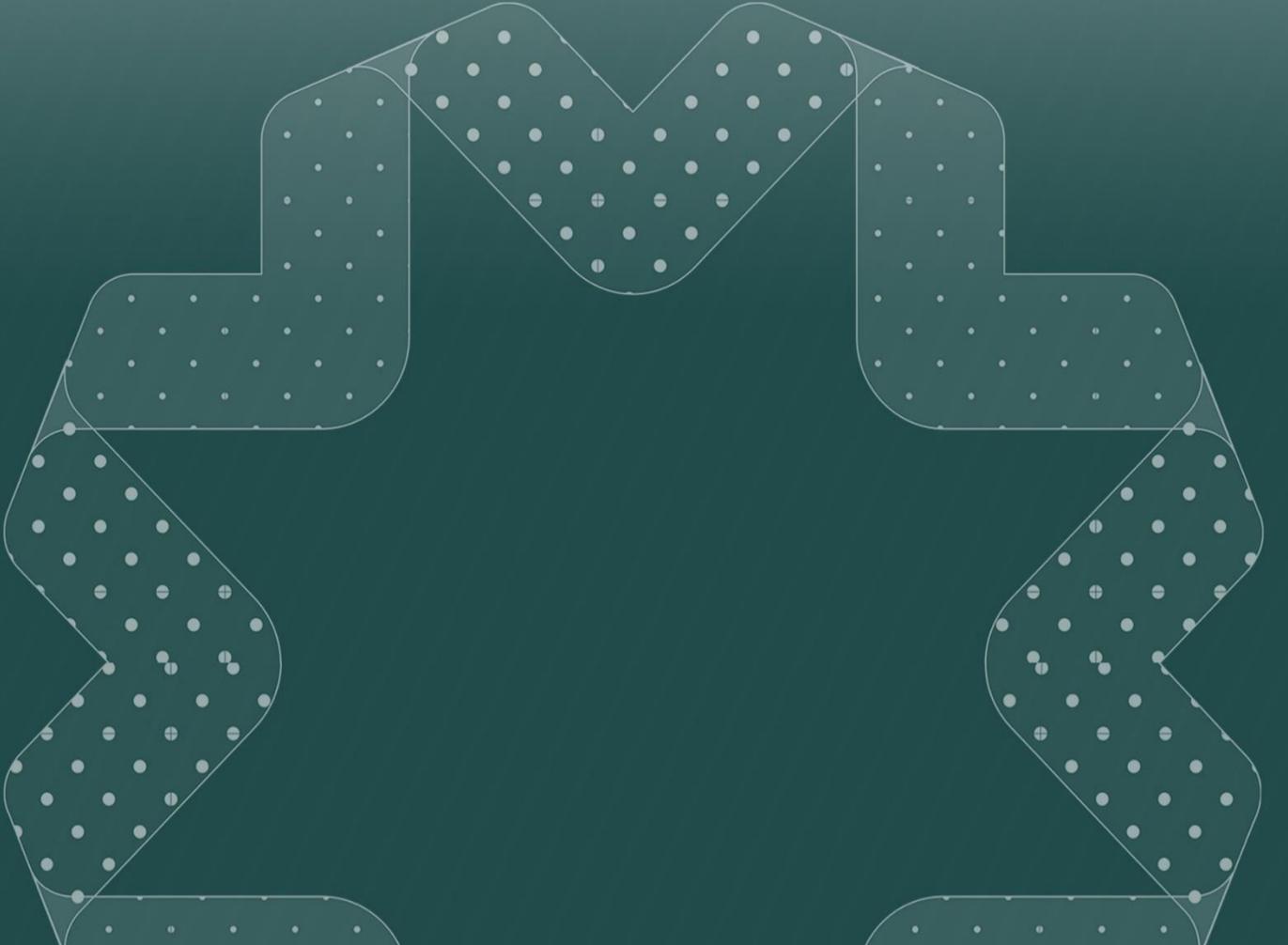
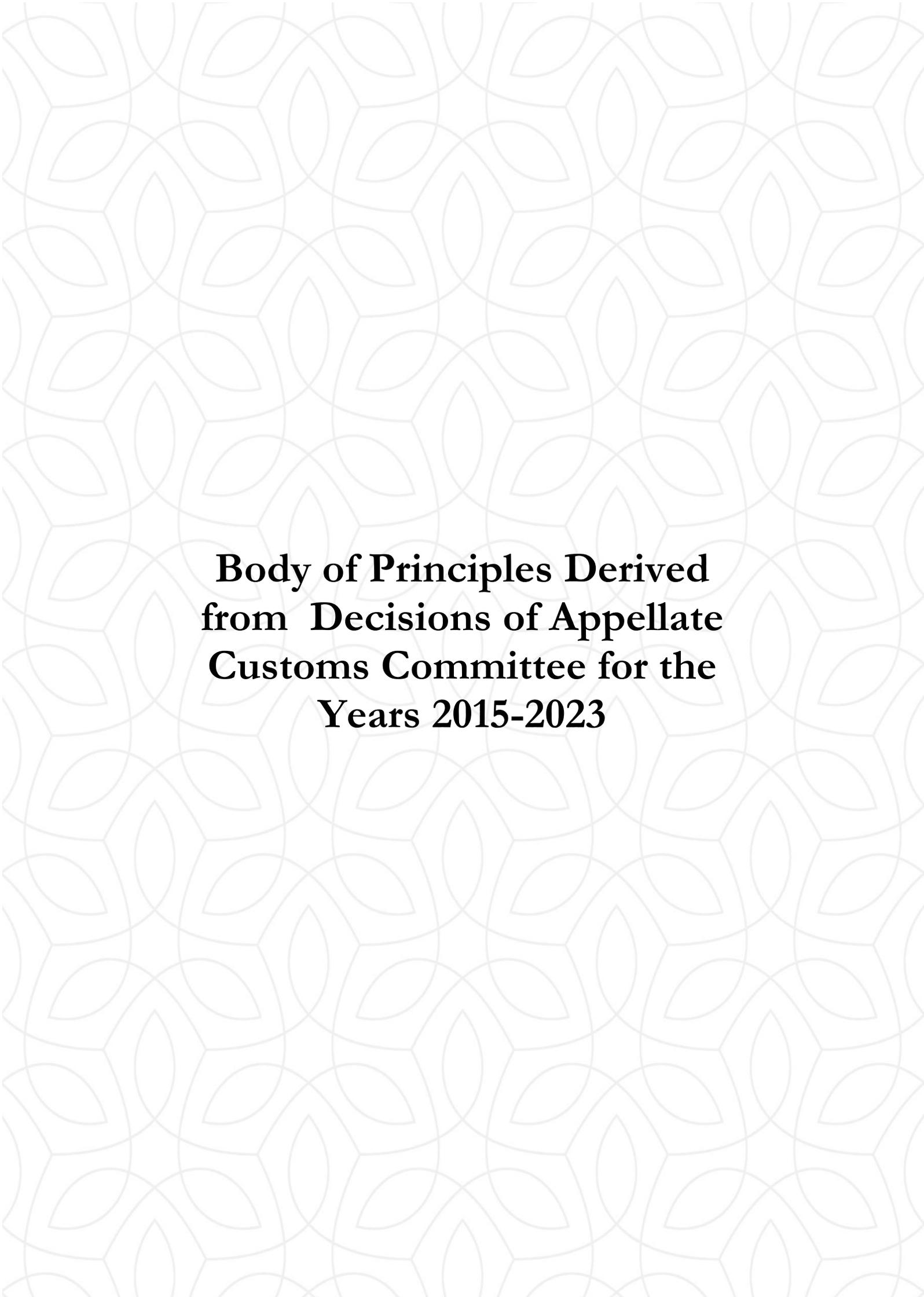




الأمانة العامة للجان الزكوية والضريبية والجمركية
General Secretariat of Zakat, Tax and Customs Committees

Body of Principles Derived from Decisions of
Appellate Customs Committee for the Years
2015-2023



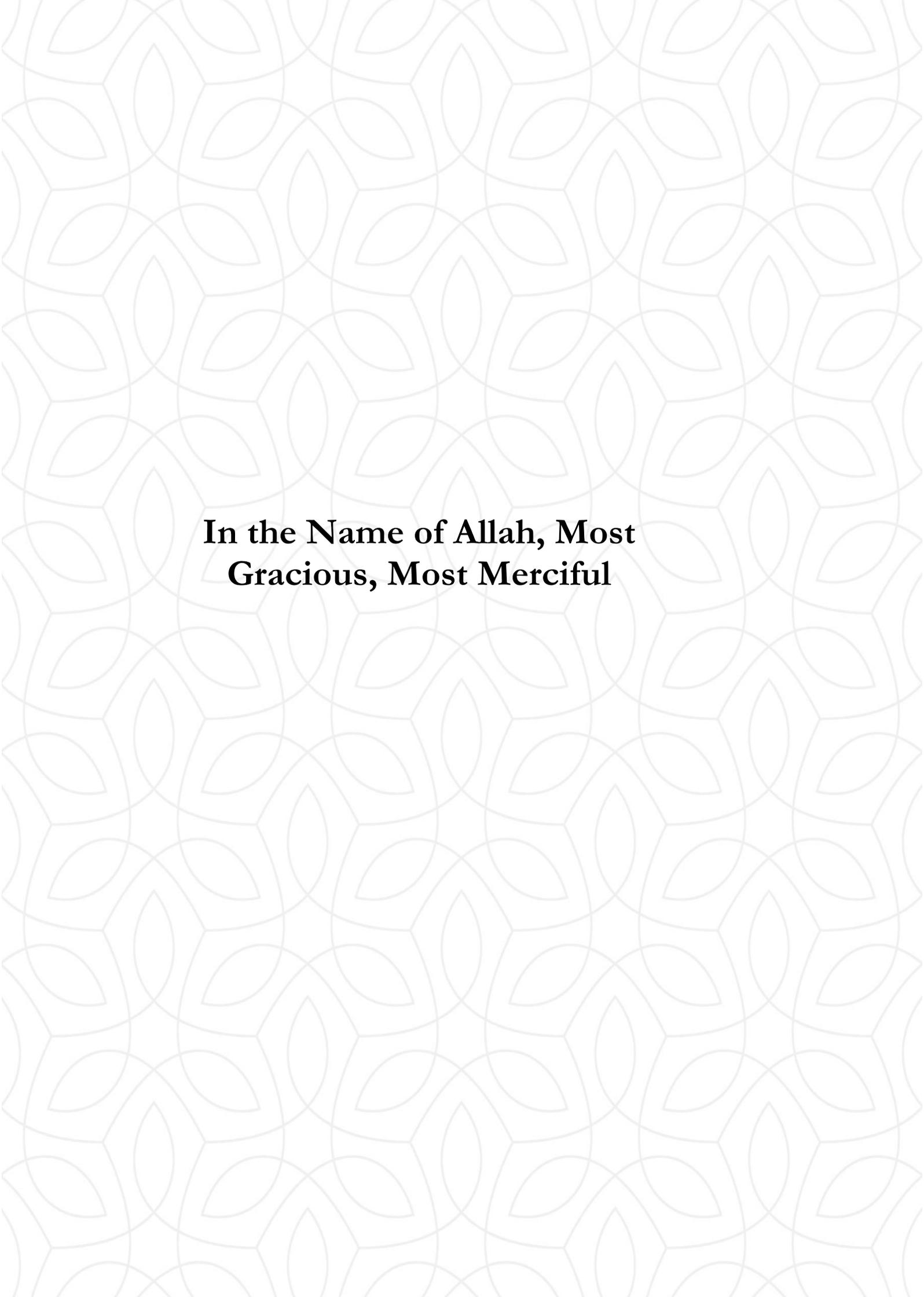
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**Body of Principles Derived
from Decisions of Appellate
Customs Committee for the
Years 2015-2023**



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2015-2023**

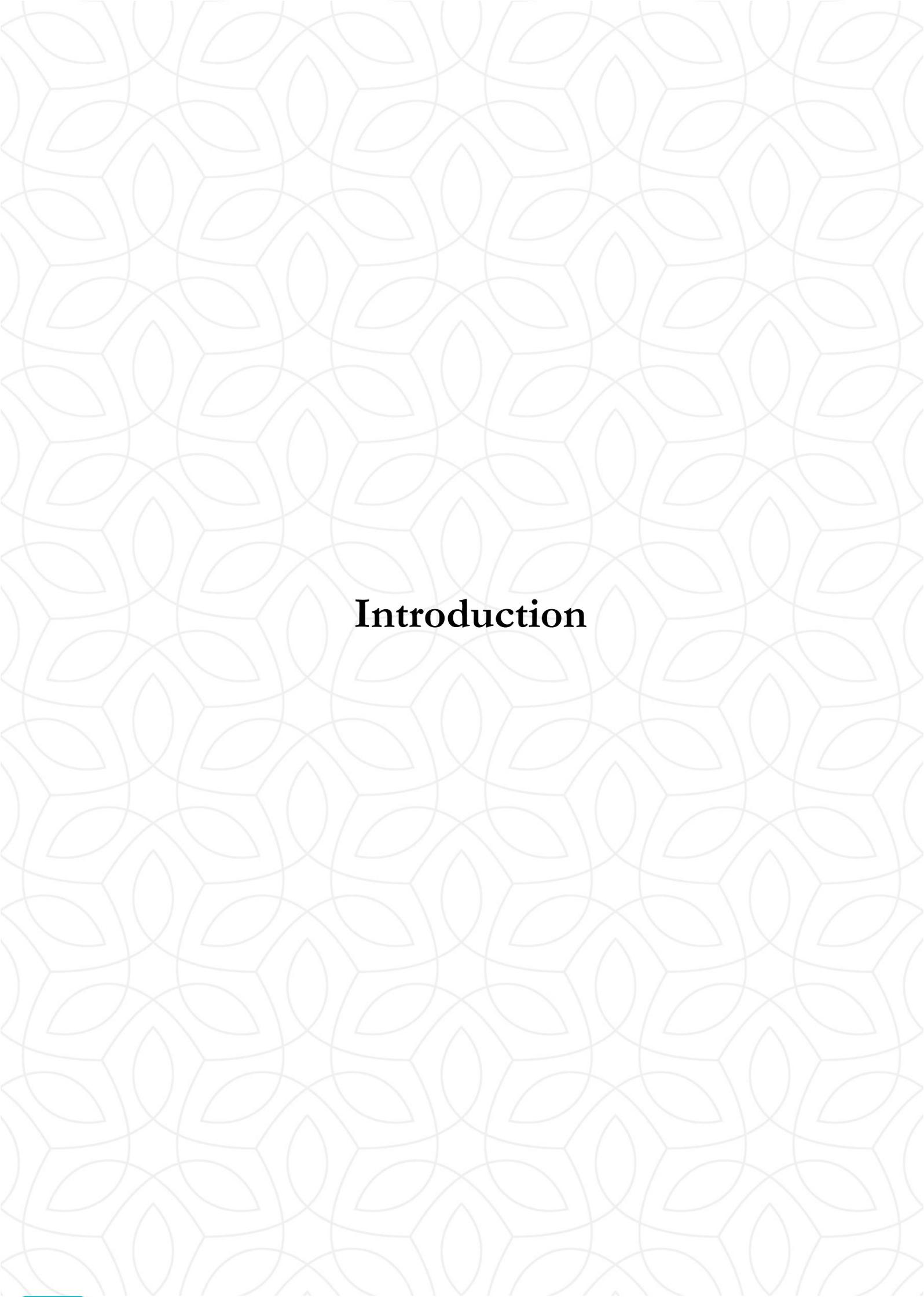


**In the Name of Allah, Most
Gracious, Most Merciful**

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Introduction



In the name of Allah, the Most Gracious, the Most Merciful

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

It is no doubt that the efforts made by the courts and judicial commission, and the rulings and decisions delivered by them are in their entirety a priceless jurisprudential and judicial wealth, and a product that should be taken care of, and in the context of the commercial and industrial revolution that the Kingdom is going through under the Saudi Vision 2030, may customs controversies have arisen affecting many people. Therefore, and based on the social responsibility of the General Secretariat of the Zakat, Tax and Customs Committees, the Secretariat has sought to create a solid foundation and reference for the committee members, taxpayers and interested parties by publishing these Body of Principles Derived from Appellate Customs Committee for the Years 2015-2023, that serves the customs dispute resolution process and contributes to limiting the time taken for deciding upon case. This record clarifies the decisions that the Appellate Committees have reached, which would have a positive impact on shortening the litigation period, saving efforts for the case examiner, fulfilling the principle of transparency pursued by the General Secretariat, and introducing the practical aspects to the bodies concerned with legal research, in particular the academic, training and other bodies.

The Secretariat has been keen to keep record of the principles established by Appellate Customs Committee in fulfillment of its objective to save efforts and create a case law of Appellate Committee that helps reduce the number of cases brought before it if the parties to the case know in advance the Committee's opinion on the subject matter of case they intend to bring.

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

All praise be to Allah,



Praise be to Allah almighty,

Based on the vision and values of the General Secretariat of the Zakat, Tax and Customs Committees, which has taken upon itself to excel in resolving zakat, tax and customs disputes, adopt innovative and effective approaches, enhance transparency and neutrality, develop cooperation between the parties of the customs ecosystem, and play an effective role in raising the efficiency of legal consideration. This is with the aim of enabling customs committees to successfully resolve the disputes before them, and providing support and assistance to the committees at all stages by conducting studies and research, and also helping the taxpayers by clarifying the laws, decisions and judicial precedents, and updating the same periodically. This fourth volume entitled Body of Principles Derived from Decisions of Appellate Customs Committees is part of these efforts.

The General Secretariat has attached special importance to the decisions delivered by appeal committees, being the final product of well-established judicial jurisprudence, and due to their ability to be developed and updated as per the real world updates. This is also because the recording of those precedents help decide the similar disputes heard by judicial committees, and knowing them eliminates disagreements and disputes and supports the litigants' position before the committees.

For their priceless value, the Appellate Committees principles had to be assembled and published for public to achieve principle of transparency, consolidate existing efforts, and enrich scientific field for the benefit of scholars, specialists and research centers.

Indeed, the publishing of these final decisions is a noble effort of the General Secretariat which comes in line with its mandate, and demonstrates its resoluteness to spare no effort for promoting justice according to the support and directives of our blessed leadership with its unlimited support for the legislative and regulatory ecosystem.

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 the employees of the 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 and accounting fields.

Secretary General

Abdullah bin Abdulrahman Al-Suhaibani

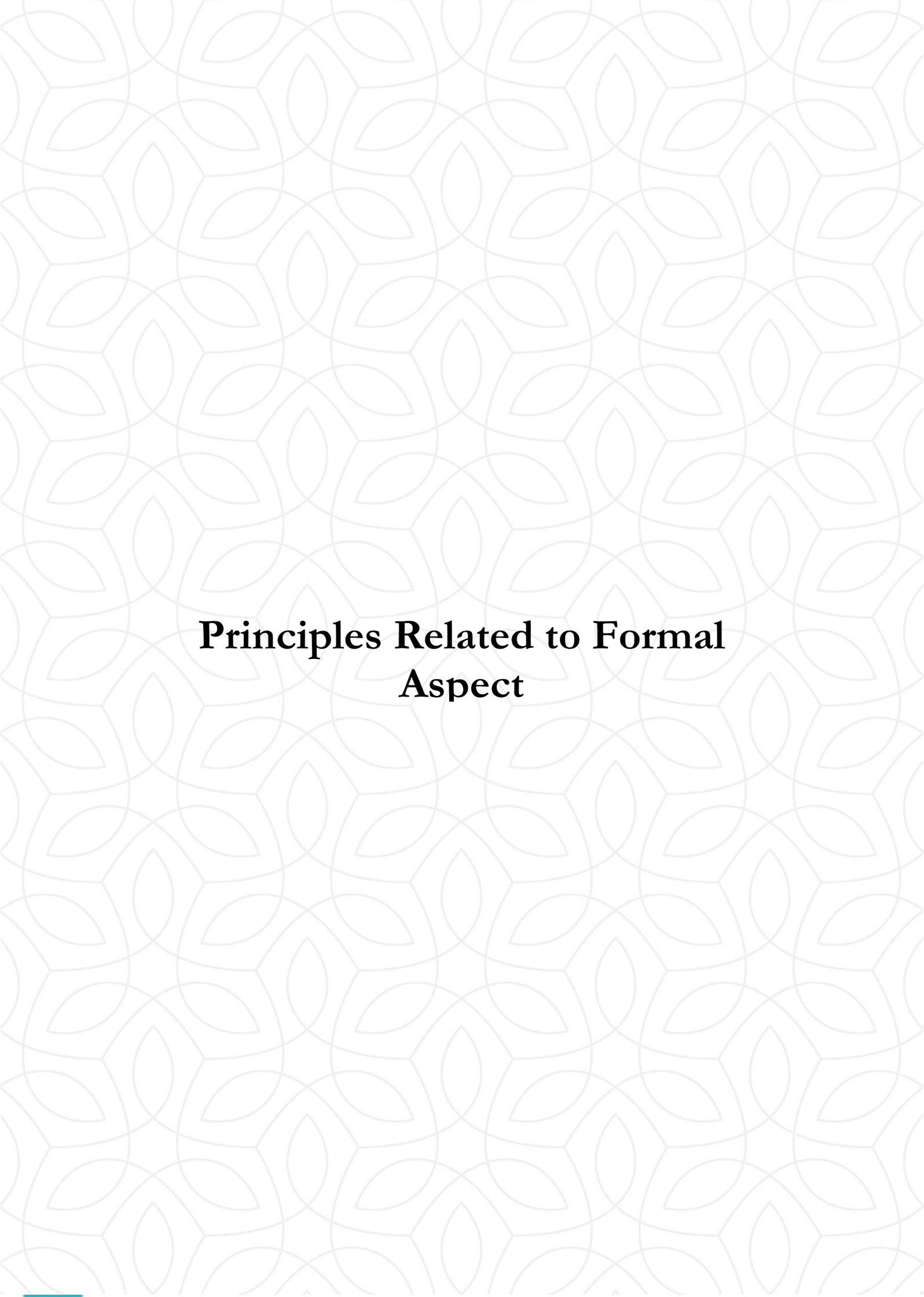


Work Methodology:

The Secretariat was keen to choose the principles well established by the committees, which have a general character that fits a large number of matters rather than less general matters, that were not also provided for by a legal provision. For their versatile circumstances, the customs cases have been arranged and classified according to topics for easy reference and search.

The work required a well-thought-out plan and a well-crafted methodology to produce it in an easy and accessible style. The work was divided into several stages as follows:

- The final decisions of the Appellate Committees have been carefully inventoried.
- Highlight the principles and the committees opinions while narrating the case proceedings and pleadings of the parties.
- Extract the committees principles usually from the grounds for decisions, which have a general nature and set out a rule that applies to similar cases.
- Record the number of the appeal decision containing the principle even if the principle was repeated in multiple decisions.
- Merge principles that are similar in wording into one principle while mentioning the decisions in which they were contained.
- Merge principles that are similar in meaning and connotation into one principle, choosing the best, clearest and most general wordings, and adding wordings to each other in some cases.
- Categorize the principles as per their categories.
- Arrange the principles in sequential numbering.
- Not to include any principle that is currently provided for in the applicable laws and any new circulars, unless necessary.
- To facilitate review of the appeal decision, the decision of the Appellate Committee from which the principle was extracted has been provided. The appellate committee decisions have been provided in the analytical part that includes the decision instruments, facts, grounds and the operative part.
- If there is more than one decision from which the principle was extracted, only one decision is included in addition to reference to the number and details of similar decisions, if any.
- Ensure anonymity of litigants without affecting the decision.



**Principles Related to Formal
Aspect**



Principle No. 1

- **The serving of a notice is the means of notifying the Defendant of the case, and the dues process requires that the case parties be duly notified to attend the hearings and plead their case.**

Facts:

The facts of this case are summed up in that a consignment of ready-made clothes arrived through the customs of King Abdulaziz International Airport in Jeddah. Upon following up on the open customs declarations to finalize the procedures, it was found that there was a consignment of 31 packages with a value of SAR 50,396 in the name of the branch ofEstablishment registered on the import declaration No. dated.../.../.., which have not been finalized. The Customs asked the customs broker about the reason for not completing the customs procedures for this consignment. He stated that when the Customs requested to bring the consignment closer, the consignment was not found in the air freight warehouse. The branch ofestablishment submitted a statement to the Customs about the loss of the consignment in the air freight warehouse. The customs contacted the air freight warehouse by letter No. to inquire about the consignment. The warehouse responded with letter No. dated.../.../.., including that after searching all warehouse locations, the consignment was not found. By referring the case to the Primary Customs Committee in Jeddah pursuant to the letter of HE the Director General of Customs No. dated.../.../.., It delivered its decision as stated above, which ruled to: First: In Form: Discharge: Branch of theestablishment owned by ... and the customs broker ... from customs smuggling.

Second: Convict from customs smuggling.

Third: Order that pays a fine twice the customs duties, an amount of SAR 5,040 (seven thousand eight hundred and fifty riyals).

Fourth: Order that to pay a customs fine equivalent to the value of the consignment as a payment in lieu of confiscation in the amount of SAR 50,396 (fifty thousand, three hundred and ninety-six riyals), bringing the total fine stipulated in paragraphs (third and fourth) to SAR 55,436 (fifty-five thousand, four hundred and thirty-six riyals).

Having notified the legal representative ofCompany of the decision on/.., The period specified for appealing the decision has expired without appeal, which makes the decision final and enforceable against the Company. Having notified the legal representative ofAirways company of the decision on/.. the company submitted a statement of appeal against the decision, which was registered with the Primary Customs Committee in Jeddah on The appeal included an objection to the primary decision without presenting an argument that would refute the decision. The case file was



referred to the Appellate Customs Committee in Jeddah by the letter of HE the Director General of Customs No. dated.../.../.., , who requested that the appeal be accepted in from and dismissed on substantive grounds. After reviewing the case file, the committee decided to summon both parties to appear before it and present their defenses. In the hearing session held on/.../..., , the Customs was represented by the Legal Researcher The legal representative of the CEO of Company also appeared. Having asked the latter about his client's objection to the primary decision, he replied that he had a 4 page objection memorandum that included all the reasons for objecting to the primary decision. He also requested in his memorandum to overturn the primary decision and remand the case to the Customs Committee to open the door for pleading on the following grounds:

1. That Customs did not notify Company Rather, the party that was notified was He added thatAirways Company is no longer responsible for the air freight, but rather Company is Therefore, his client was not duly notified.
2. That as long as an import statement was issued for the shipment, this means that the shipment has left the shipping warehouses to the inspection area; which indicates that the shipment was lost in the inspection area; therefore, the matter is not considered customs evasion by the shipping company, especially since the loss of a parcel cannot be considered customs smuggling at all, as the reasons for losing shipments are many, including: It did not arrive from the sending station, or it left the inspection area by mistake from the customs gate, knowing that the last warehouse gate is managed by customs security.
3. The absence of the two elements of the customs smuggling crime for his client.

When the representative of the customs authority received the statement of objection, the Committee asked him to respond to the defenses contained therein. Therefore, he asked for a period of 14 working days from the date of the session to submit a memorandum within the mentioned period. The Committee decided to accept to his request. This Committee received a letter from the customs authority No. dated.../.../.., indicating that the Customs Authority had previously appealed the decision of the Primary Committee in Jeddah No. (278) for the year 1437 AH, pursuant to Memorandum No. dated.../.../..., indicating that the Primary Customs Committee was wrong in its conclusion reached in the said decision for the reasons stated in the statement of appeal, requesting that the primary decision be quashed and the case be remanded to the Primary Customs Committee in Jeddah to re-consider it in light of the same reasons.

The Committee decided to adjourn the case for deliberation and delivery of its decision.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law, it is acceptable in form.

On merits:

Since the appeal of the Appellant's representative was based on grounds that the Appellant was not duly notified to attend the sessions, and that the two elements of the customs smuggling crime were not available. It also requested to remand the case to the Primary Customs Committee. The Customs Authority also requested that the primary decision be overturned and the case be returned to the Primary Customs Committee for reconsideration, and since the due process requires that the defendant be duly notified of the case and the hearings in order to appear, and since it was found that the Appellant was not duly notified, and in order not to miss a degree of litigation, this Committee decides to overturn the primary decision and remand the case to the Primary Customs Committee to reconsider it with the Appellant be duly notified in accordance with the rules established for notifying litigants. Having reviewed the Common Customs Law and its Implementing



Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Accept the appeal submitted byCompany against the decision of the Primary Customs Committee in Jeddah No. (278) of 1437 AH dated 16/08/1437 AH in form and substance.
2. Overturn the primary decision and remand the case to the Primary Customs Committee in Jeddah for consideration in light of the comments received.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (47) dated 18/04/1441 AH.

Decision of the Jeddah Appellate Customs Committee
No. (97) dated 27/11/1440 AH.



Principle No. 2

- If the Appellant submits material documents to the Appellate Committee, the Appellate Committee may remand the case to the Primary Committee in order for the litigants not to miss a degree of litigation.

