

GOVERNMENT OF PAKISTAN
CUSTOMS APPELLATE TRIBUNAL,
SPECIAL DIVISIONAL BENCH, ISLAMABAD

Before: Mr. Mumtaz Hussain, Member Judicial, Peshawar
Mr. Imtiaz Ahmed Shaikh, Member Technical-II, Karachi

Customs Appeal No.333/PB/2022

M/s. Sino Mall (Pvt) Limited,
Bara Bukhari Line No.16, House # 132/1 Phase 06, Karachi
Through Mr. Haseeb Ullah Khan.....Appellant

VERSUS

1. **The Additional Collector of Customs (Adjudication,**
Dry Port, Azakhel, 1st Floor Custom House, Jamrud Road
2. **The Collector of Customs,**
Collectorate of Customs Appraisement Peshwar,
Custom House, Peshawar..... Respondents

Mr. Haseebullah, Consultant, present for the Appellant
Mr. Asfandiyar A.O and Mr. Asghar Kamal, Inspector present for the Respondent

Date of Hearing: 26.01.2023
Date of Judgment: 09.02.2023

JUDGMENT

Imtiaz Ahmed Shaikh, Member Technical-II, Karachi : By this Judgment, we intend to dispose of Customs Appeal No.333/PB/2022, filed by the Appellant against the Order-in-Original No.1797318 dated 22.11.2022 passed by the Additional Collector of Customs (Adjudication), Customs House, Karachi.

2. Brief facts of the case as reported are that the Principal Appraiser reported that Item No 45 to 65 of GD, these items fall within meaning of imports which shall be subject to following conditions of Part 1 of Appendix B of import policy of 2022 and the same is allowed subject to certain conditions (i) it must be fit for human consumption: (ii) they shall be free of any 'haram' element or ingredients, (iii) Edible products shall have at least 66% (2/3d) shelf life remaining from the date of manufacturing: (iii-a) The ingredients and details of the product (e.g. nutritional fact usage instructions etc) of food products are printed in Urdu and English languages on the consumer packaging. (iii-b) The logo of the Halal certification body is printed on the consumer packaging (c) The labeling under clauses (a) & (b) above shall not be in the form of a sticker, overprinting, stamp or scratched labeling However, in the instant case, neither the item contains Halal logo or Urdu English ingredients nor contains details about the shelf life and only contain pasted ingredients upon certain items (which is violation condition (c) of Appendix-8). Thus the trader violated the provisions of Section 16 of the Customs Act, 1969 and Section 3(1) of Imports and Exports (Control) Act, 1950 read with S.No.43 of Appendix-A and S.No.04 of Part-1 of Appendix-B of the Import Policy Order, 2022 Punishable under clause (9) & (90) of sub-section (1) of Section 150 of the Customs Act, 1969 and Section

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3 (3) of the Imports and Exports (Control) Act, 1950. Therefore, contravention case was framed against the importer and forward to the undersigned for adjudication. Now the importer or his authorized representative is advised to appear before the undersigned for hearing on the given date and time, failing which the case will be decided ex-parte on the basis of available record.

3 The adjudicating officer vide Order-in-Original No.1797318 dated 22.11.2022 held that the charges against the Appellant are established. The operative part of the impugned order reads as under:-

"I have gone through the case record, perused reply to the show cause notice and rebuttal of the Departmental Representative. As regards, personal hearing, Mr. Umer Mukhtar, CNIC No. 42101-9207803-5 having cell No 0315-2284044, telephonically informed the undersigned that their reply is sufficient and the case may be decided accordingly. The case record reveals that the importer/trader imported and filed Good Declaration for clearance of Miscellaneous Goods, however, at the time of assessment, the assessment staff observed that there are some food items loaded in the container. Images of the food items, including banned items do not fulfil the requirements of import Policy Order, 2022. Therefore, the consignment was referred for re-examination. As a result of re-examination, 21 items were found in violation of provisions of Section 16 of the Customs Act, 1969 and Section 3(1) of Imports and Exports (Control) Act, 1950 read with S.No.43 of Appendix-A and S.No.04 of Part-1 of Appendix-B (including Banned and Restricted Items) of the Import Policy Order, 2022. As the importer/trader failed to defend their case as well as waived off the right of personal hearing, which clearly prove without any shadow of doubt that the importer/trader imported the offending/ contraband goods as well as restricted items which are in violation of provisions of Section 16 of the Customs Act, 1969 and Section 3(1) of imports and Exports (Control) Act, 1950 read with S No.43 of Appendix-A and S.No.04 of Part-1 of Appendix-B (including Banned and Restricted Items) of the Import Policy Order, 2022, and hence confiscated in terms of clause (9) & (90) of sub-section (1) of Section 156 of the Customs Act, 1969 and Section 3(3) of the Imports and Exports (Control) Act, 1950. Besides, a personal penalty of Rs.3,000,000/- is also imposed on the importer in terms of above clauses of Section 156(1) of the Act *ibid*. However, the non-offending goods are hereby released subject to payment of leviable duty/taxes."

