

# **THE HIGH COURT OF SINDH AT KARACHI**

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

Present:  
Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Agha Faisal

## **Special Customs Reference Applicant No.484 of 2020**

The Collector of Customs, MCC Appraisalment & Facilitation (West)

Versus

M/s. A.B. Saeed (Pvt.) Limited

<b>For the Applicant</b>	<b>Mirza Nadeem Taqi, Advocate</b>
<b>For the Respondent</b>	<b>Rana Sakhawat Ali, Advocate</b>
<b>Date of hearing:</b>	<b>04.02.2021</b>
<b>Date of Order:</b>	<b>04.02.2021</b>

## **ORDER**

**Muhammad Junaid Ghaffar J.:-** Through this reference Application the Applicant has impugned Judgment dated 04.06.2020, passed by the Customs Appellate Tribunal, Karachi, in Customs Appeals No.K-1213/2019, proposing the following questions of law:-

- “1. Whether on the facts / circumstances of the case the learned Customs Appellate Tribunal has considered that the impugned goods are correctly classifiable under PCT heading 4802.5700 as against declared PCT heading 4802.5510 assessable @ US\$ 1.50/kg as against declared value @ US\$ 0.86/kg?
2. Whether on the facts / circumstances of the case the learned Customs Appellate Tribunal has considered that as per finding of Security Paper Ltd vide letter dated 05.10.2018 the goods are Security Paper which require NOC from Security Printing Corporation of Pakistan vide Sr. No. 12, Part-III of Appendix-B of the Import Policy Order, 2016?
3. Whether less payment of revenue to the Exchequer, through self-assessment in terms of Section 79(1) read with Section 32(1)(c) of the Act is true / mis-statement in terms of Section 32 of the Customs Act, 1969?
4. Whether the learned Appellate Tribunal failed to consider that the Fiscal Fraud on the part of the respondent comes under the definition of mis-

declaration being untrue statement and invokes the relevant provisions of Section 16 & 32 of the Customs Act, 1969?

5. Whether as a last forum to determine the actual facts the Appellate Tribunal was / is not duty bound to give findings on each and every established fact?

2. Learned Counsel for the Applicant has read out the Impugned Judgment and submits that the Appellate Tribunal was not justified in setting aside the orders passed by the forums below, as the goods in question being security paper are not freely importable under the Import Policy Order. He has referred to the report of Security Papers Limited to which the samples were referred for testing purposes and has prayed for setting aside the impugned judgment of the Tribunal by answering the proposed questions in favor of the Applicant.

3. On the other hand, learned Counsel for respondent has supported the Impugned Judgment, and submits that in the past, various consignments have been released by the Department under the same heading without asking for any No Objection Certificate, whereas, the goods in question are for printing purposes and not a security paper as contended by the Applicant. He has further argued that even otherwise the adjudicating authority had no jurisdiction in terms of the relevant notification, as this is the matter involving technical violation of Import Policy Order; hence, the impugned judgment be maintained, whereas, in the connected petition direction be issued to release the consignment immediately.

4. We have heard both the learned Counsel and perused the record. It appears that the respondent imported the goods in question and declared the same as "WF [Wood Free] Printing Paper in sheets" and claimed assessment of the same @ US\$0.86/KG, which after examination was referred to the assessment department and the assessing officer formed an opinion that the imported paper is in fact a fully sensitized security cheque paper correctly classifiable under HS Code 4802.5700 as against claimed HS Code i.e. 4802.5510 and value was also determined @US\$1.50/KG. Thereafter, the samples were sent to the Security

Papers Limited and vide report dated 05.10.2018 it was observed as follows:

“Our Quality Assurance department has tested your provided sample and confirmed the following:

- (a) The said paper sheet has no water mark;
- (b) Blue and Lemon Yellow Fibers are glowing under U.V. light. This indicates that this is security paper; and
- (c) This is a sensitized paper which is giving reactions against the twenty chemicals. So, it is fulfilling the requirement of CBS-1 specifications as per international standards and State Bank of Pakistan and cheque books of different banks & other security documents can be prepared from this paper.

As it falls under the category of security paper, all regulations like NOC etc, should be applicable on such imports, as per the Import Policy.”

