

**THE HIGH COURT OF SINDH AT KARACHI.**

Spl. Customs Reference Application No.90 of 2012

**Present: Mr. Justice Syed Hassan Azhar Rizvi  
Mr. Justice Muhammad Junaid Ghaffar**

Mrs. Surayya Begum ..... Applicant

Versus

The Deputy Collector of Customs & others. .... Respondent

**Date of Hearing: 12.12.2013**

**Date of Order 03.01.2014**

**Applicant: Through Mr. Mohammad Khalid Hayat,  
Advocate**

**Respondent: Through Mr. Kashif Nazeer, Advocate**

**J U D G M E N T**

**MUHAMMAD JUNAID GHAFFAR, J: -** The instant Special Customs Reference Application (“SCRA”) arises out of an Order dated 20.01.2012 passed by the Customs, Appellate Tribunal Bench-II, Karachi (“Tribunal”) in Customs Appeal No.K-567/2011.

2. The applicant had originally proposed 12 questions of law purported to be arising out of the order of the Tribunal. However, on 30.10.2012 at the time of issuance of pre-admission notice, learned counsel for the applicant pressed the following four questions of law:

- “1. *Whether the tribunal is justified in holding that customs authorities has [have] properly interpreted and applied the provisions of section 32 of the Customs Act, 1969?*
2. *Whether the Tribunal was justified in upholding that imposition of penalty and redemption fine of 35% on the consignment of the applicant was correct under S.R.O 499(I)/2009 in the absence of mensrea and motive to evade tax and where such declaration would carry no fiscal consequences?*
3. *Whether the Tribunal was justified in upholding the assessment of customs department as per serial No.15 of the Valuation Ruling No.230 dated 02.03.2012 by assessing the part of consignment i.e. Children shoes/Joggers up to 12 years @ US\$0.8/pair instead of serial No.1 or serial No.4 of the Valuation Ruling?*
4. *Whether the Tribunal was justified in holding that in view of same PCT Headings of consignment i.e. shoes of description is same and classifiable under same PCT Code 6404.1900 and there is no other PCT heading which is attracted under the case, can be termed as mis-declaration of description of goods?”*

3. Briefly, facts of the case are that the applicant imported a consignment of shoes of various sizes from China and filed Goods Declaration (“G.D”) dated 16.10.2010 under HS Code 6404.1900. In the column of description the applicant declared that the consignment consists of “*children shoes booti sandle*” and claimed assessment of the consignment under Valuation Ruling No.230 dated 02.03.2010, (Valuation Ruling) wherein at serial No.1, “children shoes booti sandle/slipper up to two years” were to be assessed at the rate of US\$0.36/pair from China. The said goods declaration was selected for scrutiny under section 80 of the Customs Act, 1969 (“the Act”) and after examination of the goods, it was alleged by the respondents that the applicant had mis-declared the actual description and sizes of the goods as the consignment consists of children shoes /jogger up to 12 years of age instead of children shoes booti sandle, where after a show cause notice dated 23.10.2010 was issued calling upon the applicant as to why not the consignment be confiscated and penal action

be initiated. It was specifically alleged in the show cause notice that the goods were actually assessable vide serial No.15 of the Valuation Ruling at the rate of US\$0.80/pair instead of US\$0.36/pair as claimed by the applicant. Thereafter, an Order-in-Original bearing No.42484/2010 dated 26.10.2010 was passed against the applicant in the following terms:

*“I have gone through the case and have read the facts and statements made by representative of the importer and perused both the examination report as well. The show cause notice was issued on the basis of examination report wherein the description of goods was reported as “Children Shoes/Joggers up to 12 years” as against the importer’s declaration i.e. “Children Shoes Bootie Sandle”*

*I am convinced that the charge of mis-declaration of description stands established; however, the contention of importer regarding value of offending goods is correct; therefore, I hereby order that contravened items are confiscated u/s 181 and 156 of the Customs Act, 1969, read with SRO 499(I)/2009. However, the importer has the right to get his goods released/redeemed on payment of 35% redemption fine of the value of offending goods amounting to Rs.130000/. A penalty of Rs.10000/- is also imposed with a warning to importer to be careful in future, if there is any recurrence in future the importer and his associates would be dealt with stern action.”*

Being aggrieved, the applicant preferred an appeal under section 193 of the Act before the Collector (Appeals) and the learned Collector (Appeals) vide its Order dated 04.05.2011 dismissed the same. Being further aggrieved, the applicant preferred an appeal under section 194-A of the Act before the Tribunal and the learned Tribunal has also dismissed the appeal, against which the instant reference application has been filed by the applicant.

4. Mr. Mohammad Khalid Hayat, learned counsel appearing on behalf of the applicant contended that no mis-declaration was made by the applicant and the assessment claimed by the applicant in terms of the Valuation Ruling was in good faith. Per learned counsel, the Valuation Ruling was itself ambiguous and vague and as such the imposition of fine and penalty on the applicant was not justifiable under the facts of the

instant case. It was further contended that there was no Mens-rea on the part of the applicant while claiming the assessment of the imported goods under the said Valuation Ruling. It was further contended that it was merely the case of application of valuation ruling and therefore, no penal action could have been taken against the applicant. Learned counsel also referred to clause (d) of SRO 499(I)/2009 dated 13.06.2009 and contended that there was no change in rate of duty and further the difference in the value was also within 30%, as such the imposition of fine by the adjudicating authority was illegal. Learned counsel relied upon *2011 PTD 495 (Collector of Customs v/s. Shaikh Shakeel Ahmed)*.

