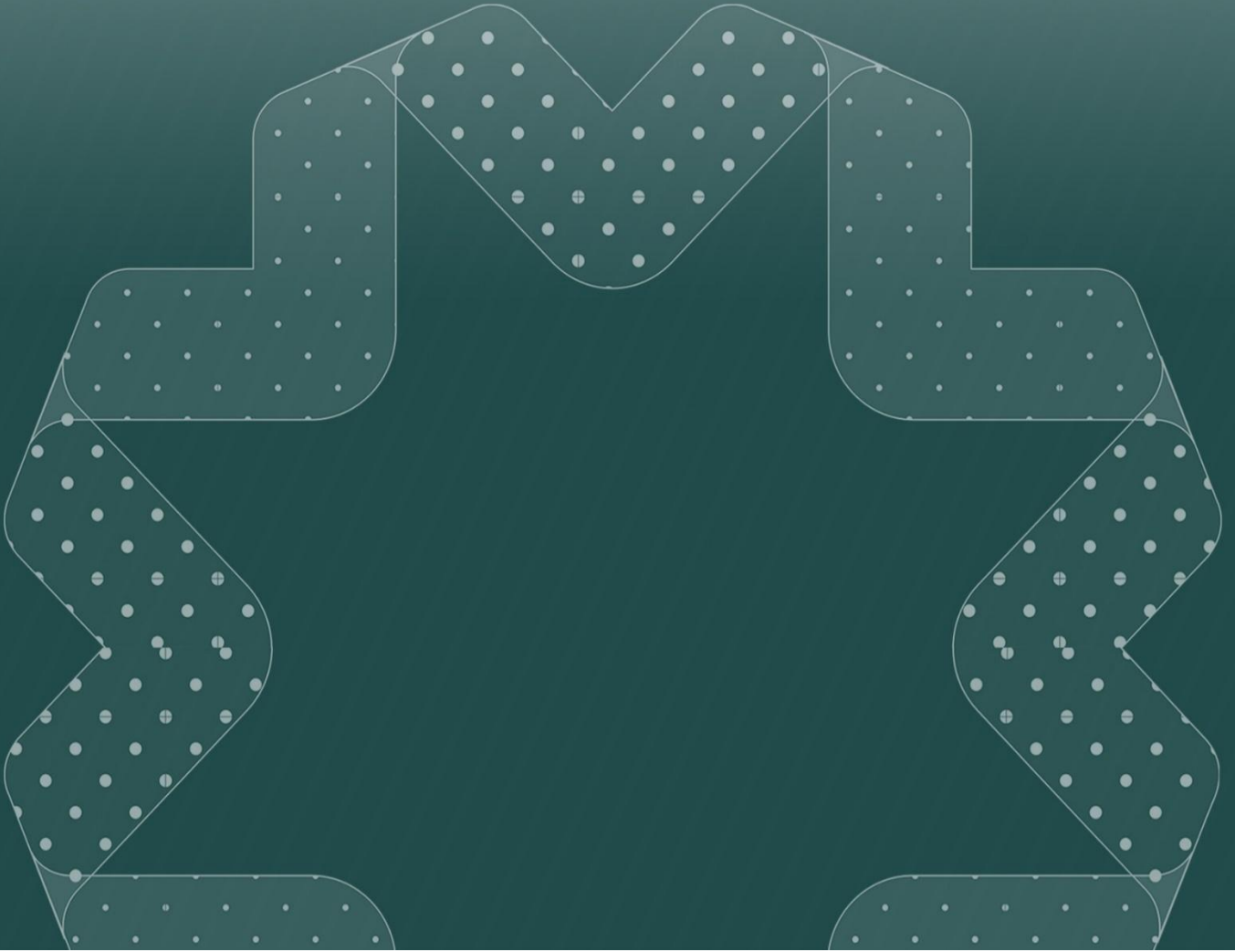




الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Main Defenses Raised before Customs Appellate Committees for the Period (2015-2022)





الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

**In the Name of Allah, the Most
Beneficent, the Most Merciful**

List of Decisions

Introduction	7
Message of His Excellency, Secretary General of Zakat, Tax and Customs Committees	8
Work Methodology:	9
First: In Form: Definition of Defenses (Dofoo') Linguistically and Terminologically	10
Second: Categories of Defenses:	10
Formal Defenses	11
Customs - Smuggling - Penal - Failure to Serve Notice - Decision Delivered in absentia.	12
Customs - Smuggling - Penal - Confiscation of consignment - Certificate of Origin - Remand the Case.	14
Objective Defenses - Administrative	16
Customs - Administrative - Customs Duties - Collection - Customs Duties.	17
Customs - Administrative - Customs Duties - Collection - Differences.	19
Customs - Administrative - Customs Duties - Collection of duties.	21
Customs - Administrative - Customs duties - Collection - Medical solutions.	30
Penal - Customs Duties	34
Customs - Penal - Customs Duties - Import Declaration - Raw Tobacco - Accepting in Form - Upholding Primary Decision.	35
Customs - Smuggling - Penal - Conviction - In Presentia - Customs Duties - Molasses Flavor - Confiscation of Means of Transport - Accepted in Form - Upholding Decision.	37
Customs - Smuggling - Penal - Conviction - In Presentia - Customs Duties - Tobacco - Confiscation of Seized Goods - Customs Zone - Accepting in Form - Dismissing on Merits.	39
Restricted Goods- Petroleum Derivatives	41
Customs - Smuggling - Penal - Petroleum Derivatives - Engine Coolant.	42
Customs - Smuggling - Penal - Petroleum Derivatives - Aromatic Substances.	44
Customs - Smuggling - Penal - Petroleum Derivatives - Polyesters.	46
Customs - Smuggling - Penal - Petroleum Derivatives - Diesel.	48
Customs – Smuggling – Penal – Oil Derivatives.	51
Commercial Fraud	53
Customs – Conviction – Commercial Fraud – Declaration of Origin – Miscellaneous – Uphold of Primary Decision.	54
Customs – Smuggling – Penal – Commercial Fraud – Declaration of Origin.	56
Customs – Smuggling – Penal – Commercial Fraud – Counterfeit Items.	58
Violation of Restrictions Provisions	60

Customs – Smuggling – Penal – Restrictions – Wireless Device.....	61
Customs – Penal – Network Devices – Disallowance.....	63
Customs – Smuggling – Penal – Restrictions – Veterinary Medicines.....	65
Written Undertaking	67
Customs – Penal – Written Undertaking – Non-Conformity with Specifications – Violation of Power Factor Specification and Source Current – Violation of Temperature Test Specification Under Normal Operating Conditions.	68
Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Insoluble Material Content.....	70
Customs – Smuggling – Penal – Written Undertaking – Non-Conformity of Specifications – Rise of Arsenic Beyond Permissible Limit.....	72
Customs – Smuggling – Penal – Written Undertaking – Non-Conformity of Specifications – Failure to Provide Detailed Packaging Declaration with Slaughter and Production Date.....	74
Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Violation of Labeling and Explanatory Data.	76
Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Absence of Production Date on Product.....	78
Customs – Penal – Undertaking of Non-Disposal – Non-Conformity of Specifications – Requirements of the Implementing Regulation of the Law of Medical Devices.....	80
Customs - Penal - Smuggling - Non-Disposal Undertaking- Accept the Case in Form - Reject the Case on Merits.....	82
Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Violation of Saudi Standard Specifications.	84
Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Low sugar content below the permissible limit.....	86
Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Presence of Misleading Advertising Phrase for the Consumer.....	88
Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.- Indication of Origin.	90
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Violation of labeling and instructions specifications.	92
Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.....	94
Customs - Penal - Promissory undertaking - Non-compliance with specifications - Absence of explanatory data and washing instructions on the label.....	96
Customs - Smuggling - Penal - Promissory undertaking- Failure of wash colorfastness test.	98

Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.- Presence of pesticide.	100
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.	101
Customs - Penal - Promissory undertaking - Non-compliance with specifications - Failure to specify the type of tea in Arabic.	103
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.	105
Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.	107
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Lack of resistance to abrasion.	108
Customs - Conviction - Commercial Fraud - Counterfeit Trademark - Accepted on Formal Grounds - Rejected on Merits.	111
Customs, Smuggling, Penal, Bond Undertaking, Failure to Record in Arabic	113
Customs – Smuggling – Penal – Bond Undertaking – Non-Compliance with Clearance Specifications and Electrical Durability Standards	115
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.	117
Customs – Smuggling – Penal – Bond Undertaking – Non-Compliance with Saudi Standards Specifications	119
Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.	121
Customs – Penal – Bond Undertaking – Non-conformity with Specifications – Color Instability in Dry Cleaning.	123
Customs – Smuggling – Penal – Restricted Goods – Camels	125
Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Non-Compliance of item (Low-Frequency Wire) to Conductor Resistance Specification. .	127
Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Non-Compliance of (Speaker) Item with Labeling Specifications	129
Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Existence of Microbes.	131
Index of Pleas	133



Introduction

Praise be to Allah, Lord of Worlds. May His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

It is no doubt that the courts and judicial commissions efforts, rulings and Decisions constitute an invaluable jurisprudential and judicial wealth that must be carefully preserved. In the context of commercial and industrial revolution that Kingdom of Saudi Arabia is experiencing under Saudi Vision 2030, various customs controversies have arisen, affecting many people. Therefore, and based on General Secretariat of Zakat, Tax and Customs Committees social responsibility, the Secretariat has sought to create a solid foundation and reference for committee members, taxpayers and interested parties by publishing final Decisions issued by customs appellate committees for the period from 2015-2022 AD. This contributes to effective settlement of customs disputes, and limits time taken for deciding upon cases. These records clarify Decisions reached by committees, which would have a positive impact on shortening litigation period, saving efforts for case examiner, fulfilling principle of transparency pursued by General Secretariat, and introducing practical aspects to bodies concerned with legal research, particularly academic, training and other relevant bodies.

We ask Allah Almighty that this book be a sincere endeavor for the sake of Allah, to reward our efforts and guide us to goodness. He is indeed the most generous.



Message of His Excellency, Secretary General of Zakat, Tax and Customs Committees

Praise be to Allah almighty,

General Secretariat of Zakat, Tax and Customs Committees vision and values has been committed to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between parties of zakat, tax and customs ecosystem, and play an effective role in raising efficiency of legal consideration. This is intended to enable zakat, tax and customs committees to successfully resolve disputes before them, and provide support and assistance to committees at all stages by conducting studies and research, as well as also helping zakat payers by clarifying laws, Decisions and judicial precedents, and updating them periodically.

The General Secretariat has attached special importance to the defenses raised by the litigants and the response of the primary and appellate committees to these defenses, being of great importance for determining cases, leading to conclusions that help achieve many of the Secretariat's objectives, including to eliminate disputes and differences, strengthen the committees' positions regarding these defenses, and further support the grounds of Decisions delivered by the committees.

In conclusion, I would like to extend my sincere thanks to His Royal Highness the Custodian of the Two Holy Mosques, King Salman bin Abdulaziz, and his Crown Prince, His Royal Highness Prince Mohammed bin Salman bin Abdulaziz, Prime Minister, may Allah protect them, for their generous patronage and support for judicial activities in various fields. I also extend my sincere recognition to employees of General Secretariat for their distinguished efforts in issuing this product, which I hope will achieve its goals and be a qualitative addition to the legal field.

Secretary General

Abdullah bin Abdulrahman Al-Suhaibani



Work Methodology

To achieve the desired benefit, General Secretariat was keen to select and publish judgments with comprehensive and general nature. Given the importance of appropriate description of case before primary and appellate committees and its impact on inference and reaching the Decision, which is the outcome sought by parties to case, and given the diverse facts and circumstances of customs cases, there has been a need to sort and classify customs committees Decisions for easy reference for litigants and interested parties.

Based on General Secretariat of Zakat, Tax and Customs Committees role in adopting and applying principles of continuous improvement and development in management of zakat, tax and customs disputes, to enable conclusive settlement of these disputes, the Secretariat was keen to identify the primary and appeal Decisions delivered by the customs committees. The Secretariat deemed it important to analyze the defenses presented by the parties during their pleadings before the committees and the committees' response to those arguments. Accordingly, a well-thought-out was developed to come up with an easy and accessible product. Work was divided into several stages according to the following:

- A thorough inventory of the Decisions issued by the customs appellate committees was conducted for the period from 2015 to 2022, totaling (5,264) Decisions.
- Setting keywords to facilitate search process.
- Indicating the name of the Department that delivered the Decision in addition to the Decision number and date of issue.
- Providing abstract of Decision outlining key points.
- Stating the legal grounds on which the committee relied for delivering its judgment.
- Stating the defenses and arguments of the case parties.
- Stating the committees' response to those defenses.
- Including the operative part of the Decision.
- Ensuring anonymity of litigants and other involved parties without affecting Decision.
- Checking Decisions to ensure they are free from any linguistic and spelling errors.
- Classifying Decisions objectively as appropriate and placing each Decisions under its relevant classification.



Before proceeding, we will define the defenses and their categories.

First: In Form: Definition of Defenses (Dofoo') Linguistically and Terminologically

Linguistically Plural of (Daf'), which means to push away or rebel something ⁽¹⁾

Definition of Defense (Daf') in legal contexts: "a statement or something similar made by the defendant to counter the plaintiff's claim."⁽²⁾

Defense in Law: Procedural Rights used by the judge or Defendant in response to the Plaintiff's claims, with the intention of referring the case to another judicial authority, suspending or terminating the proceedings ⁽³⁾.

Second: Categories of Defenses:

Defenses are divided into two main categories:

First: In Form: Formal Defenses: "the challenges made by the Defendant against the the formal procedures that the Plaintiff is required to perform before and during the pleading of the case to produce its effects", such as the defense of the lack of jurisdiction of the court hearing the case.⁽⁴⁾

Second: Substantiate Defense: The defense entered by the Defendant against the Plaintiff's claims, including to deny such claims or argue that they have expired.⁽⁵⁾

Defenses also vary in terms of continuity into **two types:**

First Type: Temporary Defenses: Time-barred defenses, which must be raised before any request or defense in the case; otherwise, they will be forfeited.⁽⁶⁾

Second Type: Absolute Defenses: Defenses that may be presented at any stage of litigation tha is not limited to any time or stage."⁽⁷⁾

⁽¹⁾ see Ibn Fāris, *Maqāyīs al-Lughā* (2/288), Ahmad ibn Faris al-Razi

⁽²⁾ see Hashiyat Ibn Abidin (2/457), "Mu'in al-Hukkam" by Al-Tarabulsi (p129), "Al-Kashif fi Sharh Nizam al-Marafa'at al-Shar'iya" (1/29), Abdullah Muhammad Al-Khunaine

⁽³⁾ Research entitled: *Al-Daf'u fi Nizam al-Mirafat al-Shar'iyyah*, Fahad bin Abdul Aziz al-Yahya, published in the Journal of Saudi Scientific Judicial Association "Qadaa", Issue No. 9, 1437 AH, (p. 16).

⁽⁴⁾ *Nazarīyyat al-da'wah bayn al-shari'ah al-Islamiyyah wa Qanun al-Morafat al-Madaniyyah wa al-Tojariyyah*. (576), Muhammad Naim Yassin.

⁽⁵⁾ see Ibid.

⁽⁶⁾ *Al-Kashf fi Sharh Nizam Al-Murafa'at Al-Shari'ah* (1/401).

⁽⁷⁾ see Ibid (1/401).



Formal Defenses



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No. (18)
Decision Date 23/02/1439 AH

Key words:

Customs - Smuggling - Penal - Failure to Serve Notice - Decision Delivered in absentia.

Abstract

The Importer requests to cancel the Decision no. (278) of 1437 AH delivered by Jeddah Primary Customs Committee on 16/08/1437 AH , which ruled to discharge: The establishment branch and customs broker in person from customs smuggling counts and to convict of customs smuggling, and order that the convict pay a fine twice the customs duties, and a fine in lieu of confiscation. The Appellate Committee found that the Importer was not duly notified to attend the sessions, Accordingly, it ruled to: Overturn the primary Decision and remand the case to the Primary Customs Committee in Jeddah to study it based on Article 57 of the Law of Civil Procedure.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 57 of the Law of Civil Procedures issued by Royal Decree No. (M/1) dated 22/01/1435 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

The Appellant argues that the customs authority did not notify the Importer, but rather another party was notified. The Appellant's attorney added that his client was no longer responsible for the air freight, but rathercompany was in charge, and therefore his client was not duly notified as per the law.

Committee's response to the argument:

Since notification is the means of notifying the Defendant of the case, and due process requires that the Defendant be duly notified of the case, and that he must appear in the hearing sessions based on Article 57 of the Law of Civil Procedures issued by Royal Decree No. (M/1) of 22/01/1435 AH; and Since it is established that the Appellant was not duly notified of the session, and in order for the Appellant not to miss any stage of litigation, this Committee decides to overturn the primary Decision and remand the case to the Primary Customs Committee to reconsider it, and that the Appellant be notified as per the rules for notifying opponents. Accordingly, the Appellate Committee ruled to:



Decision

First: In Form: Accept the appeal submitted by company against the Decision of the Jeddah Primary Customs Committee No. (278) of 1437 AH of 16/08/1437 AH, in form and on merits.

Second: Overturn the primary Decision, and remand the case to the Jeddah Primary Customs Committee in light of the findings of the Appellate Committee.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No. (112)
Decision Date 18/09/1439 AH

Key words:

Customs - Smuggling - Penal - Confiscation of consignment - Certificate of Origin - Remand the Case.

Abstract

The Importer requests to cancel the Decision of the Jeddah Primary Customs Committee No. (112) of 1439 AH, dated 04/06/1439 AH, which ruled to convictCompany in absentia of attempted customs smuggling, and order that it pays a customs fine and confiscate the consignment. the Appellate Committee found that the primary customs committee did not refer the device for testing by technical authorities to ensure its compliance with Saudi specifications and standards. Accordingly, this Committee ruled to: Overturn the primary Decision and to remand the case to the primary committee to determine it based on Article 60 of the Law of Civil Procedures.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 70.1 of Law of Civil Procedures promulgated by Royal Decree No. (M/1) of 22/01/1435 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

The device in issue is manufactured by the Korean company known for manufacturing medical devices. It operates at a frequency of (50/60) hertz, not (50) hertz, as confirmed by the attached letter submitted by the company.

The primary committee's conclusion that the device violates Saudi specifications and standards is not true, and the Committee should send it to the Saudi Standards, Metrology and Quality Organization to test the device.

Committee's response to the argument:

The Appellant's argument was based on the fact that the device in question does not violate the Saudi specifications and standards, and the primary Committee based its Decision on the existence of a violation of the Saudi specifications and standards, as there is a label on the device indicating that it operates at a frequency of (50/60) Hertz, and upon removing the label, another sticker was found below stating that the device operates at a frequency of (50) Hertz, and the primary customs Committee should have referred the device for testing by technical authorities



to verify if it complies with the Saudi specifications and standards, and the rulings must be based on certainty rather than assumptions and conjecture. Therefore, this Department ruled to:

Decision

First: In Form: Accept the appeal submitted by the legal representative ofCompany against Jeddah Primary Customs Committee's Decision No. (112) of 1439 AH dated 06/04/1439 AH in form and substance.

Second: Overturn the primary Decision, and remand the case to the primary Committee to determine it based on the grounds stated.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Objective Defenses - Administrative



Customs Appellate Committee in Riyadh

Decision No. (595)
Decision Date 05/04/1444 AH

Key words:

Customs - Administrative - Customs Duties - Collection - Customs Duties.

Abstract

The Importer requests to cancel the Decision of the Primary Customs Committee in Riyadh No. (372/3) of 1442 AH, which ruled to accept the objection in form and dismiss it on merits, and to confirm the soundness of the customs authority's procedure as to collecting customs duties. Since the Appellate Committee found that according to the collection Decision, there was part of the customs duties missed. Accordingly, the Appellate Committee ruled to: Uphold the primary Decision based on Article 147 of the Common Customs Law of GCC States.

Documents:

- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 147 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

The Appellant challenges the primary Decision in its conclusion in paragraph 2 of the Grounds, where the primary Committee stated that the exit of the goods from the customs office was to facilitate the procedures, meaning that the customs office did not duly check the goods, which is not true. The primary customs committee's conclusions were inaccurate for several reasons, including: The goods mentioned in the Decision were matched and inspected by employees, and were -finally and not temporarily- cleared. So, this cannot be to facilitate the procedures, because the final clearance doesn't apply to this case, but rather the temporary clearance, which is made under conditions set by HE the Minister.

- inadmissibility of what was stated in paragraph (3) of the Grounds of the appealed Decision, where the Committee positioned itself as an expert body by stating: "The sample image in the case file are hollow forms made of coated aluminum mixers, which are placed inside window glass for "decoration"". This action by the primary committee is contrary to its mandate and goes beyond the duties assigned thereto as a neutral judicial authority. We also did not know of the existence of these images and they were not presented to us during the trial. We delivered samples of the goods to the customs authority's representative and did not deliver photos to him, so where are these samples? We also delivered some samples to the primary committee to refute the Appellee's claims. However, the primary committee did not mention them in its Decision. The primary committee should have referred the sample to a neutral expert body and not encroach on its work, which is outside its jurisdiction.



- Paragraph (4) of the Grounds also contained invalid arguments. The Committee's response did not answer my defense, where I argued that the customs authority had exercised all its powers over the goods and carried out all its powers before the clearance. We refer to that defense to avoid repetition. Rather, the response of the primary committee was that it did not find any legal text that would restrict the customs' authority, which we do not contest. We only submitted that the customs exercised its powers and authorities for a valid classification and for inspection with the knowledge of the customs officers, and to make the classification accordingly.

Committee's response to the argument:

The appellate committee has the full authority to adopt the conclusions reached by the primary Decision, as long as it did not find in the Appellant's pleas and objections what deserved to be responded to other than those responded to by the primary Decision. This fact is not affected by the Appellant's request that an expert be appointed to identify the specifications of imported item, because this is a technical matter that the customs authority is qualified to do. Hence, the primary department's satisfaction with the identification of goods should not be affected by the objection and request for an expert by the Appellant. The committee determining the dispute is the one that estimates the need for an expert to reassure its conclusions, especially since its Decision included valid grounds to rely upon and is not contradicted by any document included in the case file. The Appellant's claim that the committee positioned itself as a technical body is refutable, as the committee made its Decision based on established conviction after thoroughly examining the dispute and the technical opinion regarding the nature of the imported goods and its classification, having thoroughly understood the facts of the case with insight and awareness of all its circumstances. Since it is found that the Appellant's appeal was not based on valid grounds; therefore, the Department decides to:

Decision

to

First: In Form: Accept in form the appeal submitted byCompany, C.R. No., against the Decision No. (3/482) of 1442 delivered by the Third Primary Customs Committee in Riyadh at the Saudi Customs Authority.