Facts:

The facts of this case are summed up in that a watches consignment arrived through the customs port of King Abdulaziz International Airport in Jeddah in the name of..... owner of registered on the import declaration No. dated.../.../..., The consignment contained packages containing 3048 units with a value of SAR 292,895. The Importer stated in the customs declaration and certificate of origin that the origin of the consignment was China and Philippines. Upon inspection, it was found that part of the consignment bore a fixed label indicating that the “Country of Origin” is China, the trade name (.....) and the trademark (TIMEX). The Customs seized the consignment due to suspicion that it was counterfeit. The customs sent a sample of the consignment to the branch of the Ministry of Commerce and Investment in Jeddah by letter No. (.....) dated.../.../..., The Ministry of Commerce and Investment replied with letter number dated.../.../..., indicating that the trademark on the watches violates the Trademark Law for being a counterfeit of contains a registered and famous trademark, and that the use of a trademark other than by its owner without a relationship between the two parties is considered a violation of the trademark law. The case was referred to the Primary Customs Committee in Jeddah pursuant to Letter from His Excellency the Governor of the Saudi Customs Authority No. (...) dated.../.../..., It delivered its decision as stated above, which ruled to:

First: In Form: Convict the owner ofEstablishment in presence of attempted customs smuggling.

Second: Obligate the Importer to pay a customs fine twice the customs duties for the violating item, in the amount of SAR 1,860 (one thousand eight hundred and sixty riyals).

Third: Confiscate the violating watches amounting to 390 watches (three hundred and ninety watches) being the smuggled goods.

Upon notifying the legal representativeof the decision on/.. he filed an appeal that was registered with Jeddah Islamic Port Customs on/..... including the following arguments:

First: In Form:Company headquartered in ... is the owner oftrademark, and that Establishments are their authorized distributors in the Kingdom of Saudi Arabia according to the letter issued by the trademark owner this is sealed and certified bystate.



Second: The failure to obtain the regular certifications from the Saudi embassy and the Ministry of Foreign Affairs due to the limited time does not invalidate the entitlement to these certifications. Instead, the Defendant should have been given a period of time to obtain the certifications rather than disregarding them. This is because the presumption is innocence, and the presumption is that the contracts are valid. Disregarding these defenses is only acceptable with valid justification.

The case file was referred to the Appellate Customs Committee in Jeddah pursuant to the letter of the Chairman of the Jeddah Primary Customs Committee No. dated .../.../... AH, Accordingly, the committee decided to refer the case for further review. Accordingly, the Committee delivered its decision No. (43) for the year 1440 AH, which ruled to overturn the primary decision and discharge the owner of ... from attempted customs mugging count. Upon referring the decision and its attachments to HE the Minister, He responded with the letter No. 7644 dated 03/08/1440 AH, stating that upon reviewing the decision, the following was found:

1. The decision did not clarify whether the document submitted by the Importer to the Committee - in which he claims that there is a commercial relationship between him and the owner of the trademark - was submitted to the Ministry of Commerce and Investment before referring the case to the primary customs committee, nor did the committee clarify in its decision who refused to accept that document according to the Importer claims indicated in his objection to the primary decision.
2. The Committee did not clarify the legal document on which it relied to accept a document issued by a foreign country without authentication from the competent authorities, and discharged the Importer based on that document.

The Committee decided to adjourn the case for deliberation and delivery of its decision.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law, it is acceptable in form.

On merits:

The conviction was based on the fact that the consignment violates the trademark law because it contained a famous registered trademark without a relationship between the owner of the trademark and the Importer. Since the Appellant's appeal was based on the existence of a relationship with the company that owns the trademark by submitting the attached documents certified by the Ministry of Foreign Affairs, and attested by State, which indicated thatCompany is the owner oftrademark, and since the Committee believes that the Appellant's submissions confirmed that there is a relationship with the company that owns the trademark; therefore, this Committee determines that those documents submitted by the Appellant are genuine and valid and in order for the litigants to not miss a grade of litigation, this Committee decided to remand the case to the Primary Committee to re-determine it. Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Acceptance of the appeal submitted by trader/ the owner of ... against the Decision No. (115) of 1439 AH, dated 06/04/1439 AH of the Primary Customs Committee in Jeddah both in form and merits.
2. Overturn the primary decision and remand the case to the Primary Customs Committee in Jeddah to redetermine it in light of the findings of this decision.



3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (62) dated 25/04/1441 AH.

Decision of the Jeddah Appellate Customs Committee
No. (27) dated 19/06/1440 AH.



Principle No. 3

- If some aspects of a customs case have been previously decided by general courts by final judgments, these matters cannot be brought before the committee for acquiring the force of res judicata.

Facts:

The Case facts are summarized that while a police patrol in (/...) Governorate was performing its duty, it managed to apprehend a vehicle of (...) plate number (...) driven by (...). Having inspected the vehicle at the arrest site, a quantity of ammunition and a pistol were found inside, totaling (91570) ninety-one thousand five hundred seventy rounds and (1) small-caliber pistol. During the investigation, the accused admitted to possessing seized quantity of ammunition and the pistol to deliver them to Khamis Mushait in exchange for a monetary payment. The ruling No. (...) was issued against him on .../.../... punishing him of thirty-five lashes in public for smuggling a man disguised as a woman, and his conviction for smuggling a quantity of ammunition and a pistol from the Republic of Yemen into Saudi territory, leaving his further punishment to the discretion of the ruler. A decision was issued against him by the Deputy Minister of Interior No. (...), on .../.../... Sentencing him to imprisonment for eight months, fining him five thousand riyals, and confiscating the seized items. A decision was also delivered by the Administrative Committee of the Border Guard to imprison him for twelve months. Moreover, a decision was also delivered against him by theCourt No. (...) on .../.../... ordering the confiscation of the vehicle and referring the Case to Primary Customs Committee in Jazan, which then issued its decision as outlined above, ruling as follows:

1. Convict..national in presentia for customs smuggling of (91570) ninety-one thousand five hundred seventy rounds of ammunition and (1) one small-caliber pistol.
2. Confiscate the ammunition and pistol, totaling 91570 (ninety-one thousand five hundred seventy) rounds of ammunition and (1) one small-caliber pistol.
3. Order the accused to pay a customs penalty of (SAR 196,795) one hundred ninety-six thousand seven hundred ninety-five Riyals.
4. Confiscate of the means of transport in the Case, a vehicle of ... type,) plate number (...) for the reasons stated herein.

Having notified the named person of the decision on .../.../..., he submitted a statement of appeal registered with the Primary Customs Committee in Jazan under number (...) dated.../.../..., in which he indicated that he has previously served a sentence for this crime and that his car was confiscated, and also referred to his family circumstances, which he wished to be taken into consideration. The Case file was forwarded to the Appellate



Customs Committee in Jeddah by Chairman of Primary Customs Committee in Jazan Letter No. (...) dated.../.../..., Accordingly, the committee decided to refer the case for review and issue a final decision.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law, it is acceptable in form.

On merits:

Since Primary Customs Committee Decision No. (46) for 1438 was delivered, convicting (...) of the crime of customs smuggling.

Since it has been established by the judicial rulings issued against the named person under Decision No. (...) on .../.../... No. (...). on .../.../... and Deputy Minister of Interior Decree No. (...) on .../.../... In addition, the Border Guard Administrative Committee issued a decision confirming committing the attributed smuggling.

And given that the Appellant also admitted the counts and since the previous rulings and decisions delivered against him do not prevent the application of the provisions of the Common Customs law against him especially Article (145) of the law, and since the confiscations of vehicle was previously decided by the General Court in Belghazi with a final ruling, this committee cannot be heard by this court for acquiring the force of res judicata.

Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Accept the appeal submitted by national against Primary Customs Committee Decision No. (46) for 1438 dated 18/05/1438 AH in form and dismiss it on merits.
2. Uphold the primary decision in (First), (Second) and (Third), and overturn its (Fourth).
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (10) dated 25/08/1439 AH.



Principle No. 4

- The customs authority has no concern with the relationship between the importer and third parties in relation to import and running the business activity.

Principle No. 5

- The importer's claim against third parties for damages due to the existence of a contractual relationship related to the consignment in issue is outside the jurisdiction of the customs committees.

Facts:

The Committee convened to consider the Appeal filed by..... holder of National ID No. (...), In their capacity as owner of ... CR No. against the decision of the Second Primary Customs Committee at the Saudi Customs Authority, Decision No. (909/2) of 1441 AH, which ruled as follows:

1. Convict the Importer ... holder of National ID No. (...), In their capacity as owner of ... CR No. from customs smuggling.
2. Order the Importer to pay a customs fine equivalent to the value of the disposed consignment that was not authorized for clearance by the competent authority, amounting to SAR 39,688 (thirty-nine thousand six hundred eighty-eight riyals).
3. Order the Importer to pay a fine in lieu of confiscation equivalent to the consignment value, amounting to SAR 39,688 (thirty-nine thousand six hundred eighty-eight riyals), totaling SAR 39,376 (thirty-nine thousand three hundred seventy-six riyals).

Upon notifying the Appellant of the primary decision on as evidenced by the notification document attached to the case file, he submitted an appeal registered with the Saudi Customs Authority under No. (...) dated.../.../..., indicating that the appeal was filed by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. Therefore, the appeal is accepted in form.

On merits, the facts of the case are summarized that a consignment of (shoes) arrived through Al-Bathaa Customs under Import Declaration No. (...) dated.../.../..., in the name of..... In their capacity as owner of ... with a declared value of SAR 39,688 (thirty-nine thousand six hundred and eighty-eight riyals). The consignment was cleared under a non-disposal undertaking pending approval for release by the competent authority. Upon laboratory testing of a sample, it issued report No....., and Report No. ... dated.../.../..., indicating the consignment did not conform to the specifications in terms of abrasion resistance. The Importer was notified of the result through several letters, but the Importer did not respond.



Based on the foregoing, the case was raised by Al-Batha Customs and referred to the Second Primary Customs Committee in Riyadh.

On.../.../... The importer..... appeared before the Primary Committee and stated that a commercial registration was issued, and that he had no knowledge of this consignment, and that he obtained the registration in exchange for SAR (1,000) for Saudization purposes. He also claimed that he was unaware of these issues until five years later.

The Primary Committee issued its contested decision, convicting the Importer of customs smuggling and imposing the penalties of fines and confiscation as previously detailed. This decision was based on the fact that the Importer disposed of the consignment in violation of Article (56) of the Unified Customs Law, as he breached the restriction imposed on the consignment by dealing with goods that had not been fully cleared. Furthermore, since the goods in question were prohibited from entering the Kingdom, his actions constituted customs smuggling under Article (142) of the same law. The decision also emphasized the negative impact on consumer safety and financial resources resulting from the sale of non-compliant goods. Accordingly, the committee applied the penalties stipulated in Paragraphs (4) and (5) of Article (145) of the Unified Customs Law.

On .../.../... The Appellant submitted a statement of appeal registered with the Saudi Customs Authority under No...., The General Authority of Customs submitted the appeal to the Appellate Committee under letter number ... dated.../.../..,

After reviewing the primary decision and the appeal submitted by, a session was set to hear the parties to the case on/.../..., The session was attended by the Saudi Customs Authority's representative, legal researcher/, and the legal researcher..... However, neither the Appellant or his representative appeared nor did they provide the Appellate Committee with an excuse for absence. Accordingly, the Appellate Committee decided to postpone the session to/.../..., On that day, the representative of the Saudi General Authority the legal researcher....., appeared. The Appellant..... also appeared. The session commenced with a question directed to the Appellant: What are the reasons for your appeal against the primary decision? He replied: I rely on the memorandum previously submitted in my appeal against the primary decision and the reasons outlined therein, which include the following: I had previously stated before the Primary Committee that I had no knowledge of these goods and did not import them. I also did not open any commercial registrations or obtain licenses for any commercial activity for any establishment, nor did I authorize any person to open commercial registrations or import goods on my behalf. Furthermore, I had no prior knowledge from any government entity regarding this matter, nor did I receive any text messages on my personal phone indicating the existence of an establishment in my name. In reality, the goods in question belong to as they were the ones who took a copy of my ID card to be registered under one of the establishments or companies for Saudization purposes. They used my ID copy to open commercial registrations and import goods in my name without any official document authorizing them to do so." Having questioned the Saudi Customs Authority's representative: You have reviewed the Appellant's memorandum and heard their statements before the committee. What is your response? He replied: In response to the Appellant's statement that he signed documents for Saudization purposes and received (1,000) riyals in return, we clarify that the very concept of false Saudization is itself a violation of the law. Moreover, this claim does not exempt him from criminal liability, nor can he plead good faith or ignorance, given the health and financial harm caused to consumers, as well as the fraud and deception involved. Consumers would purchase goods under the assumption that they meet the required specifications, while in reality, they do not, which constitutes customs smuggling under Article 142 of the Unified Customs Law and violates Article (56.B) of the same law. Having asked the Appellant: Do you have anything further to add, and what is your final request regarding the appeal? He replied: I



request the annulment of the decision issued against me, as I have no connection to the consignment. It pertains to ... who exploited a copy of my ID, which I provided in good faith, as previously stated. By asking the Customs Authority's representatives about the following: Do you have anything to add, and what is your request regarding the appeal filed against the decision? They reaffirmed their request to uphold the initial decision, stating: "The Appellant's action constitutes customs smuggling due to his breach of the restriction and his handling of goods that were not finally cleared. Therefore, the provisions of Paragraph (5) of Article (145) applies to his case, which stipulates that if the smuggled goods are prohibited items, the penalty shall be no less than the value of the goods and no more than three times their value, in addition to imprisonment for no less than six months and no more than three years, or either of these penalties. Additionally, Paragraph (5) of Article (145) mandates the confiscation of the smuggled goods or, in cases where confiscation is not possible, a ruling for payment of an equivalent value."

Grounds

The Appellate determined that the evidence presented, along with the statements made during the hearing and the documents included in the case file, were sufficient to rule on the appeal. The Appellant's claim was based on denying responsibility for the charge of customs smuggling, asserting that he had no knowledge of the consignment in question, was never contacted about it, and never received any notifications on his mobile phone regarding the establishment registered in his name. He further argued that the commercial registration was obtained for SAR 1,000 solely for inclusion in the Saudization system. He alleged that the two mentioned individuals exploited a copy of his personal ID to open commercial registrations and import goods in his name without any formal authorization. Thus, he claimed, the imported goods belonged to those two individuals. However, this defense was rejected, as the consignment was legally registered under the establishment's name. Accordingly, the Customs Authority is not concerned, when applying the provisions of the law, with any relationship that may exist between the party whose name appears on the import declaration and any third party. This claim or explanation does not negate the Appellant's liability, as the violation occurred due to his handling of the goods that were not finally cleared, by breaking the restriction and releasing them for commercial circulation without approval from the competent authority. Whether this violation constitutes customs smuggling or simply violates the provisions of the customs law and its implementing regulations, the Customs Authority is concerned with any private agreements between the Appellant and third parties regarding the facilitation of imports or business activities using a commercial registration in his name. The Appellant's subsequent claim that the importation was in violation of their prior agreement notwithstanding, the Appellant is entitled to pursue legal action against any party they allege caused them harm as a result of the importation, irrespective of the agreement and relationship they had with said party.

However, the committee observed that Laboratory Report No.... dated.../.../..., indicated that the consignment of (shoes) did not conform to the abrasion resistance specification. Since this violation does not constitute a fundamental breach that would warrant classifying the Importer's actions as customs smuggling, the Appellate Committee concludes that the importer's handling of the consignment by disposal and disregarding the restriction prohibiting disposal until clearance constitutes a customs violation. This is governed by Paragraph (6) of Article (31) of the Implementing Regulations of the Unified Customs Law, which stipulates the imposition of a fine not less than (500) five hundred riyals and not exceeding (1,000) one thousand riyals for violations of ministerial decisions and instructions issued under the law.

Accordingly, the Appellate Customs Committee in Riyadh unanimously decided as follows:



Decision

First: Accept in form the Appeal filed by, holder of National ID No. (...), In their capacity as owner of ... CR No. against the Second Primary Customs Committee's Decision No. (909/2) of 1441 AH and annul the primary decision in its entirety with respect to the Appellant, for the reasons and grounds outlined herein.

Second: consider the conduct of the Importer,, in handling the consignment as constituting a customs violation, based on Paragraph (6) of Article (31) of the Implementing Regulations of the Unified Customs Law. Consequently, a fine of SAR 1,000 (one thousand riyals) is imposed, in accordance with the reasons and grounds outlined herein.

Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (57) dated 07/09/1440 AH.

Decision of the Jeddah Appellate Customs Committee
No. (79) dated 10/09/1437 AH.

Collection Similar decisions



Principle No. 6

- A judicial precedent is only an effort to decide a case, which cannot preclude another effort in another case, meaning that judicial precedents are not binding, but can be reviewed for reference without any obligation to adopt them.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday 18/11/1444 AH, the Appellate Customs Committee convened in Riyadh to consider the appeal filed by... National ID No., in his capacity as the attorney forCompany, Commercial Registration No. pursuant to POA No., dated.../07/1443 AH against the primary decision No. for the year 1443 AH, issued by the First Primary Customs Committee in Riyadh, which ruled to:

1. Convict Importer (..... Company, C.R. No.), in presentia of customs smuggling.
2. Impose a customs fine equivalent to the value of the consignment in the amount of (SAR 402,064) (Sixty-nine thousand, six hundred and twenty-two Saudi riyals).
3. Impose a fine in lieu of confiscation equivalent to the value of consignment in the amount of (SAR 402,064) (Sixty-nine thousand, six hundred and twenty-two Saudi riyals), whereby the total amount becomes (SAR 804,128), (one hundred and thirty-nine thousand, two hundred and forty-four Saudi riyals).

Since the Appellant was notified of the appealed decision on 16/06/1443 AH, and he filed an appeal against the decision on 14/07/1443 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

The facts of the case are summed up in that a consignment of (women's handbags) arrived via King Abdulaziz Port Customs under import declaration No. (...) dated .../8/1439 AH, which was cleared under a pledge not to dispose of it until it was approved by the competent authority. Upon examining the sample by the laboratory, it issued report No.....dated .../9/1439 AH, indicating that the consignment does not conform to the specifications related to tear resistance of the upper part. The Importer was notified of the result, but he did not respond. Therefore, the Primary Committee delivered its decision as stated in its operative part, based on the laboratory report that showed that the product is not conforming to specification from a technical standpoint that does not directly affect the safety and health of the consumer, and that the Importer's disposal of the shipment despite the pledge of no disposal is considered a violation of Article (56) of the Common Customs Law and is also considered a form of customs smuggling as per Article (142) of the same Law, which is penalized under Article (145) of the same law.



The Appellate Customs Committee found that the appellant submitted an appeal through its attorney , whereby it objected to the appealed decision on grounds that it considered the goods in question as prohibited goods, which is incorrect because the goods are (women's handbags), which are restricted goods and are not prohibited in themselves. Moreover, the Appellant company took all the regular procedures in bringing in the imported goods, and disclosed them; therefore, the company did not commit customs smuggling, but rather a customs violation that is subject to Article (141/8) of the Common Customs Law, the fine for which is stipulated in Article (31/6) of the Executive Regulations of the Customs Law. Furthermore, the absence of criminal intent in the customs smuggling crime charged to the Company invalidates the existence of a customs smuggling crime. In addition, the violation referred to in the laboratory report is a formal violation and not a technical one, as it does not affect the quality and safety of the product. It also added that Decision No. (157) of 23/02/1441 AH was previously delivered by the Appellate Customs Committee in Dammam in a similar case to overturn the primary decision and consider the incident a violation of customs procedures. The Appellant concluded its statement requesting to overturn the primary decision and to rule not to convict the company of customs smuggling and consider the incident a violation of customs procedures.

The Appellate Committee then received ZATCA's response to the appeal filed by the Company's attorney on 27/08/1444 AH, whereby it argued that: The Importer had violated the pledge of no disposal and it was also notified with several notices that the consignment did not conform to the specifications, and that it must return it to customs, but it did not respond and did not contact the customs to pay the pledge fine, which indicates that it disposed of the consignment. According to the laboratory report, the violation is technical and not formal due to its impact on the quality of the product, the safety of consumers and their financial resources. The Appellee's reply was concluded with a request to dismiss the appeal filed by company and to uphold the decision of the primary customs committee.

On Thursday, 05/11/1444 AH, the Riyadh Appellate Customs Committee held its session to consider the appeal submitted by the attorney forCompany against the primary decision No. (...) for the year 1443 AH, delivered by the First Primary Customs Committee in Riyadh. After reviewing the case file and the appeal submitted by the Appellant, the committee found that the case had become ripe for adjudication after being duly informed of the facts of the case, and satisfied with the sufficiency of the submissions of the litigants to deliver its decision in light of the grounds of appeal.

Grounds

The Appellate Committee determined that the submissions made by the parties as well as the documents included in the case file are sufficient to determine the case and since the Department may adopt reasons for appealed decision without addition whenever it considers that those reasons are sufficient. As such, and since it is established that the appealed decision regarding the dispute was consistent with valid reasons on which it was based and sufficient to support its ruling, as the Primary Committee conducted a thorough examination of the dispute and concluded to the facts reached in its wording. Since the Department found that Primary Committee's conclusion in its decision is valid, and that reasons on which it based its decision are sufficient to support that decision, and since the Department did not notice anything that requires correction or comment in light of the arguments raised before this Department. The result is that the committee issuing the decision has examined the facts of the case , and has relied in arriving at its conclusions on valid evidence and indications without arbitrariness in the conclusion, and do not conflict with reason. This is however is not affected by the Appellant's attorney's argument that



there is a judicial precedent issued by the Appellate Committee in Dammam in decision No. (157) dated 23/02/1441 AH, since each case has its own circumstances and facts and the status of its parties in presenting their evidence and statements; therefore, the res judicata force is only related to the elements of this case and the judicial precedents are nothing but an effort to decide a case, which cannot prevent another effort in a second case. This means that judicial precedents are not binding, but can be reviewed for reference without being required to adopt them. In addition, the facts of the case raised by the Appellant do not apply to this case, since the violation associated with that case relates to the tariff card and the explanatory data and washing instructions it contains, while the violation associated with this case relates to the tear resistance of the upper part, which is a technical violation, and although it does not affect the health and safety of the consumer, it relates to the quality of the product and directly affects the financial resources of consumers who purchase goods that do not conform to specifications. Since the grounds for the appealed decision are sufficient to support its ruling, this committee concludes that the arguments presented do not affect the outcome of the decision. Thus, the appeal is based on ill grounds and is dismissible. However, the Appellate Committee noted that the Primary Committee charged a customs fine on the importer according to Paragraph (4) of Article (145) of the Common Customs law, which is the paragraph that applies to prohibited goods, and since the imported goods are not prohibited in their nature, but rather their entry was prevented due to their non-compliance with some of the established specifications, and the importer was requested to bring the consignment to the customs yard for re-export; therefore, this committee decides that this violation is subject to Paragraph (2) of Article (145) of the Common Customs Law , which means that the amount of the customs fine is calculated as twice the customs duties for the consignment subject matter of the case, as will be stated in the operative part, and accordingly, the Committee decided to:

Decision

1. Accept in form the appeal filed by... Company, CR No. (...), against Primary Decision No. (...) of 1443 AH delivered by the First Primary Customs Committee in Riyadh.
2. Dismiss the appeal in substance, and uphold the primary decision regarding the conviction of customs smuggling and confiscation, with the value of the imposed customs fine being modified to be double the value of the customs duties, in the amount of (SAR...), so that the total amount fined to the Appellant becomes for the grounds stated in this decision.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions:

Riyadh Appellate Customs Committee Decision No. (109) dated 06/08/1443 AH.



Principle No. 7

- The penalties requested by Public Prosecution must be specifically specified in order to be considered and verified for conformity and consistency with the penalties included in the common customs law.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday 17/01/1444 AH, the Appellate Customs Committee convened in Riyadh to consider the appeal submitted by the Public Prosecution against the primary decision No. (1/161) of 1443 AH, delivered by the Second Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict..... , National, holder of National ID No., from customs smuggling.
2. Order that the Importer pays a customs fine equivalent to the value of the seized cigarettes in the amount of SAR 5,880 (five thousand eight hundred and eighty riyals).
3. Confiscating the seized cigarettes.

Since the appeal was received from the Public Prosecution against the decision on 28/07/1443 AH, and the Public Prosecution received the decision on 08/07/1443 AH, the appeal is acceptable in form for being filed within the period prescribed in Article (163) of the Common Customs Law.

Grounds

The Committee, having reviewed the primary decision and the penalties imposed on the Appellee, as well as the Public Prosecution's request to intensify the penalty imposed, found that the penalties requested by the Public Prosecution were not specified in order for the Committee to consider its request and its conformity with the provision related to penalties included in the customs law; and given that the court deciding the case has full authority to determine a penalty that is consistent with the circumstances and conditions of the case and the behavior of the perpetrator of the criminal act; and where the Public Prosecution did not clarify if there is any fault in applying the law in this regard and its request was limited to merely intensifying the penalty, the Appellate Committee concludes to disregard the Public Prosecution's request for lack of objective grounds to examine and reconsider the penalty as requested by the Public Prosecution.

Therefore, the Appellate Customs Committee decided as follows:

Decision



1. Accept the appeal in form filed by the Public Prosecution against Primary Decision No. (2/ 161) for 1443 rendered by the Second Primary Customs Committee in Riyadh regarding the Case filed by the Public Prosecution against Defendant (...),national, holder of Yemeni ID No. (...).
2. Dismiss the appeal in substance, and confirm the primary decision for the reasons and justifications stated in this decision.

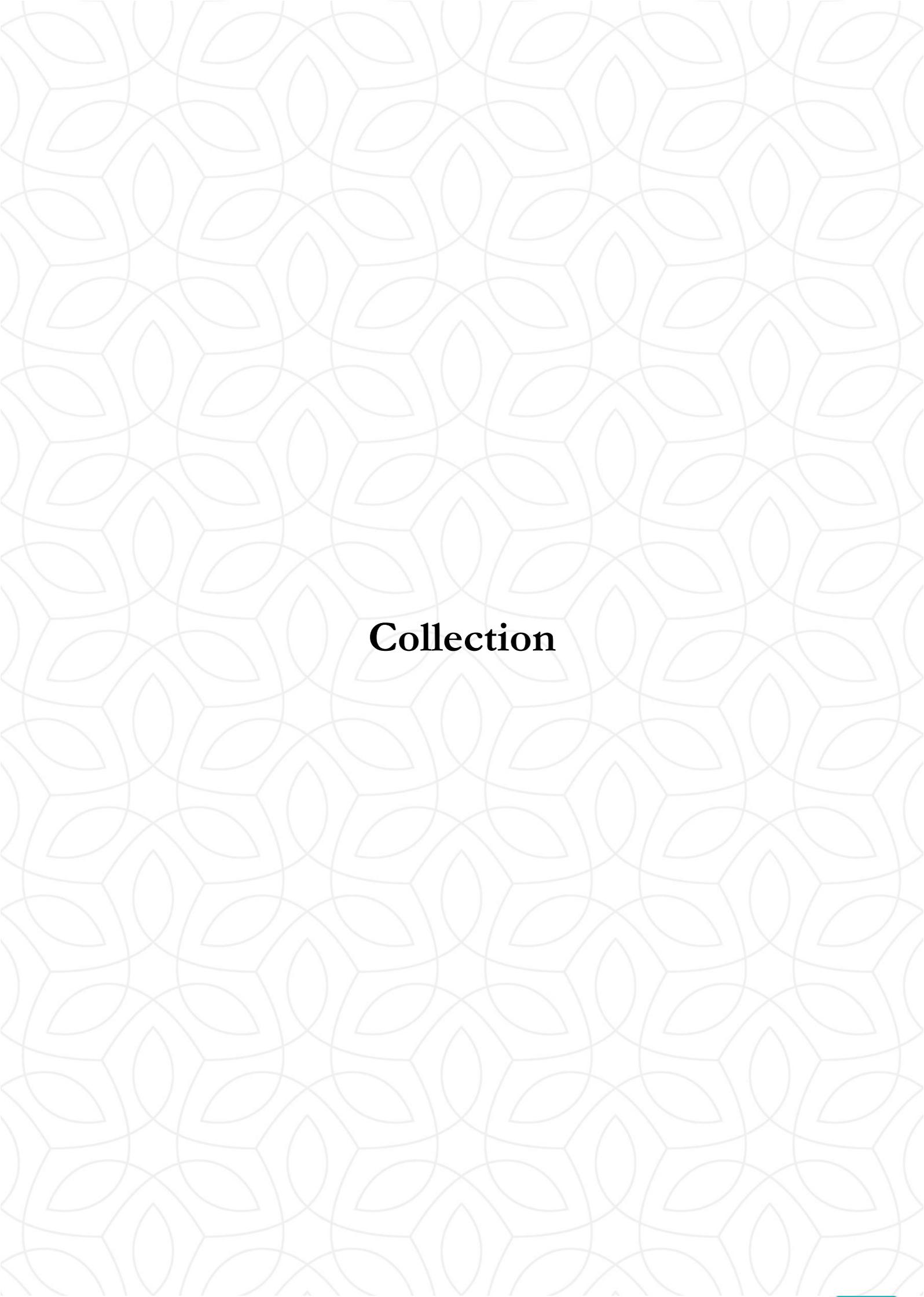
May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (109) dated 17/06/1444 AH.

Riyadh Appellate Customs Committee Decision No. (111) dated 17/06/1444 AH.

Riyadh Appellate Customs Committee Decision No. (113) dated 17/06/1444 AH.



