

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SCRA No.228, 229 & 230 of 2024

Date	Order with Signature of Judge
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Fresh Case

- 1. For order on office objection No.7 & 25
- 2. For hearing of Main Case
- 3. For hearing of CMA No. 972/2024

10.02.2026

Mr. Sardar Zafar Hussain Advocate for the Applicant

On 17.04.2024 following order was passed:

“We have confronted the Applicant’ Counsel as to any question of law arising out of the orders passed by the forums below as much as the Collector (Appeals) as well as the Tribunal both have decided the matter of classification against the Applicant department and learned Counsel needs time to prepare his brief. Adjourned.”

Today, learned counsel states that said question has already been decided against the Applicant Department vide Order dated 20.03.2025 passed in SCRA No. 721 to 723 of 2024 which reads as under:-

20.03.2025.

Mr. Shahnawaz M. Sahito, Advocate for Applicant.

Through these Reference Applications, the Applicant (department) has impugned Judgment dated 03.06.2024 passed in Customs Appeal No. K-154 to 2166 of 2024 by the Customs Appellate Tribunal at Karachi proposing the following Questions of Law:-

- i. Whether in the light of facts and circumstances of the case, the learned Customs Appellate Tribunal erred in law to hold that the importer tried to cleared his consignment of "PANODAN 165 DATEN" as a food emulsifier under incorrect PCT heading 3824.9999 (which covers the chemical products & preparation of the "chemical" or "allied industries not elsewhere specified or included) as against the correct / appropriate classified PCT Heading 2106.9040 by virtue of terms of heading and application of GRI 1 and Note 1 (b) to the Chapter Notes of Chapter 38 and duly supported by WCO Compendium along with Classification Committee Ruling vide Public Notice No. 12/2023 (specify the emulsifying agents for food and dairy products specifically under PCT Heading 2106) dated 01.06.2023, not fall under the of purview of "mens-rea" and willful "mis-declaration" on the part of the importer to evade the legitimate government revenue?
- ii. Whether the learned Customs Appellate Tribunal has considered the provision of Section 79(1) read with Section 32(1), 32(2) & 32A of the Customs Act, 1969, that the less payment of revenue through, wrong sell-assessment though is also not a case of mis-declaration within the meaning of Section 32 of the Customs Act, 1969 read with SRO 499(1)/2009 dated 13-06-2009

- iii. Whether in the light of facts & circumstances of the case, the learned. Customs Appellate Tribunal totally ignored and has failed to consider that the decision of the PCT determination by the Classification Committee was made subsequent to the dispute arise at the time of assessment regarding the correct PCT Classification (as a result of dispute GD was provisionally assessed and importer approached for correct classification) by the concerned authorizes and was endorsed by the Board vide Public Notice No. 12/2023 dated 01-06-2023, therefore, be applicable retrospectively?

Heard learned Counsel for the Applicant and perused the record. At the very outset, the Applicant's Counsel has been confronted as to the findings of the Collector of Customs (Appeals) as well as the Tribunal in favor of the Respondent to the effect that the Classification Ruling dated 01.06.2023 being relied upon by the Applicant department has been issued in respect of some another product imported by another Importer and he has not been able to satisfactorily respond to this query of the Court. Admittedly, the product imported by the Respondent is "PANODAN 165 DATEM" whereas, the Classification Ruling being relied upon by the Applicant department is in respect of the product "RECODAN RS-100 & RECODAN RS VEG". Therefore, in our considered view, both the forums below were justified in passing the impugned order(s) and no case for any exception has been made out. The proposed questions are not relevant for the issue in hand; hence, need not be answered. Accordingly, these Reference Applications are dismissed in limine with pending applications. Office to place copy of this order in connected Reference Applications.

Learned counsel states that the said order squarely binding upon this bench. In view thereof the reference application may be dismissed. Order accordingly.

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

Judge

Judge

Amjad PS