Second: Dismiss the appeal in substance, and uphold the primary Decision that validated the customs procedure by issuing Collection Decision No. of 1440 AH regarding the differences in duties against the Appellant company for the grounds stated in this Decision.



Customs - Administrative

Customs Appellate Committee in Riyadh

Decision No. (571)

Date of Decision 23/03/1444 AH

Key words:

Customs - Administrative - Customs Duties - Collection - Differences.

Abstract

The Importer requests to cancel the Decision of the Second Primary Customs Committee in Riyadh No. (400/3) of 1441 AH, which ruled to dismiss the objection submitted by the Importer, and confirm the customs procedure as to collecting customs duties. The Appellate Committee found that the appealed Decision is based on valid grounds. Therefore, it ruled to: Uphold the primary Decision based on Article 147 of the Common Customs Law of GCC States.

Documents:

- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 147 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

The Appellant entered a defense of defective reasoning, arguing that the customs authority delayed for more than five years in conducting the so-called subsequent audit. This prolonged period led the company to be assured of the validity of its procedures, as it paid the customs duties based on the globally recognized classification and brought in numerous consignment under that classification. The payment is considered exonerating. Additionally, the customs Decision subject to appeal did not clarify the difference between the classification to Item No..... and item No. In addition, the primary Committee didn't adopt the customs declarations of other countries despite being conclusive evidence that the product falls under item It is not sufficient for the primary committee to state that each country has its own system or method for filling out the customs declaration, as all countries rely on a common and standardized classification that cannot be violated under any circumstances. Furthermore, the classification set by customs authority contradicts the principles of interpreting the harmonized system (HS) as outlined in the International Convention on the Harmonized Commodity Description and Coding System ratified by Royal Decree No. (M/56) in 1407 AH.

Committee's response to the argument:

The Appellant's Arguments that the customs authority delayed for more than five years in conducting the subsequent audit is inadmissible, as the committee, having reviewed the differences statement and declarations attached to the case file, found that the prescribed period during which ZATCA is allowed to audit the customs declaration of the Appellant company has



not passed. The primary Decision is not also affected by the Appellant's argument that the classification and coding of imported goods is different from that adopted by several countries, because what matters is the nature of the imported goods and how it aligns with the correct classification adopted by each country in accordance with its customs law, especially since the Decision included grounds for the confusion in the classification considered by the Appellant compared to different customs systems. Accordingly, this Committee decided to:

Decision

First: In Form: Accept in form the Appeal filed by Company, C.R. No., against the Decision of the Second Primary Customs Committee in Riyadh No. (400/2) of 1441 AH.

Second: Dismiss the appeal on merits, and uphold the primary Decision.



Customs - Administrative

Customs Appellate Committee in Riyadh

Decision No. (177)

Decision Date 23/04/1443 AH

Key words:

Customs - Administrative - Customs Duties - Collection of duties.

Abstract

The Importer requests to cancel the Decision of the Second Primary Customs Committee in Riyadh No. (1216/2) of 1441 AH, which ruled that the customs procedure for collecting customs duties was valid. The Appellate Committee found that the dispute is in fact an objection to an administrative Decision issued by the Ministry of Industry and Mineral Resources to cancel or withdraw previous exemption Decisions, which means that the Customs Appellate Committee doesn't have jurisdiction over this dispute. Department ruled to Uphold the primary Decision based on Articles 147 and 176 of the Common Customs Law of GCC States.

Documents:

- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 147 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 176 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

The Appellant based its objection on grounds that the Saudi Customs Authority is not entitled to claim customs duties for the consignments on grounds that the consignments are subject to the Law of Protection and Promotion of National Industries and the Unified Industrial Regulatory Law of GCC States, and is not subject to the Common Customs Law of GCC States, in addition to the misapplication of the relevant laws and regulations that accompanied the study and consideration of the case, which are summarized as follows:

1. The report of the General Administration of Audit and the primary Decision under appeal included contradictions and errors in the recounting the case facts, including: Rejecting the request for exemption from customs duties on the Company's imports for 1437 for ineligibility for the exemption, which is not valid, as the company obtained the competent authority's approval for the exemption request of 1437 AH by Decision No. ... dated ../../... After completing the request requirements that would entitle it to the exemption, the Company submitted a request to add a number of raw materials to the last exemption Decision, but its request was dismissed.
2. The Company obtained the first exemption for its imports by Decision No. dated ../../..., and obtained the second exemption by Decision No. dated ../../..., and then obtained the last exemption by Decision No. dated ../../... after having met the requirements of the



competent authority, especially since obtaining the exemption goes through stages that make it impossible for the company to obtain approval without the competent authority verifying that all conditions are met.

3. Article 5 of the Law of Protection and Promotion of National Industries provided that raw and semi-manufactured materials, bags, boxes and packaging cylinders necessary for industrial establishments are exempted from customs duties, provided that they do not have an existing and sufficient counterpart in the Kingdom, which is determined by a Decision from the Minister of Commerce and Industry based on the recommendation of the Industrial Technical Office at the Ministry. Article 11 of the same Law also provided that any establishment that violates the provisions of this Law shall be deprived of the benefits stipulated therein, and the deprivation shall be by a Decision from the Council of Ministers based on a proposal from the Minister of Commerce and Industry.
4. Article 17 of the Unified Industrial Regulatory Law of GCC States stipulates that the Minister or his authorized representative shall take appropriate actions for granting all or some of the following exemptions to the industrial project: Full or partial exemption from the customs duties imposed on the project's imports in accordance with the agreed "GCC Controls for the Exemption of Industry Inputs. Moreover, Article 23.5 of the Law stipulates that "the owner of the industrial project shall: ...Use the machinery, parts and exempt raw materials solely for the purposes for which exemption was granted and keep records of such materials". Article 28 also provided that "The Minister or his authorized representative may order administrative penalties, including the closure of the project, to be taken against the violating industrial project as set forth in the Implementing Regulation". In addition, Article 32 of the same Law provided that "the Owner of the industrial project may appeal before the competent court against such administrative judgments."
5. The competent authority did not issue a Decision from an authorized person to the Company canceling the exemption Decision, so that the Company can take the necessary action in this regard as per the requirements for appealing an administrative Decision before the competent judicial authorities.
6. Rather, the Exemption Requests Reviewing Committee only issued a recommendation not a Decision, which was confirmed by the Saudi Customs in its report, and the Saudi Customs should have dealt with that matter in this way, and should have audited the Company's documents, invoices and sales for verification. It is worth noting that the General Administration of Audit visited the Company on .../.../... and audited its imports.
7. The last consignment imported by the company in 1437 AH was under Import Declaration No. dated .../.../..., which is (cold drawn pipes), and the first consignment in 1438 AH was under Import Declaration No. dated .../.../..., which are (cold drawn pipes). So, it is normal that the members of the Exemption Requests Review Committee do not find large quantities in the Company's factory due to the lack of imports. The factory imports raw materials and manufactures based on orders only due to market conditions.
8. The Saudi Customs Authority, represented by the General Administration of Auditing, stated that import declaration more than five years old from the date of issuance of the collection Decision are subject to the provisions of Articles 142, 143 and 145 according to the Common Customs Law of GCC States related to customs smuggling or attempted smuggling, and Article 176.1 of the Law related to the statute of limitations in customs smuggling cases, which means that the Saudi Customs is not entitled to claim the customs duties in its collection Decision.
9. The Committee was wrong in characterizing the incident, where it considered it a violation of customs procedures and did not clarify the type of violation and the applicable penalty. It is noteworthy that the prescription period stipulated in paragraph (a/2) of Article 176 of the Common Customs Law relates to the right of Customs Authority to investigate violations and impose the applicable penalties, and not to collect customs duties.



10. Article 99 of the Common Customs Law of GCC States provides that “Imports of the diplomatic corps, consulates, international organizations and the members of the diplomatic and consular corps accredited by the government shall be exempted from customs taxes “ duties “ on reciprocity basis according to the international agreements , laws and orders in force”. Moreover, Article 104 of the same law stipulates that “Imports of the Philanthropic Societies “Charities” shall be exempted from customs taxes “duties” according to the conditions and controls set forth in the Rules of Implementation”.
11. In addition, the exemptions granted to the factory cannot be blocked for periods prior to the visit of the two members of the exemption team made on .../.../... because these are irrevocable financial Decisions. The results were communicated to the customs authority via internal referral letter number dated .../.../..., and were approved by HE the Director General of Customs Authority. On those grounds, the industrial exemption was withheld from the company's imports the "incoming consignments" based on the Letter No..... Dated ../../. of the Director of the Industrial Exemptions Department at the Ministry of Energy, dated ../../. addressed to the Director of the Customs Exemptions Department, and the visit report issued by the members of the Exemption Requests Review Committee at the Ministry of Energy, Industry and Mineral Resources "...". The term "incoming consignments" means consignments that will arrive in the future. The law didn't provide that the exemption be applied on consignments that have been received before the visit, despite our reservations about what occurred during the visit.
12. in the results of the subsequent customs audit, it was stated that... Accordingly, the results of the subsequent customs audit of the Company's import declaration prove that it was not true thatCompany used the materials covered by the exemption for a purpose other than the purpose for which they were imported, or exchanged, sold, or disposed of them without the approval of the Customs Authority and that it paid the "customs duties" applicable to them. It is contrary to the law that the subsequent customs audits be based on the use of exempted materials for a purpose other than their intended purpose or the purpose the were imported for during a visit that lasted minutes (according to the company) and previous exemptions be canceled, as the timing of the visit was at the time of using the imported materials.
13. Article 29.3 of the Implementing regulations of the Common Customs Law of GCC States stipulates that a fine of no more than twice the customs duties and no less than the same shall be imposed for the violation of using exempted materials for a purpose other than the purpose for which they were imported, or exchanging, selling, or disposing of them without the approval of the Customs Authority and paying the customs duties applicable to them as per Articles (99, 100, 104) of the Law and the provisions contained in these Regulations. Thus, if we assume, for the sake of argument despite my disagreement, that the Company disposed of the imported raw materials for a purpose other than what they were imported for, then the Saudi Customs Authority and the customs committees do not have jurisdiction to adjudicate the violation and impose the corresponding penalty.
14. During the visit, the Company submitted (30) invoices, including some invoice pertaining to the factory, which were submitted to the Ministry of Industry at its request proving that the Company did not use the raw materials in manufacturing.
15. The factory was not informed of the results of the visit save for the suspension of the release of its consignments, where it realized that the reason was the issuance of a collection Decision. Therefore, an objection was submitted to the collection Decision by Letter No. ... dated ../../. which included "... **First: In Form:** It was stated in the statement of customs differences attached to the Decision that we had previously been granted an exemption by exemption Decision No. ... dated .../.../..., and exemption Decision No. ..., dated .../.../..., and exemption Decision No. ..., Dated .../.../..., to exempt our needs for raw materials, which are the materials mentioned in those difference statements, which means that we obtained a ministerial Decision exempting those materials. **Second:** It was also stated in the statement of differences that the exemption Decision was invalid. We hope to be provided with the grounds that invalidates the exemption,



especially since the exemption records of those materials were approved by the exemption committee, including the representative of the Customs Authority.

16.Company has several associates including the factory, and they are adjacent to each other. So, it is normal that its warehouses are used collectively. Unfortunately, and because the visit team did not meet with the factory employees, they obtained incomplete information, including information related to the warehouses, which include two warehouses where imports are stored, whether raw or manufactured, and they belong to the factory owners. Those two warehouses haven't been visited by the Committee. Additionally, there is no legal barrier to having a warehouse in the factory, especially since the visit was to the three factories that have warehouses, but it was satisfied with one factory. The area of that factory amounting to 8,865 m2 is part of a plot of land with an area of 121,609 ms, owned byCompany in In..... governorate. Warehouse No. (1), and next to that plot there is another plot of land forCompany with an area of 138,931 m2 rented from the Saudi Authority for Industrial Cities and Technology Zones.
17. What confirms the invalidity of the collection Decision is the visit that was later conducted by the subsequent audit team pursuant to the Audit Department's letter No. ... dated .../.../....., during which they requested they requested information related to 28 declarations (attached as Table 3). After that, they visitedCompany and its affiliates, including the factory, where they had no observations. This was a year ago. Among the declarations, in the required table, was the customs declaration No. ... dated .../.../..., and there were no observations regarding that declaration or any other declarations. It was the same declaration that was included in the customs declarations attached to the collection Decision, and if there was any problem with it, the team would have noted it and the rest of the declaration examined through the system of Company and the Factory system, what are a large part of the customs declarations attached to the collection Decision, which confirms the invalidity of the collection Decision. The declarations from 2015-2019 were found to be compliant with the customs procedures and were cleared by the team.
18. The time of the visit made by the Industrial Exemptions Committee, based on which the exemption request submitted by the factory was rejected was on .../.../..... As everyone knows, that period witnessed a significant decline in the local market due to the crisis experienced by the contracting sector at that time, and due to the decline in demand, the factory was only importing small quantities of raw materials, as shown in the table. By referring to the customs declarations related to the imported raw materials during the three months preceding the date of visit, it was found that the raw materials imported totaled 876 tons during the period from 15/08/2016 to 15/11/2016 compared to 8217 tons for the same period of the previous year, noting that the visit made by the Committee was at the end of the year, and it is normal that there were not large quantities of materials at the factory during that time.
19. Rulings should be based on certainty and conviction, not on conjecture and speculation. The Committee should express its opinion during the visit, and how can it assert that what was imported from 1432 to 1438 AH was not used? This contradicts the legal principle that "the burden of proof lies with the claimant". Therefore, the cancellation of the exemptions for the years specified in the collection Decision is not supported by law. Certainty can only be overturned by certainty and conclusive evidence, which has not been provided. Instead, it relied on an assumption based on a brief visit, as stated by the factory.
Based on the above, it is established that the collection Decision delivered against Company is invalid and it was delivered based on assumptions that violate the rules of evidence, especially since it was based on a visit that did not take into account the usual arrangements as was done in the subsequent visit on 20/01/2020.



ZATCA's Defenses

1. The Customs Authority received a letter from the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) No. dated 29/02/1438 AH accompanied by the report of the visit tofactory by members of the Exemption Requests Review Committee with the aim of ensuring that the factory's actual production matches the licensed products, the extent of use of materials that were previously exempted, as well as the materials required to be exempted in the licensed products. The visit report concluded as follows:
 - The factory submitted a request to the Exemption Requests Review Committee at the Ministry of Industry and Mineral Resources (formerly), No. (...) Dated .././... "Reconsideration under study" including (flat iron bars, iron bridges, stainless steel plates, copper plates, and aluminum coils).
 - The factory is licensed under industrial license No. ... Dated .././... amending license ... No. (...). Dated .././... for producing (115,000) tons of advertising and signage board structures, (40,000) tons of fire extinguisher boxes and reels, (20,000) tons of connections (flanges) for pipes made of iron or steel, and (70,000) tons of furniture, cabinets, and metal shelves.
 - The exemption Decisions delivered for the factory (raw materials) were Decision No. ... and dated .././..., No.... and dated .././..., No.... Dated .././...
 - The factory was visited on/./..., It was plain that
 - a. The factory does not produce the products licensed under the industrial license.
 - b. There is no warehouse for materials or final products, but rather raw materials and final products are stored in the yard located in the factory.
 - c. The factory does not have machines for straightening iron rolls and does not have iron rolls, and when asked about iron rolls, they stated that they will be received by the General Administration and are not used in production at the factory.
 - d. The actual products at the factory are tanks, gypsum frames, metal covers, perforation and metal shaping.
 - e. The factory produces unlicensed products in small quantities and does not use any of the exempted goods except for iron sheets.
 - Based on the findings during the field visit, the following recommendations were made:
 - Reject the exemption request "reconsideration" of Decision No. ... Dated .././... for lack of eligibility for exemption.
 - Address the Customs Authority to stay the exemption Decision delivered to the Factory under No././... in addition to all previous exemption Decisions and to recover customs duties, with a study of the consequences according to the applicable laws.
 - Address the Licensing and Follow-up Department at the Ministry of Energy, Industry and Mineral Resources to direct the factory to adhere to the license and follow up on it, and to report on the actions taken in this regard.
 - The letter of the Industrial Exemptions Department at the Ministry of Energy and Mineral Resources (formerly) No. Dated .././... included instructions to take the necessary actions by the Customs Authority regarding the recommendations.
2. The Customs Authority reviewed the customs declarations received in the name of the factory, and issued Collection Decision No. ... for the year 1439 AH based on the letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) referred to.
3. The Company's representative listed in his statement the legal texts for exempting raw materials in the Law of Protection and Promotion of National Industries and the Unified Industrial Organization Law and the procedures that must be taken to grant this exemption and object to the Decisions. We respond to that by saying that these paragraphs are not related to the subject of the Decision in question. It is up to the Company to file an objection to the negative Decision



delivered by the Ministry of Industry and Mineral Resources not to accept the exemption of its imports.

4. The Company's representative stated in his statement that what was delivered by the Exemption Requests Review Committee was no more than a recommendation and not a Decision, and that the Customs Authority should have audited the Company's documents, invoices and sales to verify these documents, and that the General Administration of Customs Audit visited the Company on and audited its imports. We respond to that by saying that the Customs Authority reviewed the customs declarations received by the factory and delivered Collection Decision No. ... for the year 1439 AH, based on the afore-mentioned letter of the Industrial Exemptions Department at the Ministry of Energy and Mineral Resources (formerly). The visit made by the General Administration of Customs Audit to the Company on has no relation to the subject of the appealed Decision. It was one of the visits made by the General Administration of Customs Audit to exercise its original jurisdiction in subsequent auditing after clearing consignments at the customs ports.
5. The Company's representative stated in his statement that the last consignment imported by the Company in 1437 AH was on .././....., and the first consignment imported in 1438 was on .././....., which was cold drawn pipes. the exemption requests review committee were not solely related to quantities. So, it is normal that the members of the Exemption Application Review committee will not find large quantities in the Company's factory due to the limited imports. We respond to that by indicating that the observations on the factory when the members of the Exemption Requests Review Committee visited are not only related to quantities, as it was also found that the factory does not have machines for straightening iron rolls, and it does not have iron rolls. When asked about the iron rolls, they stated that they are received by the General Administration and are not used in production at the factory, and that the actual products at the factory are tanks, gypsum frames, metal covers, perforation and metal shaping.
6. The Company's representative stated in his statement that the General Administration of Customs Audit believes that import declarations that are more than five years old from the date of issuance of the collection Decision are subject to the provisions of Articles (145, 143, 142) and Article (176/1) of the same Law. The Company's representative believes that the General Department of Customs Audit confirmed that it is not entitled to claim such amounts in collection Decision, and that the Primary Customs Committee erred in characterizing incident, as it considered it a violation of customs procedures and did not specify type of violation and penalty applicable to such violation. We respond by saying that the Customs Authority reviewed the customs declarations received in the name of factory and delivered Collection Decision No.... for the year 1439 AH based on the above-mentioned letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources. Moreover, the customs duties are a debt owed to the state, according to the State Revenue Law, which defines debt in Article 1 as any money owed to the state. In addition, Article (19) of the same Law stipulates "Debts due to the State are privileged debts and are not subject to the statute of limitations". The Primary Customs Committee also considered the Case as an objection by the Company to collection Decision, and not as Company's representative stated that it is a violation of customs procedures.
7. The Company's representative stated in his statement that exemptions granted to the factory cannot be withheld for periods preceding the visit of the exemption team members to the factory on .././....., and that the term "consignments" mentioned in the letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources means consignments that will arrive in the future, and we respond to that by saying that the letter of the Exemptions Department at the Ministry of Energy, Industry and Mineral Resources included staying the exemption Decision delivered to the factory bearing No.... .././.. as well as all previous exemption Decisions and recovering the related customs duties with a study of the consequences according to the applicable laws and not as Company's representative stated.



8. The Company's representative stated in paragraph (13) of item (Third) that if it is assumed, for the sake of argument, that the Company has disposed of the imported raw materials exempted under the industrial exemption Decisions for purposes other than those for which they were imported, then the Customs Authority and the customs committees are not competent to consider the violation and suspend the applicable penalty . We respond to that with what was previously explained in more than one point that the Customs Authority reviewed the customs declarations received in the name of the factory and delivered a collection Decision regarding it for the year 1439 AH in accordance with Article (147) of the Common Customs Law, based on the letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources. The Primary Customs Committee considered Company's objection to the collection Decision that falls within its jurisdiction as stipulated in Article (162) of the Unified Customs Law, and that the Decision, subject matter of objection, is related to a collection Decision, and not as Company's representative stated that it is a violation of customs procedures.
9. The Company's representative stated in his statement that (30) invoices were submitted, including those related to the factory, to the Ministry of Industry and Mineral Resources upon its request, proving the proper use of raw materials in manufacturing. We respond to that by saying that the reason for requesting them by the Ministry of Energy, Industry and Mineral Resources was not clarified, and whether they were related to the subject matter of the Decision in dispute.
10. The Company's representative stated in his statement that the Company had been granted exemption Decisions, which means that the Company had obtained a ministerial Decision to exempt those materials, and that he stated in the statement of differences that the exemption Decision was invalid, and requested to be provided with the grounds for the invalidity of the exemption, especially since the exemption minutes for those materials were approved by the exemption committee, including a representative of the Customs Authority. We respond to that by saying that the incident relates to the non-use of the materials exempted under the exemption Decisions for a purpose other than that for which they were imported; and therefore the exemption does not apply to them according to the report of the committee that visited the Company.
11. The Company's representative stated in his statement that the Company has several affiliates, and that the visit team did not meet with the factory officials, and gathered incomplete information, including information related to warehouses. We respond to that by saying that the visit was to the Company's factory, and it was found from the actual inspection of the production lines that the factory does not have machines for straightening iron rolls, and does not have iron rolls. Upon asking about the iron rolls, we were told that they are received by the General Administration, and are not used in production at the factory, which proves that the products exempted under the exemption Decisions are not used for the purpose for which they were imported.
12. The Company's representative stated in his statement that what confirms the invalidity of collection Decision is the visit that was made later by the subsequent audit team ... etc. We respond to that by saying that the visit made by the General Administration of Customs Audit toCompany on .././.. is not related to the subject matter of the Decision, but rather one of the visits made by the General Administration of Customs Audit to exercise its original jurisdiction in subsequent audit after clearing consignments from customs ports, and that what the Company's representative mentioned that there was one customs declaration with no comments among the customs declarations related to the contested Decision is irrelevant to this subject. The audit here is on the names of the items and their conformity with the exemption Decision, and not on what was used for a purpose other than that for which they were imported.
13. The Company's representative stated in his statement that at the time of the visit made by the committee, the local market was witnessing a significant decline, due to the crisis that the contracting sector had gone through ... etc. We respond to that by saying that the visit and



inspection of production lines revealed that the factory does not have machines for straightening iron rolls, and does not have iron rolls. Upon asking about the iron rolls, we were told that they are received by the General Administration and are not used in production at the factory. This proves that the products exempted under the exemption Decision were not used for the purpose for which they were imported. Regardless the volume of imports that preceded the visit, it does not justify the lack of necessary machines for manufacturing raw products that were imported and subjected to industrial exemption on the basis that manufacturing operations will be carried out.

