

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application No. 1910 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	1. For hearing of CMA No. 5473/23. 2. For hearing of main case. 3. For hearing on CMA No. 5474/23.

28.11.2025

Mr. Khalid Mehmood Rajper, advocate for applicant.

Per learned counsel evidence has not been considered by the last fact-finding forum in the statutory hierarchy. He further states that even otherwise the issue of classification was in doubt, hence, it ought to have been referred to the classification committee in view of judgment of Supreme Court reported as 2025 SCMR 121.

Learned counsel demonstrates from the file that service has been effected through publication.

Learned counsel states that law is settled in such regard with referral of the matter to the classification committee as discerned from judgment cited supra. He states that earlier in *pari materia* facts and circumstances, judgment dated 26.09.2024 was rendered in SCRA No. 1490/2023 by a learned division bench of this Court, operative part whereof reads as follows:-

“9. From perusal of the aforesaid submissions it reflects that Respondent No.2 had provided enough material to the Adjudicating Authority as to the usage of mineral oil in question, including Pakistan Standard Specification which according to the Respondent was to be specifically used in batching of jute and fibre. This apparently has not been attended to in a proper manner by the Adjudicating Authority. At the same time the Tribunal also did not bother to examine this aspect while passing the impugned order. It is also pertinent to note that in the ONO, alternatively, the Adjudicating Authority has placed reliance on the General Rules of Interpretation notified by the World Custom Organisation (“WCO”) and adopted locally in our Customs Tariff (1st Schedule to the Customs Act, 1969) as an authentic source for determination of classification of imported goods, however, it needs to be finally determined that whether it is applicable only when the classification is being determined on the basis of international heading(s) / sub-heading(s) of 6 digits (or 6 (dash) ----- heading) issued by the World Custom Organisation or it also applies when the classification is being determined or considered on the basis of a local 8-digit sub-heading in the Pakistan Customs Tariff. Such interpretation of single dash (-) and double dash (--) headings issued by WCO and their bifurcation into sub-headings locally for variance in customs duties have been dealt with and interpreted keeping in view the General Rules of Interpretation notified by WCO in the case of **Collector v SG Enterprises**² by this Court. Therefore, even if Rule 3(c)³ of GIR is applicable, then before that,

Rule 3(b)⁴ of GIR will come into application as the goods in question are more akin to the description of HS Code 2710.1991, except that its final use for batching of jute and fibre is yet to be determined. However, all these aspects have not been touched upon by both the forums below.

10. Lastly, as to final determination of correct classification of the subject goods and the appropriate forum or authority, there are several cases wherein, this Court as well the Supreme Court has finally determined the classification of goods in *S.M. Ahmad & Company (Pvt.) Limited*⁶, followed in *Shahnawaz Enterprises*⁶; *Iqbal Hussain*⁷; *Shakeel Brothers*⁸; *Asian Food Industries Ltd*⁹; *Pak Noble Enterprises*¹⁰ and *Askari Cement (Pvt) Limited*¹¹.

However, very recently, the Hon'ble Supreme Court in the case of **K. S. Sulemanji Esmailji** has been pleased to deprecate exercise of such authority by the Tribunal as well the High Court. The Supreme Court has been pleased to hold that the First Schedule of the Customs Act, 1969, provides that for the purposes of classification the Board shall be the final authority to determine the classification of any item meant to be imported or exported, as in order to fulfil the commitments under the 'International Convention on the Harmonized Commodity Description and Coding System' the Board has established the *Classification Centre* which is run and managed by the *Classification Committee*, and pursuant to Customs General Order No. 10/2001, dated 04-09-2001, has prescribed a procedure in order to streamline the issuance of classification rulings to implement the recommendations of the World Customs Organization. The Supreme Court has further observed that classification of goods is one of the most basic functions of the procedure in the context of import or export of goods and is a specialized job and technical in nature as it essentially requires expertise and taking of multiple factors into consideration e.g. examining the goods, all the relevant documents, understanding the classification aids and technical literature etc. It has been further observed that the Classification Committee includes experts who possess the skills, knowledge and experience in respect of classification of goods in conformity with the Harmonized System and therefore, the Classification Committee and its classification rulings have crucial importance. The Court has further held that the First Schedule also declares that the determination of classification by the Board shall be final which is also in the light of the scheme of the Harmonized System which has been adopted and followed by Pakistan pursuant to its commitments under the Convention, and the Tribunal nor the High Court can substitute the findings of the Classification Committee. In essence it has been held that The Tribunal or the High Court could not bypass the competent forum i.e. the *Classification Committee* nor give a different finding unless it could be clearly shown that the determination was arbitrary, fanciful and in violation of the rules and principles relating to classification of goods under the Harmonized System.

11. In view of hereinabove facts and circumstances of the case and the law now settled by the Supreme Court as above, since in this matter the Applicant department and the Tribunal have both failed to refer or seek opinion of the *Classification Committee*, we do not see any reason to sustain the order(s) passed by both the forums below. They are hereby set-aside accordingly. The matter stands remanded to the *Classification Centre* for finally deciding the issue of classification of the subject goods, which opinion shall be a final opinion; however, subject to the exceptions as provided in the above order of Supreme Court. The proposed questions are answered accordingly, and the Reference Application is *disposed of* in these terms. Let copy of this order be issued to the Customs Appellate Tribunal as required under subsection (5) of Section 196 of the Customs Act, 1969."

Learned counsel states that it may be just and proper for this reference to be disposed of on the same terms and for the same reasons. Order accordingly.

A copy of this order 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.

Judge

Judge

Ayaz p.s.