

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

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

Customs Appeal No.K-339/2013

M/s. Dynamic Incorporated  
Office No. 04, First Floor,  
Srinagar Market,  
6 - New Anarkali,  
Lahore.

Appellant

Versus

The Additional Collector (Adjudication),  
Model Customs Collectorate of PaCCS,  
Karachi

Respondent

Rana Zahid Hussain, Advocate, present for the appellant.

Mr. Kamran Ali, D.C. & Agha Jamshed, A.O. present for the respondent.

Date of hearing: 05.03.2015

Date of Order: 03.04.2015

ORDER

Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order I intend to dispose

of the Customs Appeal No. K-339/2013 filed by M/s. Dynamic Incorporated, Lahore

**ATTESTED**



Order No. 194-A of the Customs Act, 1969, against Order-in-Original No.65202-

passed by the Additional Collector of Customs (Adjudication), MCC

Model Customs Collectorate - East, Karachi.

Brief facts of the case are that the appellant is a regular importer of general

paper and paperboard. M/s. Dynamic Incorporated imported a

quantity of News Print Paper in Rolls, weighing 51,599 Kgs from USA and

electronically filed a Goods Declaration CRN No. KCSI-83281-24122012 in accordance

with export documents received from shipper through their clearing agent namely M/s.

Hassan Enterprises under HS Code 4801.0000, chargeable Customs Duty @5% at total

invoice value of US\$23219.55. The importer determined their liability of payment of

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applicable duty and taxes and sought clearance under Section 79(1) of the Customs Act, 1969. In order to check as to whether the importer had correctly paid the legitimate amount of duties and taxes the under reference was selected for scrutiny in terms of Section 80 of Customs Act, 1969.

3. Scrutiny of the Goods Declaration in the light of Test Report revealed that the importer had mis-declared in terms of description and classification of the impugned goods. The importer had declared the description of goods as 'News Print Paper in Rolls' under H.S. Code 4801.0000, chargeable to Customs Duty @5%. On joint examination with R&D staff the representative samples of the instant consignment were sent to Custom House Lab for test. As per Lab Test Report "The sample is not news print paper in respect of Grammage, however on test was found to be mechanical paper in the form of off white paper sheet, neither coating nor impregnated wt/m2 is found to be 35gms at RTH. It is composed of mixture of mechanical and chemical wood pulp, suggested PCT 4802.5890." In the light of Test report goods are classifiable under HS Code 4802.5890, which attracting Customs Duty @20% and benefit/exemption for Sales Tax under 6<sup>th</sup> Schedule is not available against ascertained PCT heading. Importer try to clear the goods under PCT heading of lower rate of Customs duty by mis-declared the description, classification and claimed inadmissible exemption. Therefore, a Show Cause Notice No.CN-61901-16012013 dated 16.01.2013 was issued to M/s. Dynamic

**ATTESTED**

25.08.2014.



On the basis of reply of Show Cause Notice, the Additional Collector of Customs Karachi passed an Order-in-Original No.65202-12022013. The operative part of this order is reproduced as under:

I have thoroughly examined the record of the case, have perused the written reply of the representative of the trader and comments thereon submitted by the Department and have also heard verbal submission of both sides. While defending the charge of misdeclaration of description and classification against the trader, the

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authorized representative (AR) has argued that the primary consideration to ascertain the character of paper as newsprint is its composition of mixture of mechanical and chemical wood pulp. He stressed that the test report confirms that the item is composed of chemi-mechanical wood pulp and accordingly needs to be treated as newsprint. In his opinion, the nominal difference in grammage alone may not change the character of paper. This line of argument, however, is found suffering from many infirmities. Firstly, the AR has not challenged the findings of lab report regarding grammage and despite pointing out possibilities of incorrect testing or sampling, has not requested retest. Instead, the AR has persisted with the argument of composition of chemi-mechanical mixture of wood pulp, leading one to infer that the AR has accepted the determined grammage but considers this fact insignificant. Clearly this is not correct because according to the Chapter Note 4 of Chapter 48 of Pakistan Customs Tariff, beside meeting the other criteria, the paper must not weigh less than 40g/m<sup>2</sup> and more than 65gm/m<sup>2</sup>, in order to be described as 'newsprint'. While determination of constituent materials, their respective percentages, the manufacturing process and surface roughness etc. required advanced analytical techniques and sophisticated instruments, the grammage may be determined through elementary lab scale and therefore is the primary and fundamental characteristic. The imported paper in instant case fails to meet this basic condition and hence has been incorrectly declared as 'newsprint'.