Collection



Riyadh Appellate Committee

Decision No. (177)

Date of Decision: 23/04/1443

AH

Principle No. 8

- The statute of limitations does not fall within the provisions of Article (176) of the Common Customs Law in the collection of customs duties, if this is due to an exemption decision issued by a competent non-customs authority and it withdrew it due to subsequent findings.

Principle No. 9

- The customs committees do not have jurisdiction to determine an objection to an administrative decision issued by a competent authority outside the customs authority.

Facts:

The Committee convened to consider the appeal submitted by the Importerfactory C. R. No. (...) against the decision of the Second Primary Customs Committee in Riyadh No. (1216/2) for the year 1441 AH, which ruled that the customs procedure was valid as to collecting customs duties for consignments arriving to the ... Factory, which had previously been exempted from these duties pursuant to the exemption decisions referred to in the facts of the decision.

Upon notifying the Appellant of the primary decision on as evidenced by the notification receipt attached to the case file, they submitted their appeal, registered with the General Customs Authority under No. (...) dated.../.../..., This indicates that the appeal was submitted by an authorized party within the statutory period specified for its submission under Article (163) of the Common Customs Law. Therefore, the appeal must be accepted in form.

As for the subject matter of case, the Head of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) sent the letter No. (...) dated.../.../..., directed to the Head of the Customs Exemptions Department, accompanied with to the visit report prepared by the members of the Exemption Requests Review Committee at the Ministry of Energy, Industry and Mineral Resources (formerly) regarding the ... factory, which was held on with the aim of ensuring that the factory's actual production matches the licensed products, and verify how much is the use of previously exempted materials in the licensed products: A number of recommendations were reached during that visit, including addressing the competent customs authority to suspend the exemption decision no..... dated.../.../..., as well as all previous exemption decisions and recover their customs duties.

Accordingly, a collection decision was issued by the Customs bearing No. (...) for the year for a total amount of (13,0547.81) Saudi riyals.



The Appellant filed an objection to that decision, and the Second Primary Committee delivered its decision based on the Ministry of Energy, Industry and Mineral Resources (formerly) having jurisdiction to decide that the Appellant was not entitled to the exemption and to suspend Exemption Decision No. (...) dated.../.../.., and the previous exemption decisions. The Ministry has established that the exemption decision delivered to the Appellant has been abused, given that the factory uses the materials covered by the exemption for a purpose other than that for which they were imported or exchanged, sold or disposed of without the approval of the Customs authority and without payment of the customs duties payable on them, as detailed in the appealed decision to which we refer to for avoidance of repetition.

The Appellate Customs Committee studied the decision and the appeal filed by the Appellant and after the conclusion of the sessions held by the Committee to hear the appeal filed on dated.../.../.., dated.../.../.., and after each party submitted its memoranda and defenses, the Appellate Committee concluded as follows:

First: In Form: The key grounds of the Factory's appeal are summarized as follows:

The Factory based its objection on the Customs Authority' lack of entitlement to claim refund of customs duties for consignments, as the incident is subject to the provisions of the Law of Protection and Promotion of National Industries and the Unified Industrial Organization Law for GCC States, and is not subject to the provisions of the Common Customs Law. In addition, the examination and determination of case was marred with misapplication of relevant Laws and regulations, according to the following:

1. The report of the General Administration of Customs Audit and the primary decision subject to appeal included inaccuracies and mistakes in the narration of the facts of the case. One of these is the rejection of the Company's request for an exemption from customs duties for its imports in....., claiming that the Company was not entitled to it. This is incorrect, as the Company obtained approval from the relevant authority for the exemption request for the year under decision number ... dated.../.../.., after completing the requests that would allow it to obtain the exemption, and submitted a request to add a number of raw materials to the last exemption decision, but its request was rejected.
2. The Company obtained the first exemption for its imports by decision No. (...) dated.../.../.., Then it obtained the second exemption by decision No. ... dated.../.../.., And it obtained the last exemption by decision No. (...) dated.../.../.., After complying with the requests of the relevant authority, especially since obtaining the exemption goes through several stages, it would be impossible for the Company to receive approval without the relevant authority ensuring that all conditions are met.
3. Article No. 5 of the Law of Protection and Promotion of National Industries stipulates that raw materials, semi-manufactured goods, and packaging bags, boxes, and cylinders necessary for industrial establishments are exempt from customs duties, provided that there is no equivalent or sufficient substitute available in the Kingdom. This 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 stipulates that any establishment that violates the provisions of this law will be deprived of the benefits established therein, and the deprivation will be decided by a resolution from the Council of Ministers based on a recommendation from the Minister of Commerce and Industry.
4. Article (17) of the Unified Industrial Organization Law stipulates that the Minister or his delegate may take appropriate measures to grant the industrial project a full or partial exemption from customs duties on the project's imports as per the controls (exemption of industrial inputs) agreed upon within the framework of the GCC Council Article (23.5) of the same law also stipulated that every industrial project



owner must use the machines, devices, spare parts and raw materials covered by customs exemption in the licensed factory for the purposes subject of exemption, and he must keep a record of these materials. Article (28) stipulates that the Minister or his delegate may order that administrative penalties be imposed on industrial projects that violate the provisions of this law in accordance with the Implementing Regulations, including the closure of the industrial project. Article (32) also stipulates that the industrial project owner may appeal before the court (the competent authority) to consider appeals against administrative decisions.

5. The competent authority did not issue a decision from the competent authority directed to the Company to cancel the exemption decision for its imports, so that the Company can take the necessary action in this regard in accordance with the provisions of the appeal against the administrative decision before the competent judicial authorities.
6. What was issued by the Exemption Requests Review Committee is merely a recommendation, not a decision, as confirmed by the Customs Authority in its report. The Customs Authority should have dealt with it accordingly and thoroughly audited the Company's documents, invoices, and sales to verify this in a documented manner. It is worth noting that the General Administration of Customs Audit visited the Company on the date .../.../.... and audited its imports.
7. The last consignment imported by the Company was in 1437 AH under import declaration No. (...) and date of/../. ... and it was (cold drawn pipes).
8. while the first consignment was in 1438 AH under import declaration dated .../.../... and it was (cold drawn pipes), so it is natural 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, as the factory imports raw materials and manufactures by order and does not manufacture without orders due to market conditions.
9. The Customs Authority, represented by the General Administration of Customs Audit, stated 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) of the Common Customs Law 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 it confirms that it is not entitled to the exemptions in the aforementioned collection decision.
10. The committee was wrong in classifying the incident. It considered it a violation of customs procedures and did not specify the type of violation and the penalty resulting from it. It is worth noting that the prescription period stipulated in paragraph (A/2) of Article (176) of the Customs Law relates to the right of customs to investigate violations and impose the penalties resulting from them, and not to collect customs duties.
11. Article (99) of the Common Customs Law stipulated 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. Article (104) of the same law stipulated that "Imports of the Philanthropic Societies "Charities" shall be exempted from customs taxes "duties" according to the conditions and controls prescribed by the Rules of Implementation."
12. The exemptions granted to the factory for periods before the visit of the two members of the exemption team to the factory oncannot be withheld, as they are irrevocable financial decisions. Accordingly, the results were reported to customs by internal referral letter No. ...) dated .../.../... AH, and were approved by HE the



Director General of Customs. For these grounds, the industrial exemption was withheld from the Company's imports "incoming consignments", based on the letter of the Head of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources No. ... No. (...). dated.../.../.., directed to the Head of the Customs Exemptions Department, accompanied with to the visit report prepared by the members of the Exemption Requests Review Committee at the Ministry of Energy, Industry and Mineral Resources (formerly.) The term "incoming consignments" means consignments that will arrive in the future, as it is not permissible by law to withhold the exemption from consignments that have arrived, since this procedure was carried out after the committee visited the site, despite our reservations about the visit.

13. Referring to the results of the subsequent customs audit work, the results of the subsequent customs audit work on the Company's import declarations prove that theFactory used exempted materials for a purpose other than the one for which they were imported, or exchanged, sold, or disposed of them without the approval of the Customs Department and paying the payable fees (customs duties) is invalid. It is not lawful that the subsequent customs audits be based on the use of exempted materials for a purpose other than the one for which they were imported during a visit that lasted minutes - according to the Company's statement - and previous exemptions be canceled. The timing of the visit was at the time of using the imported materials.
14. Article (29.3) of the Implementing Regulations of the Common Customs Law stipulates that "A fine not exceeding twice the amount of the customs taxes "duties" and not less than their equivalent amount on the following offenses:3. The use of the materials subject to exemption or to reduced customs tariff for purposes other than those for which they have been imported or replacing, selling or disposing of them without the approval of the customs administration and the payment of the customs taxes "duties" imposed under Articles 99, 100 and 104 of the Customs Law and the provisions of these Rules. . Thus, if we assume, for the sake of argument, that the Company disposed of the imported raw materials for a purpose other than that for which they were imported, the Customs Authority and the Customs Committees are not competent to consider the violation and impose the penalty for such violation.
15. There were sales during the visit period, of which the Company submitted (30) invoices, including those pertaining to the factory, which were submitted to the Ministry of Industry at its request, proving the improper use of raw materials in manufacturing.
16. The factory was not informed of the results of the visit until when the release of its consignments was suspended, when it learned that it was due to the issuance of a collection decision. Therefore, an objection was filed against the collection decision in letter No. ... dated.../.../.., which included "... It was stated in the statement of customs differences attached to the decision that we had previously obtained an exemption decision No. ... dated.../.../.., and an exemption decision No. (.....)‘ dated.../..../... and an exemption decision No. (...) dated.../.../.., exempting our needs for raw materials, which are the materials mentioned in those differences. This means that obtained a ministerial decision to exempt 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 of invalidity of the exemption, especially since the exemption records of those materials were approved by the exemption committee, including the Customs Authority's representative
17. Co. has many affiliates, including the Factory, and these affiliates are close to each other, and it is normal that their warehouses are shared. Unfortunately, and because the visiting team did not meet with the factory specialists, they obtained incomplete



information, including what pertains to the warehouses. Actually, There are two warehouses where imports are stored, whether raw or manufactured, and they belong to the Factory owners but the Committee did not visit them. There is no legal impediment that prevents a warehouse from being at the factory, especially since the visit was to the three factories, which have warehouses, but the visitors only visited one with the area of 8,865 ms, and it is part of a plot of land with an area of 121,609 ms, owned byCompany in neighborhood In Jeddah Warehouse No. (1) and next to this land there is another plot of land owned byCompany With an area of 138,931 m, rented by the Industrial Cities and Technology Zones Authority.

18. What confirms the invalidity of the collection decision that is based on the existence of differences is the visit conducted later by the subsequent audit team based on the letter from the Audit Department No. (...) dated.../.../.., during which they requested the documents related to 28 declarations (Exhibit 3 “table”). Then they went toCompany and its affiliates, including the factory, and they did not have any comments. That visit was about a year ago, and among the declaration was the customs declaration No. ... dated.../.../.., No comments were expressed for that declaration or any other declarations. It was the same declaration that was attached to the collection decision with the other declarations. Should were there any issue regarding that declaration, the visit team would have commented on it along with the other declarations examined through the Company and factory system, which constitute a large part of the customs declarations attached to the collection decision. This confirms the invalidity of the collection decision, as the customs procedures of the declarations fromto were audited and approved by the team.
19. The time of the visit made by the Industrial Exemptions Committee, and based on which the exemption request submitted by the factory was rejected, was on That period witnessed as known to everybody a significant decline in the local market on the wake of the crisis that the contracting sector went through at that time, and due to the decline in demand, the factory was only importing small quantities of raw materials, as in the table. By referring to the customs declarations for importing exempted raw materials during the three months prior to the date of the visit, it was found that the total amount of raw materials imported amounted to only 876 tons during the period from to 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 no large quantities of materials in the factory at that time, as shown in the following table:

Quantity imported	Number of customs declarations	period
4958 tons	8	1438
99189 tons	14	1437
347 tons	4	1436
38377 tons	71	1435
15427 tons	37	1334
17285 tons	44	1433
167 tons	2	1432

20. Judgments are based on certainty and not on conjecture and guesswork. Moreover, the visit committee should express its opinion during the visit period; otherwise, how can it ascertain that the material imported from 1432 AH to 1438 AH were not used. This violates the judicial rule "claims contrary to the apparent must bear the burden of proof". Therefore, canceling the exemption for the years specified in the collection decision is not lawful, as only certainty and conclusive evidence cancels certainty, and



this is what was not presented, but rather an assumption based on a mere visit for a few minutes as stated by the factory.

Accordingly, the collection decision delivered againstCompany is invalid as 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 Therefore, the Honorable Committee decides as follows:

1. Accept the appeal in form for being submitted within the period prescribed by Law.
2. Overturn the primary decision and cancel the collection decision No. (2) of 1439 AH delivered againstCompany charging customs differences on the Company in the amount of SAR 13,054,781, as the Customs has no right to claim this amount.

Second: The Customs Authority's letter is summarized as follows:

1. The Customs Authority received a letter from the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) No. dated.../.../.., 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.../.../.., amended to license (...) 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. (...) dated.../.../.., And No.....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 and reconsider decision No. (...) dated.../.../.., for lack of eligibility for exemption.
- Address the Customs Authority to stay the exemption decision delivered to the Factory under No. (...) dated.../.../.., 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 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 in the name of the factory and delivered Collection Decision No. (...) for the year 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 in 1437 AH was on and the first consignment imported in 1438 AH was on was on and it was cold-drawn pipes, so it is normal that the members of the Exemption Requests Review Committee did not find large quantities in the Company's factory due to the lack of 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 Department of Customs Audit believes that import declarations that are more than five years old from the date of issuance of collection decision are subject to provisions of Articles (142, 143 and 145) 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 Based on the stated letter of the Industrial Exemptions Department at the Ministry of Energy, Industry, and Mineral Resources, and given that customs duties constitute a debt owed to the state under State Revenue Law, which defines debt in Article (1) as: “Any sum of money due 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 the exemptions granted to the factory for periods prior to the visit of exemption team members to the factory on .../.../... should not be withheld. In addition, the term “consignments” stated in the letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources refers to the consignments that will arrive in the future. We respond by stating that the letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources included the suspension of exemption decision issued for the factory under No. (...) dated.../.../..., 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 (Third) that, even if it were hypothetically assumed that the Company had used the imported raw materials exempted under the industrial exemption decisions for purposes other than those for which they were imported, the Customs Authority and Customs Committees would not have jurisdiction to review the violation or suspend the resulting penalty. We respond to this by reiterating what has been elaborated in multiple points, namely that the Customs Authority reviewed the customs declarations issued in the name of the factory and issued a collection decision for .../.../... in accordance with Article (147) of the Unified Customs Law based on the above-mentioned 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 by saying that the reason for asking Company by the Ministry of Energy, Industry and Mineral Resources was not clarified, and whether they were related to the subject matter of the challenged decision.
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 invalidity of exemption, given that the exemption reports for such materials were approved by Exemption Committee, including Customs Authority’s representative. We respond by saying that the incident relates to the non-use of materials exempted under exemption decisions for a purpose other than that for which they were imported; and therefore, the exemption does not apply to such materials according to the report of the formed committee that visited the Company.



11. The Company's representative stated in his statement that the Company has several companies, and that the visit team did not meet with factory specialists, and gathered incomplete information, including information related to the warehouses. We respond by saying that the visit was made to Company's factory, and it was found from the actual inspection of production lines that the factory does not have machines for unrolling iron rolls, and does not have iron rolls. Having asked about the iron rolls, we were informed that they are received by the General Department, and are not used in production at the factory, which proves that the products exempted under 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 by saying that the visit made by the General Department of Customs Audit to ... Company on ../../.. has no relation to the subject of the appealed decision. It was one of the visits made by the General Department of Customs Audit to exercise its principal jurisdiction in subsequent auditing after clearing consignments at customs ports. The statements of Company's representative regarding the existence of a single customs declaration without remarks, which was among the customs declarations related to the decision under objection, is irrelevant to this matter. The audit here focuses on the classification of items and their conformity with exemption decision, rather than their use for purposes other than those for which they were imported.
13. The Company's representative stated in his statement that at the time of visit made by the formed committee, the local market was witnessing a significant decline due to the crisis that the contracting sector had gone through, etc. We respond by saying that the visit and inspection of production lines revealed that the factory does not have machines for unrolling iron rolls, and does not have iron rolls. Having asked about the iron rolls, we were informed that they are received by the General Department, and are not used in production at the factory. This proves that the products exempted under 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.

As such, the Customs Authority requests that the decision is upheld for being consistent with the Law.

Third: Appellant responded to Customs Authority's answer as follows:

1. The Company argues, based on statutory provisions, that the Customs Authority has no right to reclaim customs duties on consignment unless a final, non-appealable decision is issued by the competent authority to revoke the exemption in accordance with the Uniform GCC Law of Industrial Regulation. In addition, it responds by stating that it issued the collection decision, subject matter of objection based on the



letter of the Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) without elaborating the legal basis for considering this letter as a final decision in accordance with provisions of the Uniform GCC Law of Industrial Regulation.

2. The statute of limitations is stipulated in the Unified Customs Law, which is a special text that restricts a general rule. However, the regulation submitted by Customs Authority was based on the State Revenue Law, which is irrelevant basis, as the State Revenue Law relates to the collection of fixed debts.
3. The Company objected to Authority's right to claim customs duties on declarations after five years from the date of delivering collection decision, and to the Committee's reasoning that the statute of limitations begins from the date of discovering violation. The grounds of decision, subject matter of appeal, indicated, regarding the statute of limitations, that what applies to the Company is Article (176.2.A) of the Unified Customs Law, which is that the statute of limitations is five years for investigating violations, which means that the Committee considered the Company's act as a violation, but we find the Authority providing in paragraph (8) of its statement a response that is irrelevant to the advance payment.

We would like to emphasize what was included in the Company's memorandum No. ... dated ../../.. attached to the accounting report of Company's imports during the period covered by the contested collection decision. The report emphasized the invalidity of collection decision delivered against ... Company based on assumptions that contradict the reality 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 dated ../../...

Based on what was previously explained in the objection memorandum No. ... dated ../../..., and also, the memorandum No. ... dated ../../..., Appellant concluded its rejoinder requesting the Honorable Committee to:

1. Accept the appeal in form for being submitted within the period prescribed by Law.
2. Overturn the decision delivered by the Second Primary Customs Committee in Riyadh No. ... delivered in the objection to Collection Decision No. (...) for 1439 AH, and annul the collection decision against ... Company by charging customs variances on the Company in the amount of SAR 13,054,781, and to confirm the invalidity of Customs Authority's procedure in collecting customs duties for my principal's consignments due to the Customs Authority non-entitlement to the variances claimed. Since the Committee found, after hearing statements of both parties and the documents included in case file, in addition to the memorandums submitted by both parties regarding the appeal against the contested decision, that the Case was ripe for adjudication after the Committee has taken cognizance facts of the Case and submissions made by the parties that the Committee found to be sufficient to adjudicate the case.

Grounds

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. ... dated ../../..., No. (...) dated ../../..., No. (...) dated ../../... delivered by the Ministry of Energy, Industry and Mineral Resources (formerly). Moreover, the Head of Industrial Exemptions Department at the Ministry of Energy, Industry and Mineral Resources (formerly) issued



letter No. ... dated .../.../... was sent to the Head of the Customs Exemptions Department, indicating that the Ministry has suspended all exemption decisions delivered to Appellant based on the findings of the visit. Therefore, the Customs Authority is only the party responsible for implementing decisions and exercised its authority stipulated in Article (147) of the Unified Customs Law to collect such customs duties. Since this dispute in this Case involves the extent to which the Ministry of Industry and Mineral Resources is entitled to suspend the exemption decisions delivered by it, which resulted in Appellant requesting the return of such duties that were not paid based on such exemptions. This means that the dispute is an objection to an administrative decision delivered by the Ministry of Industry and Mineral Resources. 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 Appellant's argument that the decision issued by the Ministry of Industry and Mineral Resources was not delivered by the person authorized to annul exemption decisions, and that it was merely a recommendation, this confirms what 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 made 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 consider.

As such, the Appellate Customs Committee in Riyadh decides as follows:

Decision

First: Accept the appeal in form filed by (... Company's Factory), 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.



Principle No. 10

- The payment of customs duties is a separate matter from the criminal aspect related to the suspicion of smuggling, as what customs requires from the Importer is the payment of duties that were not collected from it, without any error on the part of Customs Authority in this regard.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 09/11/1444 AH, the Appellate Customs Committee in Riyadh convened to consider the appeal filed by (...) LTD, C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (3/123) for 1443 AH. The appeal was filed by Appellant Company objecting to the collection decision issued by the Customs Authority under No. (...) for 1441 AH, which ruled as follows:

1. Accept the objection filed by (... LTD), C.R. No. (...) to Customs Authority Collection Decision No. (...) for 1441 in form.
2. Dismiss the objection on merits and uphold the Customs Authority's procedure in collecting customs duties for the consignments, subject matter of objection, which are related to import declarations stated in the primary decision.

Since the appeal request was submitted by (...), holder of ID No. (...), in his capacity as Company's representative, on 03/05/1443 AH, and he received the decision on 03/04/1443 AH, this requires the formal acceptance of the appeal, as it was filed within the prescribed period in accordance with provisions of Article (163) of the Unified Customs Law.

On Merits: The Case facts can be summarized that it turned out from the post-audit conducted by the Authority on the customs declarations retained by the Company that its non-compliance with customs policies and procedures related to customs declarations, specifically regarding the applicable tariff classification. The Company subjected (...) items to a lower customs duty category than what should have been applied, resulting in a partial loss of customs duties owed to the state treasury. In addition, customs declarations found at Company's premises were discovered to differ from those submitted to ZATCA for the same consignments, raising suspicions of forgery. Accordingly, variances in customs duties were identified across (96) customs declarations, resulting in the delivery of Collection Decision No. (...) for the 1441 AH, amounting to (SAR 48,369,805) forty-eight million, three hundred sixty-nine thousand, eight hundred five Riyals.

After the Primary Committee held its session to consider the Case, Company's representative appeared, under POA No. (...) dated .../04/1442 AH, before the



Committee and requested a one-month opportunity to respond to Committee's inquiries. The representative then submitted a statement of objection on 25/03/1443 AH. Having taken cognizance of Company's objection to the collection decision and all attached documents, the Primary Committee delivered its decision as previously stated. The Committee based its ruling on validity of Customs Authority's procedures in collecting customs variances resulting from the adjustment of consignment value and their classification under a lower tariff category than the correct one. The Committee also found that Company's argument, which sought to shift responsibility to the party handling its customs clearance on the basis that the Company had fully paid the required fees did not absolve the Company of liability. This is because the Company remains directly responsible before customs for ensuring the full payment of customs duties. However, the Company is entitled to seek recourse against any party it deems negligent in the proper fulfillment of such payments.

The Company's representative, ..., acting under POA No. (...) dated .../04/1442 AH, submitted a statement of appeal summarized that the Company has a specific mechanism for paying customs duties due on its consignments. This mechanism involves either making payments through intermediaries who, in turn, pay the customs brokers, or directly paying customs by checks based on the payment requests submitted by customs brokers for the specified duties.

Regarding the declarations covered by collection decision, the Group had paid customs duties through an intermediary company, "(...) for Fast Services", C.R. No. (...). Under this mechanism, the Group transfers customs duties via a remittance to "(...)" based on invoices issued by (...) specifying the due customs duties for the consignments. The intermediary company "(...)" then transfers such duties, along with any additional expenses, to customs brokers handling those consignments by checks that reference the bill of lading number corresponding to the consignment for which customs duties are being paid. The customs brokers subsequently manipulate the correct tariff classification to obtain the variance in customs duties, which had already been fully paid by the Company.

According to Company's statement, it turns out from consignment documents that the customs broker prints a correct customs declaration and submits it to the Company for payment. The intermediary, "Company (...)", then requests the Group to transfer the customs duties along with other related expenses. Accordingly, the Group transfers the required duties and additional costs to the mentioned broker. However, instead of remitting full customs duties for the consignments, the broker alters the consignment values and tariff classifications in the customs declarations submitted to customs. This resulted in variances in the customs duties, leading to a claim by Customs Authority for outstanding variances amounting to SAR 48,369,805, which the customs brokers actually received from the Intermediary Company but retained for themselves.

Accordingly, it turns out that the variance in customs duties arose from customs brokers recording lower values for the consignments in import declarations that they submitted to customs, despite the fact that the Customs Authority received the full customs duties owed on the consignments covered by the collection decision. This occurred even though the original invoices and tariff classification amendments were attached, which proves brokers' manipulation. It is believed that had the administration properly audited the consignment documents at the time of customs clearance, the brokers would not have been able to alter the consignment value and retain the variances amounting to SAR 48,369,805, for which the collection decision was issued. The brokers, (...), holder of License No. (...), (...), holder of License No. (...) and (...), holder of License No. (...), provided all the correct customs documents but manipulated the recorded consignment value. The value declared in customs data were lower than those stated in the invoices and the documents attached to



import declarations. Given the duties of customs officer responsible for verifying declarations to ensure the accuracy of declared prices, it should have been evident from reviewing declared prices and attached invoices that manipulation had occurred. Accordingly, the importer cannot be held liable under the Unified Customs Law; rather, the accountable parties are the brokers who committed the manipulation. Customs officers should have cross-checked the values recorded in customs declarations against the supporting documents to prevent the under collection of duties. Therefore, there is no legal basis for claiming the importer to pay the variance in customs duties. In addition, the claim should be directed at customs brokers in accordance with the Unified Customs Law and its Implementing Regulations, specifically Article (157), which explicitly holds the customs broker responsible for paying customs duties in cases where they manipulate the customs value to obtain financial gains from the duty variances between the declared amount and the invoices submitted with customs declarations. Customs Authority is entitled to claim such variances, which has been upheld by Customs Committee decisions, and there is no legal ground for claiming them from the importer. Accordingly, the customs brokers (...), holder of License No. (...), (...), holder of License No. (...) and (...), holder of License No. (...), were the ones who manipulated the payment of customs duties by altering consignment values after collecting full customs duty amounts from the Company. In accordance with Article (179) of the Law of Civil Procedure, which stipulates that a party may request the court to include in the lawsuit any person who could have been rightfully sued when the case was initially filed, and that the usual procedures for summoning such a party shall be followed. The court shall rule on the request for impleader and the original lawsuit in a single judgment whenever possible; otherwise, it shall decide on the request for impleader after ruling on the original lawsuit in accordance with Article 2, Paragraph 2 of Rules Governing Customs Committees, which permit the Committee to apply the Law of Civil Procedure and the Law of Criminal Procedure in matters not covered under these Rules. Accordingly, the Company requests impleader of customs brokers in the case and classification of charge against them as a suspected commission of the crime of customs smuggling in accordance with Article (158) of the Law of Criminal Procedure.

As for Committee's reasoning in supporting Authority's claim that the Company failed to comply with customs policies and procedures regarding customs declaration, tariff classification and applicable customs value, this claim is incorrect. The customs brokers were the ones who received the full customs duties and then applied a lower tariff rate than required for (...) items and declared a lower customs value. This resulted in a partial loss of customs revenue for the state treasury. It is the broker, not the Company, who prepares customs declaration, a fact well known to anyone with basic knowledge of customs procedures. Given that the Company provided evidence proving brokers' manipulation of customs duties, the Committee should have applied the relevant laws, such as the Unified Customs Law, Law of Criminal Procedure, and Rules Governing Customs Committees, rather than adopting Customs Authority's position in contradiction to such regulations.

The statement submitted by Company's representative was concluded by stating that, in light of the clarification regarding the mechanism by which (...) Company paid the due customs duties for its consignments to customs brokers (...), (...) and (...), which are the consignments subject to the collection decision under objection, the Company respectfully requests the Honorable Committee to:

1. Include each of the customs brokers (...), holder of License No. (...), (...), holder of License No (...), and (...), holder of License No. (...) in the case and to order them to pay customs duties that they unlawfully obtained.



2. Amend characterization of the charge in the case against customs brokers to suspicion of committing crime of customs smuggling and order them to pay customs duties that they unlawfully obtained.
3. Annul Collection Decision No. (...) for 1441 issued against (...) LTD, which obligates the Company to pay customs duty variances amounting to SAR 48,369,805 and determine that Customs Authority is not entitled to the claimed variances.
4. Regarding the right to obligate (...), (...) and (...) to pay the amount of SAR 11,216,418 to (...) LTD, which was collected from the Company without a legal ground.

On Thursday, 05/11/1444 AH, the Appellate Customs Committee in Riyadh held its session to consider the appeal filed by (...) LTD, C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (3/123) for 1443. The Appellate Committee found that Case file contained sufficient documents and that the appeal was based on valid grounds for issuing its decision. It turned out that the dispute between the importing company and Customs Authority involves company's request to annul collection decision for the disputed customs duty variances, arguing that it had fully paid the fees to customs brokers responsible for processing the consignment. Therefore, the Company asserts that it should not be liable for such variances. However, Customs maintains that the full customs duties on the consignments in question were not entirely paid, thus justifying its claim for the outstanding amounts from the importing company.

