

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL, BENCH-II,
3RD FLOOR, JAMIL CHAMBER, SADDAR, KARACHI

Before: Mr. Adnan Ahmed, Member Judicial-II, Karachi.

Customs Appeal No.K-1608/2014

M/s. R & I Electrical Appliance (Pvt.) Ltd.,
319, Madina City Mall, Abdullah Haroon Road,
Karachi.

Appellant

Vs.

1. The Collector of Customs (Appeals), Karachi.
81-C, Block-06, P.E.C.H.S,
Karachi
 2. The Additional Collector of Customs, (Adjudication),
Model Customs Collectorate PaCCS/ (East),
Mezzaine Floor, Customs House,
Karachi.
 3. The Director,
Directorate of Post Clearance Audit (PCA),
4th Floor, Customs House,
Karachi.
- Respondents

Mr. Imran Iqbal, Advocate, present for the Appellant
Mr. Shamlal (P.A), PCA, &
Mr. Abdul Ghani Soomro, A.O., present for the Respondent

Date of Hearing: 15.01.2015
Date of Order: 06.02.2015

ORDER

Mr. Adnan Ahmed Member Judicial-II, Karachi: By this order, I intend to dispose off Customs Appeal No.K-1608/2014 filed by the appellant against the order-in-appeal No.9261/2014 dated 29.09.2014, passed by the Collector of Customs (Appeals), Karachi.

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2. Brief facts of the case are that the Directorate of Post Clearance Audit (PCA), Karachi reported vide Contravention Report C.No. PCA/1564/10-Audit/1742 dated 10-03-2011, that the appellant imported two consignments of refrigerators bearing Goods Declaration CRN Nos. 1-H.C-1339667-090320 and I-HC-1194144-02112 through their customs house agents namely M/s. Javaid Umar Enterprises (CHAL-18), Karachi and M/s. Shahnawaz Ltd. (CHAL-258), Karachi. The consignments were cleared under Pakistan Customs Tariff heading 8418.2900 from MCC PaCCS by availing benefit of concessionary rate of customs duty in terms of Pak-China FTA, SRO.659(I)/2007 dated 30.06.2007. The SRO extends concessionary duty to Refrigerators of HS Code 8418.2900 which covers "Other Refrigerators" i.e. other than Compression type or Absorption type refrigerators. The Refrigerators imported in instant cases being Compression type, are appropriately classifiable under HS Code 8418.2100. The assessment of these refrigerators under HS Code 8418.2900, was therefore, patently incorrect, and consequently, these were not entitled for concession under SRO.659(I)/2007 dated 30.06.2007. The illegal/ unlawful claim of concessionary rate of Customs duty and other taxes has resulted in short payment of Rs.11,67,978/- (Customs Duty Rs.7,99,887/-, Sales Tax of Rs.1,27,982/-, Additional Sales Tax of Rs.1,66,776/- Special Federal Excise Duty of Rs.61,769/- and With Holding Income is Rs.11,564/-). The Directorate of Post Clearance Audit (PCA), Karachi issued an audit observation letter vide No. C.No. PCA/1564/10-Audit dated 28.09.2010 to the appellant and a copy was forwarded to the concerned Custom House Agent. In view of no response/ reply by the appellant/ agents, the Directorate (PCA), Karachi issued a reminder dated 24.12.2010 to above-named appellant/ agents to which no response was tendered. The appellant through their

customs house agents namely M/s. Javaid Umar Enterprises (CHAL-18), and M/s. Shahnawaz Limited (CHAL-258), wrongly availed concessionary rate of customs duty and exemption from Sales Tax under SRO 659(I)/2007 dated 30.06.2007 thereby, evading the payment of Government Revenue amounting to Rs.11,67,978/- (Customs Duty Rs.7,99,887/-, Sales Tax of Rs.1,27,982/-, Additional Sales Tax of Rs.1,66,776/-, Special Federal Excise Duty of Rs.61,769/- and With Holding Income is Rs.11,564/-), have thus committed an offence under the provisions of Sections 32 (1), (2) & (3A) of the Customs Act, 1969 and Section 3 of the Sales Tax Act, 1990, punishable under clauses (1), (10A) & (14) of Section 156 (1) of the Customs Act 1969 and Section 33(5) and (17) of the Sales Tax Act, 1990 and Section 148 of the Income Tax Ordinance, 2001. A show cause notice was issued to the appellant and their custom house agents.