5. Conversely, Mr. Kashif Nazeer learned counsel for the respondents supported the impugned order and contended that the applicant had purposely not declared the respective sizes of the shoes/sandle and this was precisely done to avoid the correct application of the valuation ruling. Per learned counsel, such mis-declaration was intentional as the applicant had claimed assessment against Serial No.1 of the valuation ruling, which was the lowest possible value available for shoes/sandle of children of two years. It was contended by the learned counsel that in terms of section 79(1) (a) of the Act, the applicant was required to make a correct declaration of goods and since the applicant failed to comply with such requirement of law, therefore the adjudicating authority was fully justified in taking the penal action against the applicant. It was further contended that in such cases no Mens-rea is required to be present. In support of his contention, learned counsel relied upon *2005 PTD 246 (M/s Lever Brothers Pakistan Vs. Customs, Sales Tax and Excise Appellate Tribunal)*

6. We have heard both the learned counsel, perused the record and the case law referred to as above. By consent the matter was taken up at Katcha Peshi stage for final disposal.

7. It appears from the import documents that the applicant has imported a consignment of children shoes/booti sandle and declared the same on the G.D. as only one type/category of shoes and sandles. At the time of making such declaration the applicant had failed to declare either any size of the shoes or the age of the children, which was a material requirement for assessment purposes. On examination of goods, it transpired that part of the consignment consists of sizes 26 to 36 made for children of the age of 12 years and the other is of children up to age 2 years. The applicant instead of making a correct declaration in respect of both the types of shoes/sandle, declared the same under one heading and claimed the assessment of the entire consignment against serial No.1 of the Valuation Ruling No.230 dated 02.03.2010. The said valuation ruling covered the following types of goods:

<b>S.No.</b>	<b>Description of Goods</b>	<b>H.S.Code</b>	<b>Origin</b>	<b>Customs Value</b>
(1)	(2)	(3)	(4)	(5)
01.	Children Shoes Booti Sandal/Slipper upto 2 years	6403.2000	China	US\$0.36/Pair (2u)
			Thailand	US\$0.40/Pair (2u)

From the perusal of the above particulars of the valuation ruling, it is clear that the same is only applicable in respect of children shoes/booti sandle up to the age of two years, whereas it was only a part of the applicant's consignment, which was covered under serial No.1 as above and not the entire consignment imported by the applicant. It is not the case of the applicant that they were not aware of various sizes imported by them as no

such plea has been raised on behalf of the applicant. In fact no plausible explanation was put forth before the adjudicating authority and it was only requested to adjudicate the matter on priority to avoid any further levy of demurrage and detention charges. Even otherwise if this had been the case, at least, the applicant was required to disclose/declare the same that the applicant was not in knowledge of the exact sizes which may be determined after examination of the consignment. Instead, the applicant claimed the assessment of the entire consignment on the lowest possible values mentioned against serial No.1 of the ruling. Therefore, it prima facie appears that if the consignment of the applicant would have not been subjected to thorough examination in terms of section 80 of the Act, it would certainly have got away with such mis-declaration causing revenue loss to the exchequer. Insofar as the contention of the learned counsel for the applicant that the valuation ruling was itself ambiguous is concerned, we have noticed that in fact it is the declaration of the applicant which is material in deciding this issue. The applicant in terms of section 79(1) of the Act is duty bound to file a true declaration of goods, giving therein complete and correct particulars of such goods, duly supported by commercial invoice, bill of lading or airway bill, packing list or any other document required for clearance of such goods in such form and manner as prescribed. The format of G.D is already prescribed for such declaration by the Board. In view of this, the applicant was required to make a complete and true declaration, and if for some reason, the applicant was not sure about the sizes and of the age of children for which such shoes were imported, there was no compulsion on the applicant to claim assessment of the entire consignment against a particular serial No of the Valuation Ruling which was only in respect of a particular age of children. If the applicant was of the view that the valuation ruling is not specifically clear

and is ambiguous, then the applicant was itself-duty bound not to claim the assessment against serial No.1 of the said ruling, which was only applicable in respect of shoes /sandles up to two years of age. Therefore, we are of the view that the Order-in-Original was correctly passed against the applicant and the act of the applicant is fully covered under section 32 of the Act and there can be no exception to it. The imposition of fine and penalty was also in consonance with the gravity of the offence committed by the applicant. The learned counsel for the applicant had also contended that the difference in value was within 30% and had placed reliance on clause (d) of SRO 499(I)/2009 dated 13.06.2009, therefore no fine could have been imposed in terms thereof. In our view this contention is totally misconceived, as clause (d) as above, relates to a situation where offence relates to mis-declaration of value which is initiated on the basis of direct evidence and has been arrived at after due process of adjudication, and where the difference is more than 30% between the declared value and the ascertained value. Whereas in the instant matter, the offence has not been alleged on this ground, and is in relation to mis-declaration of “*physical description*” by the applicant and is more appropriately covered under clause (c) of SRO 499(I)/2009 dated 13.06.2009.

8. Insofar as the case of *Collector of Customs v/s. Shaikh Shakeel Ahmed* (supra) relied upon by the learned counsel for the applicant is concerned, we have noticed that the same was in respect of altogether a different proposition as in that case the Court had held that since the department itself had been classifying the consignment imported by the petitioner under a specific H.S Code, therefore, the declaration made subsequently by the petitioner was on the basis of previous classification and cannot be termed to have been made in bad faith or with the intention

of evading duties. It can be seen that the ratio of this judgment is not applicable on the case of the applicant, which is entirely based on different footing.

9. Consequently, all the four questions as proposed by the applicant are answered in the affirmative against the applicant and in favour of the respondents. The instant reference application is dismissed and the Order of the Tribunal is upheld and hereby maintained. The Registrar is directed to send copy of this order under the seal of this Court to the Tribunal for information.

**Judge**

**Judge**

Dated: 03.01.2014

Manzoor/P.A