Grounds



Regarding the request to include customs brokers in the case, the Appellate Committee decided to dismiss this request. The dispute between Customs Authority and the importing company involves company's failure to pay the full customs duties after the release of its consignments, leaving its financial obligation unsettled before the relevant authority. Therefore, there is no basis for including customs brokers in this case or staying proceedings to complete criminal investigations as requested by Appellant. The issue of whether the Company has fully discharged its customs duty obligations is separate from any criminal aspect related to alleged smuggling, which falls within the jurisdiction of customs prosecution to pursue against those implicated once sufficient evidence is established. Since Customs Authority is claiming payment of outstanding duties from the importing company, without any error on its part, Appellant Company remains responsible for taking legal action against the customs brokers, whom it claims acted dishonestly by failing to remit the duties to Customs Authority.

Since the body that considers the appeal is not bound to overturn the appealed decision if it finds that decision's reasoning sufficiently supports its ruling and adequately addresses the objections raised, there is no fault in upholding it. The claim by Appellant's representative that the Company had already paid the customs duties by handing them over to the brokers does not affect this conclusion. The key factor in determining Company's discharge from its customs obligations is the actual receipt of such duties by the rightful authority. Given that the Company acknowledges that part of customs duties was never received by Customs Authority, having been misappropriated by the customs brokers instead, the issuance of collection decision aligns with the proper application of the regulations, which require full payment of the due duties at the time of release of the consignments. Since it has been established that Customs Authority did not receive the full amount, and the individuals authorized by Appellant Company failed in their duty to remit such funds as per their agreement, the Company's financial liability remains in place. As such, the Appellate Customs Committee in Riyadh unanimously decided as follows:



Decision

Accept the appeal in form filed by (... Company LTD), C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (3/123) for 1443 AH.

On Merits: Dismiss the appeal, and uphold the primary decision in its entirety, confirming validity of Customs Authority's procedure in collecting customs duties on the consignments related to the contested decision as per Collection Decision No. (...) for 1441 AH according to reasons and grounds stated herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

Appellate Customs Committee in Riyadh Decision No. (142024) dated 04/02/1444 AH.



Principle No. 11

- Give the correct classification of the imported goods is not based on Importer's declaration but rather on the actual nature of the goods, as verified through consignment's catalogs.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Thursday, 04/12/1444 AH, the Appellate Customs Committee in Riyadh convened to consider the appeal filed by the Importer, (... Company LTD), C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (56/3) for 1443, which ruled as follows:

1. Accept the objection in form filed by (... Company LTD), C.R. No. (...-...) against ZATCA collection Decision No. (...) for 1441 AH.
2. Dismiss the objection on merits and uphold the validity of ZATCA procedure in collecting customs duties on the consignments, subject matter of objection, related to three (3) customs declarations, with a total amount of SAR 4,668,502 (four million six hundred sixty-eight thousand five hundred two Saudi Riyals).

Since the Appellant was notified of the appealed decision on 12/06/1443 AH, and he filed an appeal against the decision on 11/04/1443 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

On Merits: The facts of the Case are summarized that ZATCA General Audit Department, having taken cognizance of documents attached to customs declarations in Case file, found that the Company did not comply with customs policies and procedures related to tariff classification. The Company selected HS code (890520000000) with a "duty-exempt" category for consignment consisting of (parts of fixed platforms used in the exploration or exploitation of offshore oil or natural gas fields), believing them to be floating or submersible platforms. However, ZATCA Tariff and Studies Committee rendered Decision No. (...) classifying imported item under HS code (...) with a 5% duty rate, considering it as (parts of fixed platforms for drilling and depth exploration). As a result, the Company incurred customs duty variances amounting to SAR 4,668,502 (four million six hundred sixty-eight thousand five hundred two Riyals) for three (3) customs declarations. A collection decision was issued by ZATCA under No. (...) for 1441 AH to recover the customs duty variances related to facts of the Case.

On Monday, 01/12/1444 AH, the Appellate Customs Committee in Riyadh convened to consider the appeal filed by (...) LTD against Third Primary Customs Committee Decision



No. (56/3) for 1443 AH. Having taken cognizance of Case file and the appeal filed by Appellant, it turned out that the statement of appeal was based on the objection of Company's attorney, (...), holder of National ID No. (...), in his capacity as attorney of Appellant Company under POA No. (...) dated ../04/1443 AH notarized by (...) under License No. (...). The attorney's objection included the lack of legal validity of the presence of Primary Committee chairman when considering the Case and his failure to recuse himself, given that he was previously an advisor at the office of the Governor of Customs Authority, which had issued the collection decision in dispute. In addition, the Customs Authority and the Primary Committee were accused of violating Company's right to due process by failing to properly notify and communicate with it as required by law regarding Case's facts and determination of the correct tariff classification. The contested decision relied on unpublished and unfamiliar explanations and interpretations, making it unreasonable to use them as the basis for classifying offshore production platforms. The Customs Authority subjected the imports to a classification that effectively applied a new decision retroactively, which is legally impermissible. The Company asserted that the classification of offshore platforms under HS code (8905) aligns with classifications used by many other countries. The Committee's claim that the imports consisted of fixed platform components used for drilling and depth exploration and should therefore be classified under a different code was incorrect. The Company argued that the imported goods were offshore production platforms that do not perform any drilling or exploration activities. While customs could apply new classification procedures to future imports subject to inspection, the retrospective reclassification of previous imports on the ground of correcting a classification error was unjustified, as it constituted an arbitrary revision that distorted the reality of the imports. A change in classification does not necessarily imply a misclassification, particularly when the actual imports do not fall under the newly applied code, which covers items unrelated to the imported offshore platforms. The statement of appeal was concluded with a request to annul the primary decision, subject matter of appeal, due to its invalidity for violating Customs Committees' regulations and the Kingdom's judicial systems. Alternatively, Company's attorney sought overturning primary decision, annulling collection decision and exoneration of the Company from any legal or financial consequences related to collection decision.

The answer of Customs Authority to Appellant Company's statement of appeal was received via the automated system of the Secretariat on 12/09/1444 AH and included the following summary:

The Taxpayer claimed that the decision violated Articles (38) and (20) of the Basic Law of Governance. However, the Unified Customs Law ensures the collection of customs duties and other fees that were not collected due to an error by Customs Authority within five years from the date of filing customs declaration. Such variances are not penalties but customs duties that should have been collected from the date of customs declaration registration, not as a penalty for actions taken after the enactment of the legal provision. Regarding Taxpayer's argument that there was no error in the customs classification of the imported offshore platforms, the Authority responded that its review and right to collect the due fees were based on Articles (9, 29, 127 and 176) of the Unified Customs Law. The technical basis for classification, according to the explanatory notes for HS Code Heading (8905), divides offshore platforms into three categories: Self-elevating platforms, semi-submersible platforms and fixed platforms. If a platform would simply sink when placed in water and requires anchoring, it is not a floating or submersible platform and is classifiable under Section XVI. Since determining customs classification is a globally applied technical process adhered to by all member states of the World Customs Organization, the Classification and Studies Committee at the Authority, the specialized technical body responsible for determining applicable customs headings per the



International Convention on the Harmonized Commodity Description and Coding System (HS Convention), correctly reviewed the classification. The Authority refuted Taxpayer's claim that it had provided misleading information in its report, stating that the technical review of the platforms confirmed that the criteria distinguishing floating and fixed platforms involve design features such as hull structures, ballast tanks and other elements defining the imported goods. The Company's catalog materials indicated that neither the upper platform nor the base was equipped with devices or structures allowing self-buoyancy. In addition, the Authority asserted that it is not legally required to disclose studies or inquiries directed to the World Customs Organization. The classification process is not discretionary but is based on research and study following the general rules for interpreting HS. The customs law also establishes a five-year statute of limitations for collecting customs duties. The Committee did not apply the decision retroactively but exercised its legally granted right within the prescribed period to protect public treasury rights. Moreover, the Authority emphasized that classification decisions are based on factual analysis rather than the Importer's declarations. Otherwise, customs officers would not be granted the authority to review data, documents and contracts related to consignments in question. The Classification Committee's decision merely clarifies the actual nature and correct customs heading of the imported goods. The classification process is a scientific method supported by catalogs, technical publications and expert-issued decisions. The Authority's actions in requesting unpaid customs duties due to incorrect classification align with legal provisions. The classification adjustment was a correction of the heading used by the Importer or their representatives, resulting in customs duty variances that resulted in issuing collection decision. The Authority concluded its answer by requesting dismissing Company's appeal and upholding primary decision in its entirety.

Since the Committee found the reasons presented in Company's appeal and Customs Authority's answer, along with the documents included in Case file, to be sufficient for adjudication, it decided to rule on the Case in its current state after fully considering its facts.

In addition, a supplementary answer was submitted via the automated system on 02/11/1444 AH, reaffirming Customs Authority's right to conduct post-clearance audits in accordance with Article (127) of the Unified Customs Law for a period of five years from the date of completion of customs procedures. It also emphasized that the findings of Customs Audit Department align with Article (116) of the Unified Customs Law and that the collection decision in question complies with the law and established judicial precedents of the Committee.

Grounds

Since the dispute between the parties involves Company's objection to the issuance of Collection Decision No. (...) for 1441 AH by Customs Authority, which seeks to recover customs duties that the Company claims were wrongly assessed based on Customs Authority's belief that the imported goods were classified under a duty-exempt category. The Customs Authority, however, argues that the actual nature of the goods requires classification under a different tariff heading, which resulted in issuing collection decision for the uncollected duties. The Company contends that the imported goods are offshore platforms that qualify for exemption and that the tariff classification proposed by Customs Authority does not apply to the consignment in question, as detailed in Company's objections. On the other hand, Customs Authority maintains that its reassessment was based on the actual nature of the consignment and the catalogs provided, asserting that it merely corrected a misclassification to assign the proper tariff heading. The Authority further argues that this does not constitute a modification of the classification but rather a



proper characterization of goods, which resulted in customs duties that were not initially collected. The Customs Authority emphasizes that determining the correct classification is not based on Importer's claims but on the actual characteristics of goods as verified through official catalogs. In addition, the Law grants Customs Authority the right to review and rectify errors within the statutory period to ensure the collection of due duties. The Authority also asserts that it is the competent technical body for determining the correct tariff heading and is not required to disclose the studies that led to its classification decision. It further maintains that its actions do not constitute abuse of authority as long as it complies with regulations and that the Law allows importer to challenge any duties they believe to be unjustified.

Regarding Company's request to annul the primary decision due to its alleged violation of Rules Governing Customs Committees and judicial regulations in the Kingdom, specifically, the failure of Committee Chairman to recuse himself when hearing the Case and the claim of improper notification procedures, this argument is dismissed. The Company's attorney has not provided evidence proving that the Chairman of the Primary Committee participated in issuing collection decision that the Company seeks to annul. The mere fact that the Chairman previously served as an advisor in Governor Office does not necessarily imply his involvement in issuing collection decision. Therefore, this claim is unsubstantiated and is accordingly dismissed. In addition, the Company's argument regarding the lack of notification about the classification review process is also dismissed, as such procedures are internal matters that do not concern the Importer. The Law already grant the Importer the right to object to decisions resulting from these procedures, making Company's claim in this regard groundless.

Since the basis of Customs Authority's claim to justify its reassessment of the imported goods' classification relies on its right to review errors in customs procedures, and since it asserts that the initial classification was incorrect upon later review of the actual nature of the imported items, the Committee finds that this does not constitute an "error" that justifies reclassification. At the time of clearance, the consignment was under customs inspection, and it is unreasonable to assume that customs officers could not identify equipment associated with deep-sea drilling and exploration, which would be subject to duties. The Company's claim that the imported items were purely offshore platforms was accepted by customs without reservation, and the goods were classified under a duty-exempt category. This indicates customs' acknowledgment that the imported items did not fall under the category it now claims applies based on subsequent review of documents and catalogs. Customs' attempt to retroactively reclassify the imports cannot be accepted unless it concerns new shipments that are still under review and where the declared classification is disputed at the time of clearance, allowing the Importer to challenge the customs classification. Therefore, the core issue is not merely determining correct classification but rather a dispute over the true nature of imported goods. Accordingly, Customs Authority's claim that an error in classification justifies the reassessment of customs duties lacks a valid basis in fact. Thereupon, the Committee concluded as follows:

Decision

Accept the appeal in form filed by (... Company LTD), C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (56/3) for 1443 AH.

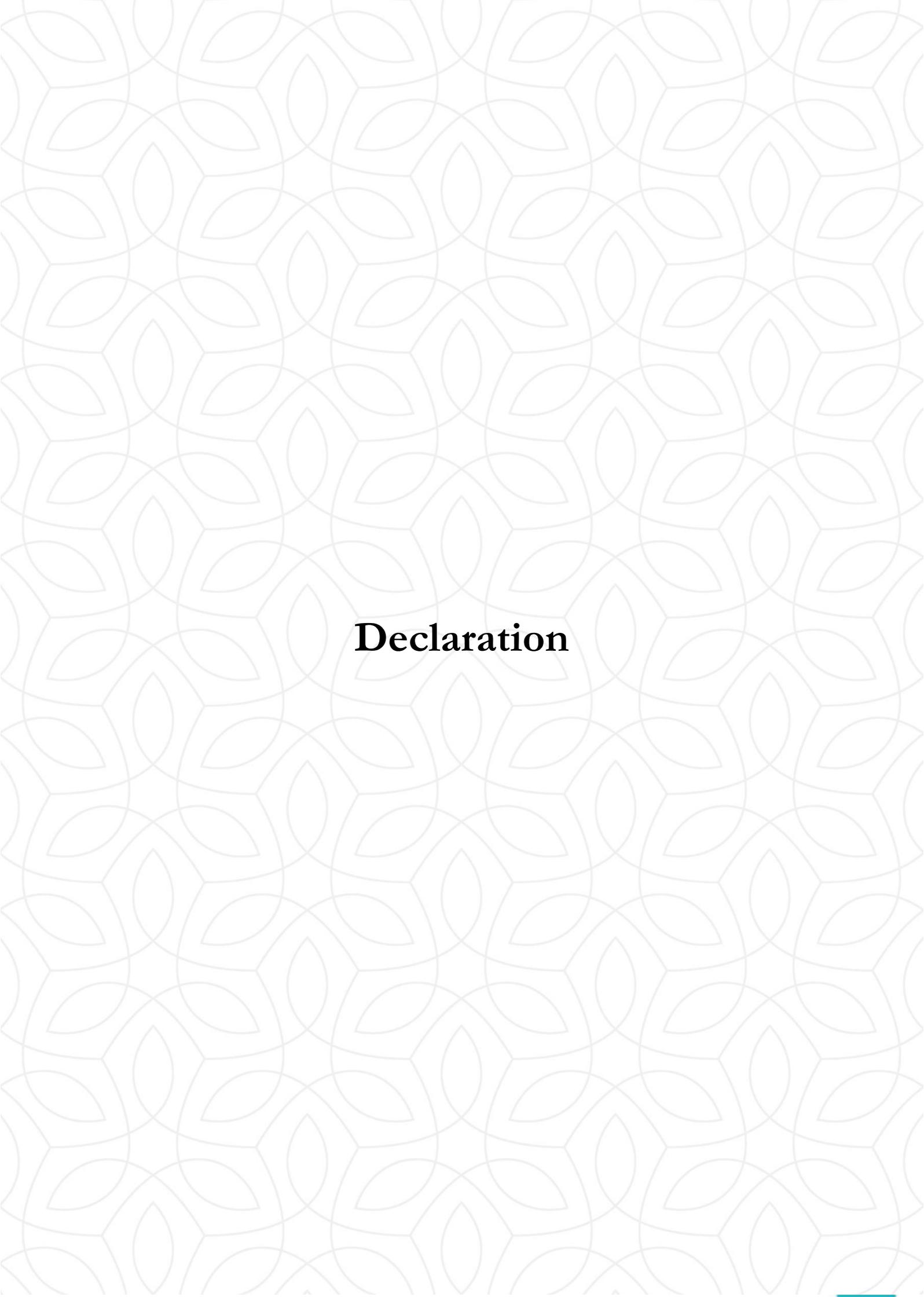
On Merits: Accept the appeal, overturn the primary decision in its entirety and annul Collection Decision No. (...) for 1441 AH for according to reasons and grounds stated herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Similar decisions

Appellate Customs Committee in Riyadh Decision No. (109) dated 06/08/1443 AH.



Declaration



Principle No. 12

- The presence of other duty-exempt items within the consignment does not exempt it from the obligation of declaration, even if all its items are exempt.

Principle No. 13

- The principal rule is that a declaration by the importer that differs from the actual goods does not justify claiming an error by the shipper without evidence confirming shipper's mistake and disproving any wrongdoing by the importer.

Principle No. 14

- The importer is presumed, upon discovering an error in the consignment, to report it before initiating consignment clearance procedures.

Facts:

To consider the appeal filed by (...) Enterprise C. R. No. (...) against Primary Decision No. (1/27) for 1440 delivered by Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict ... in his capacity as owner of ... Enterprise, C.R. No. (...) in presentia of customs smuggling.
2. Oblige Enterprise owner to pay a customs penalty equivalent to the double of customs duties, amounting to (SAR 280,370) two hundred eighty thousand three hundred seventy Riyals.
3. Confiscate the two consignments mentioned in the facts of this decision, which are being held by customs.

Since Appellant was notified of the appealed decision on 15/04/1442 AH and submitted appeal application by Letter No. (...) dated.../.../..., this requires that the appeal is accepted in form, as it was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law.

The facts of the Case are summarized that Customs Authority targeted the two consignments: First Consignment: Import Declaration No. (...) dated.../.../..., Second Consignment: Import Declaration No. (...) dated.../.../...,

After inspection by the Counter-Inspection Department, undisclosed items were found in the consignment that required a certificate of recognition for clearance. A committee comprising customs officers and review unit was formed to inventory both consignments. Samples were referred to customs valuation department, which assessed the total value of the first consignment at SAR 1,244,103, with customs duties amounting to SAR 62,205.



The value of the undisclosed items was estimated at SAR 1,117,374. Having referred the samples to the General Directorate for Combating Commercial Fraud at the Ministry of Commerce, a response was received by Letter No. (...) dated.../.../..., which stated that the sample bearing (QCY) trademark was in violation of Trademark Law. The total estimated value of the second consignment was SAR 1,559,600, with customs duties amounting to SAR 77,980. The value of undeclared items was SAR 1,476,980.

Accordingly, the decision of the Primary Customs Committee was issued convicting the Importer of customs smuggling, obliging him to pay a customs fine equivalent to the double of customs duties, and confiscating the aforementioned two consignments.

On ..., .../.../..., at ..., the Appellate Customs Committee in Riyadh held its first session in Riyadh to consider the appeal filed by ... Enterprise C.R. No. (...) against First Primary Customs Committee in Riyadh Decision No. (1/27) for 1441 AH. Having called the parties to the Case, (...), holder of National ID No. (...), appeared via video conference in his capacity as the owner of Plaintiff Enterprise under POA No. (...). In addition, ..., holder of Civil ID No. (...), appeared in his capacity as ZATCA representative under Authorization No. (...) dated.../.../..., After verifying the attendance of both parties and confirming their respective capacities, the Committee asked Appellant's attorney about reasons for objection to the primary decision. Thereupon, Appellant's attorney answered requesting a one-week opportunity for submitting a detailed memorandum of reasons for appeal. Having asked ZATCA representative about his statement, he reiterated what was stated in the primary decision. Accordingly, the Committee decided to accept the request for a grace period and to postpone the consideration of the Case.

In addition, Appellant submitted its statement of appeal, which included the following:

First: Error in Attribution: The statement of claim filed by ZATCA Governor before the Primary Committee, in accordance with Article (150) of the Law, refers to import declaration numbers and their values, which differ from those stated in the primary decision and established in its facts and reasons. The statement of claim indicates that the import declarations in question are: No. (...) dated .../.../..., with a value of (SAR 731,560) and fees of (SAR 6,141), and No. ... dated .../.../..., with a value of (SAR 678,470) and fees of (SAR 32,121), while the primary decision, in its facts, indicates that the import declarations in question are:

No. (...) dated .../.../..., with a value of (SAR 1,244,103) and fees of (SAR 62,205), and No. ... dated .../.../..., with a value of (SAR 1,559,600) and fees of (SAR 77,980).

This discrepancy and confusion in the (second) import declaration and the estimated value of both declarations undoubtedly renders the primary decision with an error in attribution, which is a fundamental error that affects the determination of the subject matter, which in turn affects the facts of the Case and the prescribed penalty.

Second: Lack of Intent to Smuggle:

1. It is well established that customs smuggling crime is not constituted unless the mental element is present in the Case under consideration, particularly in instances involving errors in the declaration of imported goods. This scenario requires establishing intent through facts and circumstantial evidence, and it necessitates that the Committee, when adjudicating the matter, discuss whether intent is proven or not. However, since the primary decision overlooked this aspect and failed to address the argument raised by Appellant's attorney that the error originated from the shipping company, supported by a submitted letter, there is no doubt that this omission renders the decision deficient in reasoning, making it subject to annulment and revocation.
2. The primary decision overlooked the translated WhatsApp conversations between Appellant and the supplier in China dated .../.../..., which took place long before the importation. This conversation clearly indicate that Importer's request was limited to the items listed in the invoice and the declared packing list.



3. In addition, the primary decision ignored the fact that the consignment was mostly exempt from customs duties, which makes resorting to smuggling inconceivable, as there is no motive to smuggle goods that are neither prohibited nor restricted.

Third: Absence of Infringement of Intellectual Property Rights:

One of the errors in the contested decision is its conclusion regarding the violation of Trademark Law and the infringement of (QCY) mark. This contradicts the facts and reality, as the Ministry of Commerce Letter No. ... dated.../.../..., did not specify the aspect of the violation.

Appellant submitted written evidence to the Primary Committee elaborating that the trademark agent had authorized him to import goods bearing the trademark.

Since the principal rule is that the registration of a trademark by any party does not prevent others from importing it, provided that it is genuine and compliant, given that the established principle is the freedom of import and trade, this remains valid even before Appellant submitted the trademark owner's letter, which alone is sufficient to negate any trademark infringement claim.

Fourth: Calculation of Value in Violation of the Law:

The appealed ruling violated what the Law requires in terms of the necessity of presenting the value to the concerned party. The Internal Audit Committee erred, and the Committee followed suit. Article (61) of the Law stipulates presenting the result of the valuation to the concerned party, stating: "Without prejudice to the importer's right to judicial recourse, he may appeal the increased value decision before the valuation committee within 15 days from the date of submitting the customs declaration or from the date of being notified of the customs valuation through proof of delivery. Committee decisions shall be passed by majority vote and shall become effective upon the approval of the general director. The importer must be notified in writing of the committee's decision regarding his appeal, and said decision shall be reasoned". Since Customs Authority determined the value without granting Appellant the right guaranteed to him by the Law, this requires objecting to the assessed value adopted by the primary decision, upon which its ruling was based.

Customs Authority violated the principles of customs valuation, which require that the value be determined using one of the methods stipulated by Article (1) of the Implementing Regulations. However, neither the Customs Authority nor the valuation report specified the method adopted in the valuation process.

Fifth Prescribed Penalty:

The primary decision did not demonstrate any distinction or differentiation between the declared and undeclared items in terms of facts, reasoning or ruling. This generalization and ambiguity undoubtedly make it difficult to assess the soundness of the ruling and its applicability to the Case at hand.

The statement of appeal was concluded with Appellant's requests to overturn the primary decision in its entirety and to rule that Appellant is not guilty of the charges attributed to him in the primary decision.

Having presented the statement to ZATCA, it requested to dismiss the appeal and uphold the primary decision.

Grounds

The Appellate Committee found that the submissions and arguments presented were sufficient to decide on the appeal. Having taken cognizance of the Case, the Appellate Committee found that the criminal complaint was filed by the Customs Authority based on Appellant's customs clearance procedures for customs declaration No. (...) dated .../.../..., It was found that there were undeclared items, items in violation of Trademark Law, and some items requiring a certificate of recognition. In this regard, customs declaration No. (...) was linked to Seizure Report No. (...) dated .../.../..., and customs



declaration No. (...) was linked to Seizure Report No. (...) dated.../.../..., with an inventory report prepared for the quantities of each declaration. The Primary Committee concluded by referring Appellant for prosecution, ordering confiscation of the consignments covered by customs declarations, and imposing a customs penalty amounting to the double of customs duties, amounting to SAR 280,370. Regarding the non-compliant items discovered by customs during the clearance procedures for customs declaration No. (...) dated .../.../..., having perused Royal Order No. (30174) dated 02/06/1440 AH, which mandated the completion of transferring investigation and prosecution responsibilities in customs cases from the Customs Authority to the Public Prosecution, it was established that a memorandum was signed between the Public Prosecution and the Customs Authority determining the date when the Public Prosecution would assume the transferred jurisdiction. The memorandum specified that the Public Prosecution would assume full jurisdiction no later than three months from the date of the Order, with the official transfer effective from 02/09/1440 AH. This confirms that the Public Prosecution holds jurisdiction over customs smuggling cases, rendering the Customs Authority unauthorized to prosecute, represent itself before the Primary Committee, or seek the conviction of the importer. Accordingly, the Committee decided to annul the primary decision concerning the incident related to customs declaration No. (...) dated .../.../..., from the primary decision. The Public Prosecution is entitled to decide whether to file a case against the importer regarding the said import declaration.

As for the violating items discovered by Customs Authority upon completing customs procedures related to customs declaration No. ... dated .../.../..., It is established from Case documents, seizure report and seizure report that the declaration statement and the request for preparation and inspection included Appellant's request for approval to clear (6) items. However, Customs Authority discovered an additional eight undeclared items, for which a seizure report was prepared under No. (...) dated .../.../..., An inventory report was also prepared, indicating that the total value of the undeclared items amounted to SAR 678,470. Given that Appellant did not declare such items and that Customs Authority discovered them during consignment inspection, the Appellate Committee concludes that the primary decision convicting Appellant of customs smuggling and ordering confiscation of both the declared and undeclared consignment should be upheld. In addition, Appellant's argument that some items within the consignment were exempt from duties does not negate the obligation to declare the entire consignment, even if all its items were duty-exempt. Likewise, the claim that the error originated from the shipper is not substantiated by any evidence that refutes the established fact that the Importer declared goods inconsistent with the actual contents. In such cases, the Importer is expected to identify and report any discrepancies before proceeding with clearance process, which was not done regarding the items in question. As for the claim of Appellant's representative that Customs Authority assessed the value contrary to the applicable regulations and that they were required to adhere to Article (61) of the Unified Customs Law, this argument is dismissed, as such matters pertain to disputes over valuation between customs and the Importer. In reality, after the Committee reviewed the inventory report prepared for the case, which detailed the value of items, it was found that the legal representative was present and signed the report without making any reservations. In addition, the Importer did not provide any supporting evidence to substantiate his claim that the assessed value did not match the total imports, nor did he present documented proof of the value from his side to counter the customs assessment.

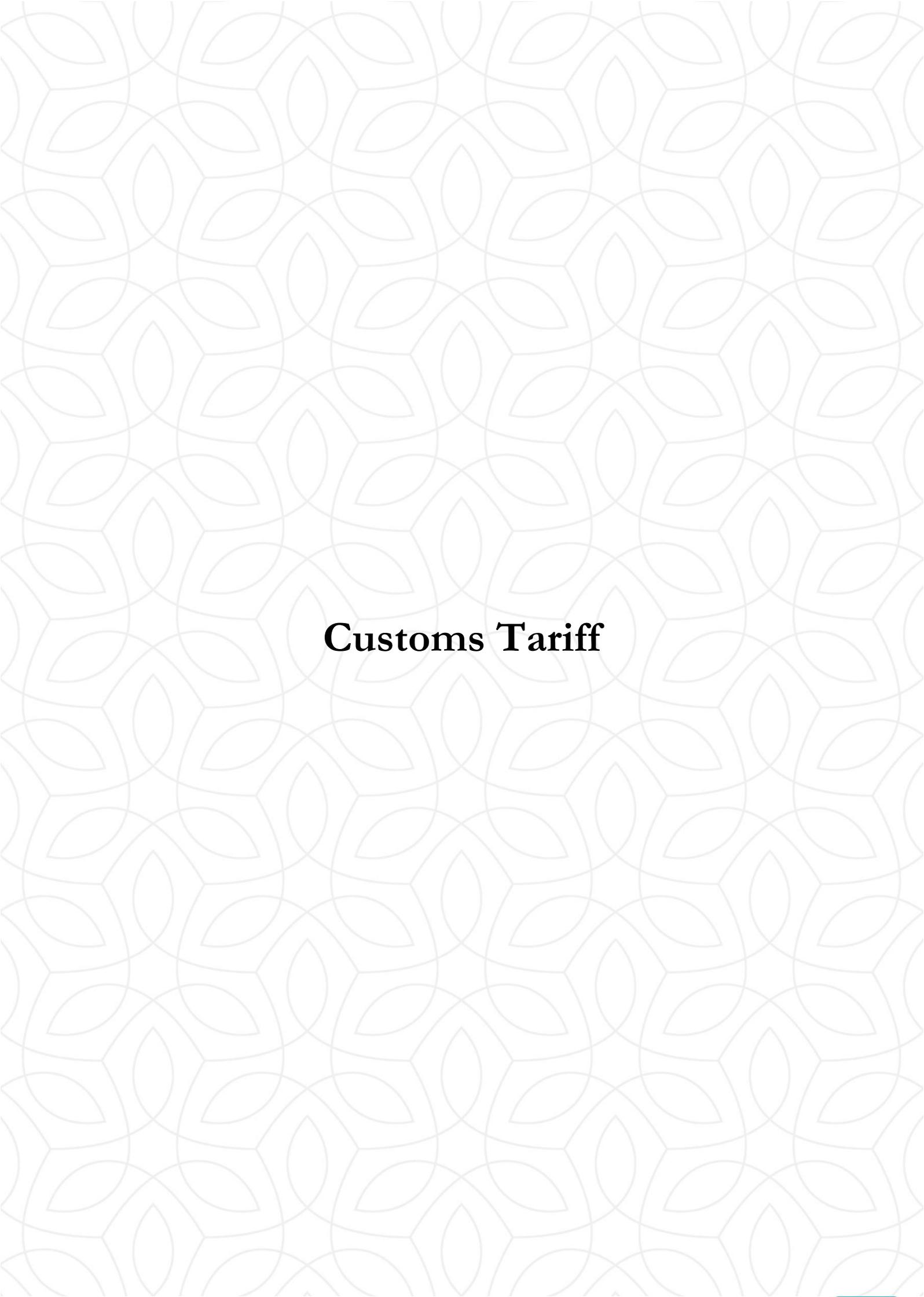
Having reviewed the inventory report signed by Importer's representative on .../.../..., the Appellate Committee concluded that the total customs penalty for the items in the consignment in question, whether exempt from duties or not, amounted to SAR 66,381.

