

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application Nos. 711 & 712 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For order on office objection No. 25.
- 2. For order on CMA No. 372/2023. (Exemption)
- 3. For order on main case.
- 4. For order on CMA No. 373/2023. (Stay)

16.10.2025

Mr. Khalid Mehmood Rajpar, advocate for applicant

The operative part of the impugned judgment reads as follows:-

“6. We have perused the case record and heard both parties to the dispute. The original Show-Cause Notice issued by the learned Respondent No.1 contains the allegations, which are quite contrary to the actual facts of the case. A perusal of the GDs reveals that the Appellant had not declared the goods to be Solar Batteries nor had they declared the PCT heading 8507.8000 as alleged in the SCN. It was only when the Appellant responded to the Show-Cause Notice and apprised the adjudicating authority about the actual facts of the case, learned Respondent No. 1 issued a corrigendum under Section-206 of the Customs Act, 1969 amending the description and PCT heading in the original Show-Cause Notice.

7. The learned representative for the Appellant argued that in terms of Section-206 of the Customs Act, 1969, no amendment can be made in the Show-Cause Notice. Section-206 is reproduced below for a better understanding: -

"206. Correction of clerical errors, etc.--Clerical or arithmetical errors in any decision or order passed by the Federal Government, the Board or any officer of Customs under this Act, or errors arising therein from accidental slip or omission, may at any time, be corrected by the Federal government, the Board or any officer of Customs or his successors in office, as the case may be."

8. The bare reading of the afore-cited Section reveals that correction can only be made in a decision or order passed by the Federal Government, the Board or any officer of Customs. The Show-Cause Notice is neither a decision nor an order. It is a charge sheet, a document that frames allegations, an investigative document. There is no other section in the Customs Act which permits issuance of corrigendum in the Show-Cause Notice. However, we restrain ourselves from giving any judgment on this issue, which we will take up in a greater detail in some other case at some relevant point in time in future.

9. Now we focus on the classification of batteries which are the subject matter of this case. Nine Goods Declarations are impugned in the instant case. Description declared therein are cited below: -

S#	GD No./Date	Declared description on GD	Declare PCT heading
1	KAPE-HC-32668-07-09-2015	Lead Acid Batteries maintenance free	8507.2090
2	KAPE-HC-93699-21-12-2015	Lead Acid Batteries	8507.2090
3	KAPE-HC-105124-01-02-2016	Lead Acid Batteries maintenance free	8507.2090
4	KAPE-HC-105122-01-02-2016	Lead Acid Batteries maintenance free	8507.2090
5	KAPE-HC-121015-07-03-2016	Lead Acid Batteries maintenance free	8507.2090
6	KAPE-HC-45684-06-10-2015	Batteries Automotive	8507.2090

7	KAPE-HC-84448-22-12-2015	Batteries Automotive	8507.2090
8	KAPE-HC-91258-05-01-2016	Batteries Automotive	8507.2090
9	KAPE-HC-112283-16-02-2016	Batteries Automotive	8507.2090

10. In the first five GDs, the description declared by the Appellant is Lead Acid Batteries, however, in the rest of the four GDs the description declared by the Appellant is 'Batteries Automotive'. From these descriptions, it is clear that the batteries covered in the last four GDs are Automotive Batteries. The Show-Cause Notice read with the corrigendum alleges that all the batteries imported by the Appellant were Automotive Batteries instead of Solar or Lead Acid Batteries hence classifiable under PCT heading 8507.1090 attracting 35% Customs duty which is factually incorrect.

11. Based on the above details, we revert to the Tariff PCT headings that pertain to the classification of batteries.

85.07	Electric accumulators, including separators therefore, whether or not rectangular (including square).
	- Lead-acid, of a kind used for starting piston engines:
8507.1010	---Meant for motor cars of heading 87.03, vehicles of sub-headings 8703.2113, 8703.2115, 8703.2193, 8703.2195, 8703.2240, 8703.2323, 8703.3223, 8704.2190, 8704.3130, 8704.3150, 8704.3190, 8703.3225 and vehicles of heading 87.11
8507.1020	--- Meant for vehicles of sub-headings 8701.2020, 8701.2090, 8701.9020, 8701.2040, 8702.1090, 8702.9090, 8704.2219, 8704.2299 and 8704.2390
8507.1090	- - - Other
	- Other lead-acid accumulators:
8507.2010	- - - Sealed lead-acid batteries used in telephone exchanges
8507.2090	- - - Other
8507.3000	- Nickel-cadmium
8507.4000	- Nickel-iron
8507.5000	- Nickel-metal hydride
8507.6000	- Lithium-ion
8507.8000	- Other
8507.9000	- Parts

