ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 1618 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For hearing of main case.
2. For hearing of CMA No.4364/2023.

06.08.2026

Mr. Shahnawaz M. Sahito, advocate for the applicant.
Mr. Darvesh K. Mandhan, advocate for the respondent.

The reference is pending since 2023 without any significant progress. Prima facie, perusal of impugned judgment demonstrates that conclusion drawn is rested on appreciation of evidence, for which no denovo determination is merited in reference jurisdiction. The impugned judgment observes as follows:

> "04. I have heard the Appellant and Respondent at length and perused the record. The admitted facts of the case are that Appellant (Importer) electronically filed Goods Declaration No. KAPE-HC-149319-14-03-2019 declared to contain various components for manufacture of Shock Absorber under PCT $714.1090 and claimed benefit of SRO 655(1)/2006 dated 22.06.2006. Whereas the Respondent department controverted the declaration of the Appellant and asserted that Appellant availed the benefit of SRO 655(1)/2006 for Ring, Piston, Guide etc. while the actual description of impugned item is REAR SHOCK PUMP which the importer deliberately and unduly claimed the exemption of SRO 655(1)/2006 paying thereby 10% CD Duty instead of 35% CD which is the actual percentage of CD payable, and has thus allegedly attempted to get the goods assessed on suppressed value and weight with undue exemption of SRO 655(1)/2006 in order to evade legitimate amount of duty and taxes. Therefore the entire controversy around which this case revolves is that (i) the impugned goods are components for shock absorber (as claimed by the Appellant) or "Rear Shock Pump" (as held by the Respondent) (ii) Whether PCT of impugned goods correctly declared as 8714.1090 by the importer or the correct PCT for the impugned goods is 8714.1040 as asserted by the Respondent and (iii) finally whether the Appellant importer was entitled to avail the benefit of SRO 655(1)/2006 dated 22.06.2006 or not.
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> 05. I will address the above questions in the light of record and written / oral submission of the rival parties. That the Appellant is licensed / authorized vender for manufacture of Shock Absorbers for motorcycles for providing to motorcycle manufacturers in Pakistan. That Appellant under registration with Engineering Development Board (EDB) holds a quota under SRO 655(1)/2006 for import of components/raw material form manufacture of Shock Absorbers. That Appellant as per conditions of the SRO is entitled for import of raw material, sub-component, components and sub-assemblies as are not manufactured locally for manufacture of components and sub-assemblies (part for motorcycle) to be provided to the local manufacturer of motorcycle. The parts and components for manufacture of shock absorbers are allowed vide Sr. No. 10 of Table 1 of SRO 655(1)/2006. That the impugned

goods (components for the production of motorcycle shock absorbers) are fully covered to be imported by the EDB quota holder for local manufacture of motorcycle Shock Absorber for supply to local manufacturers of motorcycles. That the detail of imported components for Rear Shock Absorber can be seen from photographs. Whereas detail of imported components for Front Shock Absorber is depicted in the actual Photographs and 1 D That prima facie the learned Department misconstrued "Piston" and "Rings" of shock absorbers as on and "Rings" of engine and leveled charges of mis-declaration for violation of Section 32 of the Customs Act 1969 against the Appellant, whereas, the actual photographs vividly prove that impugned goods are components for local manufacture of front and rear shock absorber of motorcycle and Appellant is duly authorized FRB/EDS for import of such components and parts under SRO 655(1)/2006 vide Sr. No.10 of Table 1 thereof. Mes pertinent to examine the text of the SRO. That the preamble of the SRO depicts the main theme of SRO 655 (1) 2006 dated 22.06.2006 as follows-

> "SRO. 655 (1)/2006. In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), the Federal Government is pleased to exempt raw materials, sub-components [. components) and sub-assemblies, as are not manufactured locally, imported for the manufacture of components and assemblies as specified in Table-1 below from so much of customs-duties leviable under the First Schedule to the said Act as are in excess of the rates specified in Schedule to the Table I thereto"