As such, the Appellate Customs Committee unanimously decided as follows:



Decision

1. Accept the appeal, in form, filed by (...) Enterprise, C.R. No. (...) against Primary Decision No. (1/27) for 1442 AH.
2. On Merits: It decided as follows:
 - A. Annul the primary decision regarding Customs Declaration No. (...) dated .../.../..., according to reasons and grounds stated herein.
 - B. Uphold the primary decision against Appellant regarding Customs Declaration No. (...) dated .../.../..., regarding the conviction for customs smuggling, confiscation and the adjustment of customs penalty, the total amount claimed from Appellant has been revised to be (SAR 66,381) sixty-six thousand three hundred and eighty-one Riyals.



Customs Tariff



Appellate Customs Committee in Riyadh

Decision No. (571)

Date of Decision: 23/03/1444

AH

Principle No. 15

- The crucial factor is the actual nature of imported goods and their conformity with the classification adopted by each country in accordance with its customs regulations, rather than claiming that different classifications and tariff treatments exist across various countries.

Facts:

To consider the appeal filed by ... Company, C.R. No. (...), against Second Primary Customs Committee in Riyadh Decision No. (400/3) for 1440, which ruled as follows:

1. Dismiss the objection filed by ... Company, C.R. No. (...), against Customs Authority Collection Decision No. (...) for 1440 regarding the attached customs declarations.
2. The validity of Customs Authority's procedures in collecting duties for the imported consignments listed in the attached report No. (1), covering (77) import declarations from (...) Company,

Having notified Appellant of the primary decision on .../.../... under notification document attached to Case file, Appellant filed an appeal with Customs Authority under No. (...) dated .../.../..., indicating that the appeal was filed by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. Therefore, the appeal is accepted in form.

On Merits: The Case facts are summarized that by auditing 77 import declarations for (...) Company related to goods consisting of aluminum cladding panels, the Customs Authority found that the Company failed to comply with customs policies and procedures regarding the proper customs declaration, particularly concerning the applicable tariff classification. This resulted in a loss of customs duties to the state treasury due to discrepancies in the assessed customs duties. The audit team sent the received sample along with customs declarations to Customs Classification and Tariff Department for further examination and determination of the correct tariff classification to be applied. The Tariff and Studies Committee issued decision No. (...) dated .../.../..., stating that the imported item consists of (cladding panels) composed of multiple layers: The outer layers are made of aluminum, with a plastic core in between, and that they are directly used for cladding building facades and other construction applications. These panels fall under tariff code (761090900004) with a 12% duty rate as they are considered pre-fabricated panels for construction purposes. They do not qualify under subheading (760611000002) with a 5% duty rate, as they are not general-purpose aluminum sheets or panels. The Tariff and Classification Committee concluded that the resulting customs duty variance owed to the state treasury amounts to SAR 1,400,297.



On/.../..., the Company's representative submitted an answer before the Primary Customs Committee, summarized as follows: The collection decision issued against his principal did not state how they violated the law. The memorandum also highlighted the lack of clarity in the methodology used to calculate the variances and how such a large amount was determined. It pointed out that the collection decision did not specify the type of imported goods, their classification based on customs tariffs, or the applicable tariff rates. In addition, the memorandum stated that the calculation of customs variances at a rate of 12% had no valid basis, as the imported goods fell under the category of (Aluminum and its Articles), classified under number (67) in Section XV. According to the Customs Authority's classifications, Company's imports consist of (plates of aluminum alloys) under HS code (760612000002), which is subject to a customs tariff of 5%, and the corresponding customs duties have already been paid. Furthermore, this code is internationally recognized as the standard customs classification for such products.

The Primary Committee issued its decision, subject matter of appeal, dismissing Company's objection to the collection decision in question, affirming the validity of Customs Authority's procedures in collecting customs duties for the imported consignments listed in Annex (1), covering (77) import declarations from ... Company. Accordingly, Plaintiff Company stated that the consignment consists of aluminum panels used for building facades, wall cladding, signage and advertising boards. These panels are composed of two metal layers, whether aluminum, stainless steel, zinc, titanium or copper, with an insulating layer in between made of aluminum hydroxide and polyethylene. This aligns with the decision of Tariff and Studies Committee, which stated that the product consists of cladding panels made up of multiple layers, with aluminum outer layers and a plastic core. These panels are used directly for cladding building facades in construction projects and have other architectural applications. The product falls under HS code (76109090004) with a duty rate of 12%.

On .../.../..., Appellant Company submitted a statement of appeal registered with Customs Authority under number (...). In addition, the Customs Authority submitted the appeal to Appellate Committee by Letter No. (...) dated .../.../...

Having taken cognizance of the decision and appeal filed by Appellant Company, the Appellate Customs Committee scheduled an e-hearing to hear the parties on (...), .../.../... At that session, ..., holder of National ID No. (...), appeared in his capacity as ZATCA representative under Authorization No. (...) dated.../.../... On the other hand, Appellant Company's representative failed to appear and did not provide any excuse for failure to appear despite of being duly notified of session date. Having asked ZATCA representative about their position regarding the appeal, he requested a copy of the appeal to answer thereto. Thereupon, the Appellate Committee decided to approve the request of ZATCA representative, provided that Plaintiff is re-notified of the next session date, which will be scheduled later.

On ..., .../.../..., the Appellate Committee held e-hearing attended by (...) holder of National ID No. (...), in his capacity as Attorney of Plaintiff Company. In addition, ZATCA representative, (...), who had previously attended and been identified, appeared. At the session, Appellant Company's attorney was asked about the reasons for appeal, and he answered: I satisfy with the statement of appeal that is summarized as follows: The reasoning is insufficient, as Customs Authority delayed in conducting so-called post-audit for more than five years. This delay led the Company to believe in the validity of its procedures, especially since it had already paid customs duties based on the globally recognized and approved classification number (760612000002). Furthermore, the Company imported multiple shipments under this classification, and the payment of duties should be considered as fully discharging its obligations. Furthermore, the Customs Authority's decision, subject matter of appeal, did not elaborate the difference between



classification under heading (760612000002) and heading (761090900004). In addition, the failure of Primary Committee to consider customs declarations from other countries constitutes negligence, as such declarations serve as conclusive evidence that the product falls under heading (760612000002). It is insufficient for the Primary Committee to argue that each country has its own system or method for filling out customs declarations, given that all countries adhere to a common and unified classification system that cannot be arbitrarily disregarded. Moreover, the classification determined by Customs Authority contradicts the principles of tariff classification interpretation outlined in the Harmonized System, as stipulated in the International Convention on the Harmonized Commodity Description and Coding System (HS Convention) ratified by Royal Decree No. (M/56) of 1407 AH. Having presented the same to ZATCA, ZATCA answered: I satisfy with the memorandum attached to Case file in response to the statement of appeal that is summarized as follows: The Law grants customs officers the right to review documents. In addition, the entities subject to Customs Authority are required to keep documents for five years. When this was presented to Appellant Company's attorney, he asked for time to respond. Accordingly, Appellant Company's attorney was granted an opportunity for reply to ZATCA answer.

On .../.../..., the Appellate Committee received Appellant Company's answer to ZATCA memorandum, which did not include any new arguments other than what was stated in the statement of appeal.

Since the Committee, after hearing statements of the parties to the Case and having taken cognizance of Case file, including the memorandums submitted regarding the appeal against the appealed decision, found that the Case was ripe for adjudication in its current state, and given that the Committee has fully grasped the facts of the Case and deemed the presented evidence and arguments sufficient to form its conviction and issue a ruling.

Grounds

The Appellate Committee held that the Collection Decision No. (...) dated .../.../..., concluded that there are customs variances due to be paid in the amount of (SAR 1,403,295.40). Tariff and Studies Committee decision No. (...) dated .../.../..., concluded that, based on auditing (77) import declarations belonging to Appellant Company, it turned out that the imported goods consisted of aluminum cladding panels composed of multiple layers, with aluminum outer layers and a plastic core. These panels are used directly for cladding building facades and other construction purposes and fall under HS code (761090900004) with a duty rate of 12%, as they are classified as prepared panels for use in construction. This classification excludes such panels from subheading (760611000002) with a 5% duty rate, as they are not considered general-use aluminum sheets and plates. Since the appellate decision properly addressed the objections and arguments raised, the Committee affirmed the validity of Customs Authority's decision to collect customs duties on (77) import shipments in question. This argument is not undermined by Appellant Company's claim that the Customs Authority delayed the post-clearance audit for more than five years. Having taken cognizance of variance report and related import declarations in Case file, the Committee found that the statutory period allowing ZATCA to audit Company's customs declarations had not expired. Furthermore, Appellant's argument regarding different tariff classifications in other countries does not hold, as the primary concern is the actual nature of the imported goods and their correct classification under the applicable customs system of each country. The decision also provided reasons explaining classification discrepancy that the Company encountered when comparing different customs regulations.

Accordingly, the Appellate Customs Committee in Riyadh decided as follows:



Decision

First: Accept the appeal in form file by (...) Company, C.R. No. (...), against Second Customs Committee in Riyadh Decision No. (400/2) for 1441 AH.

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

Similar decisions

Appellate Customs Committee in Riyadh Decision No.
(619) dated 05/04/1444 AH.

Principle No. 12 Similar decisions



Appellate Customs Committee in Riyadh

Decision No. (595)

Date of Decision: 05/04/1444
AH

Principle No. 16

- The Customs Authority is the technically qualified body to determine the classification of imported item. Therefore, the classification is not affected by a mere objection or a request for expertise from another entity.

Facts:

To consider the appeal filed by ... Company, C.R. No. (...), against Third Primary Customs Committee in Riyadh Decision No. (372/3) for 1442 AH, which ruled as follows:

1. Accept the appeal filed by (...) Company, C.R. No. (...), against Customs Authority Collection Decision No. (...) for 1440 AH in form.
2. Dismiss the objection on merits and uphold Customs Authority's procedure in collecting customs duties for the consignments, subject matter of the objection, related to (42) import declarations stated in the decision.

Having notified Appellant Company of the primary decision on .../.../... under notification document attached to Case file, Appellant filed an appeal with Customs Authority under No. (...) dated 08/02/1442 AH, which means that the appeal was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. Therefore, it is accepted in form.

On Merits: The facts of the Case, which is the subject of appealed decision and to which reference is made in the primary decision, subject matter of appeal, can be summarized that upon auditing (42) import declarations related to ... Company by the Customs Authority, Appellee found that Appellant selected an incorrect customs classification for the two imported items (coated specialty shapes and door handles) with the intent to evade a portion of customs duties. This resulted in a partial loss of revenue for the state treasury, in addition to VAT variance as outlined in the primary decision, to which reference is made in this regard.

On .../.../..., the Company's attorney submitted a statement of appeal to the Primary Customs Committee summarized as follows: 1. The inaccuracy of what was stated in paragraph (2) of reasons for the decision, subject matter of appeal, as the Primary Committee mentioned that the release of goods from customs area was merely a facilitation measure, implying that the Customs Authority did not conduct a proper audit. This contradicts reality and does not apply to the conclusion reached by the Primary Customs Committee for several reasons, including: The goods mentioned in the decision were matched and inspected by the employees, and a final clearance was issued for the goods, not a partial one, and this cannot be to facilitate procedures. The Primary Committee's conclusion applies to temporary clearance, which is also made under conditions



determined by H.E. the Minister. 2. The inaccuracy of what was stated in paragraph (3) of reasons for the decision, subject matter of appeal, as the Committee positioned itself as an expert authority by stating: “The imported items, according to the sample images attached to Case file, are special hollow shapes made of coated aluminum mixer, which are used inside window glass for decorative purposes”. This action by the Primary Committee contradicts its role and exceeds its assigned duties as a neutral judicial body. Furthermore, we were not made aware of the existence of such images, nor were they presented to us during the trial. We had handed over physical samples of the goods to Authority’s representative, not images. So, where are these samples? Furthermore, we submitted some samples to the Primary Committee to be presented to the Appellee; however, the Committee did not mention them in its decision. The Committee should have referred the samples to a neutral expert entity instead of exceeding its jurisdiction by undertaking tasks beyond its mandate. 3. The content of paragraph (4) of decision’s reasoning is incorrect, as Committee’s response did not adequately address our argument. Our argument was that the Customs Department exercised all its powers over the goods and fulfilled all its duties before clearance. We refer you to our previous argument to avoid repetition. The response of the Primary Committee was that it did not find any provision in the Law restricting rights of Customs Authority, which is not a point we disputed. What we stated was that customs had exercised its authority and carried out its duties to ensure the correct classification, with the inspection conducted in the presence of customs officers, and the classification was determined accordingly.

Having taken cognizance of the decision and appeal filed by Appellant Company, the Appellate Customs Committee scheduled an e-hearing to hear the parties on (...) .../.../... In addition, ..., holder of National ID No. (...), appeared in his capacity as ZATCA representative under Authorization No. (...) dated .../.../... On the other hand, Appellant Company’s representative failed to appear and did not provide any excuse for failure to appear despite of being duly notified of session date. Having asked ZATCA representative about their position regarding the appeal, he requested a copy of the appeal to respond thereto. Thereupon, the Appellate Committee decided to approve the request of ZATCA representative, provided that Plaintiff is re-notified of the next session date, which will be scheduled later.

On ..., .../.../..., the Appellate Committee held e-hearing. At that session, ..., holder of National ID No. (...), appeared in his capacity as attorney of Appellant Company. In addition, ZATCA representative, ..., holder of National ID No. (...). After verifying attendance and identities of the parties, the Department decided to proceed with consideration of the Case. At the session, the answer submitted by Appellee was reviewed. Having presented it to appellant’s representative, he requested a time extension. Accordingly, the Department decided to grant Appellant’s representative an opportunity until .../.../... to submit his reply.

ZATCA response summarized that the classification difference revealed duties at risk of loss due to Company’s selection of a lower-duty tariff code that did not match the actual imported goods. This contrasts with the 5% classification chosen by the Company, which declared the imports as handles and hinges. The response emphasized that tariff classification is a technical process binding on all member states of the World Customs Organization, in accordance with the International Convention on the Harmonized Commodity Description and Coding System signed in Brussels in 1983 and ratified in the Kingdom in 1407 AH. Accordingly, the responsibility for determining classification of the imported goods lies with the competent authority, which is the General Department of Customs Affairs. ZATCA concluded its answer requesting that the appealed decision be upheld and the appeal filed by Appellant Company be dismissed.



The Committee has taken cognizance of Case file and found that the Company did not submit a response within the granted extension period.

Since the Committee, having heard Appellant's statements and taken cognizance of documents included in Case file, along with the memorandum submitted regarding the appeal against the contested decision, found that the Case is ripe for adjudication in its current state, having fully comprehended the facts and deemed the presented evidence and statements sufficient to form its conviction and issue a ruling.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law, it is acceptable in form.

On merits:

Since Primary Customs Committee Decision No. (46) for 1438 was delivered, convicting (...) of the crime of customs smuggling.

Since it has been established by the judicial rulings issued against the named person under Decision No. (...) on .../.../... No. (...) on .../.../... and Deputy Minister of Interior Decree No. (...) on .../.../... In addition, the Border Guard Administrative Committee issued a decision confirming committing the attributed smuggling.

Given that the Appellant also admitted the counts and since the previous rulings and decisions delivered against him do not prevent the application of the provisions of the Common Customs law against him especially Article (145) of the law, and since the confiscations of vehicle was previously decided by the General Court in Belghazi with a final ruling, this committee cannot be heard by this court for acquiring the force of res judicata.

Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

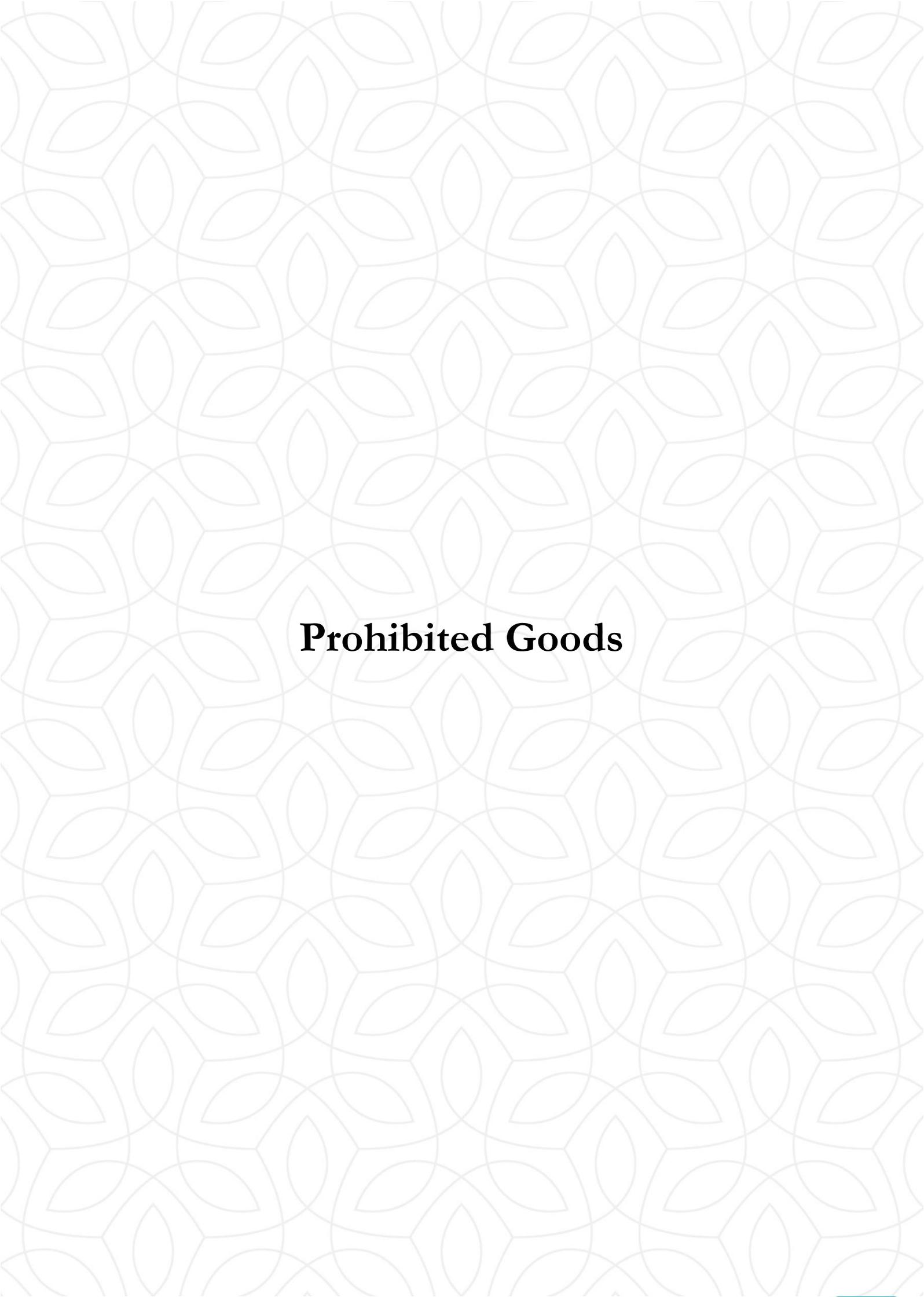
Decision

First: In Form: Accept the appeal filed by (...) Company, C.R. No. (...), against Customs Authority's Third Primary Customs Committee in Riyadh Decision No. (482/3) for 1442 AH.

Second: Dismiss the appeal on merits, and uphold the primary decision in its entirety, confirming validity of the Customs Authority's approach in issuing Collection Decision No. (...) for 1440 AH regarding tariff variances imposed on Appellant Company according to reasons and grounds stated herein.

Similar decisions

Appellate Customs Committee in Riyadh Decision No. (619) dated 05/04/1444 AH.



Prohibited Goods



Principle No. 17

- Concealing smuggled goods is evidence of knowledge and intent to bring the seized items into the country unlawfully. The claim of ignorance of customs laws does not negate this fact.

Facts:

To consider the appeal filed by the Importer (...), Syrian national – Passport No. (...), against Second Primary Customs Committee in Riyadh Decision No. (353/2) for 1442 AH, which ruled as follows:

1. Convict the driver (...), Syrian national, Passport No. (...), in presentia of customs smuggling.
2. Oblige the Importer to pay a customs penalty equivalent to the double of customs duties, amounting to (SAR 14,500) forty thousand five hundred and thirty Riyals.
3. Confiscate the seized items in the Case.
4. Confiscate Consignment No. (...), Model (...), which was used to conceal and smuggle the seized items.

Since Appellant was notified of the appealed decision on 12/07/1442 AH. In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated (...). This requires that the appeal is accepted in form, as it was filed by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. The facts of the Case are summarized that Upon the arrival of the Emirati truck with Plate No. (-), Model (...), from Kuwait to the Kingdom through Al-Khafji Border Port. Upon arrival at customs, the truck was directed to Customs Security Section. The inspector suspected irregularities, and upon manual inspection, a total of (290) containers of molasses flavor of type (...) with a volume of (30 ml), were found hidden inside the cavities of truck's axle differentials. These items were not declared, and Seizure Report No. (...) was prepared Dated (...). In addition, the seized items were attached. On (...), the driver appeared before the Committee, and stated that the seized items belonged to him. He admitted that he smuggled them into the Kingdom for trade and profit and that he was aware that bringing these flavors in this manner without declaring them was prohibited. The Primary Committee concluded with the result reached by the operative part of the decision, convicting the Importer of customs smuggling and imposing the penalties prescribed by the law.

On 13/07/1442 AH, Appellant submitted a statement of appeal registered with ZATCA under No. (...). The Customs Authority then referred the appeal to the Appellate Committee by Letter No. (...) dated 23/07/1442 AH.



Having taken cognizance of the decision and appeal filed by Appellant (...), the Appellate Customs Committee in Riyadh scheduled a session for Sunday, 12/07/1443 AH, to consider the appeal. At that session ZATCA representative, Legal Researcher (...), appeared under Authorization No. (...) dated (...) issued by ZATCA Vice Governor for Legal Affairs and Compliance. However, neither Appellant nor a representative appeared. ZATCA representative submitted a one-page statement of appeal outlining reasons for appeal, which can be summarized as follows:

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.

In addition, Appellant concluded the memorandum by requesting Committee to consider the Case as it deems appropriate. He also apologized for his actions, stating that he was unaware of the regulations and laws of Saudi customs.



Principle No. 18

- Prohibited goods are deemed prohibited in and of themselves, not due to a condition that arises upon their entry into the Kingdom when they fail to meet the required specifications.

Grounds

Since the Committee found that the Case was ripe for adjudication in its current state, having taken cognizance of the facts of the Case and deemed the submitted materials and statements sufficient to form its conviction and issue a decision, it proceeded with deliberating based on the grounds of appeal and documents included in Case file.

Since it is established that the Emirati truck (...) arrived from Kuwait Kingdom through Al-Khafji Border Port. Upon arrival at customs, the truck was directed to Customs Security Section. The inspector suspected irregularities, and upon manual inspection, a total of (290) containers of molasses flavor of type (...) with a volume of (30 ml), were found hidden inside the cavities of truck's axle differentials. These items were not declared.

Since the dispute in this Case involves the extent of liability for customs smuggling offense, particularly regarding the smuggled goods and their concealment at the time of seizure, and given that the primary committee's decision found the individual guilty, despite of his objection based on ignorance of Saudi customs regulations, such an argument does not undermine the validity of decision. Ignorance of customs laws does not negate the fact that concealing contraband indicates awareness and intent to unlawfully bring in the seized items without declaring them. This requires a conviction for customs smuggling. Accordingly, the driver's failure to declare the goods constitutes smuggling, warranting Committee's decision to uphold the primary decision on conviction, penalty and the confiscation of both the goods and the truck used in the smuggling attempt.

As such, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

1. Accept the appeal in form filed by (...), Syrian national, holder of Passport No. (...), against Primary Decision No. (...) for 1442 AH rendered by the Second Primary Customs Committee in Riyadh.
2. On Merits: Dismiss the appeal and uphold the primary decision in its entirety.

Facts:



To consider the appeal filed by the Importer (...), holder of National ID No. (...), against Primary Decision No. (351/1) for 1439 AH rendered by the First Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict the Importer, holder of National ID No. (...), from customs smuggling.
 2. Order the Importer to pay a customs fine equivalent to three times the value of the disposed item that was not authorized for clearance by the competent entity, amounting to (SAR 59,901) fifty-nine thousand nine hundred and one Riyals.
 3. Order the Importer to pay an amount equivalent to the value of the disposed item that was not authorized for clearance by the competent entity as a fine in lieu of confiscation, amounting to (SAR 19,967) nineteen thousand nine hundred sixty-seven Riyals, bringing the total amount to (SAR 79,868) seventy-nine thousand eight hundred sixty-eight Riyals.
- Appellant was notified of the appealed decision on .../.../... In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated .../.../..., this requires that the appeal is accepted in form, as it was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. The facts of the Case are summarized that a consignment of (lighting lamps) belonging to the Importer arrived through Al-Batha Customs under Import Declaration No. (...) dated .../.../... The consignment was cleared with a commitment not to dispose of it until it was approved by the competent entity. After examining sample by the laboratory, their Report No. (...) dated .../.../... indicated that the "lantern" sample did not meet the specifications in terms of labeling, moisture resistance and electrical durability. The details are included in Case documents and the primary decision, which is referred to herein to avoid repetition. The Customs Authority notified the Importer of the results through multiple letters, the last of which was Letter No. (...) dated .../.../... The quantity of the non-compliant item amounted to (74) units with a total value of (SAR 19,967) and customs duties of (SAR 899) Riyals.

A letter from H.E. the Director General of Customs, No. (...) for ..., was received, referring the Case to the First Primary Customs Committee in Riyadh for consideration and adjudication.

On .../.../..., the Importer, holder of Civil ID No. (...), appeared before the Primary Committee and stated that the imported goods were for personal use. The Importer stated that due to the delay in receiving analysis results, the lamps had already been installed in his building. When asked whether disposing of the non-compliant goods constituted a breach of the written undertaking given upon consignment's clearance, the Importer responded that this was the last consignment he had disposed of and that he had acted out of ignorance of the undertaking.

The Primary Committee concluded, as stated in decision's wording, that the Importer was convicted of customs smuggling, warranting the imposition of a customs fine and a fine in lieu of confiscation, as previously outlined. This conclusion was based on the fact that Importer's disposal of the non-compliant consignment constituted a breach of the undertaking he had given. The consignment was released to him solely for safekeeping until the laboratory results were issued, and his actions amounted to customs smuggling in accordance with Article (142) of the Unified Customs Law. The Importer violated the undertaking by disposing of the consignment before obtaining approval from the competent entity, thereby endangering consumer safety and impacting their financial resources by introducing non-compliant goods into the market. Accordingly, by breaching this restriction and disposing of the goods that had not been fully cleared, the Importer committed customs smuggling, leading to the penalties prescribed by Law, including customs fine and a fine in lieu of confiscation in accordance with Paragraphs (4) and (5) of Article (145) of the Unified Customs Law.



On .../.../..., Appellant submitted a statement of appeal registered with ZATCA under No. (...). The Customs Authority then referred the appeal to the Appellate Committee by Letter No. (...) dated .../... /...

Having taken cognizance of the decision and the appeal submitted by Appellant, the Appellate Customs Committee scheduled a session in Riyadh on ..., .../.../..., to consider the appeal. At that session, ZATCA representative, Legal Researcher (...), holder of National ID No. (...), appeared under Authorization Letter No. (...) dated .../.../..., issued by ZATCA Vice Governor for Legal Affairs and Compliance. However, neither Appellant or his representative appeared.

Since Appellant submitted the statement of appeal dated .../.../..., which was registered with Customs Authority under No. (...). The memorandum included reasons for appeal, consisting of one page, and can be summarized as follows:

The period between consignment importation in ... and the issuance of decision in ... was lengthy, which led him to dispose of it by installing it in his children's residence, and it was not used for commercial purposes.

