

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI BENCH - I
3RD FLOOR, JAMIL CHAMBERS
SADDAR, KARACHI

Before:- Mr. Mohammed Yahya, Member (Technical - I), Karachi

Customs Appeal No.K-675/2015

&

Customs Appeal No.K-592/2015

M/s. AKK Enterprises (SMC-PVT) Limited,
Plot No.540-C, Munawarabad,
Unit No.5, Latifabad, Hyderabad,
NTN: 4097513

Appellant

Versus

1. Additional Collector of Customs,
(Adjudication-I),
Custom House, Karachi.
2. Collector of Customs,
Model Customs Collectorate
Appraisement (West),
Karachi.

Respondents

Mr. Madan Lal, Advocate, present for the appellant,
Mr. Rafat, E.O., present for the respondent.

ATTESTED

Date of hearing: 11.12.2015
Date of Order: 14.12.2015

ORDER



Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order I intend to dispose of the Customs Appeals No. K-675/2015 and No.K-592/2015 filed by M/s. AKK Enterprises (SMC-PVT) Limited, Plot No.540-C, Munawarabad, Unit No.5, Latifabad, Hyderabad, NTN: 4097513, under Section 194-A of the Customs Act,

1969, against Orders-in-Original No.350393-14042015 dated 14.04.2015 and No.334212-04032015 dated 04.03.2015 passed by the Additional Collector of Customs (Adjudication-I), Karachi.

02. Brief facts of the case as per Show Cause Notice No.CN-297523-03122014 dated 02.04.2015 are that it has been reported by MCC-appraisement (West) Karachi that the importer M/s. AKK Enterprise electronically filed Goods Declaration No. KAPW-HC-72275-14-11-2014 declared to contain "PRIME COLD COLLED STEEL SHEET IN COILS; (US\$89,220,000) under HS code 7209.1890. The importer determined his liability of payment of applicable duties & taxes and sought clearance of the goods under section 79 (1) of the customs Act, 1969 through his authorized clearing agent M/s. Bushra Enterprises License No. KCUS-2425. And whereas, in order to check as to whether the importer has correctly paid the legitimate amount of duty and taxes the GD was selected for scrutiny in terms of section 80 of the Customs Act, 1969 and was referred to examination for confirmation of description, PCT, quantity and other physical attribute of the goods. The examination report is as under:

APZU3223898 KAPW-HC-72275-14-11-2014 COMMITTEE REPORT OF EXAMINATION OF CONSIGNMENT UNDER GD NO.KAPW-HC-72275-14-11-2014. REFERENCE DC GROUP'S REQUEST A COMMITTEE CONSISTING OF THREE EXAMINING OFFICER OF KICT EXAMINATION WAS CONSTITUTED BY AC KICT TO VARIFY EITHER THE CONSIGNMENT IS CONSISTING OF SECONDARY QUALITY OR OTHERWISE. KEEPING IN VIEW OF ABOVE SIAD ORDER JOINT EXAMINATION OF THE CONSIGNMENT IN PRESENCE OF AC KICT CONDUCTED, REPORT IS AS UNDER DESCRIPTION: COLD ROLLED STEEL SHEET IN COILS OF SECONDARY QUALITY IN ORDINARY PACKING DOES NOT BEAR MILL PACKING AS ROLLING MARKS WITH RUST APPEAR ON GOODS, HEAT NO. GRADE, BRAND, I/C NOT MENTIONED ON ORDINARY TYPE