**ATTESTED**



5. Being aggrieved and dis-satisfied with the impugned Order-in-Original No.65202-12022013, the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal which is reproduced as under:

"A. That kind attention is invited towards the test report incorporated in the show cause notice which clearly says that the samples are

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not newsprint paper in respect of grammage only. Whereas rest of the findings in respect of composition of the paper i.e. pulp used, are exactly the same and identical as required for the News Print Paper. As per explanatory notes the basic condition for the expression News Print Paper is that "un-coated paper used for the printing of Newspapers, of which not less than 50% by weight of the total fibre content consist of wood fibres obtained by a mechanical or chemi-mechanical process, un-sized or very lightly sized, having a surface roughness Parker Point Surf (IMPA) on each side exceeding 2.5 micro-meters (microns), weighing not less than 40 g/m<sup>2</sup>."

- B. The test report though does not confirm percentage of pulp and other parameters but clearly confirms that the sample is composed of mixture of mechanical and chemical wood pulp. However, surprisingly the learned Additional Collector did not consider it necessary to look into the basic criteria laid down in the Customs Tariff for classification of a paper under the category of News Print Paper. The observation of the learned Additional Collector is worthy to note. He had observed that "manufacturing process and surface roughness requirement advanced analytic and sophisticated instrument which is not available." This position clearly shows that the learned Additional Collector has erred in law that un-less a conclusive test report is in hand the Additional Collector was not empowered to classify the paper as News Print Paper. Therefore, the classification of impugned paper under heading 4802 is incorrect which will remain under heading 4801.0000.

**ATTESTED**



- C. Without prejudice to above, it is submitted that as per test report the grammage of the sample is 35 gm/per square meter instead of 40 per square meter provided for the News Print Paper.

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However, only the variation in grammage does not exclude the paper from the purview of News Print Paper unless the other basic parameters, as indicated above, are not met. Thus, under these circumstances when the department itself conceded that they cannot test other aspects, the declared description cannot be rejected which had to be accepted. As such the Paper imported by the appellant will remain in the same HS Code 4801.0000.

- D. That the Customs Laboratory is not legally empowered to determine the HS Code. The perusal of test report given in the show cause notice it reveals that the Customs Laboratory had just suggested (not exclusively described) that the goods may be classified under heading 4802. The group officers of Customs have given HS Code 4802.5890 whereas in other identical show cause notice, under case number CN-59976-0412013 (Annex-H), same goods have been classified under heading 4802.5400. It is submitted that to classify a paper under heading 4802 it is necessary to have a test report in hand which confirms that "other paper and paperboard, not containing fibres obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre contents consists of such fibres." However, no such report is in hand to classify the paper under heading 4802 but the report says that fibres used in this paper were obtained by mechanical process. Whereas for the paper of heading 4802.5400 or 4802.5890 it should be composed of fibres other than those not containing fibres obtained by a mechanical or chemi-mechanical process.

**ATTESTED**



- E. That the paper imported by the appellant company does not qualify for the basic conditions laid down in the head note of HS Code 4802. Therefore, by all means, the paper imported by the appellant company is classifiable under heading 4801.0000 as

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News Print Paper. It is further submitted that the News Print Paper is mostly manufactured from mechanical wood pulp specifically for the printing of newspapers which are used for a short time. Whereas the printing papers of heading 4802 are used for writing, printing or graphic purposes which are made mainly from bleached pulp satisfying any of the criteria given at Explanatory Note No. 5 of Chapter 48. A deeper look into the technical data leads to conclude that the despite variation in grammage the imported paper will remain under HS Code 4801.0000 not under heading 4804. A copy of the explanatory note to heading 4801.0000 and 4802 is marked as Annex-J and J/1.