Since the decision imposed a fine equivalent to three times the value of goods, amounting to (SAR 59,900) fifty-nine thousand nine hundred Riyals, in addition to (SAR 19,967) nineteen thousand nine hundred sixty-seven Riyals as a substitute for confiscation, bringing the total amount to (SAR 79,868) seventy-nine thousand eight hundred sixty-eight Riyals, which is a very large sum that he is unable to pay. Appellant concluded by requesting that H.E. the Director General of Customs to be addressed to consider his Case or reduce the amount in question in installments.

Grounds



Since the Committee found that the Case was ripe for adjudication in its current state, having taken cognizance of the facts of the Case and deemed the submitted materials and statements sufficient to form its conviction and issue a decision, and after Appellant was given an opportunity to appear before the Appellate Committee and present his arguments in person but failed to do so.

Since it was established that the consignment of lighting fixtures was imported by the Importer through Al-Batha Customs under Import Declaration No. (...) dated .../.../..., and was cleared with a commitment not to dispose of it until approved by the competent entity, and after the sample was examined by the laboratory, Report No. (...) on/.. indicated that the sample "lantern" did not meet the specifications regarding labeling, moisture resistance and electrical durability.

Since the dispute in this Case involves determining liability for customs smuggling offense when Appellant disposed of the consignment despite the commitment not to do so, and since the violation related to labeling, moisture resistance and electrical durability is considered a fundamental violation that warrants a customs smuggling conviction upon disposing of the consignment under such a commitment, Appellant's argument that the consignment was for private residential use rather than trade does not negate the offense. The Committee concludes that the primary decision should be upheld regarding the conviction and fine in lieu of confiscation, with a modification of customs fine to be the double of customs duties for the non-compliant consignment. This adjustment is because the consignment does not fall under prohibited goods, as prohibited goods are restricted by nature rather than by a defect in compliance with specifications at the time of importation. Therefore, the Committee revises the fine calculation method applied in the primary decision, which had incorrectly relied on Paragraph (4) of Article (145) of the Unified Customs Law. Appellant's arguments do not refute the established fact of disposing of the consignment in violation of the commitment, especially after it was confirmed that its clearance was not approved.



As for Appellant's request regarding the installment payment of the imposed fine and the fine in lieu of confiscation, this is an enforcement matter beyond the jurisdiction of the Customs Committees. Appellant may pursue this request directly with ZATCA.

As such, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

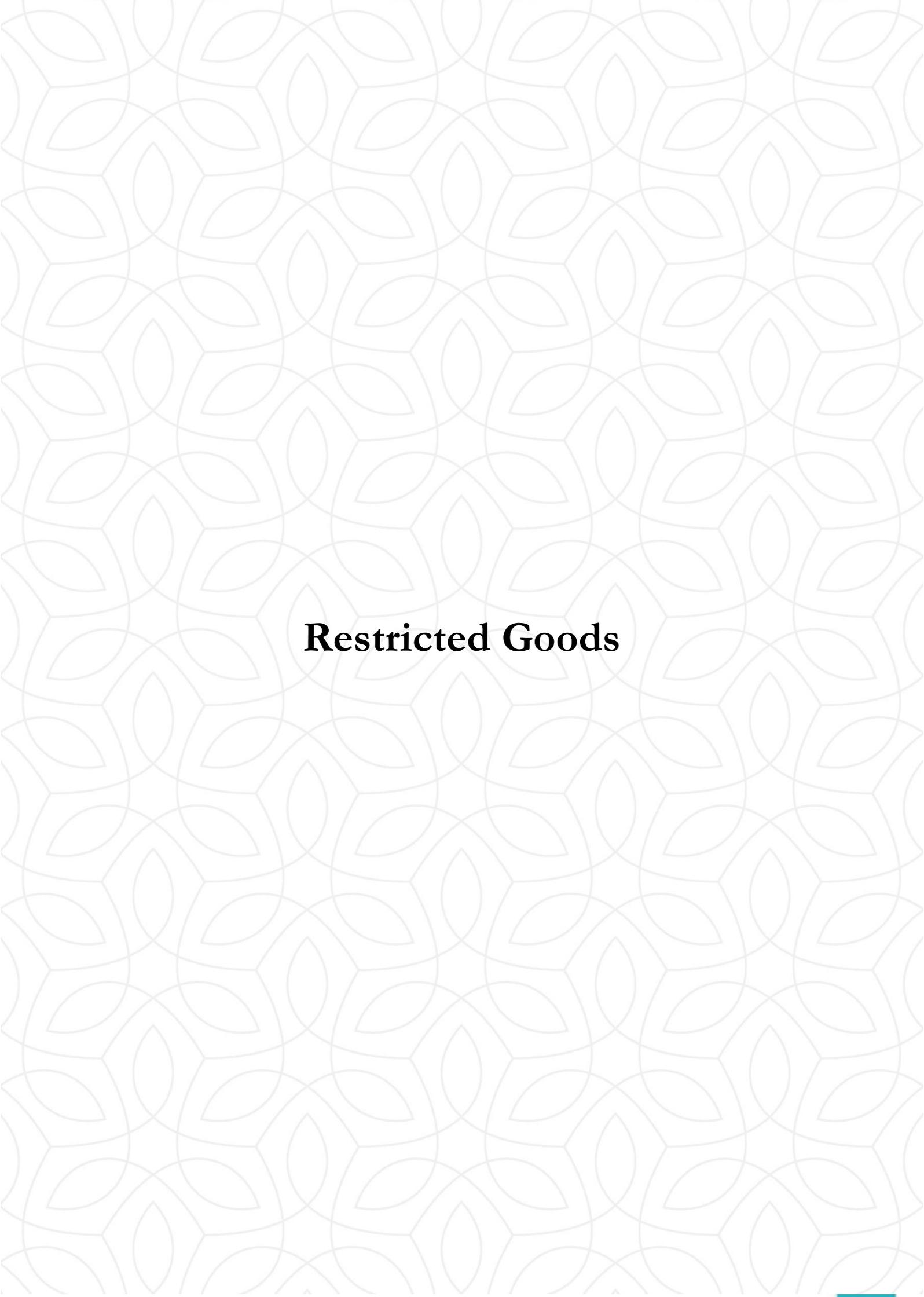
First: In Form: Accept the appeal in form filed by (...), holder of National ID No. (...), against Primary Decision No. (351/1) for 1442 AH rendered by the First Primary Customs Committee in Riyadh.

Second: On Merits: Dismiss the appeal, and uphold the primary decision regarding the conviction of Appellant of customs smuggling and impose a fine in lieu of confiscation. However, the customs fine is adjusted to be the double of customs duties, bringing the total amount due from Appellant to be (SAR 21,963) twenty-one thousand nine hundred sixty-three Riyals, according to reasons and grounds stated herein.

Similar decisions

Appellate Customs Committee in Riyadh Decision No. (608) dated 12/04/1444 AH.

Appellate Customs Committee in Riyadh Decision No. (626) dated 05/04/1444 AH.



Restricted Goods



Appellate Customs Committee in Jeddah

Decision No. (112)

Date of Decision: 18/09/1439

AH

Principle No. 19

- The conviction of the Importer is not established unless the reasons for the refusal of clearance are verified.

Facts:

The Case facts are summarized that a consignment of a skin treatment device arrived through the Customs of King Abdulaziz International Airport in Jeddah in the name of ... Company. It was registered under Import Declaration No. (...) dated .../.../..., with a total quantity of (1) package valued at (SAR 114,050). The Company declared in the customs declaration and certificate of origin that the consignment's origin was (Korea). However, upon inspection, it was found that the device had a sticker indicating (50/60) Hz. When the sticker was removed, another sticker underneath was discovered, stating that the device operates at (50) Hz. As a result, Customs Authority detained the consignment on suspicion of being counterfeit.

Having referred the Case to the Primary Customs Committee in Jeddah by Director General of Legal Department at Customs Authority Letter No. (...) dated .../... /..., it delivered its decision as stated above, which ruled to:

First: In Form: Convict ... Company in absentia of attempting to commit customs smuggling.

Second: Oblige the Company to pay a customs fine equivalent to the double of customs duties, amounting to (SAR 11,405) eleven thousand four hundred and five Riyals.

Third: Confiscate skin treatment device, totaling (1) package, as it is considered the goods subject to smuggling.

Upon notifying the legal representative (...) of the decision on 04/06/1439 AH, Company's attorney submitted a statement of objection registered with Jeddah Islamic Port Customs under No. (2986/12) dated 26/06/1439 AH. The objection was based on the claim that the device in question was manufactured by (...) Company, a well-known Korean manufacturer of medical devices, and that it operates at (50/60) Hz rather than (50) Hz. This was supported by an attached letter from the Company. Appellant requested that the device be examined and tested by the Saudi Standards, Metrology, and Quality Organization (SASO) to verify its power specifications. Company's attorney concluded his arguments by requesting annulling primary decision and return the confiscated device. The Case file was referred to the Appellate Customs Committee in Jeddah Chairman of Primary Customs Committee in Jeddah Letter No. (5320/12) dated 16/07/1439 AH, requesting the Committee to accept the appeal in form and dismiss it on merits. Accordingly, the Committee decided to adjourn the Case for consideration and adjudication.



Grounds

In form:

Since the appeal was filed within the statutory period, it is accepted in form.

On merits:

Since the appeal was based on the claim that the device in question did not violate Saudi standards and specifications, and since the Primary Committee based its conviction on a violation of such standards due to the presence of a sticker indicating that the device operates at (50/60) Hz, while another sticker underneath stated that it operates at (50) Hz, the Primary Customs Committee should have referred the device for testing by the relevant technical authorities to verify its compliance with Saudi standards. Given that rulings must be based on certainty rather than speculation, the Committee has decided to overturn the primary decision and remand the Case to the Primary Committee for further review in light of the stated reasons. Accordingly, having perused the Uniform Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah unanimously decided to:

Decision

1. Accept the appeal filed by (...) Company against Primary Customs Committee Decision No. (112) for 1439 dated 06/04/1439 AH in form and on merits.
2. Overturn the primary decision in its entirety and remand it to the Primary Committee for reconsideration in light of the stated reasons.
3. This decision shall be implemented after being approved by HE the Minister of Finance.



Principle No. 20

- The lack of a production and expiration date on the packaging constitutes a material violation that affects product quality and consumer safety.

Facts:

The Committee convened to consider the Appeal filed by the Importer (...), C.R. No. (...), against First Primary Customs Committee in Riyadh Decision No. (344/1) for 1442 AH, which ruled as follows:

1. Convict the Importer (... Company), C.R. No. (...), in presentia of customs smuggling.
2. Impose a customs fine equivalent to three times the value of the non-authorized consignment to be cleared by the Competent entity in the amount of (SAR 159,780) One hundred fifty-nine thousand, seven hundred and eighty Riyals.
3. Impose a fine in lieu of confiscation equivalent to the value of the consignment in the amount of (SAR 53,260) fifty-three thousand two hundred and sixty Riyals, whereby the total amount becomes (SAR 213,040) two hundred thirteen thousand and forty Riyals.

Since Appellant was notified of the appealed decision on 08/04/1442 AH. In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated .../.../..., this requires that the appeal is accepted in form, as it was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law.

The facts of the Case are summarized that a consignment of (mineral water) belonging to the Company arrived through Riyadh Dry Port Customs under Import Declaration No. (...) dated .../.../... with a total value of SAR (53,260) fifty-three thousand two hundred and sixty Riyals. It was cleared under a security not to dispose of it until it was authorized by the competent entity. Having presented a sample to Saudi Food and Drug Authority "SFDA" by Letter No. (...) dated .../.../... indicating that the consignment failed to comply with (...) standard, .../... Due to the lack of a production date on the product, which violates Clause (...) that mandates the inclusion of both a production and expiration date on the packaging. On .../.../..., the Company's attorney appeared under POA No. (...). Having asked Company's attorney about the consignment, he stated it was destroyed by SFDA and there is no report of destruction of the consignment.

The Primary Committee rendered the appealed decision as previously stated based on the fact that the Importer had disposed of the consignment in violation of its written undertaking of non-disposal except after obtaining laboratory results, which is considered a violation of Article (142) of the Unified Customs Law of GCC States. Accordingly, disposing of the consignment before obtaining laboratory results is considered customs



smuggling that entails the imposition of a fine in lieu of confiscation and customs fine stated in the appealed decision.

On .../.../..., Appellant submitted a statement of appeal registered with ZATCA under No. (...). The Customs Authority then referred the appeal to the Appellate Committee by Letter No. (...) dated.../.../...

On ..., .../.../..., the Appellate Customs Committee in Riyadh held its e-hearing to consider the appeal filed by ... Company, C. R. No. (...) against First Primary Customs Committee in Riyadh Decision No. (...) for ... Having called the parties, it turned out that Appellant's attorney did not appear despite of being duly notified. In addition, ..., holder of National ID No. (...), appeared in his capacity as ZATCA representative under Vice Governor for Legal Affairs Authorization No. (...) dated .../.../... AH. Having asked ZATCA representative about his answer to the attached memorandum, he stated that its contents are not impactful. Accordingly, we request upholding the primary decision and all that it entails.

Having taken cognizance of Case file, the Appellate Committee found that it contained a memorandum from Appellant, which included the grounds for objection to the decision. The memorandum consisted of two pages and summarized as follows:

First: In Form: With regard to “Customs Smuggling”, Appellant did not dispose of the consignment that was not authorized to be cleared as stated, as it is known that the sale was completed to consumers, which did not happen since the goods were destroyed under the instructions of SFDA inspectors upon visiting Appellant's warehouse in their capacity as the parties responsible in the Kingdom for the safety and health of consumers. As for the metaphorical allegation that Appellant had disposed of the consignment due to the absence of the Customs Representative during the destruction process, it is considered cancellation of SFDA role as the Competent Agency for importing in the first place. In addition, the customs duties were paid, and the question remains: Where are the customs specialists concerned with the destruction since SFDA sent its report to them on .../.../...? So, is it possible for goods to be in a warehouse for more than five (5) years, i.e., more than the expiration date itself?! In addition, the Primary Committee did not address SFDA to verify the destruction, nor did it give Appellant sufficient time to check with SFDA and obtain an official report on the destruction that took place in the presence of SFDA representatives and with their full knowledge during the pandemic; rather, it was satisfied with issuing penalty on a false ground.

Having taken cognizance of Article (142) of the Unified Customs Law that stipulates that (... Smuggling is the act of unlawfully transporting or attempting to transport goods into or out of the state ...). There is no doubt that the Committee's characterization of the Case does not, in any way, render the consignment that entered through a legal route and with Customs Authority's knowledge an act of smuggling.

Furthermore, the said Article stated the act that constitutes a violation of legislation and that the statutory definition of the legislation and its non-applicability to circulars and internal regulations are negating classification of smuggling stated in this Case, especially since acquittance is the rule and it cannot be dropped except with conclusive, crystal-clear evidence.

Second: The Primary Committee overlooked the evidence submitted by us in presence of SFDA representative, who obligated us to destroy the goods. Therefore, we request inclusion of SFDA 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 representative.

Third: 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”.

Finally: Since the (customs smuggling) is invalid due to the non-disposal of goods by sale and the existence of destruction in the presence of an official body, the customs fine resulting therefrom equivalent to three times the value of the consignment is also invalid. Since the (commercial fraud) is invalid, the customs fine resulting therefrom equivalent to the value of the consignment is also invalid due to the impossibility of confiscation since it is actually destroyed. We request the following:

1. Overturn the decision in accordance with grounds stated in this memorandum and discharge the Company from this Case.
2. Hold the negligent customs specialists accountable for failure to complete destruction procedures for more than five (5) years.

Since the Committee found that the Case was ripe for adjudication in its current state, having taken cognizance of the facts of the Case and deemed the submitted materials and statements sufficient to form its conviction and issue a decision, and after Appellant was given an opportunity to appear before the Appellate Committee and present his arguments in person but failed to do so.

Grounds



Since it was established that the consignment of (mineral water) belonging to the said Company arrived through Riyadh Dry Port Customs under Import Declaration No. (...) dated .../.../... and its value amounted to (SAR 53,260) fifty-three thousand and two hundred sixty Riyals. The consignment was cleared under a pledge of no disposal until it was approved by the competent entity. A sample was presented to SFDA, and the response was received under Letter No. (...) dated .../.../... AH indicating that the consignment did not meet (...) standard .../... The lack of a production date on the product violates the provision requiring placement of both production and expiration dates on the packaging. Since Appellant has failed to provide evidence supporting its claim that the consignment has been destroyed by SFDA, such as the report of destruction or any supporting document; and since the Customs Authority is not the party required to provide evidence of the validity of Appellant’s statements since it is assumed that Appellant possesses evidence proving destruction of the consignment in question by SFDA as claimed.

Since it is also understood from the statements of Appellant’s representative that the specifications mentioned in laboratory report are merely formal and do not affect the safety of item, these arguments are incorrect, as (...) standard .../... The lack of a production date on the product violates the provision requiring placement of both production and expiration dates on the packaging. Its absence is considered a material violation that affects the quality of product and consumer safety. Appellant’s act of disposing of the consignment without regard for the restriction against doing so establishes his conviction for customs smuggling, especially in light of his failure to provide proof of the alleged destruction as he claims.

Since the characterization of the Primary Committee issuing the decision by considering goods as prohibited and imposing a customs fine equivalent to three times the value of the consignment in question is an inaccurate characterization, as the goods are not prohibited in general; rather, they were prohibited due to the non-conformity with the specifications. Therefore, the Appellate Committee satisfies to amend the value of customs fine to become twice the customs duties by imposing customs fine as stipulated in paragraph (2) rather than paragraph (c) Article (145) of the Unified Customs Law of GCC States, contrary to the conclusion reached in the decision, subject matter of consideration.



Since the Appellate Committee was satisfied that the arguments raised by Appellant, as previously stated, have no effect on the conclusion reached in the appealed decision, as these arguments 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 customs fine, which is as stated in the wording of this decision.

In light of the above grounds, the Appellate Customs Committee in Riyadh decided as follows:

Decision

First: Accept the appeal in form filed by ..., C.R. No. (...), against Primary Decision No. (344/1) for 1442 AH.

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 (SAR 58,586) fifty-eight thousand, five hundred and eighty-six Riyals according to reasons and grounds stated herein.

Similar decisions

Appellate Customs Committee in Riyadh Decision No. (608) dated 12/04/1444 AH.

Appellate Customs Committee in Riyadh Decision No. (626) dated 05/04/1444 AH.



Principle No. 21

- The claim that the imported consignment was intended for personal use cannot be relied upon to absolve the Importer of responsibility for disposing of the consignment in violation of the undertaking.

Facts:

The Committee convened to consider the Appeal filed by..... C.R. No. (...), against Third Primary Customs Committee Decision No. (230/3) for 1442 AH, which ruled as follows:

1. Convict the Importer (... Company), C. R. No. (...) in presentia of customs smuggling.
2. Impose a customs fine equivalent to the value of the violating item in the amount of (SAR 6,788) six thousand, seven hundred and eighty-eight Riyals.
3. Impose a fine in lieu of confiscation equivalent to the value of the disposed-of, non-authorized violating item to be cleared by the competent entity in the amount of (SAR 6,788) six thousand, seven hundred and eighty-eight Riyals, bringing the total amount to be (SAR 13,576) thirteen thousand, five hundred and seventy-six Riyals.

Appellant was notified of the appealed decision on .../.../. Appellant's appeal was registered with ZATCA under No. (...) dated .../.../, this requires that the appeal is accepted in form, as it was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law.

The facts of the Case are summarized that a consignment of (ceramic tiles) belonging to the Importer arrived through Riyadh Dry Port Customs under Import Declaration No. (...) dated .../.../, with a total value of (SAR 6,788) six thousand, seven hundred eighty-eight Riyals. The consignment was cleared under a non-disposal undertaking pending approval from the competent entity. After the sample was examined by the laboratory, the Report No. (...) was received on .../.../... indicating that the samples did not meet the specifications regarding the breaking test, water absorption test, explanatory data, width dimension determination and thickness measurement, as detailed in Case documents and the contents of the primary decision, to which reference is made to avoid repetition. After Customs Authority notified the Importer of the result, he did not respond.

On .../.../, after summoning the concerned party to appear before the Primary Committee based on the memorandum submitted by ZATCA in the case filed by them, the Company's attorney appeared under POA No. (...) dated .../.../. In addition, Company's attorney requested an opportunity to consult the Company and provide the Committee with information regarding the fate of consignment. The Company then submitted a letter registered under No. (...) dated .../.../. The letter stated that Company's warehouse had been burglarized on .../.../... and that the consignment in question was among the stolen items.



The Primary Committee has reached the conclusion stated in the wording of its decision by convicting Importer of customs smuggling and imposing customs fine and a fine in lieu of confiscation, as previously stated, based on the fact that Importer's disposal of the consignment constitutes a breach of its undertaking and that Importer's argument of the robbery is inconsistent with the reality since that robbery occurred one year after the date of import. Also, the report of the robbery did not state the stolen items. Moreover, Importer did not inform the Customs Authority of the robbery to absolve itself of the undertaking.

Appellant submitted its statement of appeal, as previously outlined, outlining objections to the primary decision. The Customs Authority referred the appeal to the Appellate Committee by Letter No. (...) dated .../.../...

Grounds

The Appellate Customs Committee, upon reviewing Decision No. (230/3) for 1442 AH rendered by Third Primary Customs Committee in Riyadh, as well as the appeal filed by Appellant (... Company) set ..., .../.../..., to consider the appeal. At that session, ZATCA representative, Legal Researcher (...), holder of National ID No. (...), under ZATCA Vice Governor for Legal Affairs and Compliance Authorization No. (...) dated .../.../... Neither Appellant nor its representative appeared. The Appellate Committee found that Appellant was enabled to present its pleas and requests, yet Appellant failed to do so, despite of being duly notified of the primary decision, while ZATCA maintained the conclusion reached in the primary decision regarding Appellant's failure to appear before the Appellate Committee. The Appellate Committee, having perused Article (190) of the Law of Civil Procedure that stipulates: "The court of appeals shall consider the appeal or petition for revision based on the documents provided in the case file and new defense or evidence presented by litigants ...". In addition, Article (5) of the Implementing Regulations of Appellate Procedures stipulates: "The appeal request transfers the case that was heard before the court of first instance to the Court of Appeals in the same status that it has had prior to the judgment, within the limits of the objection submitted by the appellant in his memorandum. The Court of Appeals is required to consider the appeal case on the basis of the evidence and motions submitted to the court of first instance, in addition to the memorandum of objection and the submissions made during the consideration of the case". As Appellant's defenses before the Primary Committee, based on Case documents reviewed, were limited to stating that the company specializes in the construction and finishing of villas, that it imports certain materials for use in facilities owned personally by Company's owner, that these materials were not used for the public, and that Company's warehouse was subject to theft on .../.../... that the materials included in Import Declaration in question were the subject of robbery incident, that it would to settle the issue related to the undertaking for that Declaration, in accordance with the reply submitted to the Primary Committee on .../.../..., and that a notification has been submitted reporting robbery of a set of electrical wiring and ceramic tiles from a warehouse in Banban District, estimated at a value of (SAR 250,000) two hundred and fifty thousand Riyals in accordance with the statement of the Director of Al-Sahafa District Police Station in Riyadh on .../.../... Since the appeal was based on a mere request for objection; and since Company's arguments before the Primary Committee were discussed, and it turned out that the consignment arrived on .../.../..., while the robbery was reported on .../.../..., i.e., one year after the date of consignment import; since the report of robbery did not include a report detailing type of stolen goods; since Company did not inform the Customs Authority of robbery, which determines that Appellant's statements that the robbery occurred in a place that was subject of the undertaking of non-disposal; since Appellant's argument that the imports were for private and personal uses of Company's owner cannot



be relied upon to deny responsibility for not returning uncleared consignment to the Customs Authority, which does not change the fact that the imports were disposed of without being for general public consumption;

As such, the Appellate Committee did not notice anything that required correction or comment in light of the conclusion reached in the appealed decision regarding the conviction for customs smuggling and the imposition of a fine in lieu of confiscation, except amending customs fine to be twice the customs duties contrary to the appealed decision that imposed the same with the full value of the consignment since it is not prohibited in general. Therefore, there is no room for applying Article (145.4) of the Unified Customs Law thereto.

Therefore, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

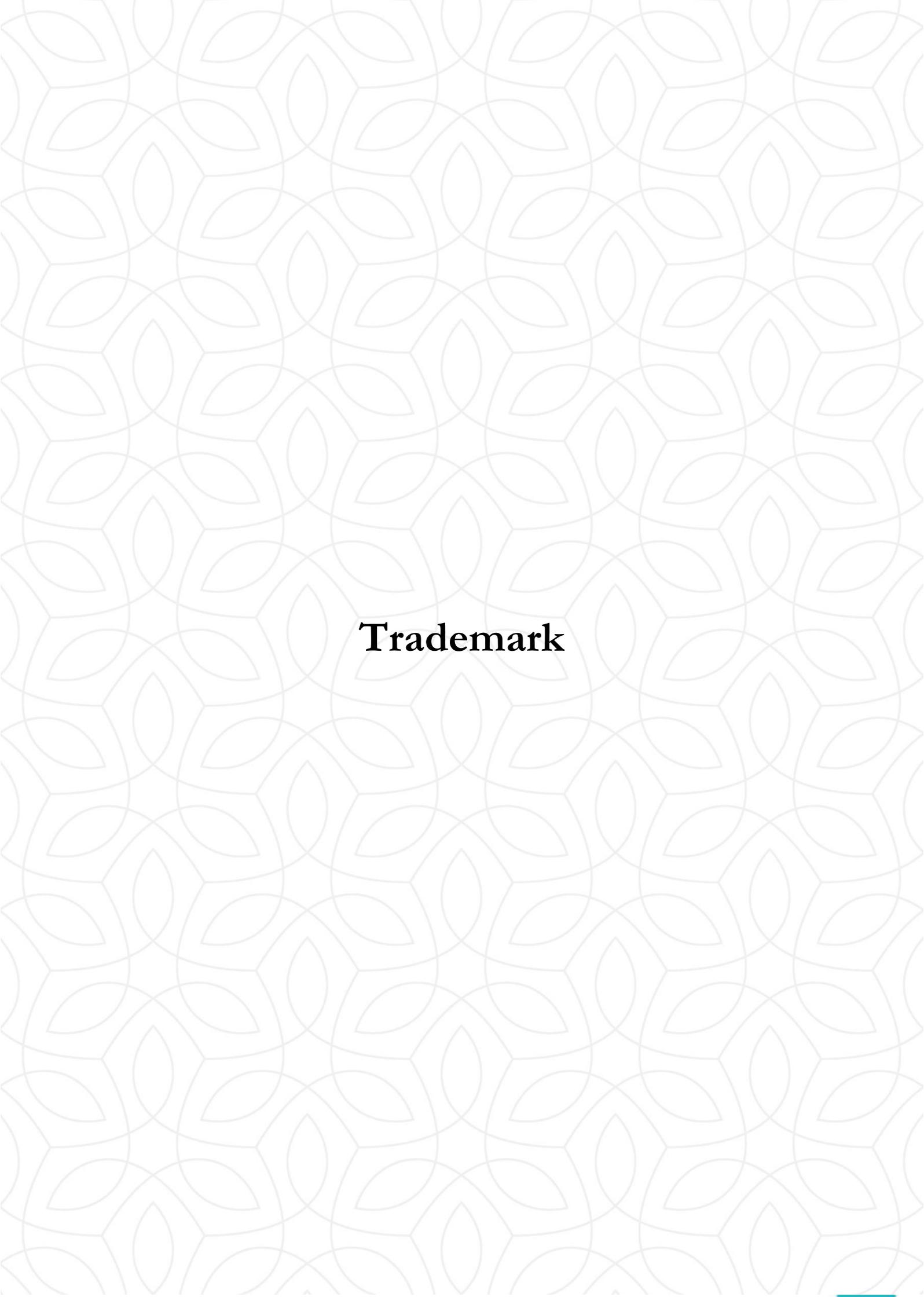
First: In Form: Accept the appeal in form filed by (... Company), C. R. No. (...) against Primary Decision No. (230/3) for 1442 AH rendered by Third Primary Customs Committee in Riyadh.

Second: Dismiss the appeal, uphold the primary decision of convicting Appellant of customs smuggling and the imposition of a fine in lieu of confiscation, and amend the value of customs fine to become twice the customs duties, bringing the total amount to (SAR 8,417) eight thousand four hundred and seventeen Riyals according to grounds stated herein.

Similar decisions

Appellate Customs Committee in Riyadh Decision No. (608) dated 12/04/1444 AH.

Appellate Customs Committee in Riyadh Decision No. (626) dated 05/04/1444 AH.



Trademark



Principle No. 22

- The intent to import the consignment bearing a registered trademark identical to the original mark constitutes a violation of Trademark Law, thereby establishing the act of customs smuggling. The mere claim of lack of intent does not negate the occurrence of smuggling, as failure to comply with the proper importation procedures while carrying such materials in violation of regulations confirms the intent of customs smuggling.