14. The Company's representative stated in his statement that the rulings must be based on certainty and conviction, and how can the formed committee be certain that what was imported from 1432 AH to 1438 AH was not used in manufacturing operations, and certainty is only invalidated by certainty ... etc. We respond by saying that the industrial exemption Decisions referred to and obtained by the Company are for a period of five years, and it was established that the Company's factory is not prepared to carry out manufacturing operations on the materials that were imported and subjected to industrial exemption that was granted to the Company on the basis that there are manufacturing operations on those imports, which is contrary to reality. The Company also did not provide evidence that it carried out manufacturing operations on its exempted imports under the aforementioned industrial exemption Decision.

Committee's response to the argument:

Since the dispute in this Case involves whether or not the Customs Authority is entitled to claim from Appellant, based on Collection Decision No. (...) for 1439, customs duties for consignments received by Appellant, for which exemption Decisions were delivered by the Ministry of Industry and Mineral Resources. The customs import declarations were subject to the exemption by the Ministry of Industry and Mineral Resources. The customs import declarations were 180 declarations received from Al-Batha port. The exemption was pursuant to the exemption Decisions delivered for the factory under No. ... and dated .../.../..., No.... and dated .../.../..., No.... ././.. delivered by the Ministry of Energy, Industry and Mineral Resources (formerly). Moreover, the Head of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) No././.. was sent to the Head of the Customs Exemptions Department, indicating that the Ministry has suspended all exemption Decisions delivered to the Appellant based on the findings detected during the visit. Therefore, the Customs Authority is only the party responsible for implementing the Decisions delivered by the competent authorities, and it has exercised its authority stipulated in Article (147) of the Common Customs Law to collect these customs duties. Since this dispute is centered around the extent to which the Ministry of Industry and Mineral Resources has the right to suspend the exemption Decisions delivered by it, which resulted in the Appellant requesting the return of those duties that were not paid based on those exemptions. This means that the dispute is an objection to an administrative Decision delivered by the Ministry of Industry and Mineral Resources, and accordingly, the Appellate Customs Committee is not competent to consider this objection, and it therefore concludes to dismiss the appeal on merits. As for the statute of limitations regarding these consignments, this case does not fall within the provisions of Article (176) of the Unified Customs Law, since the failure to collect customs duties was due to an exemption Decision delivered by a competent authority that withdrew it due to the violations found.

As for the Appellant's argument that the Decision issued by the Ministry of Industry and Mineral Resources was not delivered by the person authorized to cancel the exemption Decisions, and that it was merely a recommendation, this confirms what the Appellate Committee concluded that the dispute is in fact an objection to an administrative Decision delivered by the Ministry of Industry and Mineral Resources to cancel or withdraw previous exemption Decisions. As for the



defense that the letter was only a recommendation, the recommendation was delivered in a letter addressed to the authority responsible for customs duties (customs), which means that it is a Decision that has fulfilled the requirements for its existence, and that it was taken to be implemented by the customs authority to which it was addressed. If the Appellant argues that it was issued by a person with no authority, then this is an objection to an administrative Decision that the Appellate Customs Committee is not competent to determine. Accordingly, the Department decided to:

Decision

First: In Form: Accept in from the appeal filed by Company, C.R. No. (...), against Primary Customs Committee in Riyadh Decision No. (1216/2) for 1441 AH.

Second: Dismiss the appeal on merits and uphold the primary Decision.



Customs-Administrative

Customs Appellate Committee in Riyadh

Decision No. (619)

Decision Date 05/04/1444 AH

Key words:

Customs - Administrative - Customs duties - Collection - Medical solutions.

Abstract

The Importer requests annulling Third Primary Customs Committee in Riyadh Decision No. (399/3) for 1441, which dismissed the objection filed by the Importer and the validity of customs procedures in collecting customs duties. Since the Appellate Committee found that the Importer's procedure in clearing consignment in question was invalid. Therefore: Uphold the primary Decision based on Article 147 of the Common Customs Law of GCC States.

Documents:

- Article 1 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (27.3) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Article 57 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 116 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 147 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The primary Decision, in its ruling to uphold the duties stated in collection Decision, relied on the Decision prepared by Tariff and Studies Committee No. (...) Dated ../../...
- The aforementioned Decision of Tariff and Studies Committee is the basis upon which Appellant relies in its objection to the variances calculated in the collection Decision, as it states: "Import Declaration No. (...) Dated ../../... and No. (...) dated ../../... are medical solutions subject to sub-item No. (...) - exemption from customs duties.
- It turned out from Tariff and Studies Committee Decision No. (...) Dated ../../... that, in specifying a sample of the import declarations for medical solutions exempted from customs duties, and stating import declaration No. (...) dated ../../..., which is the same import declaration listed in the schedule of variances attached to Collection Decision No. (...) titled "gvr. Blact". If the Decision of Tariff and Studies Committee ruled to exempt the item (medical solutions) and cited one of the import declarations as a sample to indicate it, how can the



collection Decision justify calculating the variance for this item from the same declaration mentioned in the Decision of Tariff and Studies Committee?

- After the Company presented its defense before the Primary Committee, the Committee presented our defense to the General Department of Audit that answered by stating: “The competent authority authorized to classify the items is the Customs Tariff Department, which stated in its Decision No. (...) Dated ../../... after reviewing the submitted catalogs sent by the Company for the imported items that the item (...) is classified as supplies used to clean dialysis machines and is subject to item No. (...) with a customs duty of (5%), and is not subject to sub-item No. (...) as they are considered supplies used to clean dialysis machines, even if they are in the form of solutions. As for the solutions that are subject to item No. (...), as per Company’s opinion, they are the solutions classified as medicines prepared for use in therapeutic or preventive medicine, while the item (...) is sodium bicarbonate, which is a medical solution used to sterilize artificial kidney dialysis machine and is not a therapeutic solution”.
- The aforementioned answer by the General Department of Audit, in addition to its apparent substantive error in collecting what was stated in the Decision of Tariff and Studies Committee, added another misclassification of the item in question as a supply for cleaning dialysis machines, which is a groundless description.
- If the General Department of Audit acknowledges that the authority to classify goods is Tariff and Studies Department, then Tariff and Studies Committee, through its Decision No. (...) Dated ../../... ruled that Import Declaration No. (...) Dated ../../... is for medical solutions and is subject to item (...) (exemption). This declaration was included in the schedule of variances attached to Collection Decision No. (15) titled (Blacrt). This conclusively confirms the validity of Company’s procedure in exempting the item and that its actual description is (medical solutions Blacrt), and confirms the invalidity of the variances calculated for (24) import declarations included in the collection Decision. This includes Decisions and explanations of the Harmonized System Committee of the World Customs Organization, which prove the actual and true description of the item in question as (medical solutions) subject to customs tariff item (...) exempted from duties.
- ZATCA arguments presented in its memorandum does not undermine the validity and merit of Company’s objection, especially since Tariff and Studies Committee Decision No. (...) Dated ../../... had referred to Import Declaration No. (...) Dated ../../... as medical solutions and is subject to item No. (300490100000) (exemption). Therefore, how can the inclusion of this item and this declaration in the schedule of variances attached to Collection Decision No. (...) with the item name (Blacrt) be justified? Furthermore, the Company’s defense included the submission of an objective study supported by all scientific and regulatory justifications, including Decisions and explanations of the Harmonized System Committee of the World Customs Organization, which prove the actual and true description of the item in question as (medical solutions) subject to item (3004940900000) exempt from customs duties. ZATCA answer did not address this study despite of its importance and its reliance on significant grounds in the subject matter of objection.

ZATCA's Defenses

First: In Form: A shipment belonging to the Company was received, which was declared by the Company as consisting of several items. However, the Decision, subject matter of objection, included an item that violated the regulations, which was discovered after the General Department of Investigation studied and conducted a field visit to Company's premises. It was declared as (medical solutions) and was classified by the Company under customs item No. (...), which is an item exempted from duties. However, after auditing and referring to the relevant department, it turned out that the item, which is (24) customs declarations, is classified as supplies used to clean dialysis machines, even if they are in the form of solutions, and is subject to item



No. (...) customs duties of 5%. Regarding solutions that are subject to item No. (...), they are solutions classified as medicines prepared for use in therapeutic or preventive medicine. It turns out from the same that the item in question is a medical solution used to sterilize dialysis machines and not a therapeutic or preventive solution, according to the official statement of Customs Tariff Department in accordance with Harmonized System Convention ratified by Royal Decree No. (M/56) dated 19/10/1407 AH. This resulted in the loss of a portion of the customs duties to the state treasury and consequently, outstanding customs duty variances owed by the Company.

Second: Customs Authority has is entitled to refer to the involved persons regarding the consignments with outstanding variances in accordance with Article (127) of the Unified Customs Law.

Third: The Department is entitled to review and verify all that is submitted by importers and act accordingly in accordance with Articles (57) and (27.3) of the Unified Customs Law.

Committee's response to the argument:

The dispute between the parties involves Appellant Company's assertion that there is an error in classifying imported item as (bicarbonate) used for washing, whereas it is (medical solutions) subject to customs tariff item No. (200490900000) exempt from customs duties, according to a study issued by the Harmonized System Committee of the World Customs Organization. ZATCA, on the other hand, argues that the classification made by Tariff and Studies Committee of the Customs Authority under its Decision No. (...) dated .../.../... is correct, which stipulates subjecting the items mentioned to their specific tariff headings as stated in the Decision, requiring collection of the outstanding customs duty variances. The Importing Company's declaration of these items as exempt in some import declarations and as subject to customs duties in others indicates its uncertainty and lack of knowledge of the correct item under which the imported items should be classified. It also indicates the invalidity of procedure it followed in clearing the consignment in question. Therefore, ZATCA rectification by requesting the outstanding customs duty variances for the actual nature of the imported items is a correct course of action, considering that the phrase "medical solutions" does not change the actual nature of the imported items as they relate to therapeutic solutions. The proper conduct of the Importer requires it to give due care to the clearance procedures to determine the actual nature of the imported items and their correct classification, especially since the Company is specialized in dealing with such imported items and knows the difference between them and what it entails in determining the correct item upon completing their customs procedures. Therefore, the Committee upholds the primary Decision in all its rulings. The arguments raised by Appellant's attorney that the items in question fall under item (300490900000) exempt from customs duties, based on a study by the Harmonized System Committee of the World Customs Organization, is not valid, because the relevant authority is Tariff and Studies Committee of the Customs Authority, and their Decision regarding the consignment in question is the basis for classification, and the existence of an exemption for medical solutions that fall under the description of therapeutic solutions, which the imported items have not been proven to relate to, does not negate this.

The clerical error in writing collection number in the primary Decision, which was replaced with the correct number, does not affect the outcome of that Decision. Therefore, the Committee decided



Decision

First: In Form: Accept the appeal filed by (...) Company, C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (399/3) for 1441.

Second: On merits: Dismiss the appeal and uphold the primary Decision in all its rulings regarding the collection of customs duties under Customs Authority Collection Decision No. (...) for 1440 in the amount of (SAR 567,206) five hundred sixty-seven thousand two hundred six Riyals for the customs declarations in question for grounds stated herein.

The background of the slide features a repeating pattern of stylized, overlapping leaf or petal shapes. These shapes are formed by thin, light gray lines and are arranged in a way that creates a continuous, tessellated effect across the entire surface. The pattern is symmetrical and has a delicate, organic feel.

Penal - Customs Duties



Customs Appellate Committee in Riyadh

Decision No. (594)
Decision Date 05/04/1444 AH

Key words:

Customs - Penal - Customs Duties - Import Declaration - Raw Tobacco - Accepting in Form - Upholding Primary Decision

Abstract

The Importer requests annulling Primary Customs Committee in Al-Haditha Decision No. (95) for 1440 AH, which ruled to convict the Importer in presentia of customs smuggling, oblige him to pay a customs fine, and confiscate the consignment. Since the Appellate Committee found that the arguments raised by Appellant do not affect the validity of primary Decision outcome. Uphold the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.
- Article (25) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.
- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.
- Paragraph (5,4) of Article (145) of the Uniform Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- I imported tobacco through Jordan, and the Jordanian exporter is (...) Company, and I demanded French tobacco from them. Upon the arrival of the consignment, it turned out that a sticker was placed stating that the shipment was of French origin, whereas it bears an indication and Polish manufacturing. Upon communicating with (...) Company, the Company stated that this was an error on their part and that they placed this sticker to clarify the reality of the consignment, and that the Company acknowledges this error and acknowledges the validity of ZATCA procedure, and that this is considered fraud in the origin indication, but the responsible party is the Jordanian exporter.

Committee's response to the argument:

It is not affected by merely arguing that the party responsible for the existence of the origin indication statement in its contradiction to its subject on the imported raw tobacco product is the party from which it was imported, which is Jordan, because the Importer can inspect the imported items before starting the process of completing consignment procedures, and the



Importer is to claim from the exporter the damage caused to him as a result of importing goods contrary to what was agreed upon between them. This does not negate what the Importer intends to do with the imported material when it is introduced into the commercial transaction circle. Therefore, Appellant's Arguments do not affect the validity of primary Decision outcome and there is no reason to amend or annul it. Therefore, the Committee decided to:

Decision

First: In Form: Accept in form the appeal filed by (...), holder of National ID No. (...), owner of (...) Enterprise, C.R. No. (...), against First Primary Customs Committee in Riyadh Decision No. (95) of 1443 AH.

Second: Uphold Primary Customs Committee in Al-Haditha Decision No. (95) of 1443 AH against Appellant regarding conviction for customs smuggling, confiscation, and customs fine penalty.



Customs Appellate Committee in Riyadh

Decision No. (535)
Decision Date 12/07/1443 AH

Key words:

Customs - Smuggling - Penal - Conviction - In Presentia - Customs Duties - Molasses Flavor - Confiscation of Means of Transport - Accepted in Form - Upholding Decision.

Abstract

The Importer requests annulling Primary Customs Committee in Riyadh Decision No. (353/2) of 1442 AH, which ruled to convict the Importer, oblige him to pay a customs fine, confiscate the seized items, subject matter of the Case and confiscate the means of transport. Since the Appellate Committee found that concealing smuggled goods is evidence of knowledge and intent to import the seized items in an illegal manner without declaring them. Therefore: Uphold the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Provisions of Article (142) of the Unified Customs Law, Implementing Regulations and Explanatory Note thereof.

Defenses and Arguments of the Parties

Appellant's Arguments

- I was unaware of the instructions regarding truck transit through Al-Khafji Border Port and that this is my first encounter with Saudi customs. Therefore, I request the cancellation of paragraphs (1), (2) and (4) of the Decision related to the severity of customs penalty and the confiscation of truck.

Committee's response to the argument:

Since such argument does not affect the validity of the conclusion reached in the Decision against him, and the claim of ignorance of customs laws does not undermine this outcome, given that the concealment of smuggled goods is evidence of knowledge and intent to unlawfully import the seized items without declaring the same. This constitutes grounds for a customs smuggling conviction. Accordingly, the driver's failure to declare the goods is deemed an act of customs smuggling. Therefore, the Committee decided as follows:



Decision

First: In Form: Accept the appeal in form filed by (...), Syrian national, holder of Passport No. (...), against Primary Decision No. (...) for 1442 AH issued by the Second Primary Customs Committee in Riyadh.

Second: On merits: Dismiss the appeal on merits and uphold the primary Decision in its entirety.



Customs Appellate Committee in Riyadh

Decision No. (562)

Decision Date 17/03/1444 AH

Key words:

Customs - Smuggling - Penal - Conviction - In Presentia - Customs Duties - Tobacco - Confiscation of Seized Goods - Customs Zone - Accepting in Form - Dismissing on Merits.

Abstract

The Importer requests annulling Second Primary Committee in Riyadh Decision No. (1853/2) for 1442 AH, which ruled in presentia to convict the importer of customs smuggling and oblige him to pay a customs fine and confiscation of the seized goods. Since the Appellate Committee found that tobacco is a restricted commodity that requires the approval of the competent authorities for its clearance, and therefore its seizure without providing proof of its legal import is considered customs smuggling. Department ruled to Uphold the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Provisions of Article (142) of the Unified Customs Law, Implementing Regulations and Explanatory Note thereof.

Defenses and Arguments of the Parties

Appellant's Arguments

- The conviction of customs smuggling is an error in the application of the law, as the provisions of Articles (142 and 143) of the Unified Customs Law do not apply to him. He did not commit smuggling, was outside the customs zone, and the tobacco is already available in the markets. Anyone can go to Khamis Mushait market and buy tobacco. He did not bring it into the country, was not arrested while trying to smuggle it out of the country, and his purpose was to make a profit. The paragraphs of Article (142) define smuggling as bringing or attempting to bring goods into the country or taking them out. In addition, Article (143), Paragraph (14), which clarifies customs smuggling, does not apply to him at all in any of its paragraphs. So how can he be convicted of customs smuggling and then sentenced to a heavy fine that he cannot bear?" Appellant also states that the fine is very high, his income does not allow him to pay it, and his financial situation is poor. Therefore, he requests annulling the primary Decision.

Committee's response to the argument:

Appellant did not provide evidence to substantiate his claim that he purchased the seized items from inside the country for the purpose of selling them, and did not provide any invoices to prove the same. Therefore, Appellant did not provide evidence to disprove the apparent fact that the seized items were not brought into the country legally, and they were



in his possession when they were seized. The Appellate Committee has determined that the defenses presented against the primary Decision do not impact its validity, as outlined above. This means that the primary Decision was correctly applied in accordance with the law. As such, the Appellate Customs Committee concluded that the defenses presented by Appellant did not include anything that changes Committee's conviction of the validity of the appealed primary Decision, and that there is no reason to amend or cancel it. Therefore, the Committee decided as follows:

Decision

First: In Form: Accept the appeal in form filed by (...), holder of National ID No. (...), against Primary Decision No. (...). for 1442 AH issued by the Second Primary Customs Committee in Riyadh.

Second: Dismiss the appeal on merits and uphold the primary Decision according to reasons and grounds stated herein.

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Restricted Goods- Petroleum Derivatives



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (87)

Decision Date 15/07/1439 AH

Key words:

Customs - Smuggling - Penal - Petroleum Derivatives - Engine Coolant

Abstract

The Importer requests annulling Primary Customs Committee in Halat Ammar Decision No.(23) for 1437, which convicted in presentia of attempting to commit customs smuggling, and ordered him to pay customs penalty. Since the Appellate Committee has established the attempt to export restricted goods with the intent to circumvent prohibition and restriction provisions. Therefore: Uphold the primary Decision in (Second) and amend (First) thereof to be read as follows: “Convict ..., the merchant, ..., the owner of ... Enterprise, in presentia of customs smuggling” in accordance with Article 142 and (143.11) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (11.143) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The discrepancy in laboratory results for the conformity test of sample taken from the exported substance, where the percentages ranged between (35%) and (30%), suggests a flaw in the laboratory to which the sample was referred. In addition, why was more than one laboratory used in other cases?

Committee's response to the argument:

Since Appellant's appeal was based on the discrepancy in laboratory test results for the collected samples and the claim that there was a flaw in the laboratories to which the samples were referred. Since the Committee found that Appellant attempted to export a consignment of diesel outside the Kingdom of Saudi Arabia through Halat Ammar Customs in an unlawful manner by declaring consignment as “engine coolant and rust inhibitor” under Export Declaration No. (...) dated ... /... /... Furthermore, laboratory analysis confirmed that the samples contained diesel at concentrations ranging between (35%) and (30%), contrary to what was declared in the documents submitted to customs. Since diesel is among the items restricted from export outside the Kingdom except with the approval of the Ministry of Petroleum and Mineral Resources and Saudi Aramco, after collecting price difference between local and international rates. Since Appellant attempted to export restricted substances with the intent of circumventing prohibition



and restriction provisions stipulated in the Unified Customs Law. Since this act constitutes a form of customs smuggling pursuant to Articles (142) and (143.11) of the Unified Customs Law. Since the conviction Decision was not directed to the merchant personally but rather to the Enterprise, despite the fact there is not legal personality separate from that of its owner. As for Appellant's argument regarding the discrepancy in laboratory test results, it is established that samples are taken from multiple barrels, which naturally leads to variations in diesel percentage. Therefore, this Committee has consistently ruled in favor of adopting lower percentage as the more cautious and legally sound approach. Therefore, the Committee decided as follows:

Decision

First: In Form: Accept the appeal filed by the merchant (...) against Primary Customs Committee Decision No. (23) for 1438 dated 15/03/1438 AH in form and dismiss it on merits.

Second: Uphold the primary Decision in (Second) and amend (First) thereof to be read as follows: "Convict ..., the merchant, ..., the owner of ... in presentia of customs smuggling.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Riyadh

Decision No.: (170)
Decision Date 17/04/1443 AH

Key words:

Customs - Smuggling - Penal - Petroleum Derivatives - Aromatic Substances.

Abstract

The Importer requests annulling Primary Customs Committee in Al-Haditha Decision No. (4) for 1440, which ruled conviction in presentia for attempting to commit the offense of customs smuggling, imposing customs penalty and paying a fine in lieu of confiscation. Since the Appellate Committee found that the laboratory is not among the accredited laboratories for testing consignment samples and that the laboratory to which the samples were sent for analysis has an interest in determining the nature of tested substance. Therefore, the Committee decided as follows: Uphold the primary Decision in its entirety in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The Company did not commit smuggling of the substances alleged to be kerosene and petroleum derivatives, on the grounds that the laboratory results were issued by (...) Company, which has a vested interest in determining laboratory result, and that its laboratories are not among the accredited ones authorized to provide results in light of the Ministry of Commerce's instructions in accordance with Royal Orders issued on this matter, specifically Royal Order No. (3559/MB) dated 25/04/1429 AH.

Committee's response to the argument:

Since the consignment should not have been released from Al-Haditha Port in the first place, as the circulars regarding the export of petroleum products clearly state that such exports are not permitted through Al-Haditha Port and are restricted to specific ports that do not include the mentioned one in accordance with Circular No. (388/43/M) dated 09/05/1429 AH. Furthermore, the Royal Order No. (2559/MB) dated 25/04/1429 AH stipulates that the Saudi Standards, Metrology and Quality Organization (SASO) shall analyze petroleum products at



customs ports, with the possibility of conducting analyses in laboratories licensed by the Ministry of Commerce and Industry and SASO. Given that ... laboratories are not among the accredited laboratories for testing export-bound consignment in question, it is unreasonable for ... laboratories, having a vested interest in the outcome, to be the ones conducting tests. Accordingly, the results presented by such laboratories cannot be relied upon, as they formed the basis for Committee's Decision that the consignment contained petroleum derivatives. Moreover, the Committee inquired with Customs Authority about the legal basis for considering ... laboratories as acceptable for testing petroleum products designated for export, Customs Authority responded that the Case file included laboratory results issued by (...) and that ... laboratories were accredited and licensed at the time of consignment's preparation for export. However, they did not provide a legal basis for this claim, especially in light of the Royal Order, which did not list ... laboratories among the accredited ones. Therefore, Customs Authority's answer is groundless. Therefore, the Committee decided as follows:

Decision

First: In Form: Accept the appeal in form filed by ... Company, C.R. No. (...), against Primary Customs Committee in Al-Haditha Decision No. (4) for 1440 AH.

