

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

Before:- Mr. Muhammad Nadeem Qureshi, Member (Judicial - I), Karachi  
Mr. Mohammed Yahya, Member (Technical - I), Karachi

Customs Appeal No.K-863/2014  
Customs Appeal No.K-864/2014

M/s. Habib University Foundation  
Plot No. 147, Block - 7 & 8,  
Banglore Co-operative Housing  
Karachi.

Appellant

Versus

- 1- The Collector of Customs  
MCC Appraisement (East),  
Custom House,  
Karachi.
- 2- The Deputy Collector of Customs  
MCC Appraisement (East),  
Custom House,  
Karachi.
- 3- The Collector of Customs (Appeals)  
81-C, Block - 6, P.E.C.H.S.  
Karachi.

Respondents

Mr. Javed Iqbal & Mr. Younis Rao, Consultant, present for the appellant.  
Mr. Abdul Ghani, E.O., present for the respondents.

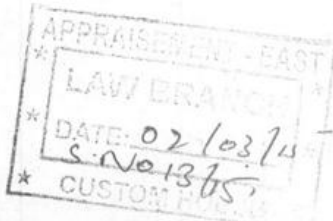
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Dates of hearing: 22.12.2014, 19.01.2015, 11.02.2015  
Date of Order: 21.02.2015

ORDER



Mr. Mohammed Yahya, Member (Technical-I), Karachi: By this order we intend to  
disposed of the Customs Appeal Nos. K-863/2014 and K-864/2014 filed, under Section



194-A of the Customs Act, 1969, by M/s. Habib University Foundation, against Order-in-Appeal No.8444 to 8445/2014 dated 15.07.2014, passed by the Collector of Custom (Appeals), Karachi. These appeals have identical issue of law and facts therefore, being heard dealt with and dispose of simultaneously though this common order in the light of judgment of the Honorable High Court of Sindh in Customs Reference No. 157 of 2008, S. M. Naqi S/o Syed Muhammad Hussain, Karachi Vs Collector of Customs (Adj-I) and Others.

2. Brief facts of the case are that the appellant imported a consignment of "air handling units complete with standard accessories and fittings" and filed GD No.KAPE-HC-14643 dated 23.08.2013 claiming classification under heading 99.13 (8415.9099) attracting 0% customs duty and 0% Sales Tax whereas the Deputy Collector of Customs, Model Customs Collectorate of Appraisement (East), Karachi regret the benefit of exemption. The appellant filed an appeal before the Collector (Appeals), Karachi, who Order-in-Appeal No.8444 to 8445/2014 dated 15.07.2014 rejected the appeal. The operative of the impugned Order-in-Appeal is reproduced as under:

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"I have examined the case record. The goods in question are of multiple use. They are not meant exclusively to advance the objective of the importing institution. The respondents have rightly denied the benefit of heading 99.13 to the importer. There is no reason to interfere with the assessment order. The appeal is rejected."

3. Being aggrieved and dis-satisfied with the impugned Order-in-Appeal the appellant filed the instant appeal before this Tribunal on the grounds incorporated in the Memo of Appeal.

4. In the memo of appeal the appellant M/s. Habib University Foundation stated that:

"1. PCT heading 99.13 (annexure-XII) covers gifts or donations received by a charitable non-profit making hospital or institution, solely for the purpose of advancing the declared objectives of such hospital or institution. The perusal of PCT heading 9913 reveals that the following requirements were to be fulfilled for the purpose of getting benefit of heading 9913:

- i) Gifts and donations received by the institution.
- ii) Gift should be for the charitable non-profit making institution.
- iii) Gift of donation is meant solely for the purpose of advancing the declared objectives of the institution.

The definition of "charitable non-profit making hospital or institution" and "gifts or donations" has been given vide Note (i)

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"Charitable Institution" and "Charitable non-profit making institution" means an institution approved for the purpose of Section 2(36C) of the Income Tax Ordinance, 2001;



- ii) "Gifts or Donations" include goods other than vehicles of chapter 87 of the First Schedule to the said Act, donated by the donors residing abroad.

The impugned "Ducted type FCT's and wall mounted FCT's" qualify the definition of "Gifts or Donations" given in the Note (ii) of Sub-Section-III of Chapter 99. The approval under Section 2(36)(C) of the Income Tax Ordinance, 2001 has been issued by the income tax authorities that Habib Universities Foundation qualify as the charitable non-profit making institution having approval under Section 2(36)(c) of the Income Tax Ordinance vide Note (i) of Sub-Section-III of Chapter 99.

The declared objectives of the Foundation as given in the Memorandum of Association (Annexure-III) interalia include:

- To establish, own and sponsor a university for the promotion and dissemination of higher education and advanced studies, knowledge and technology.

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To provide a platform for research and development relating to objects of the company and in this regard undertake any activity for development.

