

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Customs Reference Application 975 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1. For orders on office objection
- 2. For orders on CMA No.4333/2024
- 3. For hearing of main case
- 4. For orders on CMA No.4334/2024

17.11.2025

Mr. Mazhar Ali, advocate holds brief for Mr. Khalilullah Jakhro, advocate for the applicant

On 07.04.2025 following order was passed:-

“07.04.2025.

Mr. Khalilullah Jakhro, Advocate for Applicant

- 1. Counsel is not prepared nor the Classification Ruling, as referred to at page-59 by the Customs Appellate Tribunal, has been annexed with this Reference Application. Urgent Application is dismissed.”

On 07.10.2025 following order was passed:-

“07.10.2025

Mr. Khalilullah Jakhro, advocate for the applicant

The relevant portion of the impugned judgment reads as follows:-

“13. On the basis of this Test Report, department is asserting to classify the same under PCT heading 2103.9000. To arrive at the right conclusion, it is imperative to take a critical look at the relevant PCT headings, Chapter Notes, Section Notes, Explanatory Notes and other information that could assist in arriving at a fair conclusion regarding the PCT Classification.

14. The terms of main heading 21.03 reads 'Sauces and preparations therefore, mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard.

15. The department has taken the word from the test report 'seasoning' and has asserted to classify the same under this very heading. It may be noted that the heading does not mention the term 'seasoning' independently, rather it is preceded by a prefix 'mixed'. The Test Report does not say anything about this fact whether the seasoning so found were 'mixed' or otherwise. Secondly, it is observed that Note 1(b) of Chapter 38 provides an exclusion i.e. 'Chapter does not cover mixture of chemicals with foodstuff or other substances with nutritive value of a kind used in the preparation of human foods stuff (generally heading 2106)'. This provision while read with the Test Report and the Analysis Certificates provided by the Appellant, confirms that the imported goods are a mixture of chemicals with foodstuff which fall for classification under PCT heading 21.06.

16. We may refer now to the terms of heading 2106.9030 which reads as 'flavouring powders for preparation of food'. The Appellant is an industrial importer and manufactures snacks. For the preparation of snacks during the production process, flavours are added to give taste to the snacks in different flavours which are readily available in the market e.g. 'Slanty'. Such flavours, used in the preparation of food, are appropriately classifiable under PCT heading 2106.9030 by virtue of General Interpretative Notes to the Pakistan Customs Tariff which says that: -

"Rule 1: The titles of Sections, Chapters and Sub-Chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require, according to the following provisions"

17. While read in conjunction with the GIR 1, the goods are most appropriately classifiable under PCT heading 2106.9030.

18. We have also observed that it has been an established practice to classify the subject flavouring powders under PCT heading 2106.9030. A bare perusal of the import data shows the subject Flavoring Powders have all along been classified under PCT heading 2106.9030 and are being imported by various industrial importers. Refusal to classify these goods under the said PCT heading is tantamount to discrimination. Even after the matter had undergone litigation in the year 2010, the subject flavouring powders have ever since been imported and classified under PCT heading 2106.9030 and a number of GDs have been passed by the Customs Officers under Section 80 of the Customs Act, 1969, and that too after lab testing of the goods. A few sample GDs produced by the Appellant's counsel also revealed that in the past the subject flavouring powders had been imported and got tested by the Custom House Lab and found to be seasoning, despite these findings, the goods were released by appropriate officers under PCT heading 2106.9030. Moreover, the Federal Board of Revenue vide its Classification Ruling contained in its letter C. No. 3(10)Tar-1/89-pt-1 dated 11.06.2011, after examining the appropriate classification of Flavouring Powder has also ruled that such Flavouring Powders are to be classified under PCT Heading 2106.9030. According to Rule 2 of Pakistan Rules to Pakistan Customs Tariff the Federal Board of Revenue (FBR) is the final authority in classification matters and under Section 223 of the Customs Act, 1969, orders and instructions of the FBR are binding on all officers of Customs. Further, a recent judgment of hon'ble Supreme Court of Pakistan dated 18.01.2024 has also held that the FBR is the final authority in PCT classification matters (Reference Civil Appeal Nos. 799 to 824 of 2015).

19. In the light of the above stated factual and legal position, we are of the considered view that the subject goods are appropriately classifiable under PCT heading 2106.9030. Hence, the charges of misdeclaration of PCT heading are withdrawn and any fine and penalty so imposed is remitted in full.

20. In view of the foregoing deliberations, we are left with no option but to allow this appeal and set aside the Impugned Order as well as the Show-Cause Notice. The Respondents are directed to assess the subject goods under PCT heading 2106.9030 and return/refund the securities, if any, deposited at the time of clearance of the subject goods to the Appellant."

Learned counsel remains unable to assist the preponderance to observations contained supra. It was pointed out on the last date that the relevant classification ruling referred to in paragraph 18 of the impugned judgment is not placed on record, same is the case today. At his request, to come up on 14.10.2025."

Today, a brief is being held and adjournment being sought for no cogent reason whatsoever. In view of the judgment of the Supreme Court in the case of *Commissioner Inland Revenue, Lahore vs. Rafeh Limited* reported as PLD 2020 SC 518, this reference application is dismissed for non-prosecution.

A copy of this decision may be sent under the seal of this Court and signature of the Registrar to the learned Customs Appellate Tribunal, as required per section 196(5) of the Customs Act, 1969.

Judge

Judge