F. That the news Print Paper imported by the appellant company can be recognized with the naked eyes too. This Honorable Tribunal may like to inspect the samples marked as Annex-K.

G. That without prejudice to foregoing submissions, it is also vital to point out that even the newspaper owners are importing News Print Paper of less than 40 gm/per square meter which is cleared by the Customs Collectorate without any objection only because such paper except grammage meets all the standards and criteria prescribed for the Newsprint paper and can only be used for the printing of News Paper."

**ATTESTED**



I have gone through the submissions made by both the parties and read the case records carefully. The crux of the issue is the classification of the goods described as 'News print paper in rolls'.

7. The classification of the goods in the Pakistan Customs Tariff is governed by the General Rules of Interpretation (GIR). The Rule 1 which is the foremost Rule for classification of goods describes that the classification of the goods is determined according to the terms of headings and any relative Chapter and Section Notes. The classification at the sub-headings of a heading shall be determined according to the

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terms of those sub-headings and any relate sub-headings Notes and mutas mutandis to the other GIRs, on the understanding that only sub-headings at the same level are comparable. For the purposes of this Rule relative Section and Chapter Note also apply, unless the context otherwise requires.

8. In terms of Note 4 to Chapter 48 of the Pakistan Customs Tariff, the expression "newsprint" means uncoated paper of a kind used for the printing of newspapers, of which not less than 50% by weight of the total fibre content consists of wood fibres obtained by a mechanical or chemi-mechanical process, unsized or very lightly sized, having a surface roughness Parker Print Surf (1 MPa) on each side exceeding 2.5 micrometers (microns), weighing not less than 40g/m<sup>2</sup> and not more than 65 g/m<sup>2</sup>.

9. The goods described a 'News Print Paper in Rolls' were re-examined and the re-examination report is as under:

"Re-examined the consignment with R&D staff. Description: News print paper in rolls. 42.5 GSM Dia 50" Origin USA (Ordinary tables pasted on reels). Check weight 100% Kgs vide KICT slip No.421604 dated 28.12.2012. Images attached. Representative samples forwarded to CH Lab to ascertain actual description and other all aspects and same forwarded to DC R&D."

**ATTESTED**



Customs Laboratory tested the consignment samples and reported as

"The sample is not a news print paper in respect of grammage. However, on test is found to be mechanical printing paper in the form of off white paper neither coating nor impregnated. Wt/m<sup>2</sup> is found to be 35.5GMS at RTH. It is composed of mixture of mechanical and chemical wood pulp. Suggested PCT: 4802.5890."

11. The grammage of the paper on Customs Laboratory test is found lower (35.5 g/m<sup>2</sup>) than the grammage specified for News paper (Between 40g/m<sup>2</sup> to 65 g/m<sup>2</sup>) vide Note 4 to Chapter 48. Since the provisions of Note 4 to Chapter 48 are not fulfilled, the

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goods cannot be termed as news print in rolls for the purpose of classification under heading 48.01. The impugned goods cannot be classified under heading 48.01 on account of partial fulfillment of the provisions of Note 4. The goods being uncoated paper are correctly classifiable under heading 48.02.