Second: Overturn the primary Decision as stated in the grounds.



Customs - Penal

Appellate Customs Committee in Dammam

Decision No.: (491)
Decision Date 13/07/1440 AH

Key words:

Customs - Smuggling - Penal - Petroleum Derivatives - Polyesters.

Abstract

The Importer requests annulling Primary Customs Committee in Salwa Decision No. (68) dated 14/09/1439 AH, which convicted and ordered the Importer to pay a customs penalty and a fine in lieu of consignment confiscation. Since the Appellate Committee found that Case file does not include any indication that the Plant was previously notified of the result before referral to the Customs Committee. Therefore, the Committee decided as follows: Overturn the primary Decision based on the Circular of the Director General of Saudi Customs No. (M/43/553) dated 20/07/1433 AH, which mandates the concerned committee to take three samples of petroleum materials.

Documents:

- Article (163.C) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1435 AH.
- Director General of Customs Circular No. (553/43/M) dated 20/07/1433 AH regarding the competent committee's procedure for collecting three samples of petroleum materials.

Defenses and Arguments of the Parties

Appellant's Arguments

- The Case occurred in 1435 AH, yet we were not informed of it until 1439 AH. The seized substance is not derived from petroleum products and does not contain diesel, as diesel is a saturated substance, whereas the declared material is unsaturated, making it impossible for them to mix. They would naturally separate due to their differing densities, as diesel has a density of 74% to 83%, while polyester is 1.1. In addition, the flash point of diesel is 65, while that of polyester is 33, where the laboratory result indicated 154, which is scientifically impossible. It is worth noting that we have been exporting for several years without any violations. The exported substance is produced by sourcing its raw materials from major companies, and foreign companies.

Committee's response to the argument:

Since it turns out from Case documents that Company's first knowledge of laboratory results occurred only when it was confronted with them before the Primary Committee in Salwa Customs on 07/09/1439 AH, at which time its answer was based on challenging analysis results and alleging a flaw. Since Case file does not include any indication that the Plant was previously notified of results before its referral to the Customs Committee, the Committee considers this



date as the actual date of its knowledge of the analysis results. Furthermore, (Third) of Director General of Customs Circular No. (553/43/M) dated 20/07/1433 AH states that: (The competent committee shall take three samples from each shipment, sending one sample to the laboratory in designated containers with secret numbers, accompanied by the approved form for providing technical information on shipments. Two samples shall be kept at customs until the result is received. If the result indicates that the sample contains subsidized petroleum products and the concerned party objects to the result, one of the retained samples shall be sent to another laboratory. If the second test confirms the primary result, the matter shall be referred to the legal department. However, if the two results differ, the third sample shall be analyzed to determine which is correct, and the necessary procedures shall be completed accordingly).

Since Customs did not implement provisions of the said Circular, despite the fact that it was issued to ensure justice and prevent penalization of Exporter before fully verifying violation, the Primary Committee, upon being presented with a challenge to the accuracy of the analysis and finding Case file devoid of any indication that the Exporter was previously notified of the result, should have referred the matter back to Customs, as the case was prematurely filed. Given that it is no longer possible to apply provisions of the Circular due to the prolonged period since the samples were stored, assuming they were even retained, which inevitably affects their properties, this Committee concludes that the Case does not include conclusive evidence of a violation. Such certainty is essential in criminal rulings, which must be based on definitive and indisputable evidence. Therefore, the Committee decided as follows:

Decision

First: In Form: Accept the appeal filed by (...) Company against Primary Customs Committee in Salwa Decision No. (68) dated 14/09/1439 AH in form and on merits.

Second: Annul the primary Decision and acquit the Company due to insufficient evidence.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Appellate Customs Committee in Dammam

Decision No.: (602)
Decision Date 12/10/1440 AH

Key words:

Customs - Smuggling - Penal - Petroleum Derivatives - Diesel.

Abstract:

The Importer requests annulling Primary Customs Committee in Al-Batha Decision No. (1167) for 1439 AH, which convicted and ordered the Importer to pay a customs penalty. Since the Appellate Committee found that Case file does not include any indication that the Plant was previously notified of the result before referral to the Customs Committee. Therefore, the Committee decided as follows: Overturn the primary Decision based on the Circular of the Director General of Saudi Customs No. (M/43/553) dated 20/07/1433 AH, which mandates the concerned committee to take three samples of petroleum materials.

Documents:

- Article (163.C) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1435 AH.
- Director General of Customs Circular No. (553/43/M) dated 20/07/1433 AH regarding the competent committee's procedure for collecting three samples of petroleum materials.

Defenses and Arguments of the Parties

Appellant's Arguments

In Form:

First: In Form: The Decision violates Director General of Customs Circular No. (553/43/M) dated 20/07/1433 AH, which stipulates (The competent committee shall take three samples from each shipment, sending one sample to the laboratory in designated containers with secret numbers, accompanied by the approved form for providing technical information on shipments. Two samples shall be kept at customs until the result is received. If the result indicates that the sample contains subsidized petroleum products and the concerned party objects to the result, one of the retained samples shall be sent to another laboratory. If the second test confirms the primary result, the matter shall be referred to the legal department. However, if the two results differ, the third sample shall be analyzed to determine which is correct, and the necessary procedures shall be completed accordingly ...). The provisions of this Circular were established to safeguard rights and ensure liability clearance, which Customs Authority have no discretion to disregard. Furthermore, promptly notifying the Exporter of test result and granting him the opportunity to object upholds the principle of confrontation in procedures, thereby ensuring transparency and justice. However, the Exporter was not notified in accordance with this Circular, preventing him from lodging an objection before the matter was referred in its entirety to the primary committee. The fact that Customs Authority conducted another test at a different laboratory for the three statistical declarations in question does not justify this omission. (Refer



to the Decisions issued by Appellate Customs Committee in Dammam, Decision No. (71) in Case No. (3092) for 1439 and No. (221) in Case No. (3036) for 1438).

Second: The Exporter was not granted access to copies of sample analysis results despite his request. To date, the Exporter has not received copies of sample analysis result, which is one of his fundamental rights, especially since these Decisions are based on such analyses.

On merits:

First: In Form: The evidence relied upon by the Committee is not conclusive, as high-quality laboratories produce consistent results, and any discrepancies should be minimal. However, the laboratory results cited in the Decision show a striking and significant variance. For instance, in Statistical Declaration No. (...) dated .../.../..., a sample was taken from this consignment and sent to the laboratories of (...) Company, where it was found that Sample No. (...) contains (15%) diesel. Having sent another (identical) sample to the laboratories of (...) Company, it was found that Sample No. (...) contains (7%) diesel. Having reviewed the results reached by the mentioned laboratories, while maintaining our position that they lack accuracy, we find a significant discrepancy of up to 100%. This variance is substantial and cannot be relied upon as conclusive evidence for rendering a judgment.

Second: The element of criminal intent is not present for the following reasons:

1. The Exporter purchases diesel from Aramco at the prevailing international market price, thus confirming the lack of any interest to engage in product smuggling, assuming the validity of the alleged incident.
2. Assuming the validity of the alleged smuggling incident, there is a distinct fingerprint for subsidized diesel. If the samples in question have been referred to (...) laboratories, it would have been determined that this diesel is not subsidized, thereby eliminating any basis for customs smuggling allegation.
3. The percentage of diesel found in test results, when used in Exporter's fragrance manufacturing processes, yields a significantly higher profit for the Exporter compared to the minimal return that would result from smuggling, assuming the allegation were true.
4. All transport vehicles leave Company's premises sealed and cannot be opened except in the presence of Customs representative.
5. The Exporter sells these products to well-known clients in the United Arab Emirates, who have conducted laboratory tests to maintain the quality of their factories. Since the presence of diesel in base oil affects their operations, they ensured through testing that there was no diesel content at all.
6. It is highly unlikely that Al-Ghuwaifat Customs in the United Arab Emirates would collude in allowing products containing subsidized diesel to pass through. Moreover, no customs violations have been recorded at this checkpoint against the Exporter, whether related to the tankers in question or any others.
7. The Exporter has only one storage tank dedicated to base oils, which is subject to periodic and unannounced inspections. In addition, Company's record is free of any violations with Aramco.
8. The Exporter exports numerous tankers monthly from the same storage tank and with the same material, and no violations have been recorded against the Exporter due to the absence of diesel.
9. The Exporter operates through well-established and accredited companies for the export of base oils, which would not risk their reputation for the sake of minimal financial gains from smuggling diesel, assuming the alleged smuggling were true.
10. It is well known that smuggled diesel is sold on the black market (assuming smuggling claim is true). However, the Exporter, in all its dealings related to base oils, including the subject of this Decision, only deals with licensed and well-known importers in the United Arab Emirates. From this standpoint, the significant discrepancy in laboratory test results becomes evident (assuming smuggling claim is true). This substantial difference in percentages raises doubts about the accuracy of such technical reports, making them an unreliable basis for judgment. Furthermore, the laboratories of Exporter's clients in the United Arab Emirates did not detect



the existence of diesel, nor does the smuggling operation yield any benefit or advantage to the source (assuming incident to be true). This clearly indicates the lack of both the material and moral elements of smuggling crime.

Committee's response to the argument:

Since Company's defense before the Primary Committee focused on challenging laboratory results, and it turns out from Case documents that the Company first became aware of laboratory results only when confronted with them before the Primary Committee at Al-Batha Customs. In addition, the Company's answer at that time was based on contesting laboratory analysis, and not accepting them. Given that Case file lacks any indication that the Company had been previously notified of the result before the Case was referred to the Customs Committee, and in light of (Third) of Director General of Customs Circular No. (553/43/M) dated 20/07/1433 AH, which stipulates that (The competent committee shall take three samples from each shipment, sending one sample to the laboratory in designated containers with secret numbers, accompanied by the approved form for providing technical information on shipments. Two samples shall be kept at customs until the result is received. If the result indicates that the sample contains subsidized petroleum products and the concerned party objects to the result, one of the retained samples shall be sent to another laboratory. If the second test confirms the primary result, the matter shall be referred to the legal department. However, if the two results differ, the third sample shall be analyzed to determine which is correct, and the necessary procedures shall be completed accordingly). Since Customs Authority did not adhere to the circular mentioned, which was intended to ensure justice and prevent penalizing Exporter without fully verifying violation, the Primary Committee should have remanded the Case to customs upon Defendant's objection to the test results, especially given the lack of prior notification to the Exporter of analysis result. The significant discrepancy between laboratory results raises reasonable doubt regarding their accuracy. When doubt affects the evidence, it weakens its credibility as a basis for a conviction. Since these reports were the sole evidence used for conviction, the Committee finds that the Case lacks conclusive proof of the violation, an essential requirement in criminal rulings, which must be based on definitive evidence without uncertainty. Furthermore, the minimal financial gain for the Company, assuming the alleged act was committed, compared to the associated risks, further supports the conclusion that there was no criminal intent. Therefore, the Committee decided as follows:

Decision

First: In Form: Accept the appeal filed by (...) against Primary Customs Committee in Al-Batha Decision No. (1167) dated 11/10/1439 AH in form and on merits.

Second: Annul the primary Decision and acquit the Company due to insufficient evidence.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Appellate Customs Committee in Riyadh

Decision No.: (107)
Decision Date 25/11/1440 AH

Key words:

Customs – Smuggling – Penal – Oil Derivatives.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (75) of 1440 AH delivered by the Appellate Committee for Resolution of Customs Violations and Disputes in Haditha (“**Primary Department**”), which ruled to convict Importer of customs smuggling and impose a customs fine and a fine in lieu of confiscation.

The Appellate Committee Found That:

The compensation claim made by the convicted driver’s attorney should be dismissed in addition to the fact that such a request is new and was not raised during the first degree of consideration of the case.

The Appellate Committee Decided To:

Dismiss GAZT’s appeal and uphold the Primary Department’s Decision as to the conclusion it had.

Documents:

- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (142) of Unified Customs Law of GCC States, promulgated by Royal Decree No. (M/1) of 03/11/1423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

1. The vehicle was detained upon entering Saudi Arabia, not as claimed by the Haditha Port Customs Authority that it was exiting Saudi Arabia.
2. Upon entry into Saudi Arabia, the vehicle’s diesel tank was nearly empty, contrary to the said quantity.
3. The difference in the diesel price was paid in each of the four reports mentioned in the Case, and they are irrelevant thereto.
4. The quantity of diesel mentioned in the Case (308 Liters) is divided into four previous reports, and the fine was paid thereto.
5. There is no non-essential tank in the vehicle, as claimed by the Haditha Port Customs.
6. The vehicle remains impounded by Haditha Port Customs to this date.
7. The vehicle owner has no connection to the said reports.
8. The vehicle driver suffered damages, as he is being sued in Jordan by its owner and is accused of negligence and violating Customs Laws in force within the Kingdom.



9. The (6) reports mentioned in this Case are against the vehicle driver, not the vehicle.

Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since it was satisfied that the arguments presented by Appellant, as previously stated, have no effect on the conclusion reached in the appealed Decision, the appealed Decision is then consistent with the correct application of the provisions of the Law, as these arguments did not include any substantial evidence that could refute the validity of the appealed Decision, amend, or abolish the same regarding the conviction of Appellant for customs smuggling, the confiscation of the diesel, and the fine imposed as previously stated in the grounds for this Decision. As for the request of the convicted driver's attorney for compensation for the vehicle's impoundment due to the damage caused by the driver's inability to use the vehicle, since the injured party in the matter of compensation for damages must prove the existence of fault before the defendant in the compensation claim; and since the Customs Authority has exercised its statutory right to carry out its duties in light of the circumstances of the case and the resulting impoundment of the vehicle that contained the smuggled material in its tank, as the Customs Authority requested confiscation of the vehicle, which does not constitute an error or abuse in Customs Authority's usage of its right to apply the Customs Law, in addition to the fact that the convicted driver, who had the vehicle in his possession, was proven guilty of customs smuggling, which determines that the convicted driver's attorney cannot claim for compensation for the vehicle's disruption after it was impounded by the Customs Authority, which would not have happened if the driver had not committed the criminal act and was the principal perpetrator when he committed the crime of customs smuggling, which led to the vehicle being impounded based on its circumstances and the Customs Authority's request for confiscation, which determines that the compensation claim made by the convicted driver's attorney should be dismissed in addition to the fact that such a request is new and was not raised during the first degree of consideration of the case; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept GAZT's appeal, dated 09/10/1437 AH, filed against Decision No. (75) of 1440 AH delivered by the Appellate Committee for Resolution of Customs Violations and Disputes in Haditha, in form.

Second: Dismiss GAZT's appeal and uphold the Primary Department's Decision as to the conclusion it had.

Third: Release the detained vehicle and allow its owner or authorized representative pick it up for the grounds stated herein.

Fourth: This Decision shall be final after approval by the Minister of Finance.



Commercial Fraud



Customs Appellate Committee in Riyadh

Decision No.: (544)
Decision Date 17/03/1444 AH

Key words:

Customs – Conviction – Commercial Fraud – Declaration of Origin – Miscellaneous – Uphold of Primary Decision.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (39) of 1442 AH delivered by the Appellate Committee for Resolution of Customs Violations and Disputes in Haditha (“**Primary Department**”), which ruled to convict Importer of customs smuggling, impose a customs fine and a fine in lieu of confiscation in an amount equivalent to the value of the disposed item, the confiscate the seized items in question.

The Appellate Committee Found That:

Appellant attempted to import the goods to deceive the consumer with a false representation of their true nature.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision and amend the value of the customs fine to become twice the customs duties in accordance with Article (142) of Unified Customs Law of GCC States.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (143) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (145) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses of Parties:

Defenses of Appellant (Importer):

The primary Decision did not properly characterize the incident due to the absence of smuggling in the first place, as the goods were cleared under an undertaking; therefore, disposing of these goods constitutes a violation that does not rise to the level of smuggling, especially since the Primary Department did not prove that the owner of the establishment had the intent and will to smuggle without being a principal perpetrator or an accomplice in any way, nor was he in possession of the smuggled goods. Moreover, the consignment was not disposed of until a period of time later, and it is necessary to match the Customs Declaration number with the relevant laboratory report to determine the connection between that undertaking.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since the arguments presented by Appellant's Attorney that the specifications contained in the laboratory report are formal and have no effect, as the estimated value of the violating item was in the part to which the violation was associated, due to the fact that the origin in which it was decided to attribute the crime of smuggling against Appellant amounted, according to the case papers, to a total of (1330) cartons out of (2033) cartons, with a value of (SAR 51657), according to the report of violation of commercial fraud attached to Case file and also according to the invoice submitted by Appellant; thus the Primary Department's adoption of another value without confronting Appellant therewith cannot be a valid basis for settling the value for the amount decided by the Customs Authority, which determines that the certain amount of value is as declared by Appellant; Therefore, the Appellate Committee satisfies to amend the value of the fine in lieu of confiscation and the customs fine to be as stated in the wording of this Decision.

In light of the above grounds, the Appellate Customs Committee decided the following:

Decision

First: Accept Importer's (..... Establishment, holder of National No., owned by Mr., holder of National ID No.) appeal filed against Decision No. (39) of 1442 AH delivered by the Appellate Committee for Resolution of Customs Violations and Disputes in Haditha, in form.

Second: Uphold Primary Department's Decision as to the conclusion it had regarding the conviction of Appellant for customs smuggling and the imposition of a fine in lieu of confiscation, and amend the value of the customs fine to be equal to the value of the part of the violating item calculated on the basis of the submitted invoice, whereby the amount becomes (SAR 103,304) (One hundred and three thousand three hundred and four Saudi riyals), for the grounds stated herein.



Appellate Customs Committee in Jeddah

Decision No.: (6)
Decision Date 17/01/1440 AH

Key words:

Customs – Smuggling – Penal – Commercial Fraud – Declaration of Origin.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (1/242) of 1438 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh (“**Primary Department**”), which ruled to convict Importer of customs smuggling, impose a customs fine, and confiscate the consignment in question

The Appellate Committee Found That:

There was a phrase inside the carton bearing the phrase “Made in Taiwan” written on a removable label, even though the country declared in the Import Declaration as the country of origin was China.

The Appellate Committee Decided To:

Dismiss Importer’s appeal and uphold the Primary Department’s Decision as to conclusion it had in accordance with Article (142) of Unified Customs Law of GCC States.

Documents:

- Article (33) of Law of Trademarks, promulgated by Royal Decree No. (M/21) of 28/05/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- The letter of the General Directorate for Combating Commercial Fraud indicates that the trademark of “.....” is registered, and the incoming consignment actually bears, according to examination, an “Italian” design, while the phrase written on the bicycles reads the trademark of “.....” Therefore, there is a discrepancy between the consignment and that registered with the Ministry of Commerce in the letter (F). Accordingly, the primary Decision was inconsistent and unfair to Appellant and is not subject to the application of Article (142) of the Unified Customs Law of GCC States.
- The goods are not considered a means of smuggling, as they are not prohibited in and of themselves, according to Article (145.6) of the Unified Customs Law of GCC States. In addition, a thorough examination should have been carried out based on the phrase (Muddy Fox), as stated on the outer carton, not as stated in the Ministry of Commerce’s letter (Muddy Rox), which is a difference in the trademark; therefore, there is no customs smuggling.
- Since the provisions of the law require in the criminal liability the presence of criminal intent on the part of the perpetrator, in accordance with Article (142) of the Unified Customs Law of GCC



States, the appealed Decision did not clarify any aspect of the Case regarding the presence of that criminal intent, nor the indications upon which the unanimous conviction was based.

- The primary Decision was not based on sufficient, conclusive, and valid evidence of the smuggling crime attributed to Appellant, as the established principle is that the person is presumed innocent, which is a certainty that can only be refuted by a similar one.

ZATCA's Defenses

- The imported goods in question bear a trademark similar to a registered trademark, with a different letter, to mislead and deceive the consumer, according to a letter from the Ministry of Commerce laboratory stating that the trademark is registered after examining the attached sample, despite the difference in letter, which constitutes marketing fraud, especially since the trademark is not fixed to the product and can be easily removed.

Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since it is established that the letter of the General Directorate for Combating Commercial Fraud stated that the sample examined (one unit) bore the trademark (Muddy Rox), which is registered and therefore considered a violation of the Law of Trademarks; and since it is also established that the imported bicycles bore the trademark (Muddy Rox) and were imported from China, according to the letter addressed by the Director General of Riyadh Customs to the Director General of General Directorate for Combating Commercial Fraud; and since Appellant's action constitutes customs smuggling in accordance with Article (142) of the Unified Customs Law of GCC States, which determines that the arguments presented by Appellant have no effect on the conclusion reached in the appealed Decision; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (..... Company, C.R. No.) appeal against Decision No. (1/242) of 1438 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh, in form.

Second: Dismiss Importer's appeal and uphold the Primary Department's Decision as to the conclusion it had.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (31)
Decision Date 15/03/1439 AH

Key words:

Customs – Smuggling – Penal – Commercial Fraud – Counterfeit Items.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (200) of 1437 AH delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer of customs smuggling, impose a customs fine, and confiscate the consignment in question.

The Appellate Committee Found That:

The trademark found on the goods in question was valid.

The Appellate Committee Decided To:

Reverse the Primary Department’s Decision as to conclusion it had in accordance with Article (33) of Law of Trademarks.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (33) of Law of Trademarks, promulgated by Royal Decree No. (M/21) of 28/05/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- A letter in English, translated into Arabic, issued by Company (B), was submitted to the Appellate Committee.
- Company (B) is the exclusive agent for the trademark in question in the Middle East.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since the primary Decision to convict Appellant was based on the fact that the consignment bore an infringing trademark, and that the letter submitted by Appellant, stating that it was permitted to import and sell products bearing the trademark (A), was not issued by the parent company that owns the trademark, but rather by the shipping company; and since Appellant's Director General has submitted two (2) exhibits, the first of which, issued by the company owning the trademark, proves that the shipping company, which is Company (B), is the exclusive wholesaler and distributor of products (A) in the United Arab Emirates, and that Company (B) is authorized thereby to distribute those products and appoint agents and distributors in several countries, including the Kingdom of Saudi Arabia; and since the basis upon which the primary Decision was based has been nullified, and the validity of the trademark found on the goods in question was proven; Therefore, the Appellate Committee satisfies to reverse the primary Decision, clear the consignment, and drop charges against Appellant.