06. That Appellant (importer) while holding quota of IOCO as per conditions of the SRO is entitled for import of raw material, sub-component, components and sub-assemblies as are not manufactured locally for manufacture of components and sub-assemblies (part for motorcycle) to be provided to the local manufacturer of motorcycle. The Table of SRO clearly reflects that the parts and components (for manufacture of) shock absorbers are allowed vide Sr. No.10 of Table-1 of SRO 655(1)/2006. That as regard controversy of the declared and ascertained PCT the same can be resolved by carefully seeing the photographs of impugned goods catalogues and the text of relevant PCT. The text "Rear Shock Pump" is neither found in the catalogue nor the impugned goods are pump by any way being the component for production of Shock Absorber. Therefore, I hold that department failed to establish its claim for the impugned goods to be "rear Shock Pump" instead of components for shock absorber. That neither the PCT adopted by the learned Department nor the arbitrary customs value applied to the imported components is correct, therefore, assertion of the Department for assessment on enhanced customs value treating the impugned goods as "auto parts" instead of components for shock absorber is incorrect and not supported by any data. Therefore, I am of candid view that impugned goods not being Rear Shock Pumps but are components for Shock Absorber merit to be classified under PCT 8714.1090 as declared by the Appellant. The last point whether the Appellant was entitled to import the impugned goods under concessionary regime of SRO 655(1)/2006 or not?. On going through record of the case, catalogues, technical literature and description of relevant PCT, I am satisfied that the learned Department misconstrued "Piston" and "Rings" of shock absorbers as "Piston" and "Rings" of engine and leveled charges of mis-declaration for violation of Section 32 of the Customs Act, 1969, whereas, the actual photographs vividly prove that impugned goods are components for local manufacture of front and rear shock absorber of motorcycle and Appellant is duly authorized by FRB/EDB for import of such components and parts under SRO 655(1)/2006 vide Sr. No.10 of Table 1 thereof. That the Appellant (importer) imported certain components for manufacture of motorcycle shocks absorbers, which is absolutely according to the

law. By virtue of SRO 655(1)/2006 the Appellant (importer) is authorized to import the components, sub-assemblies or assemblies as are not manufactured locally subject to having an in-house suitable facilities, for specified items. Therefore, it is not a case of mis-declaration or violation of Section 79(1), 32(1) (2) of the Customs Act, 1969, and allied laws. The Appellant had declared very clearly the description, PCTs, quantity and specification, therefore, there was no incorrect declaration, customs documents, or submission which is "incorrect in material particular" in context of Section 32(1) of the Customs Act, 1969 Reliance is placed on [PTCL 2009 CL 3301. Further, the Honorable High Court in case PLD 1986 Kar. 373 (Sikandar Brothers vs. Collector) has established a criteria for invoking Section 32(1)(2) and Section 156(1)14 of the Customs Act, 1969, which in this case I find that the same criteria has not been followed in this case by the Respondent Department, thus defying the ruling of the Superior Courts and disregarding the Article 201 of the Constitution of Pakistan.

07. That for the reasons stated above the impugned Order in Original is declared illegal being based on incorrect perception arising out of presumptions or from lack of sound knowledge of components for shock absorber and any understanding of the Pakistan Customs Tariff Classification scheme. Therefore, the impugned Order in Origin is set aside and import by the Appellant is declared legal and lawful. The arbitrary redemption fine and penalty imposed on the importer on flimsy grounds has no legal rationale when the charges against the Appellant are not established hence the redemption fine/penalty imposed on the Appellant is remitted.

08. Appeal stands disposed of in above terms with no order as to cost"

The only contention advanced by the learned counsel for the applicant was that the impugned judgment was not a speaking order and devoid of any independent reasoning or discussion. Respectfully, the same could not be demonstrated from order under scrutiny. Learned counsel for the applicant has made no effort to demonstrate any infirmity in the impugned order or that could not have been rested on rational relied upon. Since no question of law has been articulated by the learned counsel, therefore, reference is dismissed.

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A copy of this decision 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

Khuhro/PS