4. Being aggrieved and dissatisfied with the Order-in-Original, the appellant filed the instant appeal before this Tribunal on the grounds, which are reproduced as under:-

- A. That the impugned O-in-O has been passed by the Respondent No.1 without judicious application of mind, which is arbitrary, unlawful and liable to be set aside in limine as the same has been passed in utter disregard and misinterpretation of the prescribed provisions of IPO
- B. That the examination images reflect that goods confiscated vide the O-in-O meet all the conditions of the IPO and despite this fact the goods have been ordered to be confiscated for the reasons best known to the adjudicating authority while passing non-speaking order without ascribing proper reasoning to the actions.

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- C. That the adjudicating authority failed to consider that most of the impugned goods have been imported in bulk packaging and NOT in retail/ consumer packaging. As such, the conditions at Sr. No. 4 (iii-a), (iii-b) and (iii-e) of Appendix-13 Part - 1 to IPO do not apply to them.
- D. That the impugned O-in-O has been passed by while grossly misreading the facts and ignoring the actual intent of the legal provisions of IPO.
- E. That under identical circumstances, relief has been allowed to various importers who do not fulfil the conditions laid down in the IPO, copy of order dated 10.07.2020 passed in suit No. 761/2020 is annexed for your ready reference. The learned adjudicating authority failed to consider that similar relief has been allowed to various importers by the ministry of commerce as well as tribunal. Denying a similar treatment to the appellant would constitute infringement of appellants inviolable right as guaranteed to all the citizens of Pakistan in Article 25 of the Constitution. Besides that the impugned order is also against the prevailing departmental practice whereby such consignments that have been imported in bulk packaging are being released regularly at various collectorates and denying the appellant the same treatment is discriminatory and in violation of Para 74 of C.G.O. 12/2002.
- F. That imposition of the penalty of Rs. 3.0 million is disproportionately harsh and does not commensurate with the gravity of the alleged offence and not warranted under the circumstances.
- G. That the impugned order is based on whimsical grounds/ mis-interpretation, without following the spirit of mandatory provision of law / established departmental practice/procedure.
- H. That it is a clear case of victimization & discrimination on the part of the adjudicating authority without any consideration of justice in accordance with the law aimed at ruining and disrupting the appellant's business.
- I. That the Appellant craves leave to urge further grounds at the time of the hearing of this Petition.



5. We have perused and given due consideration to the available case record, written and verbal submissions advanced during case proceedings. The Appellant's representative argued that majority of the impugned goods are in bulk packaging which do not attract requirements laid down under condition iii (a) & iii (b) of IPO, 2022 as these conditions are applicable on goods that are imported in consumer packaging only. He apprised the Bench that the impugned goods are not for sale in the local market and have been specifically imported for the consumption of Chinese nationals involved in various ongoing CPEC related and power generation projects in the country. He also laid special emphasis on bringing it on record that all the items that are in consumer packaging, fulfill the conditions prescribed vide Appendix B, Sr. No. 10 of the IPO, 2022. The representative of the Appellants also pointed out that the Customs staff made out the contravention in haste and the Adjudicating Authority passed the impugned O-in-O

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without fully appreciating and comprehending the material facts and legal requirement. To establish this stance, he pointed out that 1st item enlisted in the impugned O-in-O, which has been confiscated, is not even an edible product and does not require fulfilling of the conditions laid down vide Appendix B, Sr. No. 10 of the IPO, 2022.

