

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Syed Mansoor Ali Shah

Justice Jamal Khan Mandokhail

Justice Athar Minallah

CIVIL APPEAL NOS.799 TO 824 OF 2015

(Against the judgment dated 22.12.2014 of the High Court of Sindh, Karachi passed in Special Customs Reference Applications No.8 to 33 of 2011)

Additional Collector of Customs, Model Customs

Collectorate of Appraisement (West),

Customs House, Karachi

... ***Appellant*** (in all cases)

Versus

M/s K. S. Sulemanji Esmailji

and Sons Pvt. Ltd. Karachi

... ***Respondent*** (in all cases)

For the appellant:

Raja Muhammad Iqbal, ASC a/w

Ch. M.Javed, Chief (L), FBR

Nayyar Shafiq, Chief (Tariff)

For the respondent:

Mr. Farhat Nawaz Lodhi, ASC

Date of hearing:

18.01.2024

ORDER

Athar Minallah, J.- Leave in this matter was granted vide order dated 06.8.2015 to consider questions of law that had arisen from the judgment of the High Court, dated 22.12.2014.

2. The High Court had answered the questions of law proposed in the reference application filed under section 196 of the Customs Act 1969 ("**Act of 1969**") in favour of the tax payer and against the Department. The controversy was regarding determination of the correct classification of goods imported by M/s K.S.Sulemanji Esmailji & sons (Pvt.) Ltd., Karachi ("**respondent-company**"). The latter had imported twenty six consignments which were described at the import stage as "BOPP" Printed Laminated Packaging Film (Metalized) [**"imported goods"**]. The respondent-company was granted the facility of clearance of goods under the 'Automated Clearance Procedure,' which enabled the importer to clear the imported consignments

without subjecting them to examination. Only in the case of two consignments was the normal clearance process used for the release of the imported goods. The Department had completed the assessment under section 80 of the Act of 1969 on the basis of declarations made by the respondent-company itself. The H.S Code or PCT headings were also declared by the latter. According to the declarations the assessment was completed on the basis of customs duty at the rate of 25%. The goods were released after the appropriate customs officer had ordered them to be given out of customs charge. Belatedly, the respondent-company filed an application under section 33 of the Act of 1969 seeking refund on the ground that at the time of clearing the goods customs duties were paid through error because the correct H.S Code was not declared. It was the case of the respondent-company that instead of 20% the customs duties were paid at the rate of 25%. While the refund proceedings were pending, the matter was referred to the Classification Committee constituted by the Federal Board of Revenue ('**Board**') for determination of classification of imported goods. This was done pursuant to the request made by the respondent-company. The latter also approached the Federal Tax Ombudsman complaining of mal administration on account of delay in processing the refund claim. The complaint was disposed of vide findings/recommendations dated 27-01-2010 by observing that the grievance had been redressed since the Classification Committee had given its determination. The Classification Committee, after extensive deliberations, hearing all the relevant parties and examining the record, particularly the test report submitted by the Customs House Laboratory, determined the PCT Heading 3920.2040 relating to the goods imported by the respondent-company. The decision was notified through Public Notice No. 12/2009 dated 15-12-2009. The Deputy Collector-II dismissed the refund application vide Order-in-Original

No.06 of 2010 dated 22-02-2010. The PCT Heading determined by the Classification Committee was upheld. The appeal preferred by the respondent-company was dismissed by the Collector of Customs (Appeals) vide Order-in-Appeal No. 3762 to 3787 of 2010, dated 04-05-2010. The Customs Excise & Sales Tax Appellate Tribunal ('**Tribunal**'), vide judgment dated 20-08-2010, allowed the appeal preferred by the respondent-company and determined the PCT Heading as 3920.2030 attracting customs duty at the rate of 20%. The Department filed a reference application before the High Court under section 196 of the Act of 1969 but the proposed questions were not answered in its favour. Both the Tribunal as well as the High Court were of the view that the Classification Committee had misinterpreted Rule 3 (c) of the General Rules for Interpretation to the First Schedule to the Act of 1969 ("**Rules for Interpretation**"). The Tribunal had classified the imported goods under PCT Heading 3920.2030 while the High Court under 3920-2090.

