

No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Customs Reference No.57848/2023

**M/s Reshma Textile Mills Ltd. Vs Customs Appellate Tribunal
Through its Chairman
Lahore. etc.**

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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12.10.2023 Mr. Omar Arshad Hakeem, Advocate for the Applicant.
Ms. Kausar Parveen, Advocate for Customs Department.

This and connected Customs Reference Application
No.57846/2023 are directed against common judgment
dated 26.07.2023, of Customs Appellate Tribunal Bench
Lahore. Following question of law is proposed for
determination,

*Whether the learned bench failed to appreciate
that no penal consequences could be invoked
against the applicant or its agent in absence of
constitution of offence of misdeclaration under
Section 32 of the Customs Act, 1969?*

2. Learned counsel for Applicant Company
(Applicant) submits that mere declaration qua particulars
of imported goods for in-bonding of goods does not
constitute offence in terms of section 32 of the Customs
Act 1969. Adds that question of determination of duties
would arise at the time of clearance of goods – at the time
of ex-bonding. Learned counsel referred to section 30(b),

read with section 104 of the Customs Act 1969 to elucidate time of determination of duties.

3. Conversely, learned counsel for respondent department submits that incorrect particulars, regarding identity of the goods in terms of PCT Heading, were disclosed to prejudice determination / assessment of duties.

Adds that declaration made in terms of section 79 of Customs Act 1969, wherein misdeclaration was made, attracts mischief of section 32 of Customs Act, 1969. Adds that only penalty was imposed in lieu of misclassification of PCT Heading and no claim regarding assessment of duties and payment thereof was raised.

4. Arguments heard. Applicant, acting through Clearing Agent, entered declaration for warehousing of imported goods in terms of section 79 of the Customs Act 1969. Declaration contained particulars / description of imported goods - [for In-bonding], which were found incorrect upon comparing with Lab-Report. Upon discovering incorrect declaration, show cause notice was issued, alleging violation of various sections including clause 14 of section 156 (1) of Customs Act 1969. Order in original was passed, wherein liability qua evaded duties was imposed with addition of personal liability. Appellate

-:3:-

Tribunal rejected claim of evaded duties on the premise that duties need to be re-assessed at the time of clearance of goods in terms of section 30(b), 104 and 109 of the Customs Act 1969, but retained penalty, though reduced quantum thereof from Rs.1,000,000/- to Rs.500,000/-. Primary argument is that since duties had to be assessed at the time of clearance of goods, and not for in-bonding, therefore, section 32 has no application is attracted.

5. Argument is misconceived. It is not controverted that declaration for warehousing, qua the imported goods, was submitted in terms of section 79 of the Customs Act 1969, wherein particulars / description of goods was provided and same was found incorrect – in the context of description of goods and wrong mentioning of PCT Heading. Is the declaration submitted/statement made, when found wrong, constitute an offence under section 32 of Customs Act 1969. It is expedient to reproduce section 32(1) and clause 14 of section 156(1) of the Customs Act 1969, which read as,

Section 32 of Customs Act 1969

“32. Untrue statement, error, etc.- (1) If any person, in connection with any matter of customs,-

(a) makes or signs or causes to be made or signed, or delivers or causes to be delivered to an officer of customs any declaration, notice, certificate or other document whatsoever, or

(b) makes any statement in answer to any question put to him by an officer of customs which he is required by or under this Act to answer, [or]

*[**(c)** submits any false statement or document electronically through automated clearance system regarding any matter of Customs,]*

[knowing or having reason to believe that such document or statement is false] in any material particular, he shall be guilty of an offence under this section”.

(2)

(3)

Clause (14) of section 156(1) of Customs Act 1969

- [14.]** If any person commits an offence under
- (i) Sub-section (1) or sub-section (2) of section 32;
- such person shall be liable to a penalty not exceeding one hundred thousand rupees or three times the value of the goods in respect of which such offence is committed, whichever be greater; and such goods shall also be liable to confiscation; and upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding three years, or to fine, or to both;

5. A bare perusal of sub-section (1) of section 32 of Customs Act 1969 indicates its independent existence for the purposes of attracting penalty in terms of clause 14 of section 156(1) of Customs Act 1969. Clause 14, *ibid*, treats offence under sub-section (1) of section 32 of Customs Act as an independent offence, for the purposes of the penalty

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envisioned. A person can be charged with offence under sub-section (1) of section 32 of Customs Act 1969 where same had knowingly and reason to believe that document furnished, and statement made in connection with the matter of Customs, is false. Guidance is solicited from the construction proposed to section 32 of the Customs Act 1969 by Apex Court in the case of M/s Baba Khan vs. Collector of Customs, Quetta and 2 others (PTCL 2000 CL 688), relevant portion of the decision is reproduced for ease of reference,

“4. We have carefully perused the provisions of section 32 and also section 79 of the Customs Act, 1969. Under subsection (1) of section 32, if any person in connection with any matter of customs makes any declaration or statement which is untrue in any material particulars, he is guilty of an offence under that section. No reference is made in section 32(1) to section 79 or that such declaration or mis-statement is made in the bill-of-entry. For an untrue declaration or statement to come within the mischief of section 32(1), the same should be untrue in any material particulars and that the statement or declaration is made "connection" with any matter of customs. The words "any matter of customs" are not restricted to bills-of-entry.”

6. There is another aspect. Sub-section (1) of section 32 of Customs Act 1969 does not draw any distinction between declaration made either for the purposes of in-bonding or ex-bonding. Evidently, incorrect declaration / statements made, even for the purposes of in-bonding, is covered under the expression in connection with any

matter of customs, and same constitutes an offence under sub-section (1) of section 32 of the Customs Act 1969, incurring penalty in terms of clause 14 of section 156(1) of Customs Act 1969. Factum of knowledge is not disputed – Clearing agent, who acted for the applicant, has not preferred any application before this Court. Finding of fact was recorded by the Tribunal with respect to the intent underlying mis-declaration.

In wake of the narrative above, case at hand falls within the ambit of sub-section (1) of section 32 of the Customs Act 1969, which attracts penalty, notwithstanding submission of declaration for ex-bonding for the purposes of ascertaining duties at later stage.

7. In view of the above, the question of law proposed is answered in negative. Reference application is decided against the Applicant and in favour of the department.

8. Office shall send a copy of this order, under seal of the Court, to learned Appellate Tribunal, in terms of sub-section (5) of section 196 of Customs Act, 1969.

(Muhammad Sajid Mehmood Sethi)
Judge

(Asim Hafeez)
Judge

M.S.Aleem

APPROVED FOR REPORTING

Judge