ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

SCRA No. 619 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on office objection.
2. For hearing of CMA No. 3470 of 2022.
3. For hearing of main case.
4. For hearing of CMA No. 3471 of 2022.

19-11-2026

Messrs. Sardar Zafar Hussain and Tariq Aziz, advocates for the applicant.
Rana Sakhawat Ali, advocate for the respondent.

Learned counsel for the respondent states that the only issue of the respondent is with respect to fine and penalty and that is the only aspect that the respondent contest. Pursuant thereto, places on record order dated 19.08.2024 in SCRA No. 481 of 2024, which reads as follows:

"19.08.2024.

Mr. Sardar Zafar Hussain, Advocate for Applicant.

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1. Granted.

2. To be satisfied before the next date.

3. Granted subject to all just exceptions.

4-5. Through this Reference Application, the Applicant Department has impugned Order dated 17.04.2024 passed in Customs Appeal No. K-1252/2023 by the Customs Appellate Tribunal, Karachi, proposing various questions of law. However, on perusal of the record, it appears that there is only one question which is arising out of the impugned order i.e. ***Whether in the facts and circumstances of the case, the Respondent had mis-declared the classification of goods in question and if so, whether any penalty was to be imposed?***

Heard Counsel for the Applicant and perused the record. It appears that the Applicant imported goods (1. Self-adhesive PE clear transparent film with paper backing, type; PE8 white FTC 85 R, net weight-4831 kgs approx. 2. Self-adhesive PE clear transparent film with paper backing, type: PE Clear FTC, net weight-11966 kgs approx., Brand: UPM Raflatac, Origin Finland), and upon filing of the Goods Declaration, the goods were examined by the department and representative samples were referred to the Customs Laboratory for determination of its actual composition. Thereafter based on test report, Show Cause Notice was issued in the following terms:

> "4. And whereas, aforementioned Laboratory reports categorically confirm that subject goods are "one side adhesive film" correctly classifiable under PCT heading 3919.9090 attracts C.D @ 20%, ACD @ 6% and Regulatory Dutyt @ 10% whereas declared PCT 3919.1010 is for "double sided tape" where Custom Duty is only 11%, Additional Customs Duty @ 2% and Regulatory Duty @ 0%. Had this willful and deliberate offence gone undetected, the government exchequer would have suffered loss of revenue to the tune of Rs.5,758,804/-. Value of offending goods is calculated as Rs.20,270,493/-."

The Respondent contested the matter before the Adjudicating Authority on the ground that the declared description was found correct; whereas the classification was changed from 3919.1010 to 3919.9090 based on a test report with a further plea that the applicant's declared value was much higher than the

value notified vide Valuation Ruling already issued by the department. However, the Adjudicating Authority decided the matter against the Respondent and since goods had already been released under Section 83(B) of the Customs Act, 1969; instead of confiscation and redemption fine of 20%, a penalty of an equivalent amount was imposed upon the Respondent. The Respondent being aggrieved impugned the said order before the Customs Appellate Tribunal and through impugned order, appeal to the extent of penalty has been allowed in the following terms:-

> "In view of above, since description, quantity, Product code no are found as per declaration and that beside the interpretation of HS code do not constitute misdeclaration and further that customs duty & other leviable taxes have been paid at higher value rather than lower Valuation Ruling, the provision of section 32(1) & (2)of the Customs Act, 1969 is not attracted, therefore, no penal clause could be invoked against the Appellant. The impugned order is not maintainable / sustainable, is hereby set-aside. The imposition of redemption fine & penalty are found not warranted under facts and circumstances of this case hence are remitted."

From perusal of the record and the finding recorded by the learned Tribunal, we are of the considered view that since the department had initiated the proceedings only after the goods were examined and tested by the laboratory; therefore, it does not appear to be a case of misdeclaration per se. It is a matter of fact that the description declared by the Respondent was found correct and so also the value so declared was higher than the value determined by way of a Valuation Ruling. We are of the view that Tribunal's finding is correct in law, and it is not that in each and every case wherein upon scrutiny of the Goods Declaration if HS Code is changed attracting a higher rate of customs duty, that fine and penalty has to be imposed mandatorily, as it is always dependent upon facts and circumstances of the case as well. One must see the intention in doing so as well as presence of element of *mens-rea*. Here, in this case when admittedly description of goods was correct, the declared value was higher than the value notified vide Valuation ruling, then such a harsh action against the Respondent could have been avoided. It is also a settled proposition of law that classification of goods is a question based on legal and factual determination and so also of interpretation of the HS Code and the Customs tariff; hence, there could always be difference of opinion for interpreting the same[1]. It is not that it always be a case of *mens rea* and imposition of fine and penalty if the claimed HS Code is not accepted by the Department and therefore, in our opinion to the extent of imposition of fine and penalty the order of the adjudicating authority has been rightly modified by the Tribunal[2]. Reliance may also be placed on ***Shaikh Shakeel Ahmed & Power Electronic Pakistan (Pvt.) Limited[3].***

Accordingly, the question, as above, is answered against the Applicant department and in favour of the Respondent. Consequently, this Reference Application is dismissed in *Limine* with pending applications.

Let copy of this order be sent to Customs Appellate Tribunal, Karachi, in terms of Section 196(5) of Customs Act, 1969."

Learned counsel for the respondent states that the present controversy is squarely clinched by the aforementioned order, therefore, this reference application be disposed of on the same reasons and upon same terms as aforesaid. Learned counsel for the applicant articulates no cavil to the aforesaid. Order accordingly.

A copy of this decision may be sent under seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(10) of the Customs Act, 1969.

Judge

Judge

SADAM

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[1] Collector of Customs v Habib Sugar Mills Limited (PTCL 2021 CL 393)
[2] Collector of Customs v Habib Sugar Mills Limited (PTCL 2021 CL 393)
3 Collector of Customs vs. Shaikh Shakeel Ahmed (2011 PTD 495) and Collector of Customs Karachi vs. Power Electronic Pakistan (Pvt.) Limited (2011 PTD 2837).