

TaxHelpline 2013/224

SUPREME COURT OF PAKISTAN

Civil Petitions Nos. 802 and 813 of 2012, decided on 13th February, 2013

(On appeal from the judgment of the High Court of Sindh, Karachi, dated 24-02-2012 passed in Special Customs\Reference Applications Nos. 584, 585, 586 and 587 of 2011)

Nasir-ul-Mulk and Tariq Parvez. J

Malik Qamar Afzal, Advocate Supreme Court for Petitioner. Raja Muhammad Iqbal, Advocate Supreme Court for Respondents

Messrs A.C.P. OIL MILLS (PVT.) LIMITED---Petitioner

Vs

**The ADDITIONAL COLLECTOR OF CUSTOMS (APPRAISEMENT) and
another---Respondents**

JUDGMENT

NASIR-UL-MULK, J.---The petitioner is a company which has set up a plant in the Industrial Area of Islamabad for manufacturing vegetable ghee and cooking oil. They had in the month of May, 2007 imported some material for use in its factory declaring the same under the PCT heading 7210.5000 described as Tin Free Steel Sheets (Secondary, Quality) attracting customs duty 10%. Later it was discovered that the material so imported was Electrolytic Tin Plate under PCT classification i.e. 7210.1200 on the import of which 25% duty was leviable. This discovery was made when the petitioner furnished original copies of the Bill of Lading and the other relevant documents in response to notice under section 26 of Customs Act, 1969, issued by the Deputy Collector of Customs, Appraisement Intelligence Branch on 25-6-2007 who suspected mis-declaration by the petitioner. Since the original documents did not tally with photo copies earlier furnished by the petitioner on 2-8-2007, the Additional Collector Customs issued show cause notice to the petitioner alleging mis-declaration with the connivance of its clearing agent and Cargo Channel, calling upon the petitioner as to why action may not be taken against it and the clearing agent under sections 32(1), 32(2) read with 32(A) and 192 of the Customs

Act, 1969. The petitioner was further informed that the F.I.R. had already been registered in this connection. After hearing the petitioner, the Deputy Collector on 25-8-2007 passed the following order:--

"I am therefore of the view that Messrs A.C.P. Oil Mills with the connivance of their clearing agent Messrs Cargo Channel have attempted to fraudulently clear Electrolytic Tin Plate in the guise of Tin Free Steel Sheets (Secondary Quality) at a lower rate of duty by submitting fake and forged invoice and by also mis-declaring and tampering the PCT heading. I, therefore, in exercise of the powers conferred upon me in terms of clause (14) of section 156(1), order confiscation of the goods. However, an option is given in the terms of section 151 of the Customs Act, 1969 read with SRO 487(I)/2007 dated 9-6-2007 to the importers to redeem the same on the payment of 50% fine on customs value of the imported goods along with leviable duty and other taxes thereon, in terms of the above cited provisions of law, also impose a personal penalty of Rs.100,000 upon the importer and Rs.100,000 on the clearing agent, who connived with the importer in the said mis-declaration and produced a fake and tampered invoice."

2. The above said order in original was maintained by the Collector of Customs Sales Tax and Federal Excise (Appeals) on 24-9-2007 and subsequently upheld by the Customs Appellate Tribunal, Karachi on 30-5-2011, The petitioner filed Special Customs Reference Applications before the High Court of Sindh and the same were dismissed by the impugned judgment of 24-2-2012 against which these petitions for leave to appeal have been filed by the petitioner/company.

3. The learned counsel for the petitioner at the outset submitted that he does not dispute mis-declaration of the imported goods and therefore does not question the levy of duties and taxes as well as fine. He, however, assailed imposition of the penalty of Rs.100,000 in one case and Rs.50,000 in the other on the petitioner under section 32 read with section 156(14) of the Customs Act. He contended that the mis-declaration was not deliberately done by the petitioner and there was no evidence on the record to show that the management of the petitioner company knowingly made a false declaration; that the declaration was made on the basis of the documents that were sent by the exporter for which the petitioner cannot be held responsible.

4. Responding to the above contentions, the learned counsel representing the respondents submitted that the petitioner had deliberately made a mis-declaration of the imported goods in order to evade higher customs duty; that knowledge of the management of the petitioner is obvious from the fact that the photo copies furnished

by it to the custom authorities for clearing the goods were fake and did not tally with the original that was provided later.

5. One does not have to go too far to find out that management of the petitioner company had deliberately made a mis-declaration of the nature of the goods imported. At the time of clearance the petitioner and its clearing agent had submitted photo copies instead of its original invoices and the letters of credit. When the original documents were presented after notice to the petitioner under section 26 of the Customs Act it transpired a clear difference in the two. The original invoices classified the goods under PCT heading 7210.1200, 7210.5110 and 7209.9000 whereas the photo copy of an invoice tendered earlier described the goods under PCT heading 7210.5000. The photo copies of the invoices obliged the petitioner to pay custom duty @ 10% and the original at 25%. This one leads to conclude that the photo copies of the invoices were tampered with. Additionally all the four forums, including the High Court had upon factual determination held the petitioner to have intentionally made mis-declaration. On that score too we would be slow to interfere with the concurrent findings on facts. The petitions are, therefore, dismissed and leave declined.

Petition dismissed.



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