3. We have heard the learned counsel for the parties and perused the record with their able assistance.

4. The respondent-company had imported twenty six consignments. The assessment was completed and the goods were given out of customs charge on the basis of the respondent-company's own declarations. The PCT Headings attracting customs duty at the rate of 25% were also declared by the respondent company. After filing the application for refund under section 33, on the request of the respondent-company the matter was referred to the Classification Committee. The latter issued a comprehensive classification ruling and determined that the imported goods fell under PCT Heading 3920-2040 which attracted customs duty at the rate of 25%.

5. The Classification Committee had sent samples to the Customs House Laboratory for analysis and after subjecting them to tests a report was accordingly submitted. The Committee, in the light of the test analysis report and the physical attributes of the samples, had concluded that 'Biaxially Oriented Polypropylene film (BOPP) falls under one of the four PCT Headings i.e 3920.2010, 3920.2020, 3920.2030 and 2920.2040. The Committee further concluded that the composition of the imported goods described in the test report rendered all the aforementioned headings to merit equal consideration. The Committee considered the three sub rules of Rule 3 of the Rules of Interpretation in order to make a determination and the reasoning was recorded in the classification ruling. Rule 3(a) was excluded because none of the headings was most specific. Rule 3(b) was not attracted because all the headings merited equal consideration. As a consequence the determination was made by applying Rule 3(c) and on that basis PCT Heading 3920.2040 was determined since it was the heading which was last in numerical order among those which equally merited consideration. The respondent-company had taken the plea that the correct classification in that case should have been 3920-2090 i.e under the heading 'Others'. The Committee on the basis of the Explanatory Notes had concluded that the headings that merit equal consideration in this case for the purposes of Rule 3(c) were those which were specific to BOPP i.e 3920-2010, 3920.2020, 3920.2030 and 3920.2040. The heading 3920.2090 was for 'Others' i.e films, sheets of propylene other than BOPP. The said heading was not relevant for consideration under Rule 3(c) in the case before us and, therefore, the Committee had correctly determined PCT Heading 3920-2040 because it occurred last in the numerical order among those headings which merited equal consideration. The determination made by Committee was in accordance with the correct appreciation of the

Rules of Interpretation and it did not suffer from any infirmity. The Tribunal had made its own determination and that too without considering the test report nor the classification ruling of the Committee. The Tribunal had also not sought any technical assistance from the Committee nor the Board. The opinion of the Committee was substituted without appreciating it after careful consideration. On the basis of samples produced by the respondent-company the Tribunal classified the imported goods under PCT Heading 3920.2030. This determination was made in an arbitrary manner and in violation of the Rules of Interpretation. The High Court also did not appreciate that the Committee had interpreted the Rules of Interpretation in accordance with the Explanatory Notes. The heading "Others" i.e 3920.2090 was considered and reasons were recorded why it was not applicable. The reasons were in conformity with the Explanatory Notes and, therefore, the Committee had correctly concluded that the heading 'Others' i.e 3920.2090 was not applicable. The Explanatory Notes for Chapter 39 describe the rules in relation to a sub heading 'Others'. It explicitly mentions that goods are classifiable under the sub heading 'Others' provided they are not covered more specifically under another subheading. Moreover, only four headings covered BOPP and, therefore, they were relevant for applying Rule 3(c) of the Rules of Interpretation. The Tribunal had taken upon itself the role of the Classification Committee rather than examining the classification ruling issued by the latter and the reasoning recorded therein. The High Court also did not consider the reasoning in the light of the Rules of Interpretation, the Explanatory Notes and other documents. The Rules of Interpretation, particularly Rule 3(c), have not been properly appreciated and thus misinterpreted. The determination made by the Classification Committee did not suffer from any legal infirmity nor

has been found to be in violation of the Rules of Interpretation read with the Explanatory Notes.