In light of the above grounds, the Appellate Customs Committee decided the following:

Decision

First: Accept Importer's appeal against Decision No. (200) of 1437 AH, dated 24/06/1437 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Reverse the primary Decision, clear the consignment, and drop charges against Appellant regarding the customs smuggling

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.

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Violation of Restrictions Provisions



Customs Appellate Committee in Jeddah Governorate

Decision No.: (91)
Decision Date 22/07/1439 AH

Key words:

Customs – Smuggling – Penal – Restrictions – Wireless Device.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (145) of 1436 AH, dated 25/11/1436 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer of customs smuggling, confiscate the wireless device in question, and impose a customs fine equal to the estimated value of the device.

The Appellate Committee Found That:

The device in question is considered a restricted commodity, the import of which is restricted without prior permission from the Ministry of Interior. Also, the Customs Authority had instructed Appellant to re-export the wireless device, yet he attempted to bring it in again.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision as to conclusion it had in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 24 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article (11.143) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Ministry of Interior Circular No. (M/43/125).

Defenses of Parties:

Defenses of Appellant (Importer):

- The device has been re-exported to its source. In addition, given Appellant’s absolute belief that the device is not prohibited, he has requested that the Customs Authority send the device to Mecca Post. Moreover, Appellant requests the Appellate Committee to send the device to the relevant authorities for their information on whether the device in question is subject to the prohibitions and restrictions of the Unified Customs Law of GCC States.
- Appellant also requests the Appellate Committee to send the device to the Communications and Information Technology Commission to verify whether the device is prohibited.



Appellate Committee's Decision:

Appellant statement that the device is not prohibited or restricted is unsubstantiated claim that cannot be accepted.

Defenses of ZATCA:

- The device is considered a restricted commodity that may not be imported without prior approval from the Ministry of Interior, pursuant to circulars issued therefrom.
- Jeddah Post Customs Port has instructed the concerned party to re-export the aforementioned device. In addition, Appellant's re-import of the device from another port constitutes an attempt to smuggle the device into the Kingdom, demonstrating Appellant's ill intentions.

Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since the device in question is considered a restricted commodity, the import of which is restricted without prior permission from the Ministry of Interior, according to Circular No. (M/43/125), reported to all postal, air, and sea customs ports, in accordance with the telegram of His Royal Highness the Assistant Minister of Interior No. (M/B/C/9041) of 28/10/1429 AH, stating that "Due to the increase in prohibited wireless devices and the security and technical problems they cause for telecommunications networks, and the desire of His Highness not to clear the imported wireless devices for civilian use, whether by government agencies, public or private companies, or individuals, unless their owners have obtained the necessary approval from the Communications and Information Technology Commission to import and use them in the Kingdom, with the exception of security sectors exempted by previous orders;" and since Appellant has failed to obtain prior approval from the Communications and Information Technology Commission to import the wireless device in question; and since the attempt to bring in the restricted device is considered a violation of the provisions of Article (24) of the Unified Customs Law of GCC States, which stipulates: "The directorate shall, under the provisions of this Law or any other law, prohibit entry, exit, or transit of prohibited goods or goods found in violation. It shall also prohibit the entry, exit, or transit of restricted goods except with the approval of the relevant agencies of the state;" and since Appellant's attempt to bring restricted items into the Kingdom in an irregular manner constitutes the commission of the crime of attempted customs smuggling in accordance with Articles (142) and (143.11) of the Unified Customs Law of GCC States; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (..... National) appeal against Decision No. (145) of 1436 AH, dated 25/11/1436 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Uphold the Primary Department's Decision as all conclusion it had.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (570)
Decision Date 23/03/1444 AH

Key words:

Customs – Penal – Network Devices – Disallowance.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (1/49) of 1438 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh (“**Primary Department**”), which ruled to convict Importer of customs smuggling, impose a customs fine equivalent to (10%) of the value of the invoices and undeclared items, as well as a fine in lieu of confiscation.

The Appellate Committee Found That:

The fine was paid by linking to the cash insurance regarding the consignment in question.

The Appellate Committee Decided To:

Abolish the Primary Department’s Decision as to all conclusions it had, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article (163) of Unified Customs Law of GCC States, promulgated by Royal Decree No. (M/1) of 03/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/1423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- Appellant had previously, before the issuance of the appealed Decision, made the settlement with the competent Customs Port, where the Customs Port issued a customs fine equivalent to (10%) of the value of the invoices and undeclared items. This fine was paid by linking to the cash insurance; however, the Primary Department did not take this into account in its Decision in question. Therefore, Appellant requests abolishment of the appealed Decision.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since it is established from Appellant's Attorney that Appellant made a settlement with the competent Customs Port, which issued a customs fine equivalent to (10%) of the value of the invoices and undeclared items, and that such a fine was paid by linking to the cash insurance regarding the consignment in question; and since Appellee's Representative stated that Appellant had paid all the dues associated with the customs declarations, which determines that the dispute has been resolved; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (....., C.R No.) appeal against Decision No. (1/49) of 1438 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh, in form.

Second: Accept Importer's appeal on merits and abolish the Primary Department's Decision as to the conclusion it had in this regard, for the grounds stated herein.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (40)
Decision Date 28/06/1440 AH

Key words:

Customs – Smuggling – Penal – Restrictions – Veterinary Medicines.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (45) of 1439 AH, dated 19/02/1439 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling, confiscate the consignment in question, impose a customs fine, and re-export the declared items.

The Appellate Committee Found That:

Some of the undeclared items are prohibited, while the others are restricted and pose a great danger to human health and safety.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision as to conclusion it had, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 24 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (11.143) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Article 144 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (19) of Pharmaceutical Products and Facilities Law, promulgated by Royal Decree No. (M/31) of 01/06/1425 AH.
- Article (31.6) of Implementing Regulations of Unified Customs Law of GCC States, issued by Ministerial Decision No. (2748) of 25/11/1423 AH.



Defenses of Parties:

Defenses of Appellant (Importer):

- The consignment was requested from the Exporter “.....,” according to the invoices submitted with the Import Declaration; however, a packing error occurred from the Exporter, as items were placed contrary to the attached invoices in addition to the main items.
-

Appellate Committee’s Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since Appellant’s statements were made with the intention of rebutting the criminal liability incurred thereby under Article (144) of the Unified Customs Law of GCC States; and since Appellant’s argument that the Exporter has erred in sending the infringing goods, Appellant remains entitled to refer to the exporter in accordance with the provisions of contractual liability; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer’s (Mr., Owner of Establishment) appeal against Decision No. (45) of 1439 AH, dated 19/02/1439 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah, in form

Second: Uphold the Primary Department’s Decision as all conclusion it had.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Written Undertaking



Customs Appellate Committee in Jeddah Governorate

Decision No.: (3)
Decision Date 05/02/1439 AH

Key words:

Customs – Penal – Written Undertaking – Non-Conformity with Specifications – Violation of Power Factor Specification and Source Current – Violation of Temperature Test Specification Under Normal Operating Conditions.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (152) of 1437 AH, dated 30/04/1437 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling, and impose a customs fine and a fine in lieu of confiscation.

The Appellate Committee Found That:

importer had re-exported the violating consignment.

The Appellate Committee Decided To:

Reverse the Primary Department’s Decision as to all conclusions it had, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- Appellant stated that the goods are still in its warehouses and requested a grace period of (45) days from the date of this session to enable its attorney to re-export the consignment or destroy it under the Customs Authority’s supervision. Appellant filed a statement of appeal, requesting reversal of the primary Decision based on the following:
 1. The Primary Department’s belief that Appellant had disposed of the goods is contrary to reality, as the goods are still in the Appellant’s warehouses.
 2. Appellant then re-exported the consignment according to the minutes of the Re-Export Declaration No. (.....) dated .../.../...
 3. Appellant has complied with its commitment to the Customs Authority; therefore, its conviction no longer stands, which requires a ruling to reverse the primary Decision as to all conclusions it had in this regard and discharge Appellant of customs smuggling.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since it has received a Letter No. (.....) dated .../.../... of the Director General of Jeddah Islamic Port Customs, which includes that Appellant re-exported the consignment according to the minutes of the Re-Export Declaration No. (.....) dated .../.../...; and since it is established from the Customs Authority's statement by Letter No. (.....) dated .../.../..., that the consignment in question has been re-exported; and since Appellant has complied with its commitment to the Customs Authority, its conviction no longer stands; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (..... Company) appeal against Decision No. (152) of 1437 AH, dated 30/04/1437 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Reverse the Primary Department's Decision as to all conclusions it had and discharge Appellant of customs smuggling.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (626)

Decision Date 05/04/1444 AH

Key words:

Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Insoluble Material Content.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (456/2) of 1440 AH delivered by the Second Department for Resolution of Customs Violations and Disputes in Riyadh (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling and impose a customs fine equivalent to three times the value of the consignment, as well as a fine in lieu of confiscation.

The Appellate Committee Found That:

The laboratory report stated non-conformity of the sample with the specifications, indicating Appellant’s violation of the undertaking of non-disposal of the consignment.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision as to the conclusion it had and amend Paragraph (Third), in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Paragraph (2) of Article (145) of the Uniform Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- Importer has imported a consignment of “toilet soap” that was cleared with an undertaking of non-disposal, and it was kept in Importer’s warehouse. However, a fire broke out in a warehouse adjacent to Importer’s warehouse, resulting in the burning of Importer’s warehouse and the damage of the consignment. In addition, a statement issued by the Civil Defense has been sent via e-mail to the General Secretariat.
- Importer was not negligent, as the fire broke out in a warehouse adjacent to its warehouse, and it did not submit to the Primary Department any letter indicating its disposal of the consignment.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, the Appellate Committee found that the statements of Appellant's Attorney cannot constitute evidence that strengthens and supports the appellant's case and relieves it of its responsibility for the consignment in question, as the aforementioned letter of the Director General of Civil Defense did not include the statement that the soap consignment was damaged.

Defenses of ZATCA:

- ZATCA affirmed that claims raised by Appellant's Attorney at this session contradict Appellant's statements before the Primary Department, where it submitted a letter stating the disposition of the consignment.

Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since claims raised by Appellant's Attorney contradicts Appellant's letter submitted to the Primary Department and registered under No. (.....), dated .../.../..., stating that the consignment has been disposed of, which determines that Appellant's disposal of the consignment and its indifference to the existence of a restriction of non-disposal except after clearance, constitutes a customs smuggling in accordance with Article (142) of the Unified Customs Law of GCC States, and results dismissing Appellant's Attorney's arguments in denying the attribution of the crime of customs smuggling to Appellant; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (..... Establishment, C.R. No., Owned by Mr., holder of National ID No.) appeal against Decision No. (456/2) of 1440 AH delivered by the Second Department for Resolution of Customs Violations and Disputes in Riyadh, in form.

Second: Dismiss Importer's appeal, uphold the Primary Department's Decision as to the conclusion it had regarding the conviction of customs smuggling and the imposition of a fine in lieu of confiscation, and amend the value of the customs fine to become twice the customs duties, whereby the total amount becomes (SAR 58,145) (Fifty-eight thousand one hundred and forty-five Saudi riyals), for the grounds stated herein.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (46)
Decision Date 29/05/1439 AH

Key words:

Customs – Smuggling – Penal – Written Undertaking – Non-Conformity of Specifications – Rise of Arsenic Beyond Permissible Limit.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (296) of 1437 AH, dated 13/09/1437 AH, delivered by the Primary Dismiss Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling and impose a customs fine, as well as a fine in lieu of confiscation.

The Appellate Committee Found That:

The laboratory report stated non-conformity of the samples with the specifications, indicating Appellant’s violation of the undertaking of non-disposal of the consignment.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision as to the conclusion it had, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- The violating items [(170) cartons and (145) other cartons] have been destroyed with a total of (315) cartons, while the destruction report included the destruction of (565) cartons, which is considered an error.
- Appellant requests reversal of the primary Decision and discharge of the customs smuggling charge thereof.



Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since the consignment in question was temporarily cleared to Appellant under an undertaking of non-disposal until the result of the laboratory appeared; and since the result of the laboratory included the non-approval of samples Nos. (6) and (8) due to their non-conformity with the specifications and the rise of arsenic beyond the permissible limit; and since Appellant has failed to provide evidence of the destruction of the violating portion of the consignment in question; and since the disposal of the consignment that was not authorized to be cleared for any reason is considered customs smuggling in accordance with Article (142) of the Unified Customs Law of GCC States; **Therefore, the Appellate Customs Committee decided the following:.**

Decision

First: Accept Importer's (..... Company) appeal against Decision No. (296) of 1437 AH, dated 13/09/1437 AH, delivered by the Primary dismiss Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Uphold the Primary Department's Decision as all conclusions it had.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (52)
Decision Date 29/05/1439 AH

Key words:

Customs – Smuggling – Penal – Written Undertaking – Non-Conformity of Specifications – Failure to Provide Detailed Packaging Declaration with Slaughter and Production Date.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (357) of 1437 AH, dated 19/11/1437 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling and impose a customs fine equivalent to twice the customs duties, as well as a fine in lieu of confiscation.

The Appellate Committee Found That:

The laboratory report stated non-conformity of the sample with the specifications, indicating Appellant’s violation of the undertaking of non-disposal of the consignment.

The Appellate Committee Decided To:

Uphold the Primary Department’s Decision as to the conclusion it had, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- The error in the characterization of the incident, as the Primary Department has considered that Appellant’s act is customs smuggling based on Article (143.11) of the Unified Customs Law of GCC States, which cannot be accepted. In addition, the laboratory’s report No. (.....), dated .../.../..., which includes the non-conformity of samples due to the failure to provide the Packaging Declaration, means that there is no communication between Appellant and the Customs Authority, as the Customs Authority did not send its letter properly in a manner that would ensure Appellant’s certain knowledge.
- The laboratory’s report was delayed, and the Customs Authority notice did not reach Appellant despite the fact that the consignment is of consumer goods of limited validity, as the consignment was cleared on .../.../..., and the laboratory sent to Customs its letter of its failure to examine the samples on .../.../...; however, Appellant did not receive any letter from the Customs Authority regarding the laboratory request whereby it can provide the necessary requirements, nor did it receive any letter from the Customs Authority requesting the payment of the value of the written undertaking.
- The absence of criminal responsibility for the smuggling crime due to lack of criminal intent “mens rea,” as Appellant did not issue any positive act “actus reus” that could be attributed to the smuggling crime. In addition, Appellant’s destruction of the consignment without reference to the Customs Authority was due to the fact that the employee who signed the undertaking had resigned and did not notify Appellant



of that undertaking, and that its act of destruction was based on Appellant's responsibility and disposal of what it had in its possession and was not based on its knowledge and intent to violate any restrictions or undertakings.

- The absence of civil liability due to the existence of force majeure, represented in the significant decrease in poultry prices and the expiry of the validity period of the consignment, which led to its destruction and Appellant's loss and its layoff of all its employees.

Appellate Committee's Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since it is established that Appellant's violation of the provisions of prohibition and restriction stipulated in Article (142) of the Unified Customs Law of GCC States is considered customs smuggling; and since it is established in Letter No. (.....), dated .../.../... issued by the Customs Authority, titled "Very Urgent" and addressed to Appellant, stated that the Customs Authority has addressed Appellant with the laboratory result and the invalidity of the samples, and the need to return the entire consignment thereto in accordance with the written undertaking within seven (7) days from its date; to take the necessary action towards re-exporting consignment to its source; and since the non-payment of the value of the written undertaking, with regard to Appellant's argument of the absence of criminal responsibility for the absence of criminal responsibility for the smuggling crime due to lack of mens rea, constitutes the physical act "actus reu" of the crime, as the criminal intent "mens rea" is presumed in this case;

and since Appellant's argument that the employee who signed the undertaking has resigned cannot be accepted, as such a matter concerns Appellant, who remains responsible for its undertakings; and since Appellant's argument of a force majeure cannot be accepted either, as the force majeure exempting liability, in accordance with Article (154) of the Unified Customs Law of GCC States, requires that it make the fulfillment of the obligation impossible and that it be unexpected at the time of importation of the consignment and impossible to prevent, which is not available in the facts of this case; and since the acceptance of a valid settlement is a permissible matter that falls within the discretionary power of the Director General of the Customs Authority, not under the control of the Appellate Committee; **Therefore, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (..... Company) appeal against Decision No. (357) of 1437 AH, dated 19/11/1437 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Uphold the Primary Department's Decision as all conclusions it had.

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (104)
Decision Date 25/12/1437 AH

Key words:

Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Violation of Labeling and Explanatory Data.

Abstract

Importer (“**Appellant**”) filed this Case moving to abolish Decision No. (255) of 1436 AH, dated 27/07/1436 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah (“**Primary Department**”), which ruled to convict Importer in presentia of customs smuggling and impose a customs fine equivalent to twice the customs duties, as well as a fine in lieu of confiscation.

The Appellate Committee Found That:

The laboratory report stated non-conformity of the sample with the specifications of labeling and explanatory data.

The Appellate Committee Decided To:

Reverse the Primary Department’s Decision as to all conclusions it had, consider the incident a customs violation, in accordance with Article (142) of the Unified Customs Law of GCC States.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses of Parties:

Defenses of Appellant (Importer):

- Appellant’s Attorney stated that, upon importing the consignment, an undertaking of non-repetition of the violation was signed after the laboratory result appeared. In addition, Appellant has no knowledge of whether the written undertaking has been paid and that the violation is very simple, as it relates to the labeling and explanatory data, as established in the laboratory examination report. Therefore, Appellant’s Attorney requests reversal of the primary Decision and discharge Appellant of customs smuggling.

Appellate Committee’s Decision:

Having taken cognizance of documents included in Case file, requests, defenses, and pleas raised by parties thereto, the Appellate Committee found that, since Appellant is committed of non-disposal of the consignment under the written undertaking, and that failure to do so is considered customs smuggling; however, in cases where the reason for not permitting clearance is a non-essential violation, such as the lack of conformity of the consignment with the specification of the labeling and explanatory data, the incident can be considered a customs violation whenever it was proven to the Committee the goodwill of Importer, which renders subjecting the incident



to the provisions of Article (30.6) of the Implementing Regulations of the Unified Customs Law of GCC States. **In light of the above grounds and after reviewing the Unified Customs Law of GCC States and its Implementing Regulations, the Appellate Customs Committee decided the following:**

Decision

First: Accept Importer's (Mr.) appeal against Decision No. (255) of 1436 AH, dated 27/07/1436 AH, delivered by the Primary Department for Resolution of Customs Violations and Disputes in Jeddah.

Second: Reverse the Primary Department's Decision as to all conclusions it had, consider the incident a customs violation, and obligate Importer to pay a customs fine of (SAR 500).

Third: This Decision shall be final and enforceable after approval by the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (107)
Decision Date 17/03/1444 AH

Key words:

Customs – Penal – Written Undertaking – Non-Conformity of Specifications – Absence of Production Date on Product.

Abstract

Importer filed this Case moving to abolish Decision No. (1/344) of 1442 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh, which ruled to convict Importer in presence of customs smuggling and impose a customs fine equivalent to three times the value of the consignment and a fine in lieu of confiscation. The Appellate Committee found that the examination of consignment imported by Appellant resulted in the absence of a production date and an expiration date on the package; thus, Appellant failed to abide by its written undertaking. Department ruled to Uphold the Primary Department's Decision and amend the value of the customs fine to become twice the customs duties in accordance with Article (142) of Unified Customs Law of GCC States.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Paragraph (2) of Article (145) of the Uniform Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- We did not dispose of the uncleared consignment as stated, as the understanding of disposal implies completing the sale to consumers. This did not happen; rather, the goods were destroyed according to the instructions of the inspectors of the Saudi Food and Drug Authority (SFDA) during their visit to our warehouse, in their capacity as the primary authority in the Kingdom responsible for the safety and health of consumers. As for the figurative interpretation that our action constitutes disposing of the consignment due to the absence of a customs representative during the destruction, this negates the role of SFDA, which is the initial point of contact for imported goods. It should be noted that customs duties have been paid.
- The Committee overlooked the evidence submitted by us in presence of SFDA's Representative, who obligated us to destroy the goods, we request inclusion of SFDA's Representative in the Case in the interest of justice in accordance with provisions of the Law of Civil Procedure and its Implementing Regulations and as evidence of the wrongful act committed by SFDA's Representative.



- With regard to “Commercial Fraud”, regardless of the fact that water does not spoil by nature, how can the Company be held accountable for the mistake of a supplier who forgot to pass the packages on the production line to print the expiration date? That is, the matter is beyond our control, as it would have been more appropriate to correct that mistake by placing a laser heat seal or returning the goods to the source rather than intentionally causing losses to the national company. In addition, the expiration date of bottled water globally indicates “best used before this date”.

Committee's response to the argument:

The Appellate Committee has firmly concluded that the defenses presented against the appealed primary Decision, as previously outlined, do not affect its validity. Based on all the foregoing, the Customs Appellate Committee concludes that the defenses submitted by the Appellant did not include any substantial evidence that could refute the validity of the appealed Decision or abolish the same, except for the amendment of the value of the customs fine, which is as stated in the wording of this Decision;. Accordingly, the committee decided as follows:

Decision

First: In Form: Accept the appeal filed by Importer (.....), C.R. No. (.....) against Primary Decision No. (1/344) of 1442AH.

Second: On merits: Dismiss the appeal, uphold the primary Decision as to the conclusion it had regarding the conviction of Appellant for customs smuggling and the imposition of a fine in lieu of confiscation, and amend the value of the customs fine to become twice the customs duties, bringing total amount to be claimed from the Appellant to SAR (58,586) fifty-eight thousand five hundred and eighty-six Riyals, for the reasons and grounds stated herein.



Customs Appellate Committee in Riyadh

Decision No.: (577)

Decision Date 27/03/1444 AH

Key words:

Customs – Penal – Undertaking of Non-Disposal – Non-Conformity of Specifications – Requirements of the Implementing Regulation of the Law of Medical Devices.

Abstract

Importer filed this Case moving to abolish Decision No. (1082/1) of 1441 AH issued by First Customs Primary Committee in Riyadh, which convicted the Importer of customs smuggling and imposed a customs fine and a fine in lieu of confiscation. The Appellate Committee found that the samples did not conform to the requirements of the Implementing Regulation of the Law of Medical Devices, as the Importer did not complete the corrective action plan for the consignment, and failed to adhere to the undertaking given. Department ruled to Uphold the Primary Department's Decision and amend the value of the customs fine based on Article (142) of the Unified Customs Law.

Documents:

- Article (56) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Paragraph (3) of Article (145) of the Uniform Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423 AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The violation related to the consignment is considered a customs procedural violation. The Appellant argued that the observations related to the consignment were of a formal nature, pertaining to the incomplete corrective action plan and further stated that the establishment had already initiated the completion of the plan but was unable to finalize it due to the independence of each product being manufactured in a separate plant, which prolonged the process and rendered the product unusable. Consequently, the consignment was destroyed as it had been exposed to abnormal storage conditions that caused it to lose its natural properties. The Appellant further asserted that the delay was primarily due to SFDA's failure to promptly notify the Importer through the Customs Authority, as the notification was only issued after a period exceeding one year.