To establish, own, maintain, erect, construct, furnish, equip, promote, organize, manage and run institutions for special education and to provide grants and facilities for education and

training to the persons who are mute, deaf, dumb  
or proper medical attendance, nursing, food,  
medicine, drugs and special appliance.

The declared objectives of the Habib University Foundation  
as given in the Memorandum of Association are met as the  
"Ducted type FCU's" are exclusively meant for use in the  
University and have been installed in the university after  
clearance from the port.

The other conditions required to be fulfilled for the purpose  
of classification under heading 9913 are below:

- i. No condition is attached with the gift or donation  
by the donor and the receiving institution is at  
liberty to use the same in accordance with the  
declared objectives.
- ii. The receiving institution furnishes an undertaking to  
the Collector of Customs to the effect that such  
gifts or donations will not be sold, utilized or  
disposed of otherwise than for the purpose for  
which the same have been received and binds  
itself to pay the leviable duties in the event of the  
breach of the undertaking.

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The letter of the donor dated 25.08.2013 was furnished  
(Annexure-VI) confirming that no condition had been  
attached as regards its usage of the gift and Habib

University Foundation is free to use the donation in accordance with the needs and requirements within the said University. The undertaking was also furnished (Annexure-VII) binding to use the gift exclusively in the University and under took not to sell or dispose of the imported without the prior permission of the FBR.

From the foregoing it is evident that all the requirements / conditionalities linked for classification under heading 9913 were fulfilled. Instead of setting aside the "Assessment Order" passed by AC / DC Customs, the learned Collector (Appeals) passed the following orders:

"I have examined the case record. The goods in question are of multiple use. They are not meant exclusively to advance the objectives of the importing institution. The respondents have rightly denied the benefit of heading 9913 to the importer. There is no reason to interfere with the Assessment Order. The Appeal is rejected."

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The Orders of the learned Collector (Appeals) is liable to set aside interalia on the following grounds:



i) In terms of Note (2) to Sub-Chapter III of Chapter 99 of the Pakistan Customs Tariff the term "Gift or donation" includes goods other than vehicles. No restriction has been levied whether the "Gift or donation" should have multiple use or otherwise. No such requirement



has also been attached vide term of heading 9913.

Therefore, the rejection of appeal on the basis of multiple use is not supported by the law. The Hon'ble Supreme Court in case law reported as 2010 SCMR 354 (Annexure-XIII) has upheld the well recognized rule of interpretation of statute that no word used by the law makers is either redundant or can be subtracted, substituted, added or read in a piece of legislation or a document. Thus the addition of the word "Multiple use" in the heading 9913 is patently un-lawful. The Honorable Supreme Court in Judgment reported as 1971 SCMR 128 (Annexure-XIV) made the following observations / Orders:

"In interpreting the taxing statute the Courts must look to the words of the statute and interpret it in the light of what is clearly expressed. It cannot imply anything which is not expressed, it cannot import provisions in the statute so as to support assumed deficiency."

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The word "Multiple use" have neither been used vide terms of PCT heading 9913 nor used in definition of "Gifts" given vide Note (ii) to Sub-Chapter III of Chapter 99 of the Pakistan Customs Tariff for the purpose of classification under heading 9913.

ii) The imported goods i.e. "Ducted type FCU's" and wall

mounted FCU's" are used for cooling the premises.

The cooling may be performed where ever they are installed such as hotels, homes, offices, factories.

Merely because of use of the imported goods at different places does not exclude it from the definition of "Gift or donation". The exemption under heading 9913 is subject to the requirement /

conditionalities mentioned therein which were duly fulfilled as explained above.

iii) The undertaking has been given that the goods will be installed in the University. In fact the same have already been installed in the Haib University after their clearance from the port. It was also undertaken that the goods will not be sold or disposed of without the prior approval of FBR.

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iv) The appeal was filed in the office of Collector (Appeals) on 08.11.2013 whereas the same was decided on 15.07.2014 i.e. 249 days after filing an appeal. In terms of Section 193 A(3) of the Customs Act, 1969 the Order-in-Original was required to be passed within 120 days of the filing of appeal or within extended time of 60 days. The Order-in-Appeal is time barred by 129 days. The Customs Appellate Tribunal



vide judgment reported as 2011 PTD Trib. 1146

(Annexure-XV) have decided that:

"Provision of subsection (3) of S.193-A of Customs Act, 1969, required that appeal should be decided within a period of 90 days, from the date of filing of appeal or within further extended period, which could not be more than 90 days by the Collector of Customs

(Appeal), with reasons to be recorded ---

Where initial period of 90 days had expired, without any extension, the order-in-appeal had become barred by limitation rendering all the original adjudication and subsequent proceedings ab initio null and void."

Since the O-in-Appeal has been issued after the expiry of permissible time limit, the same may be set aside on this account only along with the "Assessment Order."

