and clearing of sanitary ware. Per the FIR, in a number of Goods Declarations [GDs] filed during the said period, the Respondent No.1 had described and cleared goods as "Pedestal Pan with Cistern" through the Green Channel while assessing its value as a two-piece set, whereas the actual goods were Pedestal Pan with Cistern in one-piece, for which Valuation Ruling 1282/2018 had assigned a different Code of the PCT of a higher value, hence under-valuation by the Respondent No.1.

The allegation above was premised on a seizure made on 28-06-2021 of goods declared by the Respondent No.1 in three GDs, upon which the Respondent No.1 agreed to pay the differential customs duty and taxes. Though the goods imported prior thereto

had been cleared long ago and were not available for examination, it was speculated that those too must have been cleared similarly.

Be that as it may, from the investigation report it appears that the underlying issue was essentially one of classification of goods under the PCT, and not *per se* of mis-declaration or tax fraud as it was contended by the Respondent No.1 that he had classified the goods as per established past practice. It is settled law that for the offence of mis-declaration there should be some material to show that mis-declaration was made with the knowledge or having reason to believe that the document or statement is false.¹ Admittedly, the finding of mis-declaration arrived by the department against the Respondent No.1 in the adjudication of penalty, had been set-aside by the Customs Appellate Tribunal who was also of the view that the underlying issue was of classification of goods under the PCT. In such circumstances the learned Special Judge held that where the Appellant could not succeed on the lesser threshold for proving mis-declaration, it was improbable that it could succeed on the higher threshold for proving the same for criminal conviction.

Confronted with the aforesaid circumstances of the case, learned counsel for the Appellant could not convince this Court to interfere with the order of acquittal passed by the learned Special Judge. The appeal is therefore dismissed.

JUDGE

Karachi:
Dated: 21-02-2024

¹ *Iram Ghee Mills (Pvt.) Ltd. v. Customs, Central Excise & Sales Tax (Appellate) Tribunal* (2004 PTD 559).