12. The first Single Dash (-) Heading i.e. 8507.1000 (- Lead-acid, of a kind used for starting piston engines:) is very specific. It covers lead-acid batteries, of a kind used for starting piston engines. The heading alleged by the Respondent in the corrigendum for automotive batteries is 8507.1090.

13. PCT heading 8507.2000 is subdivided into two third dash headings viz. 8507.2010 and 8507.2090. Subheading 8507.2010 classifies the sealed lead acid batteries according to their usage in the telephone exchanges. As these batteries are not useable for telephone exchanges, therefore, the same cannot be classified under 8507.2010. hence the second 'third dash' heading 8507.2090 is a residuary heading 'other', which refers that 'all the accumulators of lead-acid' shall fall under PCT heading 8507.2090. In the instant case, the description of the first five GDs suggests that these were Lead Acid Batteries'. Being lead-acid batteries, these are appropriately classifiable under PCT heading 8507.2000 and their use being other than telephone exchange brings them within the four corners of heading 8507.2090.

14. The Respondent alleges the nine GDs to have contained lead automotive batteries, however, in the absence of any sample and test report, we are unable to deliver any concrete opinion on it. Therefore, we have to rely on the description given in the Goods Declarations filed with the Customs by the Appellant. The last four GDs as mentioned in the above table, contain the description 'Batteries Automotive', therefore, there is no other justification to classify the same under PCT heading other than 8507.1090.

15. As regards recovery of 3% value-added tax, we tend to agree with the counsel for the Appellant that the hon'ble Sindh High Court in the judgment reported as 2017 PTD 130 in the case of New Allied Electronic Industries has declared 3% Valuation Addition tax levied under Rule 58B of the Sales Tax Special Procedure 2007 inconsistent with the statute. Hence, the same is neither leviable nor recoverable from the Appellant.

16. In view of the foregoing deliberations, we conclude that to the extent of first five GDs bearing Nos. KAPE-HC-32668-07-09-2015, KAPE-HC-83699-21-12-2015, KAPE-HC-105124-01-02-2016, KAPE-HC-105122-01-02-2016, and

KAPE-HC-121015-07-03-2016, the declaration of the appellant was correct as the same were declared as Lead Acid Batteries classifiable under PCT heading 8507.2090. In fact, in the absence of any sample, test report and literature, the contention of the department that the same were Automotive Batteries of PCT heading 8507.1090 is not tenable.

17. On the other hand, the description given in last four GDs viz. KAPE-HC-45684-06-10-2015, KAPE-HC-84448-22-12-2015, KAPE-HC-91258-05-01-2016 and KAPE-HC-112283-16-02-2016 being 'Automotive Batteries' were appropriately classifiable under PCT heading 8507.1090 attracting Customs duty @ 35%.

18. As regards charge of misdeclaration is concerned, the PCT classification, being a matter of interpretation, as held by superior courts time and again, does not attract penal provisions, therefore, imposition of penalty is not warranted in the instant case.

19. In view of the foregoing deliberations, we partially allow this appeal to the extent of the first five GDs as detailed in the above table, however, to the extent of the last four GDs we concur with the contention of the Respondent. Value-added tax @ 3% was neither leviable nor recoverable from the Appellant hence the same is struck off. The penalty imposed through the impugned order is also remitted in full. The impugned order is modified to the above extent only."

The determination appears to have been rendered entirely on the factual plane on the basis of record / evidence available before the learned Tribunal. The copies of relevant GDs filed before this Court also did not displace the observations of the learned Tribunal. Irrespective thereof it is noted that the question agitated appears to be question of fact and not that of law. Learned counsel was confronted on the last date, but again today as to whether the question pleaded for determination pertains to factual controversy and he remains unable to dispel the same.

In view hereof, no question appears to have been articulated for the consideration of this Court. Consequently, these references are dismissed in *limine*.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969. Office is instructed to place copy of this order in the connected file.

Judge

Judge