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AFFIXED LABELS ALSO UNEVEN ROUGH EDGES CAN EASILY BE OBSERVED THROUGH IMAGES BEING UPLOADED AGAINST EACH GD, "CONTAINER" BROWN SPOTS, UNEVEN SURFACES AND DIFFERENT SPECIFICATIONS / SIZES I.E. 0.3X 1000, 0.33 X 1000 AND GAUGES IN VIEW OF FOREGOING SUBMISSIONS IT IS EVIDENT THAT THE CONSIGNMENT IS CONSISTING OF SECONDARY QUALITY, QTY=21270 KGS NET APPROX CHECK WEIGHT 100% FOUND: 21370 KGS VIDE KICT SLIP NO. 492968 DATED 26-11-2014, WEIGHT SLIP DULY SCANNED AGAINST EACH CONTAINER ALSO BEING SENT FOR EASE OF ASSESSMENT. GROUP MAY LIKE TO ASSESS THE CONSIGNMENT TAKING INTO ACCOUNT ALL OTHER ASPECTS INCLUDING IMPORTABILITY OR OTHERWISE AT THEIR OWN END, IMAGES OF EACH CONTAINER COLD ROLLED STEEL SHEET IN COILS OF SECONDARY ARE BEING SENT SEPARATELY FOR PERUSAL AND EASE OF ASSESSMENT PLEASE."

03 And whereas, as per examination report the goods have been found as "COLD ROLLED STEEL IN COILS OF SECONDARY QUALITY" classifiable under PCT heading 7290, 1810 instead of Prime quality as declared by the importer. The aforesaid facts prove that the importer and his clearing agent have deliberately concealed the description of goods and has mis-declared in terms of description and classification in order to get the assessment on clearance at lower slab of duty and taxes @ of 5% with FTA benefit instead of 20% to evade legitimate amount of Customs Duty & other Taxes to the tune of Rs. 2,196,861/- will fully and with malafide intention and have attempted to defraud / deprive the state exchequer from its legitimate revenue. Whereas, the importer M/s. Enterprise and clearing agent M/s. Bushra Enterprises have, therefore, contravened the following Acts; Laws Violated / Contravened:-

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ACT	SECTION	PUNISHABLE
Customs Act, 1969	32 & 79(1)	Clause 14 & 45 of section 156(1)
Sales Tax Act, 1990	33	Clause 11(c) of Section 33
Income Tax Ordinance, 2001	148	148

04. Therefore, in the light of above reported facts the importer and the clearing agent are called upon to show cause as to why the goods shall not be confiscated and penal action warranted under the aforementioned provisions of law may not be taken against them.

05. On the basis of Show Cause Notice No. No. CN-297523-03122014 dated 02.04.2015, the Additional Collector of Customs, (Adjudication-I), Karachi, issued an Order-in-Original No.350393-14042015 dated 14.04.2015. The operative part of this order is reproduced as under:

"I have gone through the case record and considered written/verbal arguments of the respondent and the department. As per record the respondent the consignment declared to contain 'Prime Quality Cold Rolled Steel sheet in Coils' under PCT7209.1890. On physical examination the goods were found 'COLD Rolled Steel Sheet Secondary Quality' classifiable under PCT heading 7209.1810. The goods were re-examined by three examining officers in presence senior / supervisory officers and the goods were confirmed as 'COLD Rolled Steel Sheet in Coils Secondary Quality'. The respondent disputed the quality of goods ascertained by the department; and the case was referred for joint examination of consignment to M/s. Karachi Shipyard Engineering Works, M/s. Pakistan National Steel Association, M/s. Peoples Steel Mills and M/s. Pakistan Steel. After conducting detailed examination of the goods M/s. Pakistan Steel and M/s. People Steel Mills certified the goods as of "Secondary quality"