Committee's response to the argument:

The defenses presented by the Appellant have no bearing on the outcome of the Decision regarding the Importer's conviction for customs smuggling and the imposed fine in lieu of confiscation.

ZATCA's Defenses

- ZATCA emphasized that the Importer does not have the authority to unilaterally determine whether a violation is procedural or technical and he is obliged to adhere to the undertaking and must not take any action regarding the consignment covered by the undertaking without first consulting the Customs Authority, rather than destroying it independently as claimed, which is particularly crucial given that the consignment involves products that directly impact consumer health and safety.

Committee's response to the argument:

It has been established that the Importer disposed of the consignment in violation of relevant undertaking, and given that the Committee, upon reviewing the case file, observed that the specific observations outlined in SFDA's Report No. (...), previously referenced, indicated non-compliance of samples of consignment with the requirements of the Implementing Regulation of the Law of Medical Devices, which was attributed to the Importer's failure to complete the corrective action plan for the consignment. This constitutes a fundamental violation considering the level of non-compliance related to the failure of the samples to meet the requirements of the Implementing Regulation of the Law of Medical Devices. Accordingly, the Importer cannot unilaterally determine what constitutes formal or technical observations regarding the consignment in question, as the undertaking remains binding. However, since the Committee's Decision considered the consignment to be under the ruling of prohibited materials, this contradicts the nature of the consignment, because the violation was related to specifications and restrictions that have no bearing on classifying the consignment as inherently prohibited from entering the country. Given the aforementioned, this Committee concludes to amend the amount of the imposed customs fine to be (10%) of its value, considering it as goods exempt from duties in accordance with Paragraph (3) of Article (145) of the Customs Law, contrary to what the Primary Decision ruled. Accordingly, the Committee decided as follows:

Decision

First: In Form: Accept in form the appeal filed by Importer/Establishment (...), CR No. (...), owned by /..., ID No. (...), against Primary Decision No. (...) of ..., issued by First Primary Customs Committee in Riyadh.

Second: On merits: Reject the submitted appeal and uphold the Primary Decision regarding the Appellant's conviction for customs smuggling and the fine in lieu of confiscation, with an amendment to the imposed customs fine to be (10%) of the value of the exempted consignment, making the total amount claimed from the Importing Establishment SAR (253,548) two hundred and fifty-three thousand five hundred and forty-eight Riyals, for the reasons and grounds stated herein.



Customs Appellate Committee in Riyadh

Decision No.: (618)
Decision Date 05/04/1444 AH

Key words:

Customs - Penal - Smuggling - Non-Disposal Undertaking- Accept the Case in Form - Reject the Case on Merits.

Abstract

The Importer filed this case requesting for cancellation of Decision No. (2/333) of 1440 AH issued by Second Primary Customs Committee in Riyadh , which convicted the Importer of customs smuggling, imposed a customs fine, and ordered confiscation of the consignment. The Appellate Committee established that the consignment violated the Trademarks Law, as the samples bear the registered trademark (...), therefore constituting a violation of the Trademarks Law. Department ruled to Uphold the Primary Decision, with an amendment to the amount of the customs fine based on Article (145) of the Unified Customs Law.

Documents:

- Article (56) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (145) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- Automotive oil filters are not classified as goods prohibited or restricted from entry, so there is no basis for convicting the Importer of smuggling by importing prohibited or restricted goods in violation of the Uniform Customs Law. Such goods were imported in accordance with the established official procedures, and a detailed customs declaration was duly completed for them.
- The Decision of the Primary Customs Committee stated that the goods bear the trademark (...), constituting a violation of the Trademarks Law, and smuggling according to the definition in Article (142) of the Unified Customs Law, is incorrect and does not align with the Customs Law and the Trademarks Law. Furthermore, the Decision did not clarify the Customs Authority's relationship with trademarks, as the Ministry of Commerce is the responsible entity for trademarks and their violations. Customs is exclusively competent in controlling prohibited and restricted goods entering the Kingdom and collecting duties on them. The imported goods (oil filters) are not prohibited or restricted from entry under the Customs Law, and therefore, the act of smuggling, as stated in the Primary Decision, did not occur.



Committee's response to the argument:

The Appellant reasons for challenging the primary Decision did not undermine the validity of its conclusion to convict the Appellant of customs smuggling. The Importer claims that oil filters are not among the goods prohibited or restricted from entering the Kingdom, and that the Customs Authority has no jurisdiction to consider violations of the Trademark Law, and that the Customs Authority is not competent in this regard given that there is a supervisory authority at the Ministry of Commerce responsible for regulating trademarks matters, are irrelevant, because the Customs Authority is not only concerned with collecting customs duties on imported goods, but also with verifying the safety and legality of their entry into the Kingdom and their compliance with all applicable regulatory restrictions. The Importer failed to confirm the legitimacy of the trademark (...) with a document proving its authenticity and its placement on his imports, and that they were imported by the owner of that trademark or with their consent. Accordingly, the Committee decided as follows:

Decision

First: In Form: Accept the Appeal filed by (....) Establishment , C.R. No. (...), owned by..., ID No. (...), against Primary Decision No. (2/333) of 1440 AH, issued by Second Primary Customs Committee in Riyadh.

Second: On merits: Reject the submitted appeal, uphold of the Primary Decision regarding the Appellant's conviction for customs smuggling and fine in lieu of confiscation, and amend the imposed customs fine to be twice the amount of the customs duties, making the total amount claimed from the Appellant SAR (40.179,87) eighty-seven thousand one hundred and seventy-nine Riyals and forty Halalas, for the reasons and grounds stated herein.



Customs Appellate Committee in Riyadh

Decision No.: (30)
Decision Date 09/07/1439 AH

Key words:

Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Violation of Saudi Standard Specifications.

Abstract

The Importer filed this case requesting cancellation of Decision No. (7/2) of 1441 AH, issued by Second Customs Primary Committee in Riyadh, which convicted the Importer of customs smuggling and imposed a customs fine in addition to a fine in lieu of confiscation. The Appellate Committee established that the consignment violated Saudi Standard Specifications. Uphold the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article (56/b) of the Uniform Customs Law issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 25 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

First: In Form: Allah's Messenger (peace be upon him) said: "Indeed actions are by intentions..." To the end of the noble Hadith. Given that we imported these goods for personal use and not for trade, the Importer should be treated as one who imported the goods in his personal name, where the goods are released under his responsibility and do not enter the laboratory for examination to ensure their conformity to the specifications and therefore are not subject to the fine.

Second: The fine is a penalty aimed at preventing the occurrence of harm to society, whether economic, health, or otherwise, and since we did not sell it, no harm to society has been realized, and as for us, we bear the consequences of our use.

Third: The violation was not due to a fundamental reason that makes use of the goods dangerous to the individual and society, but rather due to a formal reason, and we have used it in the building, and we do not have any problems with it.



Committee's response to the argument:

The claim of the concerned party that the imported goods were used in his private building does not negate the occurrence of the violation of the law, regardless of the validity of his claim or lack thereof, as the import was under a commercial registration. Also, restriction on the disposal of the consignment did not include such an exception; which is why the Committee affirms the correctness of the Primary Decision which convicted the Importer Establishment/..... for customs smuggling of "tiles, a sink with a pedestal, and a toilet," as the defenses presented against the appealed Primary Decision, as previously detailed, have no bearing on its concluded outcome. This indicates that the Primary Decision correctly applied the Law.

Based on all of the foregoing, the Customs Appellate Committee concluded that the defenses submitted by the Appellant did not include anything that changes the Committee's conviction in the validity of the appealed Primary Decision, and that there is no reason to amend or cancel it. Accordingly, the Committee decided as follows:

Decision

First: In Form: Acceptance of the appeal submitted by Establishment (...), CR No. ..., owned by/ ..., Civil Registry No. ..., against Decision No. (7/2) of 1439 AH issued by Second Primary Customs Committee.

Second: Dismiss the appeal on merits, and uphold the primary Decision.

Third: This Decision shall be final and enforceable after its approval by the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (62)
Decision Date 25/06/1439 AH

Key words:

Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Low sugar content below the permissible limit.

Abstract

The Importer instituted this case moving to cancel Decision No. (348) of 1437 AH, issued by the Primary Customs Committee in Jeddah, which convicted the Importer and obligated the Importer to pay a customs fine and an amount equivalent to the value of the consignment. The Appellate Committee found that the Importer admitted before the Committee that the consignment had been disposed of. Department ruled to Uphold the Primary Decision and amend Paragraph (1) thereof to read: "Convict the Importer based on Article (142) of the Unified Customs Law".

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.

Defenses and Arguments of the Parties

Appellant's Arguments

First: In Form: The violation is minor consisting of non-compliance with the specification due to low percentage of sugars below the permissible limit. It is not considered a fundamental violation that poses a risk to consumer health. Therefore, we request the application of Article (31/6) of the Unified Customs Law.

Second: There are judicial precedents issued by the Appellate Committee that warrant similar treatment in our case. The Appellant concluded his defenses by requesting to overturn the Primary Decision.



Committee's response to the argument:

The Appellant admitted before the Committee that the consignment had been disposed of through sale, thereby violating the written undertaking given and contravening the provisions of prohibition and restriction stipulated in the Law. This action constitutes customs smuggling according to Article (142) of the Unified Customs Law. As for what the Appellant argued in their defenses that the violation is minor and does not rise to the level of a customs crime, this Committee does not agree with what they argued, and the committee also believes that what the Appellant has argued does not affect the validity of the primary Decision; which is why this Committee sees fit to uphold it based on its grounds, except that the Committee believes to direct the conviction to the Appellant; as the Establishment does not have an independent legal personality. Accordingly, the Committee decided as follows:

Decision

First: In Form: Accept in form the appeal submitted by Trader/... against Decision No. (348) of 1437 AH, dated 17/11/1437 AH issued by the Primary Customs Committee in Jeddah, and reject it on merits.

Second: Uphold the Primary Decision in its Paragraphs (2 and 3) and amend Paragraph (1) to read as follows: Convict Owner of Establishment in absentia of customs smuggling.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (79)
Decision Date 10/09/1437 AH

Key words:

Customs - Penal - Written Undertaking - Non-Compliance with Specifications - Presence of Misleading Advertising Phrase for the Consumer.

Abstract

The Importer instituted this case moving to cancel Decision No. (50) of 1437 AH, issued by the Primary Customs Committee in Al-Tawal, which convicted the Importer and obligated the Importer to pay a customs fine and an amount equivalent to the value of the violating items in lieu of confiscation. The Appellate Committee found that the Importer complied with the security not to dispose of the consignment. Department ruled to Overturn the Primary Decision in all its clauses, consider the incident a customs violation and obligate the Trader to pay a customs fine based on Article (30.6) of the Unified Customs Law.

Documents:

- Article (30/6) of Implementing Regulations of the Common Customs Law issued by Royal Decree No. (M/41) dated 11/06/1425 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The Primary Decision, in its conviction, relied on the letter of the Director of Control Department, which included that samples (2 and 1) violated the standard specification due to their inclusion of advertising phrases. This is not sufficient or justified to convict the Establishment.
- Absence of material and moral elements of the crime.
- The correct characterization of the incident does not go beyond it being a procedural violation that is decided in accordance with the provisions of the Implementing Regulations of the Unified Customs Law.

Committee's response to the argument:

Given that the original principle is the Importer's commitment to the undertaking not to dispose of the consignment, and disposing of it before being notified is considered customs smuggling, except that in cases where the reason for non-approval of the clearance is due to a non-essential violation, such as the presence of advertising phrases as in the present case, then the incident may be considered a customs violation when the Importer's good faith is proven, which requires subjecting the case to the provision of Article (30/6) of the Implementing Regulations of the Unified Customs Law. Accordingly, the Committee decided as follows:



Decision

First: In Form: Accept the appeal submitted by Trader/....., national, Owner of ... Establishment, against Decision No. (50) of 1435 AH dated 23/04/1435 AH issued by the Primary Customs Committee in Al-Tawal, in form and on merits.

Second: Overturn the Primary Decision in all its clauses, consider the incident a customs violation and obligate the Trader to pay a customs fine of SAR (500).

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (81)
Decision Date 15/07/1439 AH

Key words:

Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.- Indication of Origin.

Abstract

The Importer instituted this case moving to annul Primary Customs Committee Decision No. (3/79) of 1441 AH concerning Ammar Case No. (79) of 1437 AH, convicting the Importer and imposing a customs fine. However, the Appellate Committee has established that the Importer disposed of the consignment. Therefore, the Committee ruled as follows: Reverse the primary Decision and amend Paragraph (First) by convicting the Importer, in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 56 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The consignment of goods to the Ministry of Commerce took a significant amount of time, and the Ministry responded that the clothing items were not within their jurisdiction. Subsequently, the Saudi Customs sent the goods for testing, and it was reported that the goods did not comply with specifications because they lacked laundry care labels and country-of-origin tags. Appellant asserted that this was an unintentional error on the part of the manufacturer and that the handling of the consignment occurred due to the testing laboratory's delay in issuing the analysis results.



Committee's response to the argument:

Since the test results demonstrated the sample's non-conformity was due to failing the material composition test, contrary to Appellant's claim, and whereas the establishment owner undertook to the Saudi Customs not to dispose of the goods that were temporarily cleared pending approval by the laboratory; and whereas the violation is considered a material violation due to its connection to human health; and whereas the Appellant's claim that the error was unintentional and attributable to the manufacturer is merely an unsubstantiated assertion that does not absolve them of legal responsibility, and since the Appellant's disposal of the consignment in violation of the undertaking constitutes customs smuggling pursuant to Article (142) of the Unified Customs Law, and whereas the primary Decision was based on the correct application of the Unified Customs Law, this Committee hereby upholds thereof on the grounds stated therein. However, the conviction should be directed at the individual merchant rather than the establishment, given that the establishment does not possess an independent legal personality. Accordingly, the Committee decided as follows:

Decision

First: In Form: Accept the appeal filed by the Merchant/....., owner of Establishment, against Primary Customs Committee Decision No. (3/79) of 1441 AH concerning Ammar Case No. (79) of 1437, dated 22/10/1437, AH in form and dismiss it on merits.

Second: Uphold the primary Decision in Paragraph (Second) and amend Paragraph (First) to read as follows: "Convict the owner of ... in person of customs smuggling".

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (628)

Decision Date 05/04/1444 AH

Key words:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Violation of labeling and instructions specifications.

Abstract

The Importer instituted this case moving to cancel the Decision of the First Primary Customs Committee in Riyadh No. (157/2) of 1439 AH, which convicted the Importer and obligated them to pay a customs fine equivalent to the disposed items value and required payment of fine in lieu of confiscation equivalent to the disposed consignment value. Since it has been established to the Appellate Committee that the violation is a formal, non-substantive one — namely, that the instruction manual accompanying the product does not contain the Arabic language. Therefore, the Committee ruled as follows: Annul the primary Decision in its entirety with respect to the customs smuggling conviction and all associated penalties and consider the Importer's disposal of the consignment as a customs violation, in accordance with Article (31.6) of the Implementing Regulations of the Unified Customs Law.

Documents:

- Article (56/b) of the Uniform Customs Law issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 25 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article (31/6) of Implementing Regulations of the Common Customs Law issued by Royal Decree No. (M/41) dated 11/06/1425 AH.



Defenses and Arguments of the Parties

Appellant's Arguments

- The non-compliance of the item with labeling and instruction specifications does not justify classifying the consignment as a violation or establishing the offense of customs smuggling, for the following reasons:
 1. The laboratory's observation does not affect the validity or usability of the sample, as it does not prevent the consumer from benefiting therefrom.
 2. The laboratory's observation is merely formal and non-substantive, relating only to labeling and instructions, specifically the absence of an Arabic-language manual.

Committee's response to the argument:

Whereas the violation does not pertain to the product's quality, safety, or technical and manufacturing standards, but is rather a formal and non-substantive violation—given that the instruction manual accompanying the product does not include Arabic; Since the Appellate Committee has firmly acknowledged the impact of the arguments presented against the appealed primary Decision, as previously outlined, it is evident that the primary Decision did not align with the correct application of the law. Based on all of the foregoing, the Appellate Customs Committee concluded that the Appellant's Arguments contained sufficient grounds to alter its view of the validity of the appealed primary Decision, convicting the importing company of customs smuggling and imposing the penalties associated with that conviction. Therefore, the Committee ruled as follows:

Decision

First: In Form: Accept in form the Appeal filed by/ ..., CR No. (.....), against Primary Decision No. (157/2) of 1439 AH issued by Riyadh First Primary Customs Committee.

Second: Annul the primary Decision in its entirety, including the conviction for customs smuggling and all associated penalties.

Third: Consider the Importer's handling of the consignment as a customs violation that requires imposition of a fine of SAR 1,000, as stipulated in Article (31.6) of the Implementing Regulations of the Unified Customs Law.

Fourth: Release the amount paid by the company in connection with the case under receipt order No. (5440) dated 20/07/1444 AH, after settling the due customs duties at a rate of 12% on the imported goods, and the imposed customs fine of SAR 5,000 (five thousand riyals), in accordance with Paragraphs (3) and (4) of the operative part hereof.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (95)
Decision Date 13/10/1437 AH

Keywords:

Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.

Abstract

The Importer instituted this case moving to cancel the Decision of the Primary Committee in Jeddah No. (48) of 1436 AH, which convicted the Importer and obligated them to pay a customs fine, as well as a fine in lieu of confiscation equivalent to the consignment value. Since it has been established to the Appellate Committee that the violation is not considered substantive, and that the good faith of the Importer is evident in the facts of the case, the Committee ruled as follows: Reverse the primary Decision in its entirety and acquit the company of the alleged offense, in accordance with Article (31.6) of the Implementing Regulations of the Unified Customs Law.

Documents:

- Article (30/6) of Implementing Regulations of the Common Customs Law issued by Royal Decree No. (M/41) dated 11/06/1425 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

1. The actual consignment consisted of white cheese, from which a sample was taken and sent to the laboratory. The results confirmed that the goods were suitable for human consumption. Additionally, the requirement for the company to submit an undertaking stating that the product is "White Cheese Modified with Vegetable Oil" indicates that the consignment was compliant and had been approved for clearance by SFDA.
2. The communication issued by SFDA to the Saudi Customs under Ref No. (...) dated .././.... regarding non-compliance with (...) specification was not known to the Appellant until it was referenced by the Primary Committee in its Decision.
3. The Appellant complied with SFDA's request by issuing a written undertaking, certified by Jeddah Chamber of Commerce, confirming their commitment to labeling future consignments as "White Cheese Modified with Vegetable Oil."
4. The company approached SFDA to inquire about the issuance of a letter to the Saudi Customs. The company's representative was informed that the previous undertaking had been lost and was asked to issue a new one for the clearance of the consignment. Consequently, the company provided SFDA with a new undertaking on .././...., and they reiterated their apology, stating that it could not be officially issued.
5. After persistent follow-ups and continuous inquiries with SFDA, it was revealed to the company that the undertaking had been lost for the second time. As a result, the company was requested to issue a replacement undertaking. A third undertaking was subsequently issued and submitted to SFDA on .././.... In this undertaking, the importing company clarified that it would incur



significant losses, as the goods were subject to an expiration date and would also bear the costs of storage, refrigeration, and other related expenses.

6. A violation of specifications in a manner that renders the product harmful to human health would classify it as unfit for consumption. However, a violation related to labeling—such as additional information on the primary ingredients—falls under a different category. The specification regulations allow for the correction of unintentional errors in labeling and provide for notifying the importer to ensure compliance in future consignments. This approach was applied by SFDA in its letter dated .../.../... addressed to the Appellant.
7. SFDA issued Circulars No. (...) and No. (...). .../.../.. which was communicated to the Chambers of Commerce, outlining the controls and requirements for labeling food products that contain allergenic ingredients. The circular included a provision granting importers a six-month grace period from the date of its issuance, ending on .../.../... . The goods in question arrived on .../.../..., confirming that they are not subject to the restriction outlined in the circular, as they arrived before the issuance of the circular mandating the application of the Gulf specifications. Consequently, the goods fall within the grace period granted to importers under the circular mandating the application of the Gulf Standard. Therefore, the goods fall within the grace period granted to importers under the aforementioned circular.

Committee's response to the argument:

Whereas the Appellant's appeal was primarily based on the assertion that the goods were fit for human consumption and that SFDA's letter, dated .././../..., issued by the Director of Imported Food Inspection Department, included the Importer's undertaking request to label the product as "White Cheese Modified with Vegetable Oil" in future consignments; Whereas the Appellant presented three (3) letters to SFDA reflecting this commitment, yet was repeatedly asked to provide a new letter each time; Given that judicial rulings must be based on certainty and not on doubt, and that conviction for the crime of customs smuggling must be based on the fulfillment of both elements of the offense, which this Committee did not find to be present in the appellant's case; and considering that the grounds cited by the Primary Committee in its Decision do not constitute a sufficient basis for conviction, and that Islamic Sharia has established the principle of "There should be neither harming nor reciprocating harm," and in light of appellant's compliance with the request made in SFDA's letter dated .././../..., as well as the fact that the violation is not deemed substantive and that the facts of the case demonstrate Appellant's good faith, and that the delay in clearance was not due to their fault, this Committee has therefore resolved to classify the incident as a customs violation subject to the provisions of Article (31/6) of the Executive Regulations of the Unified Customs Law. Accordingly, the Committee has decided as follows:

Decision

First: In Form: Accept the appeal filed by Company Against Jeddah Primary Customs Committee Decision No. (48) of 1436 AH dated 1/07/1437 AH in form and on merits.

Second: Reverse the primary Decision in its entirety and exonerate the company from the alleged offense.

Third: Classify the case as a customs violation and order the company to pay SAR 500 (five hundred riyals).

Fourth: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (57)
Decision Date 09/07/1439 AH

Key words:

Customs - Penal - Promissory undertaking - Non-compliance with specifications - Absence of explanatory data and washing instructions on the label.

Abstract

The Importer seeks annulment of Jeddah Primary Committee's Decision No. (79) dated 22/08/1436 AH, which convicted the Importer in person of customs smuggling, imposed a customs fine equal to 10% of the value of the non-compliant items, and obligated them to pay a fine in lieu of confiscation. Since it has been established to the Appellate Committee that the Importer did not dispose of the consignment, therefore, it ruled as follows: Reverse the primary Decision in accordance with Article (56.B) of the Unified Customs Law.

Documents:

- Article (56/b) of the Uniform Customs Law issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
-

Defenses and Arguments of the Parties

Appellant's Arguments

- The Importer did not dispose of the consignment and requests a physical inspection of the consignment to verify its presence and to rectify the violation by affixing a label containing the explanatory data and washing instructions.