Facts:

To consider the appeal filed by the Importer (... Enterprise), C.R. No. (...), owned by ..., holder of National ID No. (...), against Customs Authority's Third Primary Customs Committee in Riyadh Decision No. (3/105) for 1441 AH, which ruled as follows:

1. Convict the Importer, C.R. No. (...), owned by ..., holder of National ID No. (...), in absentia of customs smuggling.
2. Order the Importer to pay a customs fine equivalent to the value of the consignment that was not authorized for clearance by the competent authority, amounting to SAR 71,745 (seventy-one thousand seven hundred and forty-five Riyals).
3. Confiscate the non-compliant goods in question.

Upon notifying Appellant of the primary decision on .../.../... by the notice attached to the case file, he submitted his appeal registered with the Customs Authority under No. (...) dated.../.../... This indicates that the appeal was submitted by an authorized party within the statutory period specified for its submission under Article (163) of the Common Customs Law. Therefore, the appeal must be accepted in form.

On Merits: The Case facts are summarized that a consignment of (cleaning products) arrived through Al-Batha Customs under Import Declaration No. (...) dated .../.../..., with a value of SAR 71,745. The consignment was cleared based on Importer's request accompanied by a non-disposal undertaking pending approval for release by the competent authority. Upon inspection of the samples received by the Ministry of Commerce, Report No. (...) dated .../.../..., was issued, indicating that the sample violated the Trademark Law as it bore a registered trademark. The Customs Authority notified the Importer of this result under multiple correspondences, but the Importer did not respond.

In light of the foregoing, the Case documents were forwarded by Al-Batha Customs to the Customs Authority, which then referred the Case to the Third Primary Customs Committee in Riyadh for consideration and adjudication by H.E. the Governor of Customs Authority Letter No. (...) dated .../.../...

On .../.../..., appeared before the Primary Committee in his capacity as the attorney of Appellant under POA No. (...) dated .../.../... Having asked about the status of



consignment, he stated that it consisted of cleaning products (Fairy, Dettol, and Comfort). He clarified that (Comfort) product was compliant, cleared and received, while (Fairy and Dettol) products remained detained by the Customs Authority.

The Primary Committee rendered the contested decision, convicting Importer of customs smuggling and imposed the penalties of a fine and confiscation as previously stated. This decision was based on the attempt to introduce counterfeit, fake or trademark-violating goods into the Kingdom illegally, constituting customs smuggling in accordance with Article (142) of the Unified Customs Law. The Committee also applied the penalties stipulated in Paragraph (4) of Article (145) of the same Law.

On .../.../..., Appellant submitted a statement of appeal registered with the Customs Authority under No. (...). Appellant referred the objection to the primary decision. In addition, the Customs Authority submitted to the Appellate Committee Letter No. (...) dated .../.../... Having taken cognizance of Appellate Customs Committee Decision No. (3/105) for 1441 and the appeal filed by ... in his capacity as Appellant's attorney. a session was set to hear the parties to the case on .../.../... At that session, ..., holder of National ID No. (...), appeared in his capacity as Importer's attorney POA No. (...) dated .../.../... issued by the Notary Public in Khamis Mushait Governorate.

The session commenced with a question addressed to Appellant's attorney: What are your objections to the primary decision, aside from what has been stated in the memorandum you submitted during this session? He answered: I satisfy with the memorandum submitted to the Committee on .../.../..., including the stated grounds for appealing primary decision, which can be summarized as follows:

1. The facts of Primary Customs Committee's decision included the following: "On Merits: The Importer received a consignment of (cleaning products) through Al-Batha Customs ..., with a value of SAR (71,745) ...". This stated value is incorrect and contradicts the amount recorded in the customs declaration, as the total value of the entire consignment is SAR (110,145). This inaccuracy is evidenced by the Committee's statement in its decision, where it stated: Order the Importer to pay a customs fine equivalent to the value of the consignment that was not authorized for clearance by the competent authority, amounting to SAR 71,745 (seventy-one thousand seven hundred and forty-five Riyals). However, in the wording of the primary decision, it was stated that the value of unauthorized consignment is SAR 71,745, contradicting facts of the decision, which state that the total value of the entire consignment (both cleared and uncleared) according to the customs declaration is SAR 71,745. This contradiction in Committee's decision renders it defective and unfounded, thus warranting its dismissal. It was imperative to specify in details that the consignment included three types: (Fairy, Dettol and Comfort), and that only (Comfort) was subsequently cleared, while the two items (Fairy and Dettol) remained detained by the Customs Authority without clearance and without a non-disposal undertaking being taken. Furthermore, no notification of the outcome was received from the Customs Authority.
2. Regarding the Ministry of Commerce's Report No. (...) dated .../.../..., confirming that the sample violated the Trademark Law, as it bore a registered trademark. Therefore, the Primary Customs Committee's decision was vague and lacked detail, given that it merely stated that the same violation of the relevant sample without specifying which sample was taken, whether it was from Dettol, Fairy or Comfort products. Defendant did not receive a copy of the Ministry of Commerce report, preventing them from identifying the sample or preparing their defense. Subsequently, on .../.../..., the Primary Committee stated that before this Committee, The legal representative of the Importer appeared, when asked about the status of consignment, he stated that based on the clearance of (Comfort) sample, he assumed the matter was resolved for other items (Fairy and Dettol). The Primary Committee did not address the legal



representative's statement that he believed the clearance covered the entire consignment and was unaware that it pertained only to (Comfort) sample until after a portion of the consignment had been disposed of.

3. The Primary Committee's decision stated "Since it is established that the Importer imported a consignment of (cleaning products) through Al Batha Customs under Import Declaration No. (...) dated .../.../... and the Customs Authority detained the consignment based on the Ministry of Commerce and Industry's letter indicating a violation of the Trademark Law". However, the mere absence of a trademark does not, in itself, constitute a violation warranting punishment or conviction for customs smuggling. At most, the incident may be considered a customs procedural violation rather than smuggling. Should a violation be substantiated, it would be strictly procedural in nature and insufficient to constitute customs smuggling.
4. The sole basis upon which the Primary Customs Committee relied in its decision was to deem Defendant's actions as customs smuggling, citing Article (2) of Anti-Commercial Fraud Law, which considers the importation of counterfeit products a violation. However, the Committee failed to establish the occurrence of commercial fraud in this consignment and provided no evidence thereof. Moreover, the commercial fraud is specifically addressed under Anti-Commercial Fraud Law and its implementing regulations. Assuming validity of the alleged commercial fraud, the consignment's owner should have been notified to rectify the causes of the fraud, rather than incurring substantial losses.
5. Absence of the mental element on the part of Defendant in this case, as stipulated in Article (144) of the Unified Customs Law, which states: "Criminal liability for smuggling requires the presence of intent; applicable criminal laws shall be taken into consideration upon determining such liability". This requirement was not met in this case, as Defendant imported the consignment from the United Arab Emirates, a friendly Gulf country, and made every effort to verify all importation details. Therefore, Defendant did not possess the mental element (intent) required for smuggling. Accordingly, Defendant should not be subject to any penalties under the Unified Customs Law, particularly given that this was their first time engaging in importation and they were unfamiliar with many of the relevant regulatory requirements.

Furthermore, upon contacting Customs Authority regarding their right to defend themselves by responding to the statement of appeal, they indicated that, due to the circumstances of COVID-19 Pandemic, they would suffice with a written response to the memorandum after receiving a copy of the appeal and being granted sufficient time to respond.

The Appellate Customs Committee received a letter from the Head of Legal Department at the Customs Authority, previously issued under No. (...) dated .../.../..., which included the following:

1. The claim of Appellant's attorney that the Committee erred in determining correct value, which differed from the value stated in customs declaration, clarified in its decision that the amount of SAR (71,745) outlines the value of consignment that was not authorized for clearance, meaning only the disputed portion in question.
2. Regarding Appellant's claim in the second paragraph of the statement that the Committee did not specify which sample or product type was involved and that he was unaware of the partial clearance, it is important to note that samples referred for testing are randomly selected from the entire consignment and submitted to the competent committee to verify the type of goods, their specifications, or their compliance with regulations, as well as to determine whether they match the details stated in customs



declaration. Furthermore, the report from the relevant authority specifies the type and category of the sample and can be examined before the Primary Committee.

3. Appellant's representative argued that the absence, alteration, or imitation of a trademark does not constitute a customs offense and is not considered a material violation of significance. However, this argument entirely overlooks the fact that a trademark can mislead and harm consumers, which violates the provisions of Trademark Law. In addition, Paragraph (4) of Article (2) of Anti-Commercial Fraud Law stipulates: (Whoever possesses a counterfeit product for the purpose of trading is considered in violation of the Anti-Commercial Fraud Law). Therefore, it is inconceivable to apply procedural violation provisions to this case, as the procedural violations mentioned in the Implementing Regulations of the Unified Customs Law pertain to formal rules related to customs procedures. However, the incident in question constitutes a substantive violation: first of Saudi trade regulations, and second of the general provisions of the Unified Customs Law. The Case falls under provisions of Article (143) of the Unified Customs Law, which is supported by the definition of customs smuggling provided in Article (142). The importer's actions regarding the consignment in question constitute customs smuggling, which is defined as: "Smuggling is the act of unlawfully transporting or attempting to transport goods into or out of the state without payment of customs duties wholly or partially or doing the same in violation of the provisions of prohibition or restriction provided for in this Law or in other laws".
4. Defendant argued that the Customs Authority should have simply rectified the violation and disregarded the matter, claiming that their actions do not constitute customs smuggling. However, the Customs Authority is an executive body that enforces the Unified Customs Law whenever a non-compliance report is issued. In such cases, the Customs Authority applies the law and prevents the entry of non-compliant goods into the country. This is explicitly stipulated in Article (24) of the Unified Customs Law, which states "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". Furthermore, the violation in question does not require any additional proof, as the examination was conducted by the competent authority. Upon referring the samples to the General Directorate for Combating Commercial Fraud at the Ministry of Commerce and Investment, a response was received under Letter No. (...) dated .../.../..., stating that the goods violated Trademark Law, thereby precluding their clearance.
5. Customs smuggling crimes are intentional offenses that require the presence of both physical and mental elements. The physical element consists of bringing goods into or out of the country illegally, in violation of the prohibitions or restrictions set forth in the Unified Customs Law, which is precisely what Defendant did in the Case at hand. As for the mental element (criminal intent), Defendant disposed of part of the consignment without consulting Customs Authority and failed to respond despite of being notified of the test results. Defendant's assertion of non-notification is demonstrably false, as all notifications are documented in Case file, demonstrating that Defendant's intent was directed toward violating provisions of the Unified Customs Law, as explicitly stated in Article (144) the Unified Customs Law. The principle of good faith or ignorance of the law does not exempt the Importer from legal accountability, in accordance with Article (154.A) of the Unified Customs Law, issued by Royal Decree No. (M/41) dated 03/11/1423 AH, which states ("A violation and civil liability in customs smuggling offenses are established by the presence of their physical elements. Claims of good faith or ignorance are not considered valid defenses.



However, exemption from liability is granted to those who can prove that they were victims of force majeure, or that they neither committed nor contributed to any act that constituted the violation, smuggling offense, or led to its commission").

6. Upon reviewing the Appellant's statement, it is evident that all the arguments presented are weak and lack merit, failing to alter the fundamental fact that the Appellant violated the provisions of both the Unified Customs Law and the Trademark Law. Moreover, the Appellant did not address the committed violation, clearly demonstrating an inability to provide substantive arguments capable of refuting the charges brought against them. This indicates that the appeal is merely an attempt to reverse the decision.

ZATCA concluded by requesting upholding of the primary decision in its entirety.

On ..., .../.../..., a session was scheduled to hear from the parties involved in the case. However, upon calling the parties via video conference, it was found that neither the Appellant nor ZATCA's Representative was present. The Committee subsequently received a notification stating that a technical issue with the email system of the General Secretariat of Zakat, Tax, and Customs Committees prevented notification of both the Appellant and ZATCA regarding the appeal hearing. The Appellate Committee scheduled a new hearing date for the appeal on ..., .../.../..., where the Appellant's Attorney/ ..., under POA No. (...) appeared and requested a copy of the Customs Authority's response in order to provide a reply.

On .../.../... The Appellate Committee received a memorandum from the Appellant in response to the appeal, which included the following:

First: In Form: Their failure to provide a detailed clarification regarding the accuracy of the stated amount, as they stated that the value of the non-cleared consignment amounted to SAR (71,745). Furthermore, the consignment consisted of three types of products (Fairy, Dettol, and Comfort), with the Comfort shipment being approved by the Customs Authority. Upon reviewing the customs declaration issued by the Customs Authority under number (...) dated.../.../..., it stated the following:

Total Duties	Revenue Type	Duty Category	Value in Local Currency	Currency		Domestic and Foreign Currency Value	Country	Goods Description	Tariff Item	
				27	26 Branch					
0	Concealed	6.5%	28800	1.02096	AED	24000	SA	Fairy	340220290001	A.
0	Concealed	6.5%	32400	1.02096	AED	24750	SA	Fairy	340220290001	B.
0	Concealed	6.5%	19200	1.02096	AED	6000	SA	Preventative	340220290001	C.
0	Concealed	6.5%	19200	1.02096	AED	6000	SA	Preventative	340220290001	D.
0	Concealed	6.5%	10545	1.02096	AED	9500	SA	Dettol	340220290001	E.

The calculation method for the cleared and non-cleared (non-compliant) consignment was not disclosed, preventing confirmation of whether the consignment amount, after deducting the comfort value SAR (71,745), is accurate.

Second: The Primary Committee stated in its decision (Upon sending samples of the imported goods to the Ministry of Commerce and Industry, the response received confirmed that the sample violated the Trademark Law as it bore a registered trademark.



The Customs Authority notified the Importer of the result through several correspondences, but they did not respond).

Third: Regarding what was mentioned in the Customs' response to my client's appeal that the moral element (criminal intent) was established in the case, it is insufficient to prove the moral element (criminal intent). The Defendant imported the goods from the UAE, a friendly Gulf state, and did their utmost to verify all import data. They did not proceed with importing the consignment with the intention of fraud, smuggling, or otherwise. This is evidenced by the fact that the "Comfort" consignment was cleared by Customs due to the absence of any violation. Furthermore, the value and quantity of the consignment are very small and not large enough to assume or imply deliberate criminal intent, especially as this was the Defendant's first import experience, undertaken from a sister state in good faith after conducting all possible research and investigation into the validity of the imported products.

Fourth: Regarding the issue of commercial fraud, I argue lack of jurisdiction on the part of the Customs Committee in reviewing matters related to commercial fraud, as Articles (13) and (27) of the Anti-Commercial Fraud Law for 1429 AH were amended by Royal Decree No. (M/10) dated 09/01/1440 AH.

The Appellant's Attorney concluded the memorandum by stating that the establishment maintains all the responses and requests previously presented in the submitted appeal.

The Appellate Committee received a memorandum of reply from ZATCA in response to the Appellant, which included the following:

First: In Form: It has been established that the consignment covered by the aforementioned import declaration, which was declared as cleaning products, was cleared under a non-disposal undertaking pending approval for release by the competent authority. The Ministry of Commerce and Industry later issued a statement confirming that the sample violated the Trademark Law, as it bore a registered trademark. Consequently, the Importer was instructed in writing to return the consignment to the customs yard, but no response was received.

Second: ZATCA, in accordance with Article (56.A) of the Unified Customs Law, referred samples from the consignment to the Ministry of Commerce and Industry to verify compliance with specifications. The Ministry's response confirmed that the sample violated the Trademark Law, as it bore a registered trademark. Consequently, its entry into the country was prohibited in accordance with the provisions of the law.

Third: The consignment was cleared in accordance with Article (56.B) of the Unified Customs Law. However, as previously stated, the Ministry's response confirmed that the consignment violated the Trademark Law, as it bore a registered trademark. Accordingly, the Importer was notified, based on the information registered with ZATCA, to return the consignment to the customs yard, in accordance with the relevant undertaking provided for the clearance of the consignment, which the Importer subsequently violated.

Fourth: ZATCA has the right to prohibit the entry of prohibited, non-compliant, or restricted goods, except with approval from the relevant authorities in the country, in accordance with Article (24) of the same law.

Fifth The Importer stated in his memorandum that the customs fine amount was not clarified in detail. In response, we would like to clarify that the fine amount issued by the Third Primary Customs Committee is correct, as the non-cleared items are the first item, Fairy, valued at SAR (61,200), and the second item, Dettol, valued at SAR (10,545), bringing the total fine amount to SAR (71,745), while the total value of the compliant consignment is SAR (38,400).

Sixth: Approval of a single item among multiple items does not imply that all items are legally approved. The Importer's claim of disposing of the consignment after the clearance of one out of three products is not valid, and he is therefore accountable to ZATCA for



that action and its consequences, as it is established that the merchant is fully aware of all procedures and laws and is thus prepared to bear full responsibility for the consequences. Claims of good faith and ignorance of the regulations are not valid, in accordance with Article (154.A) of the Unified Customs Law.

Seventh: Upon reviewing the Importer's actions and his failure to respond to ZATCA after the analysis results confirmed non-compliance with specifications, as well as his breach of the promissory undertaking given, this constitutes customs smuggling under Article (142) of the Unified Customs Law by introducing goods in violation of the applicable regulations and contrary to the restrictions stipulated therein. Additionally, Paragraph (17) of Article (143) of the same law states that disposing of goods released on a temporary basis under Article (56.B), without the approval of the competent authority, constitutes customs smuggling.

Eighth: Customs smuggling offenses are intentional crimes that require both the physical and mental elements to be established, which are present in the case at hand, whereas the Importer disposed of the consignment, breached the undertaking provided, and introduced goods whose entry into the country is restricted, as mentioned above.

Ninth: Counterfeit goods and both domestically or internationally forged products are prohibited from entering the Kingdom under ZATCA's Circulars No. (.../...) on .../.../..., No. .../.../... on .../.../..., No. .../.../... on .../.../... in accordance with Paragraph (9) of Article (2) of the Anti-Commercial Fraud Law. Therefore, these items are deemed non-compliant with national regulations, thereby prohibiting their entry. The Importer must promptly coordinate with the Customs Authority to return the consignment to the customs yard.

ZATCA concluded by requesting upholding of the primary decision in its entirety. On .../.../... The Appellate Committee received a memorandum of reply from the Appellant in response to ZATCA's memorandum, including the following:

First: In Form: The Ministry of Commerce and Industry's response stated that the sample violated the Trademark Law, as it bore a registered trademark! However, neither the Ministry of Commerce nor the Customs Committee provided any further details regarding the trademark violation, leaving the Importer in a state of uncertainty, as he is unaware of the specifics of the registered trademark or the detailed nature of the violation. All that the Ministry of Commerce's statement indicates is that the reason for the violation in the goods is "because they bear a registered trademark," without clarifying the Importer's specific violation, the registered trademark on the imported goods, or how the Importer infringed upon the trademark. The mere fact that these goods bear a registered trademark does not indicate any violation of the law unless it infringes upon another's trademark, which neither the Ministry of Commerce nor ZATCA mentioned in detail. It is well-known that it is neither legally nor religiously permissible to penalize an importer based solely on a general statement that lacks any detailed information about the trademark, does not specify the nature of the regulatory violation committed by the importer, and does not address whether the sample is counterfeit or fraudulent, as the primary decision indicated in its reasoning. All it mentioned was that the sample contains a registered trademark. Therefore, there is no basis to customs smuggling when the consignment complies with import requirements and is original in terms of origin and product quality. The Ministry of Commerce did not state that the imported goods are of low quality or pose a risk to consumers.

Second: The Committee's assertion that the sample violates the Anti-Commercial Fraud Law is incorrect. The mere presence of a registered trademark on the sample does not constitute a violation of the trademark law according to Article (21) of the Trademark Law issued by Royal Decree No. (M/21) dated 28/05/1423 AH. Accordingly, the law explicitly states that others have the right to use the trademark if the trademark owner has authorized



them to do so. This is something that the Ministry of Commerce and Industry did not verify in the items they claimed bore registered trademarks, as they did in the “Comfort” product, which was found to be authorized by the producing company and was cleared. Why was this not done for the rest of the imported materials?

Third: Disposing of the consignment during the undertaking period, if the consignment in question consists of genuine goods that do not involve fraud or harm to the user, and if ZATCA has cleared some of the imported materials, and if the importer acted out of ignorance of the regulations—given that this is his first time importing—then this does not constitute customs smuggling in violation of the law. The law's primary concern in such cases is to ensure that the imported goods do not harm users. Neither ZATCA nor the Ministry of Commerce has proven that the imported goods pose any harm to users; the prohibition was solely based on the presence of a registered trademark.

Fourth: The violations cited by ZATCA, related to the presence of a registered trademark, do not pertain to the product's quality or suitability for use. The failure of the samples to pass inspection constitutes a customs procedural violation under Article (31.6) of the Implementing Regulations of the Unified Customs Law and does not rise to the level of customs smuggling.

Fifth The notification period is limited to six months, as stipulated in Article (2.A) of the Implementing Regulations of the Unified Customs Law. This period has elapsed without informing the Importer of the laboratory report's results, whether positive or negative, leading to the expiration of the goods and causing harm to the Importer. The Importer's prolonged wait for a response has resulted in significant detriment.

Sixth: The fundamental principle is that a person is presumed innocent until proven guilty, and this certainty cannot be overturned by mere doubt. What is established with certainty cannot be removed except by equally certain evidence. —an essential principle in Islamic law. Since all the evidence upon which the decision was based is general and solely linked to the presence of a registered trademark, and since a conviction cannot be based on doubt, any uncertainty in the accusation should be interpreted in favor of the defendant whenever possible. In Islamic law, judgments are based on outward appearances rather than hidden intentions, and it is impermissible to rely on concealed motives. Thus, convicting the Appellant of deliberately importing fraudulent goods is incorrect, as the moral element of smuggling for ... Establishment in this case is absent, according to Article (144) of the Unified Customs Law, which is not available in this case, as imported the goods from the UAE, a friendly Gulf state, and made every effort to verify all import data. ... Establishment did not proceed with importing the consignment with the intent of fraud, smuggling, or any other illegal purpose. Instead, it acted in good faith during the import process and took reasonable steps to verify the sources of the consignment before importation. Consequently, the moral element (intent to smuggle) is not present in this case. Therefore, ... Establishment does not deserve any penalty for this action under the Unified Customs Law, especially since this is its first import experience and it is unaware of many regulatory matters.

The Appellant's Attorney concluded his memorandum by requesting cancellation of the primary decision on the charge of customs smuggling, nullification of the imposed fine due to its lack of a proper legal basis, and revocation of the committee's request to confiscate the goods in question.

The Committee, upon hearing the statements of the parties involved and reviewing the documents in the case file, along with the memoranda prepared regarding the appeal against the contested decision, concluded that the case is now ready for adjudication in its current state. The committee has fully acquainted itself with the facts of the case, and the evidence and submissions presented are sufficient to form its conviction and render a decision. It has been established that a consignment of (cleaning products) entered through



Al-Bathaa Customs port under Import Declaration No. (...) Dated/./.. Under the name of, owned by Samples of the consignment were referred to the Ministry of Commerce, whose Report No. (...), dated.../.../.., indicated that the sample violated the Trademark Law because it bore a registered trademark. Accordingly, the Primary Committee issued its decision.

Grounds

It is evident from the statements made by the Appellant's Attorney before the Appellate Committee that the Primary Customs Committee, in its appealed decision, did not specify the type or category of the examined sample. Furthermore, Ministry of Commerce's Report No. (...) dated.../.../.., also failed to mention the sample type and category. Additionally, the Appellant was not notified of any correspondence regarding the return of the consignment. The Appellant's Attorney argued that his client had no intent to smuggle and that the moral element of smuggling was not present. Upon reviewing Letter No. (...) issued by Director General of the General Directorate for Combating Commercial Fraud at Ministry of Commerce, dated.../.../.., it included a statement that the two items (Fairy - Dettol) bear a registered trademark and are considered a violation of the trademark law. It was established from the case documents that the trademark owner confirmed that they are counterfeit concerning the Fairy and Dettol trademarks.

Since, the intention to import the violating consignment, which is laden with this violation, constitutes the description of customs smuggling, the mere plea of lack of intent does not negate its occurrence. Failure to observe the import of these materials bearing these trademarks and to prove their conformity with the original trademark confirms the intent of customs smuggling, as the trader is aware of the existence of this restriction.

The Appellate Committee has firmly concluded that the defenses presented against the appealed primary decision, as previously outlined, do not affect its validity, confirming that the primary was in accordance with the proper application of the law.

Based on all the foregoing, the Appellate Committee concluded that the arguments presented by the Appellant did not alter the committee's conviction regarding the validity of the appealed primary decision. The claim that the import was from a Gulf state does not diminish this conviction, as the determining factor is the existence of a violation related to the goods intended for entry into the country, not whether the import from a neighboring state constitutes smuggling. Furthermore, the Importer's challenge to the value of the non-compliant consignment was proven to be unfounded after verifying the value of the non-compliant items.

As such, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

First: Accept in form the appeal filed by the Importer... .., CR No. (...), owned by/, National ID No. (...), against Decision No. (3/105) of 1441 AH, issued by Riyadh Third Primary Customs Committee at the Saudi Customs Authority.

Second: Dismiss the appeal on merits and uphold the primary decision in its entirety, in accordance with the reasons stated.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608) dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626) dated 05/04/1444 AH.



Principle No. 23

- Establishing the validity of the trademark found on the imported goods results in the importer not being convicted of trademark infringement.

Facts:

The Case facts are summarized that while a police patrol in (/...) Governorate was performing its duty, it managed to apprehend a vehicle of (...) plate number (...) driven by (...). Having inspected the vehicle at the arrest site, a quantity of ammunition and a pistol were found inside, totaling (91570) ninety-one thousand five hundred seventy rounds and (1) small-caliber pistol. During the investigation, the accused admitted to possessing seized quantity of ammunition and the pistol to deliver them to Khamis Mushait in exchange for a monetary payment. The ruling No. (...) was issued against him on .../.../... punishing him of thirty-five lashes in public for smuggling a man disguised as a woman, and his conviction for smuggling a quantity of ammunition and a pistol from the Republic of Yemen into Saudi territory, leaving his further punishment to the discretion of the ruler. A decision was issued against him by the Deputy Minister of Interior No. (...), on .../.../... Sentencing him to imprisonment for eight months, fining him five thousand riyals, and confiscating the seized items. A decision was also delivered by the Administrative Committee of the Border Guard to imprison him for twelve months. Moreover, a decision was also delivered against him by theCourt No. (...) on .../.../... ordering the confiscation of the vehicle and referring the Case to Primary Customs Committee in Jazan, which then issued its decision as outlined above, ruling as follows:

1. Convict/, national in presence for customs smuggling of (91570) ninety-one thousand five hundred seventy rounds of ammunition and (1) one small-caliber pistol.
2. Confiscate the ammunition and pistol, totaling 91570 (ninety-one thousand five hundred seventy) rounds of ammunition and (1) one small-caliber pistol.
3. Order the accused to pay a customs penalty of (SAR 196,795) one hundred ninety-six thousand seven hundred ninety-five Riyals.
4. Confiscate of the means of transport in the Case, a vehicle of ... type,) plate number (...) for the reasons stated herein.

Having notified the named person of the decision on .../.../..., he submitted a statement of appeal registered with the Primary Customs Committee in Jazan under number (...) dated.../.../..., in which he indicated that he has previously served a sentence for this crime and that his car was confiscated, and also referred to his family circumstances, which he wished to be taken into consideration. The Case file was forwarded to the Appellate Customs Committee in Jeddah by Chairman of Primary Customs Committee in Jazan Letter No. (...) dated.../.../..., Accordingly, the committee decided to refer the case for review and issue a final decision.



Grounds

In form:

Since the appeal was submitted within the regular period, it is admissible in form.

On merits:

The primary decision to convict the Appellant was based on the claim that the consignment carried a counterfeit trademark, and that the letter provided by the Appellant, which allowed them to import and sell products bearing trademark (A), was not issued by the parent company owning the trademark, but by the shipping company. The CEO of the Appellant company submitted two attachments. The first document, issued by the trademark owner, states that the shipping company, Company (B), is the exclusive wholesale distributor of Company (A) products in the UAE and that Company (B) is authorized by them to distribute these products and appoint agents and distributors in several countries, including Saudi Arabia. Since the basis for the primary decision has been disproven and the committee has confirmed the authenticity of the trademark on the goods in question, the Committee has decided to overturn the primary decision, release the consignment, and acquit the Appellant. Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Accept the appeal submitted by/ Company against the decision of the Primary Customs Committee in Jeddah No. (200) of 1437 AH dated 24/06/1437 AH in form and substance.
2. The primary decision is overturned in all its rulings, the consignment is released, and the Appellant is acquitted of customs smuggling.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Jeddah Appellate Customs Committee Decision No. (13)
dated 09/05/1439 AH



Appellate Customs Committee in Jeddah

Decision No. (42)
Date of Decision:
20/03/1441 AH

Principle No. 24

- The use of a registered trademark on consignments by someone other than the trademark owner, without a relationship between the importer and the trademark owner, constitutes a violation of the trademark law.