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They have reported that the goods were in ordinary packing not as per export standards. The coils were covered with only polythene sheets and tied with packing strips. Some coils were de-shaped and some have uneven edges with defects like Telecopicity/improper coiling, torn edges, loose coiling and rust etc. Thickness of the coils varies considerably ranging from 0.19 - 1.69 mm. For a lot of prime quality, specific values of thickness are normally mentioned for a specific lot. The sheet coils have variable lengths as evident from their ranging from 1.036 - 4.06MT. The prime quality lots are normally manufactured having narrow range of length or a single length value dimensional tolerance. As a result, individual coils of prime quality must have uniform weights within the lot. Surface appearance of most of the sheet coils were found heavily rusted and corroded. Conversely, M/s. Pakistan Shipyard and M/s. Pakistan National Steel Association confirmed the goods as of prime quality, however, these two reports also confirm the variation of thickness and weight etc. of the impugned coils. In the view of the above, I uphold the contention of the department that the goods are of "Secondary Quality". Hence, it is evident that the respondents have mis-declared in terms of description and classification in order to get the assessment on clearance at lower slab of duty and taxes @ of 5% instead of 20% to evade legitimate amount of Customs duty/taxes. The charges leveled in the Show Cause Notice, thus, stand established. I, therefore, order for confiscation of the offending goods under section 156 (1) clause 14, read with section 32 (1) & (2) of the Customs Act, 1969. However, an option under section 181 of the Customs Act, 1969 is given to the importer to redeem the confiscated goods on payment of 35% Redemption. Fine

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Rs.1,903,221/- (Rupees one million nine hundred three thousand two hundred and twenty one) in terms of SRO 499(I) 2009 dated 13.06.2009 of the value of offending goods (as determined by the department) in addition to payment of duty and taxes leviable thereon. A penalty of Rs.200,000/- (Rupees Two Hundred Thousand) is also imposed on the importer."

06. Being aggrieved and dis-satisfied with the impugned Order-in-Original No.350393-14042015 dated 14.04.2015, the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal which is reproduced as under:

- i) That the Order in Original No. 350393 dated 14.04.2015 is illegal and unlawful, same has been issued without cogent reason, which is contrary to natural justice and principle of equity, same liable to be set aside.
- ii) That the Respondent No.1 had erred in law by not considering the fact that, the appellant had correctly declared, description, appropriate PCT-heading, quantity and value correctly on the Goods Declaration under section 79(Ij) of the Customs Act-1969 as per Letter of Credit, Bill of Lading, Packing List, Invoice Mill Test Certificate and FTA Trade Agreement executed between Government of Pakistan & China).
- iii) That the respondent no. 1 had ignored the correct description as "Prime quality cold Rolled Steel Coils" under PCT heading 7209.1890 carrying Customs duty @5% as per Invoice and Mill Test Certificate. The Mill Test Certificate is always issued for "Prime quality only, not for

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"Secondary quality goods", same had always been relied for assessment purpose since decades.

iv) That the Respondent I had not considered the Mill Test Certificate issued by a recognized Manufacturer which categorically confirms Coils number, Grade No., Specification, Heat No. Net weight, chemical composition Standard No. "JIS G3141", Tensile Test, Punch & Hardness.

v) The report of 2 members out of 4 members which confirms "Prime quality" beside the Mill Test Certificate and further original Bank retired documents i.e. Bill of Lading, Letter of Credit, Invoice and packing list shows "Prime quality". Since the balance of convenience is in favor of appellant. Therefore on the strength of report of 2 member and Mill Test Certificate the impugned goods are liable to be treated as "Prime quality".

vi) That the Respondent No. 1 had not considered the fact that appellant had opted "1st Examination" as evident from Goods Declaration: No. cognizance of offence is to be taken as CGO:12/2012 dated 15-06-2002, which envisaged as under:-

Question of taking cognizance of mis-declaration of description, value and PCT headings. - for invoking provisions of mis-declaration under section 32 of The Customs Act, 1969 prima-facie an element of "mensrea" should be present i.e. there should be an attempt of will full and deliberate false declaration. The importers may not be charged for mis-declaration under



section 32 of the Customs Act, 1969 in the following situations.