Committee's response to the argument:

Whereas the letter issued by the Director General of Riyadh Dry Port Customs confirmed the presence of the consignment in the Importer's warehouses and the rectification of the violation; accordingly, the basis for their conviction no longer stands due to their lack of disposal of the consignment. Therefore, the Committee ruled as follows:



Decision

First: In Form: Accept the appeal filed by the Merchant/....., owner of Establishment, against Primary Customs Committee Decision concerning Ammar Case No. (79) of 1436 AH, dated 22/8/1436, AH in form and on merits.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Appellate Customs Committee in Dammam

Decision No.: (255)
Decision Date 08/08/1439 AH

Key words:

Customs - Smuggling - Penal - Promissory undertaking- Failure of wash colorfastness test.

Abstract

The Importer seeks annulment of Al-Bathaa Primary Committee's Decision No. (267) of 1437 ah, which convicted the Importer and obligated them to pay a fine equivalent to twice the due customs duties. Since the Appellate Committee demonstrated that the Importer did not present, in their appeal, any grounds warranting the amendment or annulment of the primary Decision, the Committee therefore ruled as follows: Uphold Item (2) of the primary Decision, as well as Item (1) along with its amendment to convict the Importer based on Articles (142) and (145) of the Unified Customs Law.

Documents:

- Article (56) of the Income Tax Law issued by Royal Decree No. (M/41) dated 3/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (145/2.5) of the Unified Customs Law issued by Royal Decree No. (M/41) dated 3/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- Appellant asserted their unawareness of this consignment, but stated that, several years ago, he executed a legal power of attorney for an individual he does not recall and gave him six thousand Riyals to establish a contracting establishment. Appellant explained that this individual disappeared after receiving the six thousand Riyals. Appellant further stated that he only learned of the situation through GAZT, currently ZATCA, where he was asked to pay the zakat due and informed that three establishments were registered under his name. The Appellant then stated his insolvency to pay any fines.



Committee's response to the argument:

The claim made by the owner of Establishment before the Primary Customs Committee that he has absolutely no knowledge of these consignments is not persuasive, particularly in light of his admission that he previously executed a legal power of attorney for an individual he does not recall from several years ago, to whom he handed six thousand riyals to establish a contracting company, and that this individual subsequently disappeared, with the owner having no further information about him. Given that the commercial registration bears his name and all documents for the two consignments were finalized bearing the establishment's seal and the attestation of the Chamber of Commerce, he must therefore bear the responsibility for violating the non-disposal promissory undertaking, and as the saying goes, "There is no reward without risk", the establishment therefore remains accountable for disposal of the consignment, which was not approved by the competent authority, in respect of the binding nature of promissory undertakings. Accordingly, the Committee decided as follows:

Decision

First: In Form: Accept the appeal submitted by (...) owner of ... Establishment, against the Decision delivered by the Primary Customs Committee in Al-Bathaa No. (267) dated 13/10/1437 AH in form and dismiss it on merits.

Second: Uphold Item (2) of the primary Decision, as well as Item (1) thereof with its amendment to read as follows: "Convict ..., Civil Registry No. (...), the owner of ... for Trading, CR No. (...), issued on .././.... by in person of customs smuggling".

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (9)
Decision Date 09/05/1440 AH

Key words:

Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.- Presence of pesticide.

Abstract

The Importer instituted this case moving to annul Jeddah Primary Customs Committee's Decision No. (255) of 1438 AH, convicting the Importer of customs smuggling and imposing a customs fine, as well as a fine in lieu of confiscation. Since it has been established to the Appellate Committee that the Importer complied with the promissory undertaking, the Committee ruled to reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 42 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The goods in question have been returned to the competent customs authority and handed over to the customs broker,..... We are unaware whether they have been re-exported or are still within the customs office.

Committee's response to the argument:

The Committee received a copy of the (Disposal Report) for the consignment under Customs Declaration No. (...) Dated ../../... belonging to the importer, on ..., ../../.... Since the merchant fulfilled their commitment to the Saudi Customs, the Committee ruled as follows:

Decision

First: In Form: Accept the appeal submitted by (...) Against Jeddah Primary Customs Committee Decision No. (255) of 1438 AH dated 17/07/1438 AH in form and dismiss it on merits.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (17)
Decision Date 11/03/1439 AH

Keywords:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.

Abstract:

The Importer instituted this case moving to annul Jeddah Primary Customs Committee's Decision No. (162) of 1437 AH, convicting the Importer of customs smuggling and imposing a customs fine, as well as a fine in lieu of confiscation. Since it has been established to the Appellate Committee that the Importer complied with the promissory undertaking, the Committee ruled to reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 42 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- Appellant stated that the goods were still stored in their warehouses. They further acknowledged that they had previously informed the Primary Committee that the consignment had been disposed of. They requested the Appellate Committee to form a committee, in accordance with customs procedures, to verify the existence of the goods and subsequently re-export or destroy thereof as deemed appropriate by the Customs Authority. Furthermore, Appellant requested reversal of the relevant primary Decision.

Committee's response to the argument:

Whereas the merchant, in their defense, stated that the non-compliant consignment is still in their warehouses, and they are fully prepared to bring the same to the Saudi Customs for re-export or disposal; and whereas it is established in the documents that the disposal pertained to (23) packages, the total quantity involved in the case, covered by Import Declaration No. (...) dated .../.../..., and whereas the Saudi Customs supervised the disposal process based on Disposal Report No. (...) dated .../.../...; and since the merchant fulfilled their commitment to the Saudi Customs, the Committee ruled as follows:



Decision

First: In Form: Accept the appeal submitted by (...) the owner of ... Against Jeddah Primary Customs Committee Decision No. (162) of 1437 AH dated 20/07/1437 AH in form and on merits.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (29)
Decision Date 10/03/1439 AH

Key words:

Customs - Penal - Promissory undertaking - Non-compliance with specifications - Failure to specify the type of tea in Arabic.

Abstract

The Importer seeks annulment of Jeddah Primary Committee's Decision No. (13) dated 26/02/1437 AH, which convicted the Importer in person of customs smuggling, imposed a customs fine equal to 10% of the consignment value, as well as a fine in lieu of confiscation. Since it has been established to the Appellate Committee that the Importer imported a consignment, and it was found that the violation relates to the product name, the committee therefore ruled as follows: Reverse the primary Decision and classify the incident as a customs violation in accordance with Article (31) of the Implementing Regulations of the Unified Customs Law.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (31) of the Implementing Regulations of the Unified Customs Law issued by Ministerial Decision No. (2748) dated 25/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- Appellant reported that the goods were disposed of through sale, and added that the violation is minor, as it pertains only to the product name. Appellant submitted a one-page memorandum stating that the laboratory results confirmed the goods were compliant and fit for human consumption, and that the dispute was merely over the English name of the tea. He also noted that he was not informed by the Saudi Customs about the required name correction until he received notice of the Primary Committee session date, three years later. Additionally, he mentioned that he had previously imported two containers of the same product.



Committee's response to the argument:

Whereas the Appellant's challenge was based on the argument that the violation was minor as it pertained only to the product name, and whereas SFDA's report indicated that the sample was non-compliant due to the failure to specify the type of tea in Arabic and the merchant's failure to follow up, and whereas the violation is not considered a substantive infraction and therefore does not rise to the level of a customs smuggling offense, and whereas the primary Decision ruled to convict the Appellant of customs smuggling; the Committee accordingly decided as follows:

Decision

First: In Form: Accept the appeal submitted by (...) owner of the branch of Establishment, against Jeddah Primary Customs Committee Decision No. (13) of 1437 AH dated 26/02/1437 AH in form.

Second: On merits: reverse the primary Decision, consider the incident a customs violation, and oblige Appellant to pay a fine of SAR 500 (five hundred riyals).

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Appellate Customs Committee in Dammam

Decision No.: (30)
Decision Date 04/03/1439 AH

Key words:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.

Abstract

The Importer seeks annulment of Jeddah Primary Committee's Decision No. (154) dated 30/04/1437 AH, which convicted the Importer in person of customs smuggling, imposed a customs fine equivalent to twice the customs duties, as well as a fine in lieu of confiscation. Since the Appellate Committee determined that the Importer clarified that the sample relied upon by the laboratory was non-compliant and was not included in the invoices or the packing list, the Committee therefore ruled as follows: reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

1. Appellant stated that the establishment, since its inception, has adhered to the laws, and that the necessary documents were submitted, leading to the release of the goods under a non-disposal undertaking until the laboratory results were issued.
2. The laboratory report was issued, stating that the sample was not approved for clearance due to non-compliance with product specifications under a non-disposal undertaking until the laboratory results were issued.
3. The laboratory report was issued, stating that the sample was not approved for clearance due to non-compliance with the raw materials composition specification.
4. The laboratory report indicates that the sample passed the primary tests.
5. Failure of the sample to meet raw material tests does not affect the product.
6. The Appellant asserts their cooperation with the Saudi Customs and states that the letter referenced in the primary Decision as not received, placing the onus of proof on the Customs Authority to demonstrate otherwise.
7. The item referred to in the laboratory report under Model No. (...) does not belong to his establishment and was not included in the invoices or the packing list.
8. Article (144) of the Customs Law does not apply to him, and the criminal intent is not present in his case since he acted in good faith when dealing with the goods.
9. The goods were disposed of through sale, and he affirmed that the item referred to in the laboratory result was not listed in the invoice or the packing list. He added that there might have been a confusion on the part of the laboratory when preparing the report.



Committee's response to the argument:

The Appellant's representative's appeal was based on the claim that the sample relied upon by the laboratory was non-compliant and was not included in the invoices or packing list. The primary Decision stated that the violation was limited to a shirt of Model No. (R2022). However, the Customs Authority was unable to determine the quantity and customs duty value of the non-compliant item. The Primary Committee imposed the fine and a fine in lieu of confiscation on the entire consignment, whereas judicial rulings must be based on certainty rather than speculation or assumption. Given that the sample, which is a shirt and was identified in the laboratory report as non-compliant, was not listed in the invoice or packing list, and since its quantity and value could not be determined, as confirmed by the Director General of the Legal Department's Letter No. (...) dated ../ ../..., the Committee therefore decided as follows:

Decision

First: In Form: Accept the appeal submitted by (...) the owner of ... Against Jeddah Primary Customs Committee Decision No. (154) of 1437 AH dated 30/07/1437 AH in form and on merits.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (128)
Decision Date 03/11/1439 AH

Key words:

Customs - Smuggling - Penal - Promissory undertaking- Non-compliance with specifications.

Abstract

The Importer seeks annulment of Jeddah Primary Committee's Decision No. (271) dated 12/8/1436 AH, which convicted the Importer in person of customs smuggling, imposed a customs fine equivalent to twice the customs duties, and obligated them to pay a fine in lieu of confiscation. Since it has been established to the Appellate Committee that the Importer did not dispose of the consignment, therefore, it ruled to reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 56 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/1423 AH.
-

Defenses and Arguments of the Parties

Appellant's Arguments

- The goods are still in the merchant's warehouses, and he requests a 30-day extension from the date of this session to enable him to re-export or dispose of the consignment under customs supervision.

Committee's response to the argument:

Since it was established under the Customs' Letter No. (...) Dated ../../... that the consignment in question has been re-exported, and since the merchant fulfilled their commitment to the Saudi Customs, the Committee ruled as follows:

Decision

First: In Form: Accept the appeal filed by the Merchant/....., owner of the branch of Establishment, against Jeddah Primary Customs Committee Decision No. (271) of 1437 AH dated 12/08/1437 AH in form and on merits.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (245)
Decision Date 22/05/1443 AH

Key words:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Lack of resistance to abrasion.

Abstract

The Importer seeks annulment of the Second Primary Customs Committee's Decision No. (864/2) of 1441 AH, which convicted the Importer and imposed a fine along with a fine in lieu of confiscation equivalent to the value of the disposed consignment. Since the Appellate Committee established that the Importer violated their non-disposal undertaking, the Committee therefore ruled as follows: Annul the primary Decision in its entirety, including the conviction for customs smuggling, the fine, and the confiscation penalty, considering the Importer's disposal as a customs violation and imposing a fine of SAR 1,000 (one thousand riyals) based on Article (31/6) of the Implementing Regulations of the Unified Customs Law.

Documents:

- Article (56/b) of the Uniform Customs Law issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 25 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 145 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11/1423 AH.
- Article (31/6) of Implementing Regulations of the Common Customs Law issued by Royal Decree No. (M/41) dated 11/06/1425 AH.



Defenses and Arguments of the Parties

Appellant's Arguments

- He states that his client has no knowledge whatsoever of the Decisions issued against him and has never previously established a commercial registration for the purpose of importing goods from outside the Kingdom.
- He went to the Ministry of Commerce branch in Al-Ahsa with two individuals, the first named (A) and the second named (B), who entered the Ministry of Commerce branch without his client, who waited outside the building. They came out with documents and asked him to sign thereof, claiming that he would be employed under the Saudization system. He was given the amount of one thousand Riyals as an advance payment for his employment and not for the issuance of a commercial registration under his name.
- My client, after a period, received a call from Al-Bathaa Customs. Upon their review, they informed him that goods had arrived in his name and that significant financial penalties had been issued against him. He immediately proceeded to cancel the commercial registration.
- The Importer states that the individuals named (A) and (B) are the ones who fraudulently obtained the commercial registration in his name and used it for their own account, and that they engage in such methods with many individuals who have been their victims, by extracting commercial registrations in their names. He affirms their readiness to testify against the aforementioned individuals, noting that Al-Bathaa Customs is aware of these two individuals and their activities.
- The commercial registration was issued on .../.../... and was canceled on .../.../..., according to the attached copy of the cancellation document, implying that the registration was only active for six months.
- The Customs Clearance Office (...) has never been dealt with by the importer, nor does he know it, and he did not authorize it for any matters. Furthermore, the signature on the power of attorney is merely the name (...) written out, and not his actual signature. He contests this signature and requests that this power of attorney be referred to the Forensic Evidence Department to verify its authenticity and for signature comparison. It is important to note that powers of attorney are issued by a notary public, implying that this power of attorney is invalid and forged. It is also worth mentioning that his client's National ID number was not mentioned therein.
- Al-Bathaa Customs did not summon the owner of the customs clearance office to question them about the individual they were personally dealing with, including their full name, regarding the amounts of money handed over in cash or deposited into the office's account for the purpose of finalizing the goods' procedures.



Committee's response to the argument:

The appeal filed by the concerned party was based on their claim of denying responsibility and being charged with the crime of customs smuggling, alleging that the responsibility does not pertain to them because they have no knowledge of the consignment in question, were not contacted regarding the same, and were not notified of the existence of an establishment in their name, and that therefore they have no connection to that consignment. They further claimed that the commercial registration under their name for a fee of 1000 (one thousand riyals) was for the purpose of their inclusion in the Saudization system, and that the two individuals involved exploited a copy of their personal ID to open commercial records and import the goods in question. However, this defense was dismissed, as the consignment was registered under the establishment's name, and thus, the Saudi Customs has no concern, when applying the provisions of the Law, with the relationship that may exist between the individual whose name the import documents were registered under and the third parties involved. That claim or interpretation of the original nature of that relationship does not negate the establishment of responsibility on the Appellant for the occurrence of the violation by disposing of goods that were not finally cleared by breaking the seal and releasing thereof for commercial circulation without authorization from the competent authority, regardless of whether that violation entails what necessitates considering it customs smuggling or a violation of the provisions of the Customs Law and its Implementing Regulations. Consequently, the Customs Authority has no concern with any such relationship that may govern the Appellant's agreement with third parties due to enabling them to import and conduct commercial activity by extracting a commercial registration in their name, and then claiming that such importation was contrary to their agreement, and the Appellant is at liberty to claim against whoever they allege caused them harm contrary to their agreement and the relationship established with third parties. Whereas the Appellate Committee, upon reviewing the documents included in the case file, that the laboratory results pertaining to the observations outlined in the laboratory report regarding the item included in the consignment—specifically, "footwear"—did not contain any findings that would warrant considering them as substantial violations, the contravention of the restriction regarding which, upon disposal of the tested item, would constitute the customs smuggling offense, as the observations were related to a lack of abrasion resistance; and whereas the Importer violated their non-disposal undertaking, despite being officially notified to re-export the item in question in light of the lab's findings, to which he failed to respond, thus establishing the Importer's violation by proceeding with the customs clearance procedures for the consignment. However, his actions do not rise to the level of constituting the customs smuggling offense. Therefore, the Committee resolved as follows:

Decision

First: In Form: Accept in form the Appeal filed by Est., CR No. (...), owned by, holder of National ID No. (...), against the Second Primary Customs Committee's Decision No. (864/2) of 1441 AH.

Second: On Merits, annul the primary Decision in its entirety regarding the conviction for customs smuggling, the fine, and the ordered fine in lieu of confiscation, for the reasons and grounds outlined herein.

Third: Consider the Appellant's disposal of the non-compliant item from the consignment as constituting a customs violation punishable under Article (31/6) of the implementing Regulations of the Unified Customs Law and impose a fine of SAR 1,000 (one thousand riyals), for the reasons and grounds outlined herein.



Customs Appellate Committee in Riyadh

Decision No.: (541)
Decision Date 16/03/1444 AH

Key words:

Customs - Conviction - Commercial Fraud - Counterfeit Trademark - Accepted on Formal Grounds - Rejected on Merits.

Abstract

The importer seeks the annulment of the Decision No. (3/ 201) for the year 1442 AH, which issued by Riyadh Customs Primary Committee, convicting the importer of the crime of customs smuggling and obligating them to pay a fine equivalent to the value of the violating consignment - and the confiscation of the seized items. Whereas the Appellate Committee has established that the importer imported a consignment containing a registered trademark, the purport thereof is: Confirmation of the initial Decision based on Article (142) of the Unified Customs Law and the Trademarks Law.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.
- Article (145) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.
- Article (163) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1425 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The incident does not constitute the crime of customs smuggling, as it is well-established that customs smuggling is divided, in terms of the infringed right, into two types:
 1. A type that pertains to customs duties imposed on goods with the intention of evading their payment.
 2. A type that pertains to the prohibition of certain goods that may not be imported or exported, with the intention of violating the absolute prohibition imposed by the legislator in this regard. Therefore, considering what pertains to the goods as smuggling is inconceivable except upon their entry into or exit from that customs zone, especially since the crime was not complete even assuming its commission, but rather an attempt; which indicates the lack of completion of the crime.
- Furthermore, because the crime of customs smuggling is an intentional crime that requires the criminal intent of the perpetrator to commit the criminal act while being aware of its elements. Criminal intent is a fundamental element of the crime and must be proven effectively. The fact is that the company's goal was personal use of the product and not trading in it or offering it to the consumer.



Committee's response to the argument:

Whereas it is understood from the statements of the Appellant's representative that the specifications mentioned in the laboratory report are considered formal and do not affect the safety of the item, the Appellate Committee does not agree therewith, because the lighting devices are considered in violation of the Anti-Commercial Fraud Law and the Trademarks Law, according to what was stated in the letter issued by the Ministry of Commerce, and the other item (light bulbs) is in violation of the Trademarks Law. These violations are considered fundamental violations that affect the quality of the product and the safety of the consumer. The claim that the consignment was for the company's private use does not affect the proof of the violation; because such a statement does not change the fact of attempting to import goods into the country through a consignment was seized with the noted violations. Moreover, the claim of the Appellant's representative that smuggling can only be conceived of as occurring upon the entry and exit of goods from the customs zone for it to be a complete crime, does not detract from the proof of customs smuggling; because the law equates entry and exit with the attempt to enter and exit violating goods or to evade the payment of customs duties or what violates the regulations. Accordingly, the attempt to import this consignment is considered customs smuggling according to Article (142) of the Unified Customs Law, especially since the legislator equated the penalty for the completed crime and the attempted smuggling according to what is stipulated in Article (145) of the law. Furthermore, the representative of the Appellant Company's claim regarding the error of the issuing committee in applying multiple penalties to the company, and such application, according to his claim, does not conform to the correct implementation of the law, is refuted by considering that the penalty of confiscation and the customs fine are two mandatory penalties to be applied for the crime of smuggling, and it is impermissible to apply one without the other, as this violates the correct implementation of the law. Therefore, the Appellant's request is worthy of being disregarded; which led the committee to decide:

Decision

First: In Form: Accept appeal filed by Company C. R. No. (...) of 1442 AH

Second: On merits; the submitted appeal was dismissed, and the primary Decision rendered against it was affirmed.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (23)
Decision Date 08/03/1439 AH

Key words:

Customs, Smuggling, Penal, Bond Undertaking, Failure to Record in Arabic

Abstract

The importer seeks to annul the Decision No. (87495) of 1436H, which issued by Jeddah Primary Customs Committee, convicting the importer and imposing a customs fine equivalent to the value of the non-compliant goods as a substitute for confiscation. Whereas it is established to the Appellate Committee that the importer failed to provide evidence from his records showing that the goods were among those destroyed in the warehouse fire; therefore: The primary Decision is affirmed.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- It was found that the goods were damaged due to a fire in the establishment's warehouse. The importer submitted a copy of an official report issued by the Civil Defense and relied on his objection memorandum recorded under No. (...), Dated ../../... claiming that the consignment had been sent several times for destruction but was returned to the warehouse due to the incomplete formation of the customs destruction committee, until a fire broke out in the warehouse on 14/03/1431 AH.
- In response to the Customs Authority's representative, who stated that attempts were made multiple times to clear the bond undertaking related to the consignment, but their attempts with customs were unsuccessful, and customs apologized repeatedly for the incomplete formation of the inspection committee, and that they possess receipts from the shipping company evidencing its carriage of the consignment to customs multiple times, which they will present to the committee, and that the goods remained in the warehouse until the fire occurred.



Committee's response to the argument:

The merchant's appeal was based on the claim that the goods perished in the fire, as evidenced by the Civil Defense's letter No. (...). After having reviewed the case file, it was turned out that the fire occurred on 14/03/1431 AH, according to the Civil Defense's letter mentioned above. While there was a period exceeding one year from the date of sample withdrawal on 15/11/1429 AH until the fire date, a period sufficient for the merchant or his representative to settle the bond undertaking. Thus, the Appellant's pleas lacked supporting evidence, and the merchant failed to provide records proving that the goods were among the burnt goods. Accordingly, the Committee decided to uphold the primary Decision in its entirety, as it was consistent with the applicable regulations and facts. It was also determined that the conviction should be directed at the merchant personally, as the establishment does not have an independent legal personality separate from its owner. After reviewing the Unified Customs Law and its Implementing Regulations, the Committee decided as follows:

Decision

First: In Form: In Form: accept the appeal filed by the merchant/ against Jeddah Primary Customs Committee Decision No. (254) of 1437 AH, dated 26/07/1437 AH, and reject it on merits.

Second: To uphold the primary Decision regarding paragraphs (Second) and (Third), and to amend paragraph (First) to become: "Conviction of the merchant/ in person of customs smuggling".

