

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
S.C.R.A. No. 628 & 629 of 2016

Date

Order with signature of Judge

HEARING / PRIORITY CASE.

- 1) For hearing of main case.
- 2) For hearing of CMA No. 3800/2016.

18.04.2025.

Ms. Masooda Siraj, Advocate for Applicant.

Pursuant to order passed on 07.03.2025 publication has been affected in daily EXPRESS, but no one has turned up. Service is held good upon the Respondent.

Through these Reference Applications, the Applicant department has impugned a common judgment dated 27.06.2016, passed in Customs Appeal Nos. 1777 of 2015 and 1778 of 2015 by the Customs Appellate Tribunal at Karachi, proposing various questions of law.

Heard learned Counsel for the Applicant and perused the record. It appears that a Show Cause Notice was issued to the Respondent on two grounds that firstly, the classification of goods was mis-declared as the Respondent had claimed classification under HS Code 3208.9019 chargeable to customs duty at the rate of 10%, whereas the department determined classification under HS Code 3208.1090 chargeable to customs duty at the rate of 20%. The determination of the department was based on a lab test, whereas the main heading declared by the Respondent and the one determined by the department is same i.e. “**3208**” coupled with the fact that it was only arrived at after a lab test. Once the Applicant department itself determined the HS code based on a test report, then any allegation of change in the last 4 digits of the HS code cannot by itself be termed as misdeclaration of classification. At the most duty and taxes could be charged but no fine and penalty could be imposed.

Insofar as the determination of value @ US\$ 2.12 /Kg is concerned, though in the Show Cause Notice it was alleged that declared value is @ US\$ 0.70/kg whereas, the assessable value as determined by the department was @ US\$ 2.12/kg. however, it is an admitted position that neither in the Show Cause Notice; nor in the Order in Original any evidence of a value @ US\$ 2.12/kg was produced. It further appears that this fact was recorded by the Tribunal in its order and today when confronted, Counsel is not able to refer any such evidentiary document or data which could determine the value of @US\$ 2.12/kg.

In view of such position, no case for indulgence is made out as primarily issue of fact has been decided by the Tribunal whereas, no evidentiary evidence has been placed on record regarding mis-declaration of value, therefore, both these Reference Applications are ***dismissed***.

Let copy of this order be sent to the Customs Appellate Tribunal in terms of Section 196(5) of Customs Act, 1969. Office is directed to place a copy of this order in connected SCRA.

ACTING CHIEF JUSTICE

J U D G E

Arshad/