12. In order to understand classification at the sub-heading level, heading 48.02 is reproduced below:

48.02	Uncoated paper and paperboard, of a kind used for writing, printing or other graphic purposes, and non perforated punch- cards and punch tape paper, in rolls or rectangular (including square) sheets, of any size, other than paper of heading 48.01 or 48.03; hand-made paper and paperboard.	
4802.1000	- Hand-made paper and paper board	20
4802.2000	- Paper and paperboard of kind used as a base for photo-sensitive, heat-sensitive or electro-sensitive paper or paperboard.	5
4802.4000	- Wallpaper base	5
	- Other paper and paperboard, not containing fibres obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres:	
4802.5400	-- Weighing less than 40 g/m <sup>2</sup>	20
	-- Weighing 40 g/m <sup>2</sup> or more but not more than 150 g/m <sup>2</sup> , in rolls:	
4802.5510	--- Printing paper	20
4802.5520	--- Poster paper	20
4802.5530	--- Graph paper	20
4802.5540	--- Bond paper	20
4802.5590	--- Other	20
4802.5600	-- Weighing 40 g/m <sup>2</sup> or more but not more than 150 g/m <sup>2</sup> , in sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state.	20
	-- Other, weighing 40 g/m <sup>2</sup> or more but not more than 150 g/m <sup>2</sup>	20
	-- Weighing more than 150 g/m <sup>2</sup>	
4802.5810	--- Art paper	20
4802.5820	--- Card board	20
4802.5850	--- Art card	20
4802.5890	--- Other	20
	- Other paper and paperboard, of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi-mechanical process:	
4802.6100	-- In rolls:	20
4802.6200	-- In sheets with one side not exceeding 435 mm and the other side not exceeding 297 mm in the unfolded state:	20
	--- Other	
4802.6910	---Carbonizing base paper	5
4802.6990	--- Other	20



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13. The fifth single dash sub-heading describes the goods "-Other paper and paperboard, not containing fibres obtained by a mechanical or chemi-mechanical process or of which not more than 10% by weight of the total fibre content consists of such fibres:" On the other hand Customs Laboratory test report describes that the impugned paper is composed of mixture of mechanical and chemical wood pulp. Thus the goods are not classifiable in this single dash sub-heading. This single dash heading has further been sub-divided in the double dash ( - - ) and three dash ( - - - ) sub-headings. Since the impugned goods are not classifiable in the single dash sub-heading, they are not classifiable in its two dash or three dash sub-headings including sub-heading 4802.5890, as well.

14. The Customs Laboratory test report has confirmed that the goods are composed of mixture of mechanical and chemical wood pulp. They are therefore, classifiable under the sixth single dash sub-heading "- Other paper and paperboard, of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi-mechanical process:" The goods being in the forms of roll should for classification at the eight digit level under heading 1802.6100.

15. The goods are neither classifiable under heading 4801.000 @5% duty as declared by the appellant in the GD nor classifiable under heading 4802.5890 @20% duty as determined by the Customs Laboratory as well as Department as upheld by the Appellate Authority. As discussed above, the goods under reference are correctly classifiable under heading 4802.6100 @20% duty being in reels and composed of mechanical and chemical wood pulp. If the Department could not determine correct PCT heading correctly, it is not fair to allege that the importer and clearing agent willfully cited a wrong PCT heading, the determination of PCT heading involves interpretation. Each wrong determination of PCT heading does not require invocation of penal clauses unless the element of mens rea is present. Therefore, the imposition of fine and penalty is unjustified and harsh.



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16. In view of the above discussion, description and mode of packaging which clearly says "Rolls" the impugned goods are correctly classifiable under HS 4802.6100 (for Rolls). Since, the department itself has failed to classify the impugned goods correctly and failed to establish any mensrea on part of the importer that he willfully stated wrong HS heading, thus each wrong determination of HS code on part of importer does not require invoking penal laws. Accordingly, the fine and penalty imposed in this instant case are remitted and the appeal is partially accepted with no order as to cost.

17. Order passed and announced accordingly.

**ATTESTED**



(Mohammed Wahya)  
Member (Technical - I)

GOVERNMENT OF PAKISTAN  
CUSTOMS APPELLATE TRIBUNAL  
BENCH-I, KARACHI

Appeal No. Old \_\_\_\_\_ dated \_\_\_\_\_  
Appeal No. New K-339/2013 dated 12/04/2015  
M/s Dynamic Incorporated against  
Order-In-O/Appeal 65202-1202 dated 12/02/2013  
by Collector Customs FBR Karachi

Copy forwarded to:

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*[Signature]*  
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