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5. We have heard arguments of both sides and read the case record carefully. BOM, heading 9913 allows levy of 0% duty on gifts or donations received by a charitable non profit making institution. The definition of 'Charitable non-profit making institution and Gift' has been provided vide Note (i) and (ii) of Sub-Chapter III of Chapter 99 of the Pakistan Customs Tariff according to which 'charitable non-profit making institution' is the one which is approved for the purpose of Section 2(36C) of the Income Tax Ordinance, 2001 and 'Gift' or 'donation' means goods

other than vehicle of Chapter 87. The appellants have produced a valid certificate issued under Section 2(36C) by the Commissioner Income Tax under the Income Tax Ordinance, 2001. They had received gift of goods other than vehicle of Chapter 87 (i.e. "Air handling units complete with standard accessories and fittings") from a donor residing abroad. The donor vide his letter dated 19.08.2013 has confirmed that no condition whatsoever is attached with the gift and the University is free to use the Goods according to their need in the university. An undertaking was also furnished by the University that they will not sell the goods and use them exclusively in the University. Thus, all the conditional ties of heading 9913 are fulfilled and the goods qualified classification under heading 9913.

6. The argument that the goods in question have multiple use and hence not entitled for exemption under heading 99.13 is not convincing as no such condition has been mentioned for the purpose of classification under this heading. No word can be added or deleted in the statute as has been decided in the number of judgments of the Superior Courts. Thus the addition of 'Multiple use' by the Collector (Appeals) for the purpose of allowing exemption under heading 9913 is patently wrong.

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7. The contention that "Air handling units complete with standard accessories and fittings" do not have educational character is also farfetched. The goods of educational character are governed vide heading 9915 whereas 'gifts or donations' are dealt under heading 9913. The appellants had furnished an undertaking at the time of release that the goods will be exclusively be used in the University. The respondents could not establish that the goods were disposed of or used for any other purpose. On the other hand the appellants offered that Customs may verify that the impugned goods were dually installed in the University. Thus the goods were



/ are being used in accordance with the declared objectives of the Habib University Foundation.

8. During the hearing proceedings the respondents argued that the appellants should have approached the senior official of the Collectorate before involving jurisdiction of the appellate forum. Further, Habib University is charging very high fees from the students and hence cannot be treated as charitable non-profit making institution. The arguments are not at all convincing as the importer (Appellant) has the right to file an appeal before the Collector Appeals in terms of Section 193 of the Customs Act, 1969 and before the Customs Appellate Tribunal under Section 194 of the Customs Act, 1969. The right given to a citizen under the law cannot be denied. The definition of 'charitable non-profit making institution' has been given vide Note (i) to Sub-Chapter III of Chapter 99 of the Pakistan Customs Tariff. The only requirement for the purpose is approval of the institution under Section 2(36C) of the Income Tax Ordinance, 2001. The University has furnished the requisite approval under the Income Tax Ordinance, 2001. The collection of higher or lower fees from the students by the University is not the criteria to term the University as charitable non-profit making institution' or otherwise.

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9. The appeal was filed by the appellants before the Collector (Appeals) on 08.11.2013 and Order-in-Original was issued on 15.07.2014. In terms of Section 193(3) of the Customs Act, 1969 an appeal is required to be filed within 120 days and extended time of 60 days. The appeal has been decided after 67 days of the permissible time limit. In case reported as 2011 PTD (Trib.) 1146 the Customs Federal Excise and Sales Tax Appellant Tribunal has passed the following order:

*"Where initial period of 90 days had expired, without any extension, the order in original had become barred by limitation rendering all*

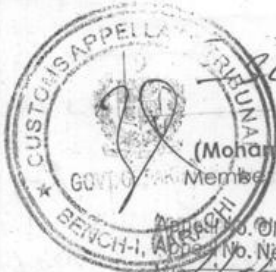


the original adjudication and subsequent proceedings ab initio nul  
and void."

10. By getting the strength from above referred statutory obligations and interpretation of law, we are of the considered view that the appellant's contentions carries weight and should have been recorded in accordance with law. Since the appellant had fulfill all conditions as envisaged in sub-section III of Chapter 99 of the Pakistan Customs Tariff and the observations made during the hierarchy of the customs by the concerned Collectors are perverse from the evident having patent legal infirmities hereby declared void, ultra viral and without lawful authority, accordingly the appeal in hand stand accepted/allowed with no order as to cost.

11. Order passed and announced accordingly.

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(Mohammed Yahya)  
Member (Technical)

(Muhammad Nadeem Qureshi)  
Member (Judicial - I)

Copy forwarded to:

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2. Secy. of Customs, Govt. of Sindh, Karachi am -
3. Secy. of Customs, Hyderabad / Sukkur / Gaddani / Quetta am -
4. T. & S. Intelligence & Investigation, F. R. Karachi / Hyderabad / Sukkur / C. am -
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