

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
Special Customs Reference Application No.39 of 2019

Date _____ Order with signature of Judge(s) _____

1. For hearing of main case.
2. For orders on CMA No.364/2019

11.10.2021

Dr. Shahnawaz Memon, Advocate for the Applicant.

The present SCRA assails the judgment of the learned Customs Appellate Tribunal dated 27.08.2018 ('Impugned Judgment') and it is considered expedient to reproduce the operative constituent herein below:

"7. Arguments heard and record perused. The respondents challenged the order on the point of jurisdiction also as the appeal is signed by the Deputy Director whereas, appeal can only be filed by the Director. When asked the DR stated that there was no Director, hence authorization was given by the Additional Director, which is illegal. Briefly, the respondent imported auto parts i.e, piston with pin and clips and declared as excavator parts under PCT 8409.999 and claimed FTA benefit. These parts were of Izumi brand. The appellant, Directorate of Custom Intelligence, seized the consignment on the charge that these are auto parts for Hino and UD Trucks, hence fall under PCT 8409.9910, which attracts higher rate of duty. During hearing the appellant conceded that the parts are for multiple use i.e, can be used in machinery as well as in vehicles like Hino Trucks etc. The parts are of Izumi brand and can be used in excavators also. So on this point alone there is no case of the appellant. The GD was filed and processed through yellow channel i.e, proper assessment was made by the officers and deliberate decision was taken. The adjudicating authority examined the photographs and consulted the website which gave following result:

*Guangzhou FuGe Construction Machinery Parts Co., Ltd.
US \$ 15-100/piece
Add to Compare
Hino excavator engine parts piston M10C OEM: 13216-2411 13211-2320
1 piece (Min. Order)
Excavator engine parts w04d hino ranger piston 13216-1460*

*FOB Reference Price : Get Latest Price
US\$1-100/set 10 Set/S/Sets (Min. Order)
Supply Ability:*

200000 Piece/Pieces per Month

*Port:
K13C Engine Piston For Excavator Engine Part No.13216-2140
US\$ 10-90 / Set
1 Set (Min. Order)
Type : Piston
Engine Type: Diesel
Model Number: K13 C
Brand Name: TPK
Place of Origin: Guizhou, China (Mainland)
Material: Aluminum, Metal*

8. The above discussion leads us to the same conclusion as determined at the adjudication stage. The DIT has made out a baseless case. The good, as conceded by the appellant has multiple uses and can be used in trucks as well machinery and excavators. In view of the above discussion the order of the adjudicating authority is upheld and appeal of the department is dismissed with no order as to cost.

(Underline added for emphasis.)

The learned tribunal has recorded the admission of the department / applicant herein that the assessment of the tribunal, with respect to the nature of the goods, was correct. The same view was also maintained by the department in the earlier order in original dated 05.12.2017. No case has been set forth before us to interfere in the concurrent findings of the statutory fora under consideration.

The applicant has proposed various questions of law which we, respectfully, consider extraneous and dissonant to the Impugned Judgment. The learned Appellate Tribunal has already appraised the evidence and concluded that there was no case of mis-declaration of description as the goods in question had an *admittedly* generic / universal

use. It is trite law that the learned Tribunal is final arbitrator of facts¹ and that factual controversies are not amenable before the reference jurisdiction of this court.

In view hereof, we are of the considered view that the applicant has failed to raise any question of law arising out of the Impugned Judgment meriting the consideration of this court, therefore, the present reference is hereby 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.

JUDGE

JUDGE

Amjad/PA

¹ Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as 2011 PTD 2577.