5. On the basis of such report, show cause notice was issued culminating in Order-in-Original and Order-in-Appeal against the Respondent, which were then impugned before the Tribunal and through impugned order the Tribunal has over-turned the orders of the forums below in the following terms:

“8. Arguments heard record examined. The crux of the case is that the appellant importer has been alleged for mis-declaration of description and by doing so the restricted item (Security Paper) is to be cleared under the garb of freely imported item i.e. wood-free printing paper from Spain vide B/L No.1802547/53801 dated 16.08.2018 from M/s. J.VILASECA, S.A, Spain, and declared the particulars of the consignment as per the import documents with PCT classification under heading 4802.5200 of sub-chapter 4802.5000, which covers “*paper and paper board of a kind for writing, printing or other graphic purposes and “non perforated punch card and punch lapse paper mean paper and paper board made mainly from bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process....”*”, under Section 79(l) of the Customs Act 1969, vide GD No.KAPW-HC-43138-18-09-2018. The respondent selected the GD for physical examination and, therefore, the examination staff upon scrutinizing the physical nature of the goods confirmed the description of the imported goods as declared i.e. “Wood Free Printing Paper”, and the examination staff also forwarded the sample to the Assessment Group-III. The Assessing officer of the Respondent No.2, upon bare looking at the samples framed an opinion that the imported paper is synthesized security cheque paper without realizing the fact that every kind of paper that falls under the sub-chapter of 4802.5000 are all made of bleached pulp or from pulp obtained by a mechanical or chemi-mechanical process, therefore, making synthesized nature of paper as a ground to call the appellant’s imported paper as a “security paper” was wrong and merely a presumption or assumption. Indeed, to call a paper as “security cheque paper”, it is necessary that the paper has to contain security customize features such as Water Marks like “HBL”, “ABL”, UBL, etc. However the respondent No.2 had forwarded the samples to M/s. Security Paper Limited (SPL), which is a private company incorporated under company law of Pakistan, to re-confirm whether the imported paper can be called as a security paper vide letter dated 03.10.2018. In reply dated 05.10.2018, M/s. Security Paper Limited, re-produced the following “(a) The said paper sheet has no water mark; (a) *Blue and Lemon Yellow Fibers are glowing under U.V. light. This indicates that this is security*

*paper*; Therefore, the respondents alleged that importer paper falls under the NOC requirement as per Serial No.12 of Appendix– B Part II of Import Policy Order, 2016. The appellant was not agree with the opinion of the SPL emphasized that first of all as per the BPD Circular dated 25.06.2003 of the State Bank of Pakistan, the CBS-I specification test is a very precise test of chemicals of precise specification and quality, therefore, merely saying that requirement of CBS-I is fulfilled without any evidential test report confirming the "Water Mark" is completely absurd and mala fide. Secondly, that as confirmed by the reply of SPL that the Appellant's imported paper does not contain any "Water-Mark", it is a customize engraved transparent logo / mark that is visible from both side and put in paper to broadly bifurcate cheque security paper from wood free printing normal paper and which can only be placed during the manufacturing process and once the paper reaches its finished stage any sort of water-mark cannot be engraved or places. Moreover, the appellant had further informed the respondent that the same fact can be confirmed from the customs department's own practice that paper which contains specific Bank's watermark and imported against specific order are to be treated as "Security Cheques Paper". However, the Respondent No.2 without checking credibility of the observation of SPL, blindly trusted the words of the General Manager (Supply Chain) of SPL and framed contravention of alleged mis-declaration of description, PCT and value, in addition to violation of Import Policy Order 2016. In the mean-while the appellant wrote a letter dated 23.10.2018, to the Security Paper Limited, wherein the appellant explained that their imported paper is "Wood Free Printing Paper" and not alleged Security Paper and also asked for detailed explanation of why the paper has been called a cheque paper without a water-mark. While appellant maintaining his stance for the imported paper being normal wood-free printing paper, but asked for NOC or clarification in order to get release of the goods. Subsequently, in reply to the appellants letter dated 23.10.2018, the SPL vide letter dated 26.10.2018, wherein the officer of SPL failed to justify the findings of the test and impliedly agreed with the appellant's contention that the imported paper may have been "Wood Free Printing Paper" and not "Security Paper", hence, does not require NOC of any sort and is freely importable. Moreover, the SPL also recommended the appellants to resolve the matter with the Customs/Respondents. The appellant at the time of hearing before the Respondent No.1 submitted a detailed reply against the allegations of the Respondents raised in the Show Cause Notice, for which, prima facie, there was no defense from the Respondents. Apart from merits of the specification of the imported paper and merits of the case, which were, prima facie, in favour of the appellants, it was also argued by the appellants during the adjudication proceedings that for the sake of the arguments, if the Show Cause Notice has been issued for the violation of Import Policy Order, 2016, and Section 16 of the Customs Act 1969, then it is without jurisdiction because as per the provisions of clause (d) of Para (3) of the SRO 886(I)/2012, the officers of Collectorate of Adjudication cannot adjudicate upon the matters of Import and Export restrictions. Admittedly, the matters of adjudication of IPO violation falls under the jurisdiction of the Clearance Collectorate, and as the dispute/matter of IPO violation was pending before the Respondent No.2., in view of the SPL's letter, therefore, the incorporation of violation of IPO in the aforesaid Show Cause Notice was patently without jurisdiction and illegal. However, without giving heed to the objection of the appellant and exercised the jurisdiction, which was not vested to the designated position and adjudicated the instant case solely on the matter of alleged violation Import Policy Order 2016, and passed the impugned Order-in-Original, wherein the appellant has been held to have violated the particulars of the IPO 2016.