5. The Act of 1969 is a comprehensive statute dealing with matters relating to the levy and collection of customs duties etc. The charging section, i.e section 18, expressly provides that customs duties shall be levied at such rates as are, inter alia, prescribed in the First Schedule. The First Schedule contains the general rules for interpretation of the schedule. Moreover, it provides that for the purposes of interpretation 'Explanatory Notes' to the Harmonised Commodity Description and Coding System published by the World Customs Organisation, Brussels, as amended from time to time, shall be considered the authentic source of interpretation. It further provides that for the purposes of classification the Board shall be the final authority to determine the classification of any item meant to be imported or exported. The First Schedule is divided into ninety nine chapters and twenty one sections in accordance with the Harmonised Commodity Description and Coding System ('**Harmonised System**') developed by the World Customs Organisation. It is a multipurpose international product nomenclature and governed under the 'International Convention on the Harmonised Commodity Description and Coding System'. It is the most effective and widely used classification system. More than 180 countries have ratified the Convention and Pakistan is one of them. In order to fulfil the commitments under the Convention, the Board has established the Classification Centre which is run and managed by the Classification Committee. Through Customs General Order No. 10/2001, dated 04-09-2001, the Board has established the Classification Committee and has prescribed a procedure in order to streamline the issuance of classification rulings, implement the recommendations of the World Customs Organisation etc. The latter has issued five volumes of Explanatory Notes which are the official

interpretation of the Harmonised System. The World Customs Organisation takes measures to secure uniform interpretation of the Harmonised System and it is periodically updated in the light of developments which take place from time to time. The World Customs Organisation has constituted various committees to manage this process. It also issues guidelines to the contracting States to the Convention regarding the tariff classification and related infrastructure. It is noted that classification of goods is one of the most basic functions of the procedure in the context of import or export of goods. It is a specialised job and technical in nature. It essentially requires expertise and taking of multiple factors into consideration e.g examining the goods, all the relevant documents, understanding the classification aids and technical literature etc. The Classification Committee includes experts who possess the skills, knowledge and experience in respect of classification of goods in conformity with the Harmonised System. The Classification Committee has been established by the Board pursuant to the guidelines of the World Customs Organisation and the commitments under the Convention. The Rules of Interpretation have statutory backing because they form part of the First Schedule to the Act of 1969. Likewise, the Explanatory Notes issued by the World Customs Organisation are declared in the First Schedule to be the most authentic interpretation of its chapters and sections based on the Harmonised System. The Classification Committee and its classification rulings, therefore, have crucial importance. There is a presumption of regularity attached to its proceedings and findings regarding classification of goods. This presumption, however, is rebuttable if it can be demonstrably shown that the findings are arbitrary, fanciful and in violation of the Rules of Interpretation, the Explanatory Notes and other relevant guidelines or principles relating to classification of goods under the Harmonised

System. The First Schedule also declares that the determination of classification by the Board shall be final. This finality is also in the light of the scheme of the Harmonised System which has been adopted and followed by Pakistan pursuant to its commitments under the Convention. The Tribunal nor the High Court can substitute the findings of the Classification Committee unless they can be shown to be arbitrary, fanciful or in violation to the applicable rules and principles of interpretation. In the case before us, the Tribunal fell in error by disregarding the classification ruling issued by the Classification Committee and proceeding to determine the classification on its own. The Tribunal could not bypass the competent forum i.e the Classification Committee nor give a different finding unless it could be clearly shown that the determination was arbitrary, fanciful and in violation of the rules and principles relating to classification of goods under the Harmonised System. The High Court had also misinterpreted the Rules of Interpretation without adverting itself to the reasons recorded in the classification ruling issued by the Classification Committee.

6. The above are the reasons for allowing the appeals in the open Court. The respective judgments of the Tribunal and the High Court are hereby set-aside. Consequently, the Order in Original No.6 of 2010, whereby the refund application was rejected stands restored.

Judge

Judge

Judge

Islamabad the

18th January 2024

APPROVED FOR REPORTING

Aamir Sheikh/Remeen Moin, LC