

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 95 of 2024

Date

Order with signature of Judge

HEARING / PRIORITY CASE:

1. For hearing of CMA No.372/2024.
2. For Regular Hearing.

Dated: 7th November 2024

Mr. Agha Shahid Majeed Khan alongwith Mr. Muhammad Zakir,
Advocate for Applicant.

Mr. Muhammad Abbas, Advocate for Respondent.

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Through this Reference Application the Applicant department has impugned judgment dated 03.11.2023 passed in Customs Appeal No.K-1907/2022 by the Customs Appellate Tribunal Bench-II, Karachi; proposing various questions of law, however, today learned counsel for the Applicant has only pressed Question No. B, which reads as follows: -

B. Whether in the facts and circumstances of the case, the Learned Customs Appellate Tribunal has erred in law by determining that "examination report available of record shows that the particulars of the declaration made by the appellant including the description of goods were confirmed by the examination officer and no discrepancy was found at all", whereas, on the contrary, the examination report clearly states "this is the case of mis-declaration....."?

2. Heard learned counsel for the parties and perused the record. It appears that Respondent imported a consignment of Emery Paper and filed a Goods Declaration; claiming assessment of the goods under HS Code 6805.1000 with a total value of United Arab Emirate Dirham 26,000, whereas the origin of the goods was declared as United Arab Emirates. The consignment was examined by the Applicant department and it was alleged that gross mis-declaration was made in respect of description, value, HS Code and origin; hence a Show Cause Notice was issued, which was adjudicated against the Respondent, whereby, the charges leveled in the Show Cause

Notice were affirmed and goods were also confiscated with an option to pay fine in lieu of confiscation at the rate of 35% in terms of SRO 499(I)/2009, dated 13.06.2009 with a person penalty of Rs. 50,000/-. Respondent being aggrieved preferred an appeal before the Tribunal and through impugned judgment the appeal has been allowed and the order of the Adjudicating Authority has been set aside, against which instant Reference Application has been filed.

3. After going through the order of the Tribunal, we have confronted Respondent's Counsel as to the findings of the Tribunal at Para 13, wherein certain observations have been made in favour of the Respondent, however, learned counsel was unable to substantiate the said findings with any supporting documents on record. It would be advantageous to refer to Paras 13 and 14 of the impugned order, which reads as under: -

"13. The record of the case suggests that the goods were duly examined and assessed by the Customs officers under Section 80 of the Customs Act, 1969. The Examination Report available on record shows that the particulars of the declaration made by the appellant including the description of goods were duly confirmed by the Examining Officer and no discrepancy was found at all. On the basis of the Examination Report, the assessment was made by the Assessing Officer, who confirmed the description and PCT heading claimed by the Appellant. However, the value declared by the Appellant as per declared description that is Emery Paper covered under PCT Heading 6805.1000 was not taken into consideration as per (90) ninety days valid data and valuation ruling of abrasive products was being arbitrarily, illegally and unlawfully applied covered vide Valuation Ruling No. 1658/2022 dated 16.6.2022 under presumption, assumption, conjures and surmises assuming it to be abrasive cloth in rolls under same PCT Heading 6805.1000 and also abrasive cloth in rolls under PCT heading 6805.2000.

14. The Respondent department has opted to change the classification on the basis of 'images' of the product, which is contrary to the scheme of classification as well as unacceptable as the classification of goods in question depends upon the physical structure of the impugned goods in question namely Emery Paper and the same can only be determined through physical examination/testing. The Examination Report on the record confirms the goods to be as per the declaration of the Appellant, hence in the presence of Physical Examination Report, the reliance of the Respondent department on the 'images' is uncalled for and unlawful. It is a trite law that 'evidence has precedence over presumption, therefore, the assertion of the respondent department, which is based on mere presumption is uncalled for."

4. From perusal of the aforesaid observations of the Tribunal it reflects that the Tribunal has come to a definite conclusion that Examination Report shows that particulars of the declaration made by the Respondent in respect of description of goods was affirmed by the Examining Officer and no discrepancy was found at all. It has been further observed that based on such Examination Report, the assessment was made by the Assessing Officer, who also confirmed the description and PCT heading so claimed by the Appellant. Learned Tribunal has finally observed that in presence of the Physical Examination Report any reliance on the basis of images obtained during examination report are irrelevant. We are afraid that this finding of the Tribunal is devoid of merits and is not based on proper appreciation of facts; not is supported any material on record. It would be advantageous to refer to Para 2 of the allegations leveled against the Respondent in the Show Cause Notice, which reads as under: -

"2. And whereas, the under reference GD was selected by the WeBOC system for scrutiny in terms of Section 80 of the Customs Act, 1969 and was referred to Examination for confirmation of description, quantity, weight and other physical attributes of the goods. Following is the detail of examination:

"...Assessment alert... This is the case of Mis-declaration of description, invoice not found inside the container. Examined the goods on the basis of G.D retrieved through WeBOC system. Description of goods found/examined: (1) Abrasive cloth in rolls (cloth base), placed on wooden pallets, brand: 3M, origin: U.S.A, weight: 1500 kg approx. (2) Abrasive paper in rolls (paper base), placed on wooden pallets, Brand: Nastroflex, naxostats, Naxos, Origin: Made in E.C printed on abrasive paper, weight: 20500 kg approx. Note: R/sample of both items are being forwarded to customs House group. Checked weight 100% vides QICT slip no: 10640647, dated: 13/July/2022, & found weight: 22180 kg. Group is requested to check all aspects. Images are attached."

5. From perusal of the aforesaid allegations, it reflects that the examination report has not confirmed or affirmed declared description; rather it has been alleged that this is a case of mis-declaration or description, whereas the original declaration says that Emery Paper has been imported weighing 22,650 kg, however, on examination the paper in question is of two types, one is cloth based, which is 1,500kg and is classifiable under HS

Code 6805.1000 chargeable to customs duty at the rate of 11%, whereas the second item found in the examination report is though Emery Paper; but is paper based and the quantity found is 20,500kg which is correctly classifiable under HS Code 6805.2000 chargeable to customs duty at the rate of 20%. Not only this, it is the case of the Applicant department that the value of both the items is also different, as the Emery Paper classifiable under HS Code 6805.2000 attracts a higher valuation, whereas, the Origin of the goods is also mis declared. When confronted, learned counsel for the Respondent has not been able to satisfactorily respond as to the observations of the Tribunal vis-à-vis, allegations in the Show Cause Notice, except reliance on an order passed by this Court on 19.08.2024 in Special Customs Reference Application No.481 of 2024 and submits that the Respondent had shown willingness to pay the duties and taxes and fine and penalty may be remitted. However, from perusal of the said order, it reflects that the same is not relevant for the present facts and circumstances, as in that case there was a question of change in classification based on test report, whereas in the instant matter, the classification is not in dispute; rather it is a case of mis-declaration or description and Origin to avoid higher rate of duty and the assessable value, as the rate of duty on major part of the imported goods i.e. 20,500 Kgs is 20% as against the declared rate of 11%.

6. In view of hereinabove facts and circumstances of the case, the proposed question "B" is answered in favour of the Applicant and against the Respondent. As a consequence thereof, this Reference Application is **allowed** and the impugned order of the Tribunal is hereby set-aside. Let copy of this order be sent to the Customs Appellate Tribunal Karachi, in terms of sub-section (5) of Section 196 of Customs Act, 1969.

JUDGE

JUDGE

Farhan/PS