ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 487 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For order on office objection No.13
2. For hearing of CMA No.2582/2022
3. For hearing of main case
4. For hearing of CMA No.2583/2022

13.02.2025

Ms. Masooda Siraj, advocate for the applicant

Following question of law has been framed for determination.

> Whether the learned Appellate Tribunal has erred in law by not considering the fact that the imported submersible motors made of cast iron are correctly classifiable under PCT Heading 8501.2590 instead of 8501.5210 which is specified for submersible motors of stainless steel as per Pakistan Customs Tariff?

Courier report and tracking report place on record to demonstrate that service has been effected.

Learned counsel states that the matter squarely covered by the judgment of Supreme Court in the case of K.S. Sulemanji Esmailji reported as 2025 PTD 260. Learned counsel states that on identical circumstances orders have been passed including order dated 26.09.2025 passed in SCRA 303 of 2019 and connected matters which reads as follows:

> **"26.09.2025**
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> Mr. Khalid Mehmood Rajpar, advocate for the applicant
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> These reference applications are pending since 2019 and the question framed for determination vide order dated 26.11.2020 was as follows :
>
> *"Whether learned Appellate Tribunal has erred in law that goods were declared / self-assessed under incorrect HS Code with malafide intention to pay less amount of duty and taxes and the charges established against the Respondent importer in terms of Sections 79(1), 32(1), 32(2), and 32-A of the Act"*
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> Learned counsel states that the matters ought to have been submitted to the classification committee as mandated by the judgment of Supreme Court reported as 2025 SCMR 121. Learned counsel placed on record public notice 3/2024 dated 06.02.2024, where classification committee had classified similarly placed items and findings were rendered consistent with the claim of the department. Learned counsel relies upon a Division Bench order of this court reported as PTCL 2025 CL 285 which reads as follows :

Through this Reference Application, the Applicant has impugned Judgment dated 24.12.2022 passed by the Customs Appellate Tribunal at Karachi in Customs Appeal No. K-748 of 2022 proposing various questions of law. However, the issue involved apparently is in respect of correct classification of the goods in question which are being imported in partial shipment that, "as to whether they are to be classified under HS Code 8502.3900 or in the respective heading of the parts, components and other machineries imported from time to time in the shape of partial shipment via separate and different consignments". After briefly hearing the Counsel for the parties on 21.05.2024 the following order was passed:

> *"It appears that insofar as SCRA No.792 of 2023 is concerned, the dispute relates to the correct classification of boilers imported as plant machinery, equipment and spares (imported in partial shipments) meant for a Steam Power Generation Plant. The boiler in question imported as a partial shipment of the said project was intercepted by the Directorate of Intelligence after it had been cleared and out of charged by the concerned Collectorate on the ground that it was incorrectly classified under HS Code 8502.3900 instead of 8402.1110, whereafter, a seizure was made out; and finally the Tribunal has passed the impugned order, whereby it has been held that no case for deliberate misdeclaration is made out, however, at the same time boiler has been classified under HS Code 8402.1110. The said impugned order (though partially against the Directorate of Intelligence as to the opinion that no case of misdeclaration is made out) has not been challenged by anyone including the Director of Intelligence. It further appears that, additionally, in the impugned order there are certain directions to the Chief Collector Appraisement, Custom House Karachi to incorporate certain procedure in its Public Notice regulating such imports based on the observations given in the order of the Tribunal.*
>
> *Today, when confronted, counsel appearing for the concerned Collectorate pleads no instructions as to the action taken by the Chief Collector. Moreover, it is the case of the petitioner that insofar as the classification of the partial shipments of the project in question is concerned, they are governed by Customs General Order No. 12/2002 (Para-1(xi)). which provides classification of machinery when imported in partial shipments.*
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> *Insofar as the connected petitions are concerned, subsequent consignments of other part shipments have been ordered to be released against securities pending final adjudication of the SCRA in question. However, the question so raised in the SCRA is only in respect of classification and exemption on import of boilers, whereas, in the petitions there are items other than boiler.*
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> *Since the issue primarily pertains to classification of goods imported in partial shipments for a project, in our considered view, at the very outset it ought to have been referred to the Classification Centre established in terms of Para 02 of CGO 12 of 2002.*
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> *Accordingly, the respondent-Collectorate as well as the Chief Collector Appraisement South are directed to assist the Court as to the action taken by them and why not the issue of classification in respect of the boiler, as well as machinery / equipment / materials imported in partial shipments in the connected petitions may not referred to the Classification Centre.*
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> *For such purposes, to come up on 29.5.2024. Interim order passed earlier to continue till the next date of hearing.*
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> *Office to place a copy of this order in all connected matters."*

2. In response, the Chief Collector, South has already conceded for referral of the matter to the Classification Centre as may be deemed appropriate by this Court. When confronted Applicant's Counsel submits that through Para 1(xi) notified through CGO 12 of 2022, FBR has already issued guidelines for classification of goods in question which has been Page 3 of 5 disregarded by the authorities below. However, as to any final determination of correct classification of the subject goods and the appropriate forum or authority, though 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[1],

[1] Collector of Customs v S.M. Ahmad & Company (Pvt.) Limited (1999 SCMR 138

followed in Shahnawaz Enterprises[2]; Iqbal Hussain[3]; Shakeel Brothers[4]; Asian Food Industries Ltd[5]; Pak Noble Enterprises [6] and Askari Cement (Pvt) Limited[7]. However, very recently, the Hon'ble Supreme Court in the case of K. S. Sulemanji Esmailji[8] 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.

3. 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. Since the Respondent in SCRA is not aggrieved by the finding of the Tribunal regarding any alleged mis-declaration on the part of the Applicant by claiming classification under HS Code 8502.3900, the order of the Tribunal can only be set aside to the extent of determination of classification and it is so ordered, along with the orders of the forums below. The matter stands remanded to the Classification Centre for finally deciding the issue of classification of the subject goods, including all part shipments of the project imported by the Applicant which are otherwise not a subject matter of SCRA as above, but have been released by this Court in connected petitions. Insofar as the contention of the Applicant's Counsel by placing reliance on Para 1(xi) notified through CGO 12 of 2022 is concerned, the Classification Committee shall consider the same while finally deciding the correct classification of the goods in question. Needless to observe that the said opinion shall be a final opinion; however, subject to the exceptions as provided in the above judgment of Supreme Court.

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[2] Collector of Customs v Shahnawaz Enterprises (2007 PTD 1213-upholding a judgment of this Court reported as Shahnawaz Enterprises v Collector of Customs-2005 PTD 1172)
[3] Iqbal Hussain v Federation of Pakistan (2010 PTD 2338-maintained by Supreme Court vide order dated 11.02.2020 in Civil Appeal No.381 of 2011
[4] Central Board of Revenue v Shakeel Brothers (1998 SCMR 237)
[5] Asian Food Industries Ltd v Pakistan (1985 SCMR 1753
[6] Pak Noble Enterprises v CBR & Others (PLD 1989 Karachi 617
[7] Collector of Customs v Askari Cement (Pvt) Limited (2020 SCMR 649)
[8] (2024) 130 Tax 521 (S.C.Pak)

Learned counsel seeks that this reference application may also be disposed of for the same reasons and upon the same terms. 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