

## IN THE HIGH COURT OF SINDH AT KARACHI

SCRA 2187 of 2015 : Collector of Customs vs.  
Yamaha Motors Pakistan (Pvt.) Ltd.

For the Applicant : Mr. Muhammad Bilal Bhatti, Advocate

For the Respondent : Khawaja Shams-ul-Islam, Advocate

Date/s of hearing : 29.10.2020

Date of announcement : 29.10.2020

### JUDGMENT

**Agha Faisal, J.** This reference application was preferred under section 196 of the Customs Act 1969 (“Act”) with respect to judgment dated 20.03.2015 rendered in Customs Appeal K-1673 of 2014 by the learned Customs Appellate Tribunal (“Impugned Judgment”).

2. Briefly stated, the respondent, being a manufacturer of motorcycles, had imported specialized power cable for its new factory project and the same was assessed for duty under an HS Code<sup>1</sup> other than that sought by the respondent. The departmental adjudication proceedings culminated in the Impugned Judgment, whereby it was held that a mere difference of opinion between the declared PCT heading and the ascertained PCT heading did not automatically constitute the customs offence of mis-declaration entailing penal consequences. Aggrieved by such a finding, the department preferred the present reference application.

3. The learned counsel for the applicant submitted that the only pertinent issue to determine was whether the learned tribunal was correct in its finding, thus, eschewing the levy of any penalty upon the respondent. In view hereof the matter is ring fenced<sup>2</sup> to the adjudication of the sole relevant question of law; being:

“Whether divergence between the declared PCT heading and the ascertained PCT heading automatically constituted the customs offence of mis-declaration, entailing penal consequences?”

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<sup>1</sup> 8544.4990, instead of the respondent’s claim being 8544.4920.

<sup>2</sup> By recasting the question for determination per 2011 PTD 1460; 2011 PTD 476; 2013 PTD 1420.

4. The case set forth for the applicant was that since the claimed PCT heading in respect of the imported goods was adjudicated to be at variance to the ascertained PCT heading, hence, the respondent's claim automatically constituted a mis-declaration and ought to have been adjudged as such.

On the contrary the respondent's counsel articulated that the claimed PCT heading was cited honestly, based *inter alia* on past departmental treatment in such regard, and that there was no element of culpable *mens rea* in the facts under consideration.

5. We have appreciated the arguments placed before us and deem it appropriate to initiate our deliberation by reproducing the pertinent constituent of the Impugned Judgment herein below:

"28. We have also scrutinized the record of post clearance of the cables. The clearance record reflects that Respondent has been clearing flat cables under PCT 8544.4920 for many importers. Whereas, round shaped cables have also been indicated to be cleared in PCT 8544.4920 specifically meant for the flat cables. This shows that Respondent has been practicing a pattern of classification of flat as well round cables which is not in full conformity with the description of relevant PCT Heading. In this background the charges of misdeclaration leveled against the Appellant for PCT Heading of impugned cables seems to be ridiculous. The Respondent while having released many consignments of identical description as of the Appellant, in the PCT declared by the Appellant is not in a position to press any charges for misdeclaration against the Appellant specifically when no element of mens-rea is visible on part of the Appellant as he not only declared in detail the description, origin, weight, value and standard of certificate of the cables and the relevant invoice was also found in the container on examination and the declared value has been found for exceeding than comparable imports, therefore, the impugned import which has been made by a multinational to set up a modern motorcycle manufacturing facility in Pakistan under FEI is not interested with any charge of misdeclaration on any account. Therefore, we find no force in arguments of Respondent to press for charges of misdeclaration against the Appellant.

