ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Applications 585 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on CMA No.2758/2024
2. For hearing of main case
3. For orders on CMA No.2759/2024

29.09.2025

Mr. Arif Ali Manthar, advocate for the applicant

The reference application impugns judgment dated 15.05.2024, rendered in Customs Appeal No.K-1908, K-1909 and K-1910 of 2023. The operative part of the judgment reads as follows:

> *9. Arguments heard and the record produced before the undersigned has been perused. The department's main contention is that the "Filters", imported by the Appellants, were ought to be used in the vehicles and/or machines having operated with Internal Combustion Engines, as such the same were correctly classifiable under PCT Heading 8421.2390 (For Fuel Filters) and 8421.3190 (For Air Filters). In rebuttal, the appellants have contended that every machine is not fitted with Internal Combustion Engines, like Drilling Equipments, Heavy Duty Construction Machinery. Generating Sets, etc. The A.R has further contended that the department's case is just based on presumptions. The appellants cited that as per their "Reply to SCN", annexed as "C" at pages 33-36 of the appeal, submitted before the respondents/Adjudicating Authority, it is clear that the specifications of the Filters of PCT Headings 8421.2390 and 8421.3190 were also cleared by the appellants @35% C.D and the specifications of the Filters, other than of 8421.2390 and 8421.3190 @35% C.D, were cleared according to the respective lawful PCT Headings @ 20% and 16% C.D respectively. Considering the facts & circumstances of the case and submissions of both side it is clear that the respondent Department at post clearance stage has treated all the imported Oil Filters and Air Filters assessed/cleared under PCT/H.S Code 8421.2900 and 8421.3940 as of Internal Combustion Engine, hence, classifiable under 8421.2390 and 8421.3190 respectively. After listening to the arguments of both sides, I am of the considered view that the subject appeals revolve around the following questions:-*
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> *(i). Whether the "Filters" imported by the appellants were meant for the vehicles or machines having Internal Combustion Engines? and*
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> *(ii), Whether the Fuel Filters and Air Filters, imported by the appellants were correctly classifiable under PCT Heading 8421.2390 (For Fuel Filters)/8421.3190 (For Air Filters) @35% C.D and / or 8421.2900 (For Fuel Filters)/8421.3940 (For Air Filters) @20% C.D.*
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> *10. As per the Pakistan Customs Tariff (PCT)'s structure, as has been mentioned in Ground-G of the appeal (K-1908/2023), for Oil Filters used in the machines /vehicles having Internal Combustion Engines the Heading / HS Code: 8421.2300 (--) is correct and its subsequent (---) PCT Heading 8421.2390 covers the Oil Filters for machines operated with Internal Combustion Engines, other than the vehicles specified under PCT Headings 8421.2310 and 8421.2320. Likewise, for Air Filters, used in the Machines, operating through the Internal Combustion Engines, the correct Heading/H.S Code is 8421.3100 (--), and subsequently for Air Filters of Machines, the correct PCT Heading is 8421.3190. Prima facie, the department's stance about classification is correct, however, in the absence of any concrete evidence from the appellants as well as from the department, it is difficult to prove that the Oil Filters / Air Filters, imported and released by the appellants were of machines having Internal Combustion Engines.*
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> *11. The department contends that aspect of Internal Combustion Engine was concealed and ignored at the time of import clearance stage. Whereas the appellants are taking refuge behind the arguments that the impugned consignments were allowed release after checking, which also includes physical examination of the goods, under Section 80 of the Customs Act, 1969, as such the department's re-classification of the goods at the belated stage after assessment / release of the goods, is just based on presumptions.*

However, it has been noticed that the appellants, except the aforesaid argument, have failed to substantiate that their imported Filters were for the "Machines" operating without Internal Combustion Engines. Under the computerized self-assessment WeBOC System, in terms of LIBUN @ebification/classification is the responsibility of an importer. After the Adjudication Authority's order about the classification in favour of the respondent department, it was is the responsibility of the appellants to negate the findings of the Adjudicating Authority with concrete evidence like manufactures' catalogue, etc., and to substantiate that the imported Filters were for the Machines or Generators not fitted /operated with Internal Combustion Engines.