10. In view of the above, I am of the opinion that both in the impugned Order-in-Appeal and Order-in-Original the appellant's imported paper has been labeled as "Security Cheque Paper" just because of being synthesized paper whereas keeping in view the samples' scrutiny conducted by the Collectorate as per directions given by the learned Collector (Appeals) vide Interim Order dated 26.12.2018, the SPL, vide its letter dated 04.03.2019, has confirmed that the consignments cleared by the Collectorate were also similar to the appellant's

consignment, thus, it is a clear case of discrimination with the appellant. This fact alone is confirming that only such papers was ought to have been considered as "Security Cheque Paper" which have "Water Mark" of the relevant bank, etc. The data of past clearance available with the Custom House also confirms that only such paper was considered as a "Security Cheque Paper" where the "Water Mark" are available, this position is also confirm by the very fact that as per customs practice the consignments of "Wood Free Printing Paper" have been allow released even under PCT Heading 4802.5700 which is meant for Security Paper vide GD No.KAPW-HC-40107-12-09-2018 and KAPW-HC-165675-18-05-2019, etc, without any restriction of NOC from SPL as a "Uncoated Offset Paper for Writing, Printing and Photocopying and other similar papers/Wood Free Paper @ US \$ 0.87/kg. The correspondence of the SPL, resting on the appellant's letter to SPL, also confirms that the impugned paper cannot be termed as "Security Cheque Paper". The appellants have also offered that the Respondents may check the subsequent use and supply of the imported paper. Keeping in view the un-controverted fact that the Respondents have only released such papers as "Security Cheque Paper" which have Water Mark, as such I do not find any substance in the Respondent's stance to treat the imported paper as security paper which is against the accepted principles of natural justice. Resultantly the subject appeal is allowed and the impugned orders are set aside as the same have been passed against the law and un-deniable facts. The appellant's consignment is allowed as per declared description of the importer alongwith issuance of delay and detention certificate in terms of Section 14-A of the Customs Act, 1969. However keeping in view the offer made by the appellant the department is at liberty to check the subsequent use and supply of the impugned consignment of the appellant/importer."

