

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Custom Reference Application No. 268 of 2022

Date

Order with signature of Judge

HEARING OF CASE (PRIORITY).

- 1) For orders on office objection No. 05 & 25.
- 2) For hearing of main case.
- 3) For hearing of CMA No. 1557/2022.

17.04.2025.

Mr. Rasheed Ashraf, Advocate for Applicant.
Mr. Asif Ali, Advocate for Respondent.

Counsel has affected appearance on behalf of concerned Collector and undertakes to file Vakalatnama. Let such Vakalatnama be filed in the office.

Through this Reference Application, the Applicant has impugned Judgment dated 21.02.2022 passed in Customs Appeal No. K-7495 of 2021 by the Customs Appellate Tribunal at Karachi proposing various questions of law; however, the only relevant question is that *“whether any fine could be imposed in terms of SRO 499(I)/2009 when classification is changed by the Customs based on a laboratory test report?”. The Appeal filed by the Respondent / Collector of Customs has been allowed in the following terms: -*

05. “Heard both the sides and examined the case record. There is no doubt that mis-declaration in PCT classification has been established during physical examination of the goods and on the basis of Custom Lab Report. The contention of respondent that before importing the goods HEJ Lab report was obtained on the basis of which GD was filed cannot be relied upon because the goods tested by HEJ Lab may have been different than the goods imported vide the subject GD.”

06. In view of the above, the instant appeal is allowed and a Redemption Fine of 20% is imposed under SRO 499(I)/2009 dated 13-06-2009.

It appears that the controversy in this case is regarding the correct classification of the goods and such classification has been determined pursuant to the Lab Test Report. Though a Show Cause Notice was issued and the classification determined by the Customs department has been accepted by the Adjudicating authority against which the Applicant had not filed any further appeal; however, neither

the goods were confiscated, nor fine and penalty was imposed on the ground that the classification of goods, particularly chemical is a question based on legal and factual determination and so also of interpretation of HS Code and Customs tariff; hence, there could be difference of opinion in interpreting the same. The Adjudicating Authority has relied upon ***Power Electronics Pakistan (Pvt.) Ltd¹***.

Such order was impugned and the Tribunal without assigning any reasons and merely on the fact that classification has been changed has imposed Redemption Fine of 20% under SRO 499(1)/2009 dated 13.06.2009. Firstly, the Tribunal cannot act as an Adjudicating Authority inasmuch as fine could only be imposed once goods are confiscated and redeemed it. At best, the Tribunal could have remanded the matter to the original authority for its re-adjudication. Secondly, it is settled proposition of law that classification of goods is a question based on legal and factual determination and so also of interpretation of the HS Code and the Customs tariff; hence, there could always be difference of opinion for interpreting the same. It is not that it always be a case of mens rea and imposition of fine and penalty if the claimed HS Code is not accepted by the Department and therefore, in our opinion to the extent of imposition of fine the Tribunal has erred, whereas the Adjudicating Authority had arrived at a correct conclusion and therefore, the order of the Tribunal cannot be sustained².

Accordingly, the above Question is answered in favor of the Applicant and against the Respondent (department). Consequently, thereof, the impugned Judgment is set aside, and this Reference Application is ***allowed***. Let copy of this order be sent to Customs Appellate Tribunal in terms of sub-section (5) of Section 196 of Customs Act, 1969.

ACTING CHIEF JUSTICE

J U D G E

Arshad/

¹ Collector of Customs vs. Power Electronics Pakistan (Pvt.) Ltd. (2011 PTD 2837).

² Habib Sugar Mills Ltd v Collector of Customs (PTCL 2012 CL 393) Collector of Customs vs. Shaikh Shakeel Ahmed reported as 2011 PTD 495 and Collector of Customs Karachi vs. Power Electronic Pakistan (Pvt.) Limited Lahore reported as 2011 PTD 2837