12. Under the given facts and circumstances of the case besides considering the appellants' failure to substantiate the specification of the imported Filters with the manufacturers' catalogues, verifiable part number, etc., to justify their declaration of classification, I have no other option left but to accept the respondent departments' ascertained PCT Headings 8421.2390 (For Fuel Filters) and 8421.3190 (For Air Filters) as correct provided the Filters were meant for the Machines operating on Internal Combustion Engines. However, considering that the Collectorate has assessed the consignments after checking under Section 80 of the Customs Act, 1969, as per their assessment practice as such it cannot be considered a case of penal action on account of deliberate mis-declaration, therefore, the penalties imposed by the Adjudicating Authority are not warranted, as such the impugned Order-in-Original is modified to that extent.

13. Given the above observations, the subject appeals are disposed of.

14. Judgment passed and announced accordingly.

15. This judgment consists of 13 pages and each page bears initial and the last page is appended with signature and office seal.

While several questions were pleaded for determination, learned counsel remained unable to dispel the preponderant observation that the same were argumentative and / or sought to agitate factual / evidential aspects of the case.

Learned counsel stated that post clearance the consignment and / or any declaration / assessment in regard thereof became a past and closed transaction. At the same time it was submitted that the show cause was within the period of limitation. Such mutually destructive arguments could not be reconciled before the Court; needless to state that no case for treating the assessment as a past and closed transaction could be sustained on the anvil of *Mekotex*[1].

Learned counsel sought a *de novo* appreciation of evidence, however, could not befall such an exercise within the ambit of reference jurisdiction. Counsel also sought refuge behind the Supreme Court judgment reported as 2025 PTD 260, however, remained unable to assist as to how it was applicable in the present facts and circumstances. Needless to state that the learned counsel did not possess a copy of the very judgment sought to be relied upon.

The aforementioned judgment categorically states that there is a presumption of regularity attached proceedings and findings regarding classification of goods. The presumption is rebuttable if it can be demonstrably shown that the findings are arbitrary, fanciful and /or repugnant to the rules etc. In the present facts and circumstances, nothing could be demonstrated before the learned tribunal to create such a doubt and same was the case before us today.

In so far as the *de novo* appreciation of evidence is concerned, it would suffice to reiterate settled law that the learned tribunal is the last forum of fact in the pertinent statutory hierarchy. The appreciation of evidence was only material before the subordinate adjudication fora and no appreciation of evidence is merited before this Court in the exercise of

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[1] Per *Syed Mansoor Ali Shah J* in *Commissioner Inland Revenue vs. Mekotex (Private) Limited* reported as *PLD 2025 Supreme Court 1168*.

its reference jurisdiction[2]. Even otherwise, the learned counsel remained unable to dispel the preponderance of reasoning / record relied upon in the impugned judgment and could not demonstrate that the conclusion reached could not have been rested thereupon.

While several questions of law are listed in the memorandum of application, it is observed that the same *prima facie* seek *de novo* appreciation of evidence, are argumentative and raise factual controversies[3], therefore, we respectfully observe that the same are extraneous, dissonant and do not qualify as questions of law to be answered by this Court in exercise of its reference jurisdiction in the present facts and circumstances. Since no question of law, arising from the Impugned Judgment, could be demonstrated before this Court, therefore, this reference and pending application are dismissed.

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

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[2] Per *Qazi Faez Isa J* in *Middle East Construction vs. Collector Customs*; judgment dated *16.02.2023* in *Civil Appeals 2016 & 2017 of 2022*; *Collector of Sales Tax vs. Qadbros Engineering Limited* reported as *2023 SCMR 939*; *Army Welfare Trust vs. Collector of Sales Tax* reported as *2017 SCMR 9*; *Pakistan Match Industries (Pvt.) Ltd. Vs. Assistant Collector, Sales Tax and Central Excise* reported as *2019 SCMR 906*; *Commissioner of Inland Revenue, Lahore vs. Sargodha Spinning Mills (Pvt.) Ltd.* reported as *2022 SCMR 1082*.

[3] Per *Munib Akhtar J* in *Collector of Customs vs. Mazhar ul Islam* reported as *2011 PTD 2577* – Findings of fact cannot be challenged in reference jurisdiction.