

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL, BENCH-II,
3rd FLOOR, JAMIL CHAMBERS,
SADDAR, KARACHI

Before: *Mr. Khalid Mahmood, Member Technical-I, Islamabad.*

Customs Appeal No. K-634/2014

M/s. Supertech Autoparts (Pvt.) Ltd.,
c/o S.A WK Associates,
F-55, 1st Floor, Glass Towers, Clifton,
Karachi.



Appellant

Versus

1. The Additional Collector of Customs (Adjudication),
Custom House, Karachi.
2. The Deputy Collector of Customs-V,
MCC (Appraisement), West, Customs House, Karachi.

Respondents

ATTESTED By: Hassan Raza Jafri, Consultant for the Appellant
Mr. Muhammad Khalid, A.O. for the Respondents



Date of Hearing:

07.04.2015

Date of Order:

08.04.2015

ORDER

Mr. Khalid Mahmood, Member Technical: This order disposes of Customs Appeal No.K-634/2014 which has been directed against order-in-original No.580/2013-14 dated 16.05.2014 passed by the Additional Collector of Customs (Adjudication-I), Karachi.

2. Brief facts of the case as reported are that the appellant imported a consignment declared to contain Prime Quality High Carbon Steel Wire Rod weighing 39.964

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MT vide GD IGM No.06/2014 dated 13.01.2014, Index No.103 under PCT Heading 7213.9990 chargeable to customs duty @ 10% and becomes 0% under SRO 655(1)/2006 dated 22.06.2006 and GD was filed for home consumption. The GD was processed under 1st Appraisalment System for confirmation of the declaration. On physical examination, it was found that the goods are of prime quality but description was not confirmed whether the goods are Alloy or Non-Alloy Steel as the Alloy Steel is classifiable under PCT heading 7227.9000 @ 20% customs duty. Therefore, representative samples were sent to M/s A.Q. Khan Research Laboratory for confirmation of description of goods. Meanwhile, goods were released under Section 81 of the Customs Act, 1969 after obtaining pay order for differential amount of duty/taxes. The Laboratory vide its test report No.MIC14-CUS-162 dated 12.02.2014 reported percentages. The elements found in the samples, the percentages were examined in juxtaposition to definition of Alloy Steel given at Chapter Notes 1(f) of Chapter 72 of Pakistan Customs Tariff. The percentage of Boron was found to be as 0.0077% (more than 0.0008%), which is in consonance with the criterion given therein and the goods were found as of Alloy Steel, which

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are classifiable under PCT heading 7227.9000 attracting 20% instead of PCT heading 7213.9990 attracting 10% customs duty and becomes 0% on claim of exemption under SRO 655(I)/2006 dated 22.06.2006. The SRO 655(1)/2006 allows 0% custom duty against items as notified vide EDB through input/out ratio & Capacity Utilization Certificate. Though the quota for input consumption of the imported item under PCT heading i.e. 7213.9990 is available to the importers, the detected item i.e. Wire Rod of Alloy Steel of PCT heading 7227.9000 is not included in the list of items, issued to the importer, notifying therein as input consumption of the industry. The ascertained goods do not qualify the eligibility of

SRO 655(I)/2006 dated 22.06.2006. The importers thus deliberately manipulated the description as well as PCT heading as to avail the benefit in terms of SRO 655(I)/2006 dated 22.06.2006.

3. The Additional Collector of Customs (Adjudication-I) did not agree with the replies of show cause notice and passed an order-in-original No.580/2013-14 dated 16.05.2014 as under:

"I have gone through the case record and examined written/verbal submissions of the respondent and the department. Scrutiny of record reveals that the respondent declared the impugned goods under PCT heading 7213.9990 CD @ 10% applicable on Wire Rod of Non-alloy steel. As per Test Report No. MIC14-CUS-162 dated 12.02.2014 the percentage of Boron was found to be 0.0077 which is more than 0.0008% confirming the goods as Wire Rods of Alloy Steel classifiable under heading 7227.9000 CD @ 20%. The respondent's plea that as per EDB approval No.EDB-IOR/V-023/SRO-655 dated 11.03.2014 they are entitled to import these goods as well under concession, I am of the view that the subject goods are not covered under EDB revalidation approval No.EDB-IOR/V-023/SRO-655 dated 11.03.2014 because the subject approval was granted after the filing of Goods Declaration, therefore, at the time of declaration the approval was not available. The next plea of the respondent that the goods may be sent for lab test again was not accepted because firstly, KRL is an (authentic lab hence, re-test not required. Secondly, the goods have already been released and availability of an authentic sample after lapse of considerable time may also not be possible. Accordingly, as per the lab test report it stands established that the respondent has committed offence of mis-declaration of description under Sections 32 (1) & (2) of the Customs Act, 1969 punishable under clauses (14) of Section 156 (1) of the Customs Act 1969. I, therefore, order confiscation of the impugned goods. However, an option under section 181 of the Customs Act, 1969 read with SRO 499(I)/2009 dated 13.06.2009 is given to the respondent to redeem the same on payment of 35% redemption fine on the value of goods ascertained by the department in addition to duty and taxes chargeable thereon. A penalty of Rs.50,000/- (Fifty thousand) is also imposed on the respondent".