3. The Additional Collector of Customs, MCC of PaCCs, Karachi, did not agree with replies of the appellant and passed the Order-in-Original No.106 of 2012 dated 23.05.2012 which is reproduced as under:-

"I have considered facts of the case, written reply of respondents and comments of Department Representative, it has been that the impugned goods were cleared under PCT Heading 8418.2900 by availing benefit of Pak-China FTA Notification No. SRO-659(I)/2007 dated 30.06.2007. But the impugned goods are appropriately classifiable under HS Code 8418.2100, as the goods, Refrigerators are compression type. The respondents have denied the allegation, but failed to justify classification of goods under HS Code 8418.2900. The charge, therefore, stands established. The respondents are order to pay Rs.11,67,978/- (Customs Duty Rs.7,99,887/-, Sales Tax of Rs.1,27,982/-, Additional Sales Tax of Rs.1,66,776/-, Special Federal Excise Duty of Rs.61,769/- and With Holding Income is Rs.11,564/-.

also impose a personal penalty Rs.1,00,000/- the respondent no. (i) under clause 14 of section 156(1) of the Customs Act, 1969."

4. The appellant being dissatisfied with the Order-in-Original No. 106 of 2012 dated 23.05.2012 and filed an appeal before the Collector of Customs (Appeals), Karachi, who rejected the appeal.

5. Being aggrieved and dissatisfied with the Order-in-Appeal No.599261/2014 dated 29.09.2014, passed by the Collector of Customs (Appeals), Karachi, the appellant filed instant appeal before this Tribunal on the grounds incorporated in the memo of appeal.

6. Mr. Imran Iqbal, Advocate, represented the appellant and Mr. Shamlal, P.A., PCA and Mr. Abdul Ghaffi Soomro, A.O., represented the respondents and submitted advance arguments with supporting grounds of memo of appeal and objections.

7. Mr. Imran Iqbal, counsel for the appellant has contended that the respondents have discharged his burden under article 117 of Qanun-e-Shahadat. The impugned goods were out of charged and released by the customs authority, therefore the burden of proof is shifted on the shoulder of the respondents, who have failed to prove his case. He further submitted that allegation in a show cause notice is also hit by past and closed transaction. Therefore, the show cause notice has no value in the eyes of law. He further argued that the appellant has filed Goods Declaration correctly with correct description of the impugned goods which was undisputed; therefore, no collusion of the staff neither the appellant has misdeclared the material. The impugned judgments are neither speaking nor according to law are liable to be set aside.

8. The learned counsel for the appellant besides reiterated the grounds mentioned in the memo of appeal have contended the above mentioned additional grounds in respect of his appeal.

9. The learned representative of the respondents supported the impugned order. According to him the appellant got the goods in question cleared by misdeclaration, description in order to avoid higher rate of customs duty. The learned representative of the respondent has further argued that in a audit observation of even number dated 28.09.2010 was issued to the importer and highlight the position and also copy of the same was forwarded to the concerned clearing agent. The appellant got cleared goods under HS Code 8418.2900 by availing of concessionary rate of customs duty. The Refrigerators imported in instant case being Compression type are appropriately classifiable under HS Code 8418.2100, therefore, the appellant are not entitled for concession under SRO 659(I)/2007 dated 30.06.2007. the representative of the respondents has vehemently opposed the advance arguments of the appellant's counsel and prayed that the appeal may be dismissed with special cost.

10. I have heard the learned counsel appearing on behalf of the appellant as well as the representative of the respondents and perused the record carefully. The respondent has failed to consider that the determination of PCT Heading is a sole function of the customs officer. The importer only assists the customs by citing the PCT Heading of the goods. At best citation of PCT Heading may be called a claim for assessment of taxes, which means a request, may be accepted or rejected by the competent authority but is not a punishable

offence under any of the provisions of the Customs Act or notification issued there under. The citation of a particular PCT Heading in the Bill of Entry does not amount to misdeclaration within the meaning of section 32 of the Customs Act, 1969 is a well settled principle of law in Customs Jurisprudence through a series of Judgments of Superior Judicial Fora. In the case of Monnoo Industries Ltd v. Govt, of Pakistan reported as PET D-199/1984 to State Cement Corporation v. Govt. of Pakistan reported as C.A. No. 43 of 1999. Reference is made to the reported judgment 2003 PTD (Trib.) 293 of the Customs Appellate Tribunal Karachi Bench, which is reproduced as under:-