6. On perusal of the aforesaid findings, we have not been able to convince ourselves as to how the Tribunal has over turned the finding of fact arrived at by the relevant authority i.e. Security Papers Limited [to whom the samples were sent and never objected to] wherein categorically, it has been observed that the paper in question is a sensitized paper and as per specification can be used for printing of cheque books and other security documents. Such Security Paper, according to Serial No.12-Part-II of Appendix-B of the Import Policy Order, 2016, falls into restricted imports subject to No Objection Certificate from Security Printing Corporation of Pakistan (Pvt) Limited, The Tribunal in fact has looked into the case from entirely an irrelevant aspect and has delved into the issue of classification of goods and has drawn a conclusion that since the goods are to be classified under HS Code 4802.5510; hence, the restriction at Serial No.12 of Appendix B of Part-II of the Import Policy Order<sup>1</sup> would not apply. This in the given facts was

an incorrect approach. The restriction is not only confined to specific HS code(s) but in clear and express terms the word “Security Papers” is mentioned in the commodity description column. It is a matter of admitted fact that the paper in question is a security paper, [though may not having a water mark] which perhaps led the Tribunal to hold it otherwise; however, except a water mark, it has been held to be a sensitized security paper meant for the purposes of printing cheques and other security instruments; hence, would fall into the restriction as provided against Serial No.12 *ibid*. The Tribunal in light of the report of a specialized agency, was not justified to hold otherwise until and unless some further probe was made and the report from some other agency was made available. This is not the case here, and a mere presumptive approach has been adopted in deciding the Appeal in question. For the present purposes it was irrelevant that whether the goods are to be classified under HS Code 4802.5510 or 4802.5700 as both these heading do cover printing papers and one or the other is not specific for a “security paper”. Therefore, we have left this question of appropriate classification of the goods in question unanswered, coupled with the fact that the rate of duty against both these HS codes is the same. The Respondent have made an attempt and agreed upon by the Tribunal that since HS code 4802.5510 is not mentioned against Serial No.12 *ibid*; therefore, the restriction would not apply. However, we are not in agreement with such argument for aforesaid reasons. Lastly, the argument that in past certain consignments having same declared description have been released is concerned, it would suffice to say that this would not *ipso facto* warrant same treatment to the Respondents

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12.	4802.5600 4802.5700	Security Paper	Importable on the recommendation of Security Printing Corporation of Pakistan (Pvt.) Limited and only against specific orders; Provided that Pakistan Security Papers certifies that it is not able to meet the requirement from its stock and gives NOC for imports; Provided further that Pakistan Security Printing Corporation shall be allowed to import the said paper without taking NOC from the Security Papers Limited to meet its own requirement.
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consignment for which a negative report from a specialized forum is on record.

7. Insofar as the objection regarding jurisdiction in terms of SRO 886(I)/2012 dated 18.7.2012<sup>2</sup> so raised on behalf of the Respondent is concerned, the same does not appear to be correct and convincing inasmuch as the show cause notice in question was not only issued for violation of Import Policy / restrictions, which according to the Respondent does not confer jurisdiction upon the Adjudication Collectorate; but so also for a mis-declaration resulting in loss to the extent of Rs.321,739/-; hence, the officer concerned was conferred with jurisdiction to adjudicate the matter.

8. In the circumstances, we are unable to subscribe to the findings of the learned Tribunal as it has failed to appreciate the available facts as well as the relevant law. Though several questions of law have been proposed; however, in our view they are not properly drafted and therefore they are rephrased in the following terms:

1. Whether in the facts and circumstances of the case the Tribunal could have disregarded the test report and findings of Security Papers Limited, whereby, the paper in question has been found to be a security paper?
2. Whether the goods in question, even if classified under HS Code 4802.5510, would attract restriction as provided against Serial No.12 of Part-II of Appendix-B of the Import Policy Order?
3. Whether in the facts and circumstances of the case the Adjudication Officer had jurisdiction to decide the show cause notice involving violation of import policy along with short recover of duty and taxes?

8. In view of the above discussion question No. (1) is answered in negative, in favor of the Applicant and against the Respondent; question No. (2) is answered in the affirmative, in favor of the Applicant and against the Respondent, and question No. (3) is answered in affirmative, in favor of the Applicant and against the Respondent. Consequently, the Reference Application is allowed and the impugned order is hereby set-aside and the orders of the

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<sup>2</sup> 3. The cases of following categories shall not be adjudicated by the adjudicating officers of Collectroate of Customs (Adjudication), namely;  
(b) cases involving technical violations of import or export restrictions without involvement of any evasion of duty or taxes;

forums below stands restored. Let copy of this order be sent to the Appellate Tribunal in terms of s.196(5) of the Customs Act, 1969.

JUDGE

JUDGE

Khuhro/PA