4. The appellant being aggrieved from the order-in-original No.580/2013-14 dated 16.05.2014 and filed an appeal before Tribunal on grounds concluded as under:



- "(i) That we are not commercial importers who import the goods and sell locally.
- ii) That we are OEM Manufactures and import the raw material as per specific requirement of the local assemblers, viz M/s Atlas Honda Ltd, Pak Suzuki Ltd and other assemblers of the country.
- (iii) That we manufacture quality parts for the automotive industry of the country as per their requirements.
- (iv) That the same item was previously imported several times and got tested but no discrepancy was found ever.
- (v) That if the percentage of Boron in the steel increases from 0.0008, the goods are treated as Alloy steel and are classifiable under HS Code 7227.9000 and if the quantity of Boron is less than 0.0008, it is a Non Alloy classifiable under HS Code 7213.9990.
- (vi) That our request for re-test of the goods was not accepted by the Adjudicating Officer. We are importing this item regularly and non discrepancy was ever detected. We are and we have to import Non-alloy steel classifiable under HS Code 7213.9990 as per requirement of our clients and for which a quota has been allocated by the Engineering Development Board.
- (vii) That the good are being imported and cleared under SRO 655(I)/2006 dated 22.06.2006 as per quota allocation by the EDB.
- (viii) That on our request the Engineering Development board has also allocated quota of alloy steel (HS. Code 7227.9000) as per letter dated March, 11, 2014.
- (ix) That there is no need to mis-declare the goods, especially when we are capable to get permission for import of specific raw material from the EDB. Therefore provisions of Section 32 invoked in the show cause notice are not correct.



That in view of the above facts it is prayed that this honourable forum may graciously be pleased to set aside the order-in-original No.580/2013-14 dated 16.05.2014 being bad in law and facts".

5. Both sides have been heard and record of the appeal perused. The appellants/importers are regularly importing the goods / raw material in question for use in their vending plant specific to the requirements of M/s Atlas Honda Ltd, M/s Pak. Suzuki Ltd and other assemblers of auto-mobiles in the country. They also

contended that they have been importing the same raw material for long time and no discrepancy had been previously found in their descriptions/imports. The percentage of Boron is a variable that stands between the two PCT classifications; one declared by the appellant and other ascertained by the respondents, subsequently to the lab test. The appellants' contesting the lab test, had requested for 2nd lab test from another laboratory, which was not met favourable by the respondent. In my view, the appellants were entitled to make the request of review through another lab test. The GD was also processed under Ist examination to confirm the declaration and to ascertain the exact composition of the goods/raw material.

6. In view of the circumstances, I am convinced that the charge for mis-declaration of the description cannot be justifiably leveled against the appellants. The appellants also take the benefit of strong history of the import of the identical raw material and clearance by customs under description and PCT heading, claimed by them. I therefore found no reasons to attribute any deliberate attempt of mis-declaration or *mens rea* on the part of the appellants. Accordingly, redemption fine imposed in lieu of the confiscation of the goods and penalty imposed on the appellants are hereby remitted.

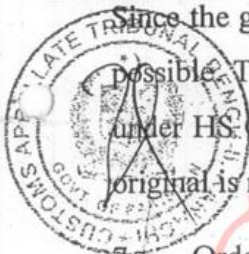
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Since the goods have already been released, putting them to re-test at this stage is not possible. The goods will therefore remain classifiable and assessable to customs duty under HS Code as ascertained by the respondent/department. The impugned order-in-original is modified to the above extent, only.

7. Order passed accordingly.



(Khalid Mahmood)
Member Technical-I
Islamabad



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DNo- 315 dt 8-4-15

GOVT OF BANGLADESH
CUSTOMS EXCISE & TRADING
APPELLATE TRIBUNAL, DHAKA

4-634/14
mb Superstore Antipark (Pvt)
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ADC Agt - I, 4

Spateel Antipark (Pvt)
Husein Rose (Corel)
Appt - WST
Director of Customs, Dhaka
General of Customs, Dhaka
Director General of Customs Investigation
Dhaka City

[Signature]
08/4/15 etc

Customs