

Order Sheet

IN THE HIGH COURT OF SINDH, KARACHI**Special Custom Reference Application No. 1135 of 2015**

Date

Order with signature of Judge

Hearing/Priority

- 1.For hearing of CMA No.4762/2015
- 2.For hearing of main case

06.05.2024

Mr. Parvaiz A. Memon, Advocate for Applicant
Mr. Ahmed Ali Hussain, Advocate for Respondent

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Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned order dated 30.01.2015, passed by the Customs Appellate Tribunal, Bench-I, Karachi, in Custom Appeal No.K-786/2014, by proposing the following questions of law:-

- (i) Whether on the facts and circumstances of the case, the learned Appellate Tribunal has not erred in law to classify the imported Batteries meant for automotive vehicles under PCT 8507.8000 having Custom Duty @10% instead of 8507.1020 chargeable to Custom Duty and Additional Customs Duty @35% and 15% respectively?
- (ii) Whether on the facts and circumstances of the case the learned Appellate Tribunal has not erred in law by not considering the Examination Reports and image No.10 uploaded in the system by the examination staff as well as catalogue of the goods which reflects that the goods are meant for use in automotive vehicles only?
- (iii) Whether on the facts and circumstances of the case the learned Appellate Tribunal has not erred in law by ignoring the counter objections/reply comments submitted by the department in terms of Section 194-A(4) of the Act?
- (iv) Whether the findings of the Tribunal re not perverse for non-reading and misreading of the record available before the Appellate Tribunal?

Heard learned counsel for the parties and perused the record. It appears that Respondent had imported Automotive Calcium Premium Batteries and after examination of the goods, a contravention report was made out in which it was

alleged that the goods in question are correctly classifiable under HS Code 8507.1020 chargeable to CD @35% and additional CD @15%, whereas, the Respondent had claimed that the goods in question are to be classified under HS Code 8507.2090 chargeable to CD @20%. A show cause notice was issued, which was adjudicated against the Respondent and thereafter an Appeal was preferred before the Tribunal which has been allowed through the impugned order. The relevant findings of the Tribunal in the impugned order is as under:-

“7. In order to understand the classification of batteries, PCT heading 85.07 is reproduced below:

85.07	Electric accumulators, including separators therefore, whether or not rectangular (including square)
1000	-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, 8703.3223, 8704.2190, 8704.3190, 8703.3225 and vehicles of heading 87.11
8507.1020	---Meant for vehicles of sub-headings 8701.2020, 8701.2090, 8701.9020, 8701.9040, 8701.9060, 8702.1090, 8702.9090, 8704.2219, 8704.2299 and 8704.2390
8507.1090	---Other
2000	-Other lead-acid accumulators:
8507.2010	---Sealed lead-acid batteries used in telephone exchange
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

8. The first single dash sub-heading deals with lead acid electric accumulators (Batteries) used for starting piston engines. The second single dash sub-heading deals with lead acid accumulators other than of a kind used for starting piston engines. The batteries other than lead acid are classifiable in other single dash sub-headings (8507.3000 to 8507.8000).

9. The appellants had declared in the GD that the goods were Calcium Premium batteries. The goods were examined twice by the Customs examination staff to both the examination reports Customs staff had confirmed the declared description 'Calcium Premium Batteries'. The respondents had not given any basis to ignore the description declared by the appellants and twice confirmed by the Customs examination staff. Even the respondents had not given the basis / document that the impugned batteries contained lead-Calcium electrodes which fall for classification under sub-heading 8507.1020. It has also not given in the Order in original that the batteries are meant for the vehicles mentioned against sub-heading 8507.1020 and not meant for the vehicles mentioned against sub-heading 8507.1010.

10. Keeping in view the examination reports given twice by the Customs Examination staff confirming the description 'Calcium Premium Batteries', scheme of classification and facts about the existence, manufacturing and working of Calcium Batteries, it is held that the impugned goods are correctly classifiable under heading 8507.8000 @ 10% duty, accordingly the appeal is allowed and the Order-in-Original is set-aside. Appeal is disposed of with no orders as to cost.

From perusal of the aforesaid finding of the Tribunal, it reflects that a sound reasoning has been assigned to reject the classification determined by the Applicant department inasmuch as the examination report relied upon by the Applicant itself does not support their contention. In our view such determination of classification appears to be correct and in accordance with the Tariff headings as above. HS code 8507.1020 can only be attracted when battery is a lead acid battery used for starting piston engine (normally called automotive battery).

Insofar as the batteries in question are concerned, notwithstanding that they are being used for Automotive Vehicles, they are not lead acid batteries; hence, cannot be classified under HS Code 8507.1020 as contended by the Applicant department. The goods were examined twice by the department and Examination Report available at page-57, clearly reflects that batteries are Automotive Calcium Premium Battery and not lead acid batteries which is the first pre-requisite of classifying it under HS Code 8507.1020. Not all automotive batteries are to be classified in this sub-heading; but only those which are lead acid batteries. First single dash headings (-) in 8507 i.e 1000 is for lead acid batteries for starting piston engines; second single dash heading (-) in

8507 i.e. 2000 is for other types of lead acid batteries, whereas, thereafter nickel cadmium batteries (8507.3000); Nickel iron batteries (8507.4000); Nickel Metal Hydride batteries (8507.5000) Lithium iron batteries (8507.6000) and lastly all other types of batteries are to be classified under 8507.8000. Therefore, no exception can be drawn to the finding of the Tribunal which is based on sound and lawful appreciation of the HS codes and its interpretation. Such interpretation of single dash (-) and double dash (--) headings and their bifurcation into sub-headings have been dealt with and interpreted keeping in view the General Rules of Interpretation notified by World Custom Organisation (“WCO”) in the case of **Collector v SG Enterprises**¹ by this Court.

In view of the above, no case for indulgence is made out. However, the questions of law so proposed have not been drafted properly, as only one question arises from the impugned order i.e. ***“Whether the Tribunal was justified in holding that the Automotive Calcium Batteries are correctly classifiable under HS Code 8507.8000”*** and the same is answered in the **affirmative**; against the Applicant and in favour of the Respondent. As a consequence, thereof, this Reference Application is dismissed with pending applications.

Let a copy of this order be issued to the Customs Appellate Tribunal, Bench-I, Karachi, as required under Section 196(5) of the Customs Act, 1969.

J U D G E

J U D G E

Ashraf

¹ 2021 PTD 815