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (29)
Decision Date 10/03/1439 AH

Key words:

Customs – Smuggling – Penal – Bond Undertaking – Non-Compliance with Clearance Specifications and Electrical Durability Standards

Abstract

The importer's claim for Annulment of the Decision No. (229/3) of 1441H, which issued by the Riyadh Third Customs Committee, convicting the importer and imposing a customs fine equivalent to the value of the non-compliant goods as a substitute for confiscation. Since the Appellate Committee found that the importer had re-exported the consignment; accordingly: The primary Decision is annulled in its entirety.

Documents:

- Article 24 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 56 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 24 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article (5.145) of the Unified Customs Law promulgated by Royal Decree No. (M/41) dated 03/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The Company's re-exportation of the consignment and the absence of a criminal offense: The documents issued by Al-Batha Customs confirmed that the Appellant Company re-exported the consignment immediately after becoming aware of its non-compliance, and this re-exportation occurred more than three years before the initiation of the criminal proceedings by the General Authority of Customs, clearly demonstrating the absence of criminal intent and the collapse of both the material and moral elements of the offense.

The judgment of Conviction was relied upon conjecture and probability:

The Primary Customs Committee established its judgment on an incorrect presumption that the Appellant company failed to respond to the Customs Authority's request to re-export the consignment and allegedly disposed of the goods. However, it is evident that this assumption, upon which the appealed ruling based its judgment on groundless in fact, rendering the judgment invalid and subject to annulment.



Pleas of the Authority

- A sample was taken from the consignment and sent to the relevant laboratory, the laboratory report indicated that the sample did not comply with the clearance distances and electrical durability specifications, which are considered technical violations. The Customs Authority contacted the importer, informing him that the consignment consisted of goods prohibited from entering the Kingdom of Saudi Arabia; however, the importer failed to respond despite the undertaking previously signed by him, noting that such conduct poses numerous direct negative impacts on consumers, affecting their health, safety, and financial resources.
- The consignment was not cleared by Customs but was temporarily released to the importer pending the laboratory results, based on an undertaking not to dispose of the goods. Due to the importer's failure to comply with Customs' instructions to re-export the consignment, it was established that the importer had disposed of the consignment, which constitutes a breach of the undertaking given, in accordance with the provision of Article (56) of the Unified Customs Law.
- The representative of the Appellant company claimed that the consignment had been re-exported and that the undertaking had been fulfilled under Declaration No. (...). Upon requesting clarification from Al-Batha Customs regarding the undertaking, their response indicated that Statistical Declaration No. (...) remains unsettled, according to the electronic system. After having reviewed the re-export declaration revealed discrepancies between the imported and re-exported goods in terms of origin and quantity; namely, 750 units of Italian origin were re-exported, whereas only 4 units of Indian origin had been imported.

Committee's response to the argument:

- Since it was established to the Appellate Committee that the importer did, in fact, re-export the consignment, and considering that the Customs Authority's claim regarding the discrepancy in the item between the re-export declaration and the import declaration, this is attributable to the comparison being made with the other item of Italian origin, which is unrelated to the subject of the dispute between the parties. Consequently, the assertion that the Appellant did not fulfill its obligation to re-export the violating item lacks supporting evidence given the aforementioned circumstances; accordingly, the Committee decided as follows:

Decision

First: In Form: Accept appeal filed by/ Company, C. R. No., against the Third Primary Customs Committee Decision No. (229/3) of 1441 AH.

Second: On merits; acceptance of the appeal and annulment of the primary Decision in its entirety for the reasons and arguments stated herein.



Customs – Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (34)
Decision Date 26/06/1440 AH

Key words:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.

Abstract

The Importer seeks annulment of Jeddah Primary Committee's Decision No. (154) dated 30/04/1437 AH, which convicted the Importer in person of customs smuggling, imposed a customs fine equivalent to twice the customs duties, as well as a fine in lieu of confiscation. The Appellate Committee further found that the importer demonstrated that the sample upon which the laboratory based its finding of non-conformity was not mentioned in the invoices or packing list, thereby: reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The goods remained stored in the company's warehouses. Moreover, the importer argued that the violation was minor and non-substantial and expressed readiness to coordinate with the laboratory to rectify the sample's status, and requested the Committee to address the Customs authority for the purpose of coordination and to inform the importer of the Committee's actions taken to rectify the sample's status.

Committee's response to the argument:

The Appellant was relied upon the claim that the goods remained in the company's warehouses and were deemed compliant per the laboratory's report, as referenced in the letter No. (...) dated .../.../...., which issued by His Excellency the Director General of King Abdulaziz International Airport Customs. Since the Appellant had not disposed of the consignment, the Committee concluded that no violation had occurred. After having reviewed the Unified Customs Law and its Implementing Regulations, the Committee decided:



Decision

First: In Form: Accept the appeal submitted by Company Against Jeddah Primary Customs Committee Decision No. (63) of 1437 AH dated 26/07/1437 AH in form and on merits.

Second: The primary Decision is revoked in its entirety.

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (47)
Decision Date 29/05/1439 AH

Key words:

Customs – Smuggling – Penal – Bond Undertaking – Non-Compliance with Saudi Standards Specifications

Abstract

The importer seeks the annulment of the Decision No. (68) of 1437H dated 16/9/1437H, which issued by the Al Tuwal Primary Customs Committee , convicting the establishment, in presence, of customs smuggling, imposing a customs fine, and obligating the importer to pay a fine in lieu of confiscation. Whereas the Appellate Committee has established that the consignment did not comply with Saudi standards and specifications, and that the importer failed to adhere to the bond undertaking signed, it consequently resolves: Uphold the primary Decision, with the amendment of the conviction paragraph to include the owner of the establishment, pursuant to Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The importer argued that the consignment had been disposed of due to the absence of any notification from Customs requesting its return, and petitioned the Committee to reduce both the customs fine and the fine in lieu of confiscation, asserting that they were only notified of the Food and Drug Authority's Decision only after a three-month delay.

Committee's response to the argument:

Since the Appellant admitted to having disposed of the consignment, thus breaching the bond undertaking, such conduct constitutes customs smuggling under Article (142) of the Unified Customs Law. As for the plea of the Appellant's attorney regarding the delay in the arrival of the laboratory report, this is not considered a valid reason for exemption from liability. Accordingly, the primary Decision is in accordance with the correct implementation of the law, which leads this Committee to uphold it based on its stated reasons. Furthermore, as the conviction was directed at the establishment, which lacks a separate legal personality from its owner, the primary Decision must be amended to direct the conviction to the owner personally. After having reviewed the Unified Customs Law and its Implementing Regulations, the Committee decided:



Decision

First: In Form: Admit the appeal filed by the merchant/ the Establishment's owner/ against Al Tuwal Primary Customs Committee Decision No. (68) of 1437 AH, dated 16/09/1437 AH, and to be overturned on merits.

Second: Uphold the primary Decision regarding paragraphs (Second and Third), and to amend paragraph (First) to become as follows: "Conviction of the owner of the Establishment/ in person for the offense of customs smuggling."

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (153)
Decision Date 23/11/1439 AH

Key words:

Customs - Penal - Promissory undertaking- Non-compliance with specifications - Non-compliance of raw materials composition.

Abstract

The importer requests the annulment of the Decision No. (318) dated 8/10/1437 AH, which issued by the Jeddah Primary Committee, adjudging to convict her in person of customs smuggling, and imposing a fine equal to twice the customs duties and a fine in lieu of confiscation. Whereas the Appellate Committee has established that the importer destroyed a consignment, pursuant to an official destruction report, accordingly: reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The goods are still in the merchant's warehouses, and the importer requests that the esteemed Committee instruct the Customs Authority to form a committee, in accordance with the applicable customs procedures, to inspect the consignment and re-export or destroy it as deemed appropriate by Customs, and to settle the bond undertaking, thereby requesting the annulment of the primary Decision.

Committee's response to the argument:

The Appellant's challenge is based on the claim of revoking the primary Decision, relying upon the destruction of the Establishment's owner of the non-compliant consignment, the Customs Authority confirmed in its letter No. (...) Dated ../../... that the Appellant had destroyed the consignment pursuant to Destruction Report No. (...) dated ../../.....; Given that the merchant fulfilled his obligations towards Customs in accordance with the bond undertaking, so his conviction no longer relies upon groundless, thereby requiring the annulment of the primary Decision in its entirety and issuing a judgment of the merchant's innocence from the offense of customs smuggling. Thus, the Committee resolved:



Decision

First: In Form: In Form and **On merits:** Admit the appeal filed by the merchant/ the owner of Establishment branch/ against Jeddah Primary Customs Committee Decision No. (318) of 1437 AH, dated 08/10/1437 AH.

Second: Reverse the primary Decision in its entirety and exonerate the merchant from the alleged offense.

Third: This Decision shall be executed upon approval of His Excellency the Minister of Finance.



Customs Appellate Committee in Riyadh

Decision No.: (391)

Decision Date 09/09/1443 AH

Key words:

Customs – Penal – Bond Undertaking – Non-conformity with Specifications – Color Instability in Dry Cleaning.

Abstract

A claim initiated by the importer to overturn the Decision No. (1/3141) of 1442 AH, which issued of the Riyadh Primary Customs Committee, adjudging to convict the importer in presence of customs smuggling, obligating it to pay a customs fine equivalent to the value of the consignment, and requiring it to pay a fine in lieu of confiscation. Whereas the Appellate Committee has established that the importer has fulfilled the undertaking, the purport of which is as follows: reverse the primary Decision in accordance with Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The undertaking related to this case was settled on .../.../..., which was confirmed during our appearance before the Customs Committee in the hearing. We hereby attach a statement issued by Fasah platform, which provides the undertakings registered in their commercial registry, indicating that the non-disposal bond associated with this customs declaration has been settled. A request is hereby made to authorize the relevant authority to resolve the matter.

Committee's response to the argument:

Whereas the Appeal Committee requested the Customs Authority's response to the concerned party's claim, who affirmed that the undertaking had been settled, and whereas the case file did not contain any evidence from the Customs Authority proving the non-settlement of the undertaking, a copy of which was submitted by the appellant until .../.../..... Accordingly, the importer's (Defendant's) assertion shall prevail, especially since the Customs Authority is the entity with the capability to access its electronic system and provide the Committee with a document therefrom proving the invalidity of the Appellant's claim, in light of the Customs Authority's failure to address the copy of the document submitted by the Appellant, which contradicts the Customs Authority's claims regarding the consignment in this respect; based on which the Committee decided:



Decision

First: In Form: Admit the appeal submitted by (.....) Establishment, Commercial Register No. (...) owned by Mr. (...), National ID No. (...), against Primary Decision No. (1/3141) of 1442 AH issued by the First Primary Customs Committee in Riyadh.

Second: Overturn the primary Decision insofar as it ruled the Appellant guilty of customs smuggling and imposed a fine in lieu of confiscation and customs fine, based on the reasoning and grounds stated in this Decision.



Customs Appellate Committee in Riyadh

Decision No.: (560)
Decision Date 16/03/1444 AH

Key words:

Customs – Smuggling – Penal – Restricted Goods – Camels

Abstract

A claim by the Authority to annul the Decision No. (216) of 1441 AH issued by the Riyadh Primary Customs Committee, which ruled that the importer was not guilty of customs smuggling. As the Appellate Committee confirmed that the Authority's objection memorandum—attached in the case file—was based on the argument that the Decision-issuing committee failed to verify the authenticity of the letters provided by competent authorities concerning the death of the camels, especially since the camels owner acknowledged their presence during his appearance before the Primary Committee; Accordingly: The Appeals Committee upheld the primary Decision of non-conviction, based on Article (142) of the Unified Customs Law.

Documents:

- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
-

Defenses and Arguments of the Parties

ZATCA's Defenses

- The Decision-issuing committee did not verify the authenticity of the letters submitted by the competent authorities regarding the death of the camels, particularly as the camels owner acknowledged their presence during his appearance before the Primary Committee.

Committee's response to the argument:

Whereas the Customs Authority's plea regarding the Primary Committee's failure to verify the authenticity of the documents submitted by the Public Authority for Agricultural Affairs and Fish Resources in the State of Kuwait does not affect the authenticity of the Decision reached, considering that the Decision-issuing entity has the discretion to assess the evidence presented to it. Moreover, the Customs Authority did not provide any indication of forgery in the submitted documents; rather, its objection was based solely on the Committee's lack of verification of the documents indicating the death of the camels. Therefore, this plea, as presented by the Customs Authority, does not alter the outcome of the Decision, which stated of not convicting the owner of the camels for customs smuggling due to the non-return of the camels, as the Committee had established their death. Consequently, the appeal lacks a valid ground that contradicts the established facts in the case files; accordingly, the Committee has decided:



Decision

First: In Form: Admit f the appeal in form submitted by ZATCA against the Decision No. (216) of the year 1441 AH issued by the Al Ruqai Primary Customs Committee in its case issued against (.....), National ID No. (...).

Second: On the merits, the appeal is rejected, and the primary Decision is upheld in its ruling of non-conviction of (...) for customs smuggling, for the reasons and legal grounds stated in this Decision.



Customs Appellate Committee in Riyadh

Decision No.: (412)
Decision Date 08/10/1443 AH

Key words:

Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Non-Compliance of item (Low-Frequency Wire) to Conductor Resistance Specification.

Abstract

A claim by the importer to annul the Riyadh Primary Customs Committee Decision No. (1/59) of 1440 AH, which convicted the importer, obligated a customs fine, and required payment of an amount equivalent to the value of the disposed goods. Whereas the Appellate Committee found that the importer disposed of the consignment based on Article (142) of the Unified Customs Law, the purport thereof is to as follows: Overturn the primary Decision insofar as it convicted the Appellant of customs smuggling and imposed related penalties, based on the reasons and grounds stated in this Decision.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.
- Article 163 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The goods remained in the importer's warehouse, and the importer abided by the undertaking not to dispose of them as of 20/06/1440 AH, noting that a letter for re-examination of the goods had previously been sent, requesting their destruction in case the goods did not conform to the required specifications. The importer visited Riyadh Dry Port Customs several times in this regard, but the goods were not destroyed. Their market value is now zero, as the model is outdated and no longer marketable domestically or internationally. The goods were eventually destroyed by Riyadh Dry Port Customs in accordance with the undertaking, hence, the importer possesses the receipt for the fine related to the consignment, and also requests the annulment of the primary Decision in all its operative parts.



Committee's response to the argument:

After reviewing the case file, the Committee found that the item in this regard (a connector), which was part of the consignment, had been destroyed under an official report dated .../.../....; whereas the matter was as stated, the ground for the conviction of customs smuggling—i.e., that the importer disposed of the goods in violation of his undertaking—collapses, since the goods were destroyed and no reservation exists regarding the quantity concerned in this case. Accordingly, the Committee ruled:

Decision

First: In Form: Admit the appeal in form, submitted by Establishment, Commercial Registry No. (...), Owned by/, National ID No. (...), against First Customs Committee Decision No. (1/59) of 1440 AH issued in Riyadh.

Second: On the merits, to admit the appeal and overturn the primary Decision insofar as it convicted the Appellant of customs smuggling and imposed related penalties, for the reasons and goods stated in this Decision.



Customs - Penal

Customs Appellate Committee in Jeddah Governorate

Decision No.: (559)

Date of Decision: 16/03/1444AH

Key words:

Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Non-Compliance of (Speaker) Item with Labeling Specifications

Abstract

A claim by the importer to annul the Decision No. (1/129) of 1440 AH issued by First Primary Committee in Riyadh , which convicted the importer, imposed a customs fine, and required payment equivalent to the value of the disposed item as a fine in lieu of confiscation. Whereas it has been established to the Appellate Committee that the non-compliant consignment was destroyed, the purport is as follows: Overturn the primary Decision based on Article (163) of the Unified Customs Law.

Documents:

- Article (142) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (143) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (145) of Common Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423AH.
- Article (163) of the Unified Customs Law issued by Royal Decree No. (M/41) dated 03/11/1423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The consignment relevant to the Decision under appeal (mobile phone accessories) was destroyed by Riyadh Dry Port Customs in accordance with the undertaking, and the importer holds a receipt confirming payment of the related fine, and requests cancellation of the primary Decision in all that it ruled.

Committee's response to the argument:

After reviewing the case file, the Committee found that the item in this regard, which was part of the consignment, had been destroyed under an official report dated .../.../....; whereas the matter was as stated, the ground for the conviction of customs smuggling—i.e., that the importer disposed of the goods in violation of his undertaking—collapses, since the goods were destroyed and no reservation exists regarding the quantity concerned in this case...‘ Accordingly, the Committee ruled:



Decision

First: In Form: Admit the appeal in form, submitted by (.....) Establishment, Commercial Registry No. (...), owned by/, National ID No. (...), against primary Customs Committee Decision No. (1/129) of 1440 AH issued in Riyadh.

Second: On the merits, to admit the appeal and overturn the primary Decision insofar as it convicted the Appellant of customs smuggling and imposed related penalties, for the reasons and goods stated in this Decision.



Customs Appellate Committee in Jeddah Governorate

Decision No.: (60)

Date of Decision: 23/06/1439AH

Key words:

Customs – Penal – Bond Undertaking – Non-Conformity with Specifications – Existence of Microbes.

Abstract

A claim by the importer to annul the Jeddah Primary Customs Committee Decision No. (248) of 1437 AH, which convicted the importer, imposed a customs fine, and required payment of an amount equivalent to the value of the non-compliant goods as a fine in lieu of confiscation. Whereas it was established to the Appellate Committee that the importer re-exported the consignment, the purport thereof is as follows: Overturn the primary Decision in all that it ruled, based on Article (142) of the Unified Customs Law.

Documents:

- Article 142 of the Common Customs Law of GCC States issued by Royal Decree No. (41/M) dated 03/11423 AH.

Defenses and Arguments of the Parties

Appellant's Arguments

- The copy of the re-export declaration submitted to the Appellate Committee does not pertain to the consignment under review, but the consignment was re-exported under Re-export Declaration No. (...), Dated ../../... Additionally, criminal intent was not established against the importer.

Committee's response to the argument:

The Appellant based his appeal on the fact that he had re-exported the non-compliant portion of the consignment. He applied for Customs and requested issuance of Re-export Declaration No. (...), dated ../../..., and addressed with the Director of the General Department for Customs Audit at the Authority via Letter No. (.../...) Dated ../../... to provide Customs with re-export declaration No. (...), Dated ../../... Their letter No. (...) Dated ../../... stating that the re-export declaration was destroyed due to the lapse of more than five years since the completion of the declaration procedures. Furthermore, a letter No. (...) dated ../../..... issued by the Director General of Jeddah Islamic Port Customs confirmed Dated ../../... the consignment in this regard, as registered under the relevant import declaration, had indeed been re-exported. Accordingly, the ground upon which the conviction was established has ceased to exist, and there is no ground to claim that the Appellant breached the bond undertaking or committed the offense of customs smuggling; therefore, the Committee has decided to:



Decision

First: In Form: Accept the appeal submitted by (...) the owner of ... Against Jeddah Primary Customs Committee Decision No. (248) of 1437 AH dated 25/07/1438 AH in form and dismiss it on merits.

Second: Overturn the primary Decision in its entirety.

Third: This Decision shall enter into force after being approved by HE the Minister of Finance.

May Allah's Blessings and Peace be upon our Prophet Muhammad and upon his family and companions.



Index of Pleas

Order as per index	Brief of Plea	Decision NO.	Page NO.
Definition and Categories of Pleas			10
Formal Pleas			11
1	Plea of lack of notification	18	12
2	Plea that the consignment does not violate Saudi specifications	112	14
Subjective Pleas: Administrative			16
3	Plea of the Committee's Lack of Jurisdiction as a Neutral Judicial Body	595	17
4	Pleas of lack of causation	571	20
5	Plea of the General Authority of Customs' Lack of Entitlement to Claim Refund of Customs Duties	177	22
6	Plea of misclassification of the imported item	619	34
Penal Customs duties			39
7	Plea of non-liability for the error	594	40
8	Plea of ignorance of truck transit regulations	535	42
9	Plea of non-smuggling	562	44
Restricted Items Petroleum derivatives			46
10	Plea of discrepancy in laboratory results	87	47
11	Plea that the laboratory is not accredited to issue results	170	49
12	Plea that the case occurred in 1435 AH and was not reported until 1439 AH	491	51
13	Plea of failure to deliver the laboratory result to the importer	602	54
14	Plea that the vehicle was seized while entering Saudi territory	107	58
Commercial Fraud			61
15	Plea that the act of disposing of the consignment is a violation that does not amount to smuggling	544	62
16	Plea that the goods are not considered a means of smuggling as they are not inherently prohibited	6	64
17	Plea that Company (B) is the exclusive agent for the trademark	31	67
Violation of Registration Provisions			69



18	Plea that the consignment is not prohibited	91	70
19	Plea of settlement of the violation	570	73
20	Plea of lack of criminal intent	40	75
Pledged Undertaking			77
21	Plea of re-export of the consignment	3	78
22	Plea of fire outbreak in the adjacent warehouse	626	80
23	Plea of destruction of the shipment	46	83
24	Plea of failure to notify the importer of the lab results	52	85
25	Plea that the violation is not substantial	104	88
26	Plea that the committee ignored the right to litigation	107	90
27	Plea that the violation is merely procedural	577	93
28	Plea that the goods are not restricted items	618	96
29	Plea that the consignment was not intended for trade but for personal use	30	99
30	Plea that the violation is not substantial	62	101
31	Plea that the proper classification of the incident is a procedural violation	79	103
32	Plea that the disposal of the consignment was due to the delay in issuing the lab result	81	105
33	Plea that the violation is procedural and not substantial	628	107
34	Plea that the goods are fit for consumption	95	110
35	Plea of Non-Disposal of the consignment	57	113
36	Plea of lack of knowledge of the consignment	255	115
37	Plea of Returning the Consignment to Customs	9	117
38	Plea that the consignment is still in his possession	17	119
39	Plea that the Consignment Was Disposed of Through Sale	29	121
40	Plea of Non-Receipt of Invoices or Packing List	30	123
41	Plea that the Establishment did not receive any notice to review the customs authority for settlement of the undertaking	128	125
42	Plea of Denying Responsibility and Liability for the Crime of Customs Smuggling	245	127
43	Plea that the violation is formal and does not affect the integrity of the item	541	131
44	Plea that the goods were damaged due to fire	23	134
45	Plea of re-exportation of the consignment and absence of criminal capacity	29	136
46	Plea that the violation is not substantial and is minor	34	139
47	Plea that no letter was received indicating non-disposal	47	141
48	Plea that the goods are still in the merchant's warehouse	153	143
49	Plea that the bond undertaking has been settled	391	145



50	Plea that the committee did not verify the authenticity of the letters submitted by the relevant authorities	412	147
51	Plea that the consignment's market value is zero	560	149
52	Plea that the consignment was destroyed	559	151
53	Plea that the consignment was re-exported	60	153



**Successfully Completed, Thanks to
Allah**