6. To further substantiate his point of defense, the Appellant's representative pointed out that items at Sr. No. 37, 38, 39, 42, 43, 44, 47, 49, 51, 53, 54, 55 & 61 of the impugned O-in-O have been imported in bulk packages in range of 04 to 25 Kgs/packs. He further drew attention of the Bench to the reported details and uploaded images of items at Sr. No. 37, 40, 42, 43, 51 & 61 in the O-in-O, which show that these items are in conformity with the requisites prescribed under Sr.No.10 of Appendix-B to IPO, 2022. The representative for the Appellants also presented examination images of confiscated goods to reinforce his stance that images uploaded by the Collectorate's examination staff clearly show that most of the goods that are in consumer packaging meet all the stipulated conditions laid down IPO, 2022. The Bench observed that not only the "Halal" logo is printed but the ingredients and nutritional facts are also printed in English as well as Urdu. The Bench, however, observed that the representative of Appellants couldn't offer any plausible justification as to how items at **Sr. No. 26, 48, 50, 52, 56 & 57**, which are in consumer packaging, meet the requirements of the IPO, 2022 as those items had stickers pasted on them showing ingredients and "Halal" logo instead of print. The representative of Appellants, laid reliance on a few orders made by different legal fora in the past, whereby goods pasted with stickers of "Halal" logo and ingredients had been allowed release as a one time dispensation to facilitate the importers. The representative of the Appellants also fervidly agitated against the imposition of penalty amounting to Rs. 3.0 million being too harsh. He argued that penalty amounts to more than 60% of the total value of entire consignment and legally almost 85% of the confiscated goods are liable to be released as they either meet the conditions laid down under the relevant provisions of IPO, 2022 or are not subjectable to any of the postulated conditions being in bulk packaging. The representative of the Appellants also agitated against the assessment criterion adopted by the Collectorate in respect of the impugned goods, being discriminatory as similar goods are being assessed at far less values. He requested that Collectorate may also be directed to revisit the same in line with the practice in vogue.

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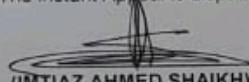
7. The Bench inquired the departmental representative to explain the raison d'être behind their decision to have also reported those goods liable to confiscation whose images are clearly reflecting that they conform to the labeling requirement stipulated

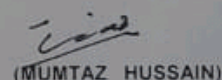

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under the IPO, 2022? To this specific query, departmental representative could not present any viable justification. Besides that, the departmental representative also couldn't convincingly rebut any of the contentions put forth by representative of the Appellants with regard to the rationale of assessment and imposition of penalty at such a high pitch.

8. In view of the case deliberation, its over all facts and circumstances, we find that the impugned goods except those enlisted at Sr. No. 26, 48, 50, 52, 56 & 57 of the impugned O-in-O were not liable to confiscation in the first place, as they are either in bulk packaging (being in range of 4 to 25 KGs/pack) or meet all the requisite conditions of import. As far as goods at Sr.No.26, 48, 50, 52, 56 & 57 are concerned, the Appellant's plea that stickers are to be considered sufficient in meeting the conditions of IPO, 2022 is found legally untenable. The condition iii (c) to Appendix-B specifically requires that 'the labeling under clause iii (a) & iii (b) above shall not be in the form of a sticker, over printing, stamp or scratched labeling'. All other items confiscated vide the impugned O-in-O are hereby ordered to be released except goods at Sr. No. 26, 48, 50, 52, 56 & 57 therein. The Collectorate may also look objectively into the criterion adopted to assess the value of impugned goods and rectify any apparent anomalies in valuation to maintain parity and fairness in its practice. The pitch of penalty which was vehemently disputed by the representative of the Appellants is also found to be incongruent with the severity of offence. Keeping in view the total value of the impugned consignment and the fact that Collectorate has clearly erred in reporting the exact details of impugned goods, this Bench is of the considered view that imposition of a penalty of this proportion on impugned consignment is rather harsh and irrational. Therefore, the penalty of Rs.3.0 million in excess of Rs 100,000/- is hereby remitted. The impugned O-in-O No 1797318-22-11-2022 is modified to the above extent.

9. The instant Appeal is disposed-off in above terms.


(IMTIAZ AHMED SHAIKH)
Member (Technical-II)
Karachi


(MUMTAZ HUSSAIN)
Member (Judicial)
Peshawar

Appeal No. cus:333/PB/2022/115 22.6.23
Copy forwarded to:-
01. M/S Sino Mall (Pvt) Limited Thug zone
02. _____
03. Collector of Customs, Peshawar.
04. _____
05. Record


Registrar
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Peshawar

25/07/2023