29. Keeping in view of above, we hold that PCT 8544.4990 shall be relevant as determined by the Respondent as compared with PCT 8544.4920 as claimed by the Appellant. The applicable rate of duty on consignment shall be @ 25% as determined by the department viz. @ 10% claimed by the Appellant. However, for the detailed reasons stated above and on the erratic pattern of clearances of imports by the Respondent we hold that Appellant is not involved in any willful, designed and as per thought out plan of misdeclaration by any means therefore, no action against them was due for violation of Section 32 of the Customs Act, 1969. This contention is supported by landmark judgments of superior courts wherein it was held time and again that mere difference of opinion between the declared PCT heading and ascertained PCT Heading does not constitute a customs offence of misdeclaration under Section 32 of the Customs Act, 1969. Reliance is placed on [Ibrahim Textile Mills Limited v. F.O.P PLD 1989 Lahore 47], [Crescent Steel v. Collector Appeal No.48/2000. (T)], [State Cement Corporation v. G.O.P. C.A No.43 of 1999], [Cargill Pakistan Seeds (Pvt.) Lt. v. Tribunal PTCL 2003 CL.671], [Pakistan State Oil Co. Ltd v. C.E.S.T.A.T 2005 PTD 78], [M/s Falcon Enterprises vs. Collector of Customs (Appeal NO.K-723/2007)], [M/s Saadat Khan vs. Federation of Pakistan (2014 PTD 1615)], [M/s Sarwar International vs. Additional Collector of Customs, MCC Preventive AFU JIAP, Karachi (2013 PTD 813)], [M/s Fazal Elahi vs. Additional Collector of Customs, Karachi (2011 PTD (Trib.) 79)], [2003 PTD (Trib.) 293], [M/s R.M Gulistan Engineering & Constructors (Pvt.) Ltd. vs. Collector of Customs (Appeals) (2014 PTD (Trib.) 76)], [Collector of Customs Karachi vs. M/s Power Electronics Pakistan (Pvt.) Ltd. Lahore (2011 PTD 2837)].

30. Owing to above reasons coupled with fact that no mens-rea has been proved on behalf of the Appellant and the fact that department has been releasing round cables in PCT 8544.4920 as well as confirmed in PRAL Data of imports, we hold that confiscation of impugned goods was illegal and without justification as mere difference in opinion of PCT heading while all vital information like description, weight, value, origin, standard and availability of invoice in the container suggest that charges of misdeclaration were perfunctory and without any legal rationale. We accordingly order to remit the redemption fine and penalty imposed on the Appellant. The impugned Order-in-Original is modified to that extent and Appeal is disposed of accordingly with no order as to cost."

6. The law<sup>3</sup> illumined by the Superior Courts stipulates that misconstruction or erroneous interpretation in respect of a relevant notification did not *per se* amount to a false declaration in terms of the Act. The said principle was applied to divergence of PCT headings in the *Shaikh Shakeel*

<sup>3</sup> Per *Sabihuddin Ahmed J* in *State Cement Corporation vs. Collector of Customs & Another* reported as *2002 MLD 180*.

*Ahmed case*<sup>4</sup> and it was maintained that where wrong interpretation of a section was made and duty had been paid predicated upon such erroneous interpretation in good faith the same may not be deemed to be a mis-declaration. It has also been maintained<sup>5</sup> that if a claim in good faith, under such circumstances, was dis-allowed, penal consequences would not automatically entail.

7. Adverting to the matter under scrutiny, comparison of the two PCT headings demonstrates that they are fairly akin and it appears that the claimed PCT heading had admittedly been accepted / allowed by the department for treatment of similar goods in the past<sup>6</sup>. The arguments of the applicant's counsel have not made out any case for the respondent's claim, in respect of the PCT heading, being a deliberate attempt to deprive the exchequer of rightful revenue. Therefore, we find ourselves to be in accord with the Impugned Judgment and hold that the decision arrived at on the question under scrutiny is unexceptionable and merits no interference by this Court.

8. In view of the reasoning and rationale contained herein the question re-framed for determination by this Court is answered in the negative, hence, in favor of the respondent and against the applicant. This reference application stands disposed of in the above terms. 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 by section 196(5) of the Act.

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JUDGE

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<sup>4</sup> Per *Muhammad Ather Saeed J* in *Collector of Customs vs. Shaikh Shakeel Ahmed* reported as 2011 PTD 495.

<sup>5</sup> Per *Munib Akhtar J* in *Collector of Customs Karachi vs. Power Electronic Pakistan (Pvt.) Limited Lahore* reported as 2011 PTD 2837.

<sup>6</sup> The question of past practice in determination of divergent claims of PCT headings was answered similarly in *Collector of Customs vs. Shaikh Shakeel Ahmed* reported as 2011 PTD 495.