- i) Where an importer makes a correct declaration on bill of entry or opts for 1st appraisement for determination of correct description, PCT heading of quantity of goods.
- ii) When a consignment is found to contain goods of description other than the one declared falling under separate PCT heading but chargeable to same rate of duty.
- iii) Where the description of goods is as per declaration but incorrect PCT heading has been mentioned in the bill of entry no mis-declaration case under section 32 of the Customs Act, 1969 be made out provided there is not changes in the rate of customs duty as a result of ascertained PCT heading.
- vii) That the respondent No. 1 had erred in law by invoking section 32, 79 (i) of the Customs Act-1969 read with section 33 of the Sales Tax Act 1990, and section 148 of the Income Tax Ordinance 2001, punishable under clause 14 & 45 of Section 156 (1) of the Customs Act, 1969 read with clause 11(c) of section 33 of the Sales Tax Act, 1990 & Section 148 of the Income Tax Ordinance, 2001.
- viii) That the respondent No. 1 had ignored the report of "Steel Committee" of 2 members.
 - i) Karachi shipyard and engineering works, and Pakistan National Steel Association have

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categorically confirmed that impugned goods are of "Prime Quality as whereas 2 members i.e. Peoples Steel Mills and Pakistan Steel reported as "Secondary quality".

ix) That the Respondent No. 1 had wrongly interpreted the penal clause imposed harsh redemption fine @ 35% Rs.1,903,221/- in terms of section 181 of the Customs Act, 1969 read with SRO 499 (I) 2009 dated 13.06.2009 & penalty of Rs.200,000/- as imposed under clause (14) of Section 156(I) of the Customs Act, 1969 on the appellant. The fine & penalty both are unwarranted and same are liable to be remitted.

x) It is submitted that two members of Steel Committee i.e. Karachi Shipyard & Engineering works and National Steel Association had categorically "Prime quality". The Mill Test Certificate issued by manufacturer further strengthens the fact that impugned goods are of "Prime Quality". Since the balance of convenience is in support of Appellant. Therefore impugned goods are liable to be treated as "Prime Quality".

07. I have heard the arguments of the advocate of the appellant, representative of the respondent MCC Appraisement (West), Karachi, and gone through the complete record of the case. Perusal of the record shows that the committee constituted to give its opinion whether the impugned goods are prime quality or secondary has given reports individually. According to Deputy General Manager (Co-ordination), Karachi Shipyard and Engineering Works, the impugned goods are of Primary Quality. Similarly, Pakistan National Steel Association has also opined the impugned goods as Primary Quality. However,

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People Steel Mills Limited and Pakistan Steel are of the opinion that the impugned goods are of Secondary Quality. Perusal of the record further shows that according to the Mill Test Report impugned goods are Prime Cold Rolled Coils. Taking into the consideration the Mill Test Report also one can easily conclude that three organizations are giving opinion that the impugned goods are of Prime Quality whereas, only two i.e. People Steel Mills Limited and Pakistan Steel are holding the impugned goods as Secondary Quality. In view of this situation I tend to agree with the findings and opinions of majority of specialized organizations.

08. In view of above observations and discussions, I hold that the impugned goods are of Prime Quality, as such entitled for the benefit available under FTA agreement between Pakistan and Peoples Republic of China. Accordingly, the Show Cause Notices No.CN-297523-03122014 dated 02.04.2015 and No.CN-295521-28112014 dated 04.02.2015 are vacated and the Orders-in-Original No.350393-14042015 dated 14.04.2015 and No.334212-04032015 dated 04.03.2015 are set-aside, the appeal is accepted with no order as to cost.

09. Order passed and announced accordingly.

ATTESTED



— sd —
(Mohammed Yahya)
Member (Technical - I)

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL
KARACHI

Case No. K-592/2015 dated 10/09/2015 of
AKK Enterprises (SMC-PVT) Ltd. against
Add. 334212/15 dated 04-03-2015 passed
Collector of Customs & Excise, Port of Callar

Against
AKK Enterprises (SMC-PVT) Ltd -
Madan Lal (Kashmir) -
Applicant (West) - Kashur

CN-295521-28112014

Quetta
Quetta
Asstt. Registrar
Quota Excise & Sales Tax
Appellate Tribunal
Karachi Bench