"We believe that clearing agent while filing a bill of entry is required to fill the PCT Column for the easement and assistance of the Assessing Officer. The perusal of section 80 of the Customs Act, 1969, indicates that during the process of assessment it is the duty of the Assessing Officer not only to examine the goods but also to tally the description its weight and value of the goods thereof, and to consider any 'extra information available on the bill of entry in order to arrive at a correct assessment of duty and taxes. Simply, assuming that a wrong PCT Heading amounts misdeclaration would not be a correct approach to interpret section 32, where emphasis is on the word "material particulars" which means something going to the root cause of the basic declaration. To our mind, a misdeclaration in material terms has not been made by the Appellant."

11. The allegation under section 32(1) or 32(2) of the Customs Act, 1969 are unwarranted under the circumstances of the case. The appellant has filed description of goods which is undisputed; there is no false statement of the appellant. That in Appeal No.K-723/07 M/s. Falcon Enterprises Vs. Collector of Customs that it was held as under:-

"alleging a charge of misdeclaration on the basis of a wrong classification heading does not constitute an offence within the framework of section 32 of the Customs Act, 1969 as there is no material falsity in the statement made by the appellant."

12. The lower forum while adjudicating the subject case also forgot that section 131(1)(c) of the Customs Act, 1969 lays certain duties upon the Customs Officers once the Goods Declaration is presented to them by the importer. The responsibility of the Customs Assessing Officer was all the more enhanced since the Goods Declaration was presented under the First Appraisal System under section 131(1)(a) of the Customs Act, 1969 meaning thereby the exporter had made a declaration subject to full scrutiny and examination of all aspects by the customs staff in terms of section 131(1)(c) of the Customs Act, 1969. The section 32 of the Customs Act, 1969 would only be attracted when misdeclaration was made to cause loss to the Government Exchequer by evasion of Customs Duty. Thus in absence of any revenue loss the charge of misdeclaration under section 32 of the Act was not attracted.

13. Mr. Imran Iqbal, Advocate has referred the judgments as reported 2014 PTD (Trib.) 330 and 1999 SCMR 1072. In case of Collector of Customs Vs. M/s. Sim Lim International judgments as reported 2014 PTD (Trib.) 330. The Chairman was then has given finding as under:-

"Finally, I am of the view that the case in hand relates to dispute regarding classification which was required to be referred to Classification Committee for clarification as per prescribed procedure. However, the record produced before me reveals that the appellant was in hurry to pass order-in-original for changed classification from retrospective effect. The contention of the respondent No.1 that the matter of this case are not "chemically blended refrigerant gases" but are "compound of pure refrigerant gases" has not even been considered by the

appellant. Further more, refrigerant gas R-406-a was classified under HS Code 3824.9099 through a letter No.MCC-FTO-88/2009-PaCCS dated 8-7-2010 of the PaCCS Collectorate whereas the consignments of the subject case are of the years 2007, 2008 and 2009. The appellant has agreed that this classification of the PaCCS Collectorate is effective prospectively and not retrospectively."

14. That in case of Gatron (Industries) Limited Vs. Government of Pakistan as reported 1999 SCMR 1072. The apex court has allowed the appeal in following terms:-


"For reasons to be recorded later, the appeal is accepted, the impugned judgment of the Balochistan High Court, Quetta is set aside and it is declared that the machinery in dispute imported by the appellant is exempted from payment of impugned taxes under Notification No.SRO. 1284(I)/90, dated 13.12.1990, therefore, it is entitled to refund of the amount of taxes deposited by it in the bank under the orders of the High Court which has been withdrawn by the respondent alongwith the profits.


15. The case under his circumstance was not fit for re-assessment by any stretch of imagination, under the mandate of section 80 of the Customs Act, 1969 as no new evidence of false declaration was alleged or available in this case. The dispute created by PCA on 10.03.2011 at belated stage, such action on part of post clearance of PCA is infested with non-bonafide.

16. In the above discussions and circumstances of the case, the show cause notice and consequent proceedings was held to be as without any lawful authority.

17. The upshot of the above discussions, there is no evidence to establish that the appellant got impugned goods by misdeclaration. Resultantly by misdeclaration, the appeal is accepted and the impugned order-in-original as well as order-in-appeal is set aside.

18. Order passed accordingly.


(ADNAN AHMED)
Member Judicial-II
Karachi


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