Facts:

The facts of the case are summarized as follows: A consignment (Flash Memory) was received through King Abdulaziz International Airport Customs in Jeddah, under the name of ... Company. The consignment was registered under Import Declaration No. (...) dated .../.../... AH, with a total of four (4) packages valued at SAR 4,727 (four thousand seven hundred and twenty-seven Riyals). The Company stated in the customs declaration and certificate of origin that the consignment originated from China. Upon physical inspection, it was found that the consignment bore the trademark of (...) brand. The customs authorities suspended the consignment due to suspicion that it was counterfeit. The customs sent a sample of the consignment to the Ministry of Commerce and Industry branch in Jeddah, under letter No. (...) dated .../.../... AH. Their reply, letter No. (...) dated .../.../... AH, indicated that the trademark on the sample was in violation of the Trademark Law, as it contained a registered trademark belonging to a third party with no connection between the two. The use of this trademark was deemed a violation of both the Trademark Law and the Commercial Data Law due to the duality of the country of origin.

Upon referral of the case to Jeddah Primary Customs Committee through letter No. (...) from His Excellency the Director General of Customs, dated .../.../... AH, It issued its decision:

1. Convict, Owner of Company in presence of attempted customs smuggling.
2. Confiscate the flash memory consignment consisting of four (4) packages, considered the goods involved in smuggling.
3. Obligate the trader to pay a customs fine equal to 10% of the value of the consignment amounting to SAR 70,472.70 (seventy thousand four hundred seventy-two Riyals and seventy halalas).

Upon notification of the decision to the Legal Attorney/ on .../.../.... AH, he submitted a two-page objection memorandum, registered with Jeddah Islamic Port Customs under No. (...), dated .../.../.... AH, that included the following points:

1. The import order issued by the Company was specifically for importing flash memory from China. The exporting company was the one that tampered with the imported goods, as evidenced by the letter included in the case file. This letter confirms that the parent company manufactured the goods in Taiwan, then packaged them and placed the tariff label on the products in China.



2. All actions were carried out by the exporting company without the knowledge or approval of the Appellant. ‘ The company had no involvement in or connection to these actions. It is neither legally nor religiously permissible to punish the Appellant for the actions of a third party. On what basis are we being judged with this verdict, knowing that for many years our work has been conducted in this manner?
3. Determining whether this constitutes commercial fraud falls outside the jurisdiction of the Customs Committees. The jurisdiction to handle commercial fraud disputes belongs to the Ministry of Commerce, not the Customs Committees. Articles (51) and (52) of the Uniform Customs Law and Article (255) of its Implementing Regulations explicitly state that Customs Committees are only authorized to handle customs smuggling cases, not commercial fraud cases.
4. The customs smuggling offense does not exist in the first place, as demonstrated by the following:
According to the Customs Law, customs smuggling is defined as the unauthorized import or export of goods in a manner that circumvents customs duties in full or in part.

Thus, the concept of customs smuggling encompasses two key elements:

First: Illegally importing prohibited goods‘ meaning that the goods in question must be subject to an import or export ban, such as narcotics. This does not apply in this case, as flash memory devices are not among the prohibited goods for importation.

Second: Smuggling with the intent to evade customs duties – this would involve using fraudulent means to avoid paying customs fees. This claim does not apply as I did not use any deceptive methods to evade these duties whether in full or in part. On the contrary, I submitted all required documents for customs duty assessment and had no objection to paying them. Furthermore, as confirmed in the seizure report, the consignment itself is not prohibited and is exempt from customs duties under the customs tariff.

5. Confiscating the consignment would result in a significant loss for the Company and deprive it of its right to seek damages from the parent company for violating the import order. This would constitute a clear and substantial injustice to the Company, one that would be difficult to rectify. Therefore, we request delivery of the consignment to us and its re-export so that we can pursue a claim against the parent company and recover the Company's rights.

After reviewing the case file, the committee decided to proceed with further examination and issue a ruling.

Grounds

In form:

Since the appeal was submitted within the regular period, it is admissible in form.

On merits:

Appellant’s challenge to the decision of the primary customs committee is based on the following points: The company that handled the imported goods: The Appellant argues that the exporting company is responsible for the imported goods, and the parent company manufactured the goods in Taiwan without the institution’s knowledge or consent. Jurisdiction over commercial fraud disputes: The Appellant claims that disputes related to commercial fraud fall under the jurisdiction of the Ministry of Commerce, not the customs committees. No customs smuggling offense: The Appellant argues that customs smuggling is not applicable in this case, as the flash memory consignment is not a prohibited good and is exempt from customs duties under the customs tariff.

It is established that a consignment of (Flash Memory) arrived via King Abdulaziz International Airport Customs in Jeddah in the name of ... Establishment, under import declaration no. (...) dated .../.../... AH. It is also established from the import declaration



and the certificate of origin that the Importer declared the origin of the consignment as (China). Upon physical inspection, it was found that the consignment bears the trademark of ... brand. The customs authority sent two samples of the consignment to the Ministry of Commerce and Investment branch in Jeddah under letter no. (...) dated .../.../... AH. Their reply, letter No. (...) dated .../.../... AH, indicated that the trademark on the sample was in violation of the Trademark Law, as it contained a registered trademark belonging to a third party with no connection between the two. The use of this trademark was deemed a violation of both the Trademark Law and the Commercial Data Law due to the duality of the country of origin.

The consignment's origin is China, but it carries the trademark of brand (...), which violates the origin marking laws. According to Article 25 of the Uniform Customs Law, goods must prove their origin in accordance with the agreed origin rules within international and regional economic organizations. This implies that goods must comply with origin marking requirements, and any violation of this is considered customs smuggling. Moreover, Royal Order (27748) dated 24/11/1402 AH, which requires all foreign goods to carry the original country of origin marking, is legislation that must be followed and applied to imported goods. Therefore, violating this royal decree is considered an attempt to introduce goods illegally, either by failing to place an origin mark or by placing a misleading and incorrect origin mark. Article 142 of the Uniform Customs Law states that customs smuggling occurs when goods are brought into the country without full or partial payment of customs duties or in violation of prohibition or restriction laws outlined in the customs law or other relevant regulations. Additionally, Article 143/11 of the same Law specifies that providing false, forged, or fabricated documents or marking goods with false labels to evade full or partial customs duties or to bypass prohibition or restriction laws is also considered customs smuggling. One of the General Customs Authority's responsibilities is to combat commercial fraud and prevent the entry of poorly manufactured or counterfeit goods into the country to protect consumers and national economy in general. The content of the statement of appeal submitted by the Establishment Owner does not rise to the level of affecting the validity of the initial decision. As the primary decision is based on correct application of the law, the committee upholds it, relying on the reasons provided.

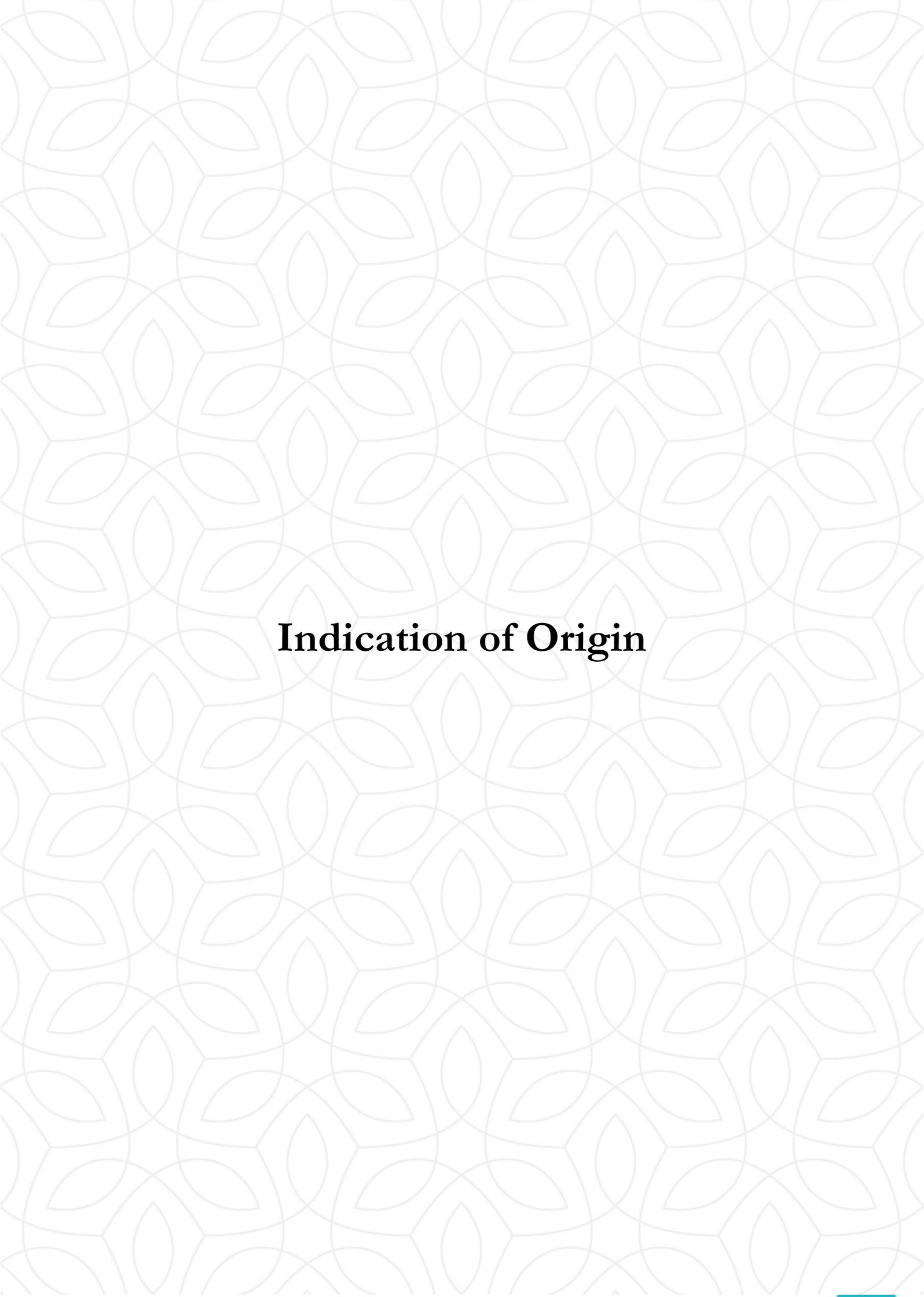
Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Accept the appeal submitted by ..., Owner of Establishment, against Decision No. (335) of 1439 AH dated 17/07/1439 AH, issued by the Primary Customs Committee in Jeddah in form and reject it on merits.
2. Uphold the primary decision in all its sections.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Jeddah Appellate Customs Committee Decision No. (17)
dated 25/11/1440 AH



Indication of Origin



Principle No. 25

- The presence of a proven indication of origin that contradicts reality establishes the availability of the two elements of criminal liability: knowledge and intent on the part of the Importer.

Facts:

The facts are summarized as follows: A consignment of alfalfa seeds arrived for ... Company, via Jeddah Islamic Port Customs, registered on import declaration No. (...), dated.../.../..., AH. The consignment consisted of (4,640) four thousand six hundred and forty bags, valued at (2,952,000) two million nine hundred and fifty-two thousand riyals. The company declared in the customs declaration and certificate of origin that the origin of the consignment was (Australia). However, upon actual inspection, it was found that the consignment bore the original origin marking (Australia) in the form of stitching on the bag. The phrase (...) was also found on the bag's surface, in a clear and permanent manner, while the back of the bag had the label "MADE IN USAH." As a result, customs halted the consignment due to suspicion of counterfeit and fraudulent products.

By referring the case to the Primary Customs Committee in Jeddah pursuant to the letter of HE the Director General of Customs No. dated.../.../... It issued its decision:

1. Conviction of/ Company, owned by ... in presence of attempted customs smuggling.
2. Confiscation of the alfalfa seed consignment, consisting of (4,640) four thousand six hundred and forty bags, deemed non-compliant, as it is considered the smuggled goods.
3. Obligate the trader to pay a customs fine equivalent to (10%) of the value of the consignment, amounting to SAR (295,200) two hundred ninety-five thousand and two hundred riyal.

Upon notifying the legal representativeof the decision on/.. he submitted an objection memorandum consisting of 4 pages, registered with the Legal Department of the General Authority of Customs under number (...) dated.../.../..., including the following:

First: In Form: Lack of Justification:

The decision considered our primary argument that the phrase "MADE IN USA" relates only to the bag in which the seeds are placed as an attempt to avoid criminal liability, rather than revealing the truth. This is especially true given that the consignment that marked with the country of origin, Australia, through stitching. In fact, the decision reiterated multiple times that it is established that the original country of origin is Australia. The customs committee should have paid more attention to the fact that the seed-producing company in the country of origin is a subsidiary of the parent company, which



had its location address placed on the bags manufactured in the United States. The company is based in California, USA, and the bags used for packing the seeds were manufactured in the USA. These phrases were not placed on the bags by us but by the same company. Attached is a letter from the company regarding this matter. Moreover, there are many similar cases with major international companies that have their headquarters in one location and manufacturing, packing, and export facilities in different places.

Second: Corruption in Reasoning:

The seeds in the consignment are from Australia, and their country of origin is Australia, with Malaysia merely being a transit point. As for the phrase "High-Quality Seeds 'California' USA" (...), it appears on the bag because the company producing these seeds is an American company, and the consignment was sent from one of its branches in Australia. The country of origin is Australia, as clearly stated in the certificate of origin and the customs declaration of the consignment. The implication is that the shipments are labeled with all the information relating to the country of origin, and these labels were placed only after approval by the Australian authorities, with confirmation from the country's authorities. The that phrase "MADE IN USA" referring only to the bags is confirmed by the fact that there is no indication from the U.S. authorities that the product is American. The attached letter from the manufacturing company indicates that the bags were made in the United States.

In other words, the company's location, listed on the bag as California, USA has no relation to the origin of the seeds, which have been documented as originating from Australia. Thus, it becomes clear that the entire issue was a misunderstanding that was interpreted as an attempt to smuggle, while, in reality, the importer had no involvement in this matter. The exporter is the one responsible for packing and sending the consignment, and we had no knowledge that this consignment could cause confusion with the Saudi customs authorities. It is also incorrect, as stated in the decision, that removing the country of origin label would be easy, as doing so would remove all consignment details (production date, expiry date, seed type, seed purity, testing percentage, and government approval from the country of origin). This label is a requirement from the Ministry of Agriculture and the consignment cannot be cleared without the appropriate product identifiers. It is inconceivable that the importer would intentionally obscure the details of the goods, as this would result in a loss from being unable to sell them.

Third: Error in Applying the Law:

The decision treated the importer as if they were definitively found guilty of committing a customs smuggling crime, which has not been proven at all. The fundamental element of the crime, the criminal intent of the importer, was not present. Article (144) of the Uniform Customs Law stipulates that "the responsibility for customs violations related to smuggling requires the presence of intent." Smuggling, as defined in Article (142) of the Uniform Customs Law, is "the act of bringing goods into or attempting to bring them into the country, or removing them from the country in violation of applicable laws, without paying the full or partial customs duties, or in violation of the prohibitions or restrictions contained in this Law (law) and other regulations." It has been established from all the documents in the case that the Importer did not make any such attempts. The Importer followed the legal procedures for importing the consignment with the declared origin according to the registered information on the consignment and the supporting documents. As for the phrase "Made in America," regarding Non on the back of the bag it does not constitute an attempt at customs smuggling. It should have been classified as a customs violation, with the primary cause being the supplier of the consignment, not the Importer who did not commit any legal violation. The Importer's actions do not amount to a customs smuggling crime. All procedures followed were in compliance with the law.



However, upon the arrival of the consignment, it was a surprise to all that the bags had the phrase "Made in America" on the back, which refers to the location where the bags were made, not the seeds inside them. This is clearly indicated on the bag, and if translated correctly, it would point to this fact. Therefore, based on the above and for the reasons mentioned, we respectfully request that you issue your decision as follows:

First: In Form: accept Appeal in form.

Second: On the merits, the customs decision No. (57) of 1438 AH, issued by the Customs Committee in Jeddah against the institution in case No. (167) of 1437 AH, is hereby annulled.

After reviewing the case file, the committee decided to proceed with further examination and issue a ruling.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law it is acceptable in form.

On merits:

The Appellant's challenge was based on the fact that the consignment was stitched with a label indicating the country of origin as Australia, and the decision itself confirmed that the original country of origin was Australia. The phrase "MADE IN USA" pertains only to the bags, which were manufactured in the United States, as the company's headquarters is in California, while the seeds originated from Australia with Malaysia merely serving as a transit point. The decision treated the Importer as if customs smuggling had been definitively proven, which was never established. The essential element of the crime, criminal intent, was absent, as confirmed by all the documents in the case file. The presence of "Made in USA" on the back of the bags does not constitute an attempt at customs smuggling. Instead, it should have been classified as a customs violation, as the primary cause was the consignment supplier, not the Importer. The Appellant concluded the defense by requesting the annulment of primary Decision No. (57) of 1438 AH. It was established that a consignment of alfalfa seeds arrived via Jeddah Islamic Port Customs under the name of (...) Company. according to the import declaration No. (...) dated.../.../... The quantity was 4,640 four thousand six hundred and forty bags. It is established from the import declaration and certificate of origin that the Importer declared the origin of the consignment as Australia. However, upon actual inspection, it was found that the consignment bore the origin marking (USA), and on the back of the bags, consignee without a was the phrase (MADE IN USA). These permanent markings on the bags mislead the consumer regarding the true origin of the seeds. Furthermore, the criminal intent required for the smuggling offense as stated in Article (144) of the Uniform Customs Law is present in this case, as both elements of criminal responsibility, knowledge and intent, are evident on the part of the Importer. The presence of these markings on the bags constitutes a violation of the origin marking requirements set forth in Article (25) of the Uniform Customs Law, which states that "imported goods must prove their origin according to the origin rules agreed upon in the frameworks of international and regional economic organizations. This also violates Article 5 of the Implementing Regulations of the Commercial Data Law, which mandates that all required commercial data, including the country of manufacture, must be written in Arabic and be clearly stated, matching the true facts in all respects. Additionally, Article 7 of the same Law on prohibits placing any indication on a product that suggests it originates from a geographic area different from its actual origin. Moreover, Royal Order (27748) dated 24/11/1402 AH, which requires all foreign goods to carry the original country of origin marking, is legislation that must be followed and applied to imported goods. Therefore, violating this royal decree is considered an attempt to introduce goods illegally, either by failing to place an origin mark



or by placing a misleading and incorrect origin mark. Additionally, presenting false, forged, or fabricated documents or placing false marks to evade customs duties, either fully or partially, or to bypass prohibitions and restrictions is considered a form of customs smuggling. Accordingly, the actions of the importer in attempting to introduce non-compliant goods are deemed as an attempt to commit customs smuggling. Therefore, it was decided to convict/ ... the owner of ... of attempting customs smuggling in accordance with Articles (142), (134/11), and (145/3) of the Uniform Customs Law. The arguments presented by the Appellant do not affect the validity of the primary decision; rather, they were aimed at avoiding the legal responsibility imposed on him. Therefore, this committee supports the decision, upholding its grounds.

Then, having taken cognizance of the Common Customs Law and its Implementing Regulations, and after study and deliberation, the Appellate Customs Committee in Jeddah unanimously decided to:

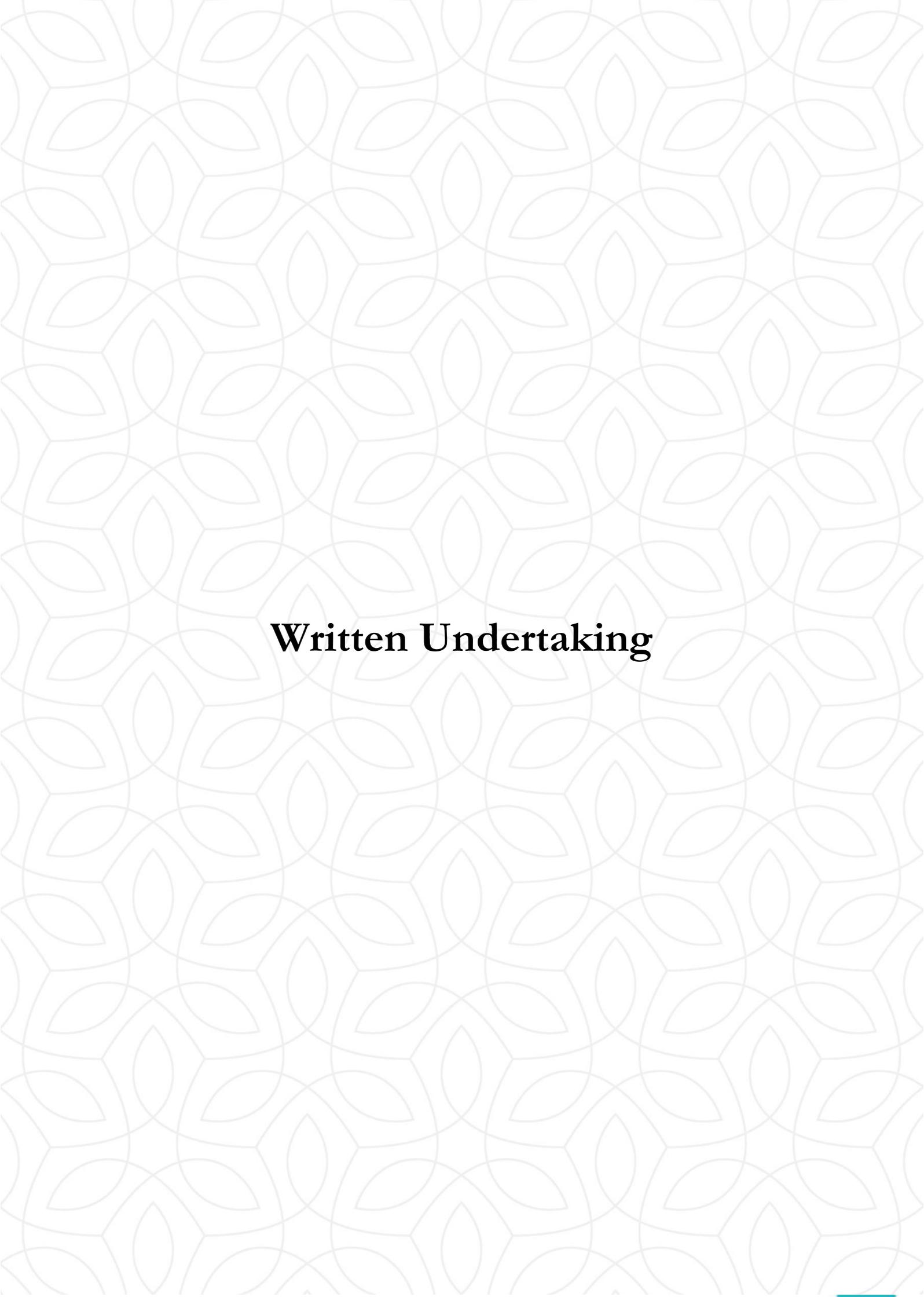
Decision

1. Accept the appeal submitted by Importer/..... the owner of ... against Decision No. (57) of 1438 AH, dated 23/02/1438 AH issued by Jeddah Primary Customs Committee in form and reject it on merits.
2. Uphold the primary decision in its paragraphs (2 and 3) and amend paragraph (1) to read as follows: Convict the Importer ... the owner of ... in presence of attempted customs smuggling.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Decision of the Jeddah Appellate Customs Committee No. (42) dated 20/03/1441 AH.

Decision of the Jeddah Appellate Customs Committee No. (91) dated 25/11/1441 AH.



Written Undertaking



Principle No. 26

- The importer's disposal of the consignment, while it bears non-substantive remarks from the laboratory, does not constitute customs smuggling on the part of the importer.

Facts:

The Department convened to consider the Appeal filed by the Importer/..... Establishment, C. R. No. (...) owned by....., holder of National ID No. (...), against Primary Decision No. (441) of 1441 AH issued by Ar Ruqi Primary Customs Committee, which ruled as follows:

1. Convict Pursuant to C.R. No. (...), from customs smuggling.
2. Obligate the establishment to pay customs fine of SAR 55,571 (fifty-five thousand five hundred seventy-one riyals), equivalent to the goods value.
3. Obligate the establishment to pay an amount equivalent to the consignment value, amounting to SAR 55,571 (fifty-five thousand five hundred seventy-one riyals, bringing the total fine to SAR 111,142 (one hundred eleven thousand one hundred forty-two riyals).

Since the Appellant was notified of the appealed decision on 06/06/1442 AH and given that the Appellant's submission of their statement of appeal was registered with ZATCA under No. (...) dated.../.../... As such, this appeal is acceptable in form being filed by a person with a legal standing and within the period prescribed by law as per Article (163) of the Common Customs Law.

Facts of the case are summed up as follows: a consignment of assorted clothing arrived under Import Declaration No. (...), dated 25/04/1440 AH, valued at SAR (55,571). The consignment was released under an undertaking of non-disposal pending authorization from the competent authority. Upon laboratory examination of the sample, report no. (...) dated 09/06/1440 AH, stating that the consignment was not cleared due to the quantitative and qualitative fiber analysis. The Importer provided a non-disposal undertaking pending approval for which included the competent authority, as it was confirmed that the consignment did not comply with the specifications. Consequently, penalties were imposed on the Importer as outlined in the operative part of the primary decision previously mentioned.

On 02/07/1442 AH, the Appellant presented a statement of appeal registered with ZATCA under no. (...). Saudi Customs Authority then forwarded the appeal to the Appellate Committee via letter no. (...), dated 19/07/1442 AH.

The Appellate Customs Committee in Riyadh, upon reviewing the decision as well as the appeal filed by the Appellant, Establishment scheduled a hearing on, .../.../..., to review the appeal. In the session, the legal advisor (...), representing ZATCA, attended,



along with the representative of the Appellant, who appeared on behalf of the Establishment Owner (...), under POA No. (...), on .././..

Having asked the Appellant's Attorney regarding the reasons for objection, he stated that the consignment consisted of clothing with only formal observations, which do not affect consumer safety. He also indicated that he had disposed of the entire consignment and that he relied solely on the appeal memorandum submitted to challenge the decision. He requested the annulment of the primary decision issued with respect to the Appellant. ZATCA, on the other hand, requested the confirmation of the decision in its entirety.

As it became apparent to the Committee, after hearing the statements of its parties and what its file contained of documents, that the case had become ready for adjudication in its current state after

the Committee was informed of the facts of the case and the sufficiency of what was presented and what was stated to form its conviction and decide on it.

Grounds



It is established that a consignment of assorted clothing belonging to the Importer was received under Import Declaration No. (...) dated 25/04/1440 AH, valued at SAR (55,571). The consignment was released under an undertaking of non-disposal pending authorization from the competent authority. After examining the sample by the laboratory, their response was received in report no. (...) dated 09/06/1440 AH, including non-release due to the quantitative and qualitative analysis of fibers.

Whereas the core issue in this case revolves around the determination of liability for the offense of customs smuggling, given that the Appellant disposed of the consignment that was cleared under a non-disposal undertaking, as evidenced by the laboratory report confirming its non-compliance; and whereas the laboratory's observations pertained to non-essential matters that do not result from the Importer's disposal of the consignment laden with violations noted in the laboratory report, the Appellant's actions cannot be deemed customs smuggling. However, the Appellant's handling of the consignment without adhering to the non-disposal undertaking—which required approval from the laboratory before disposal—constitutes a customs violation under Article (31.6) of the Implementing Regulations of the Unified Customs Law. As a result, the Appellant is subject to customs fine of SAR 1,000 (one thousand riyals).

Based on the above, the Customs Appellate Committee Riyadh decided as follows:

Decision

1. Accept in form the appeal filed by, CR No. (...), Owned by/..... ID No. (...), against Primary Decision No. (441) of 1441 AH issued by Al Ruqai Primary Customs Committee, as it was submitted within the statutory period.
2. On merits: cancel the Primary Department's decision as to the conclusion it had regarding the conviction of the Appellant for customs smuggling and the imposition of a customs fine and a fine in lieu of confiscation, for the grounds stated herein.
3. Consider the Appellant's handling of the consignment as a customs violation, and impose customs fine of SAR 1,000 (one thousand riyals), in light of reasons and justifications outlined herein.



Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (57) dated 07/09/1440 AH.

Decision of the Jeddah Appellate Customs Committee
No. (79) dated 10/09/1437 AH.

Principle No. 23 Similar decisions



Principle No. 27

- The importer's disposal of the consignment released under the written undertaking before its approval constitutes a breach of the commitment registered against him with customs, which entails responsibility for violating the provisions of prohibition and restriction stipulated in the law that address customs smuggling.

Facts:

The facts of the case are summed up as follows:, a Saudi national holding National ID No. (...) the owner of ... Trading Company, C.R. No. (...) Dated 03/01/1436 AH, imported a commercial consignment under import declaration no.(...), dated 23/02/1436 AH, no. (...) dated 29/02/1436 AH, and no. (...) dated 25/02/1436 AH. It was released under a copy of the undertaking certified by the Chamber of Commerce on 09/11/2014. Upon referring a sample of it to the competent laboratory, the result was received that the sample did not pass the examination, as detailed in the laboratory result attached to the case file. Upon contacting the Importer to return the consignment, he did not respond. When the case was considered by Al-Batha Primary Customs Committee, the concerned party appeared before it and stated that he had authorized a person named/... to issue a commercial registration and obtain labor visas, and that he had no knowledge of this consignment at all. Accordingly, the Committee issued its appealed decision convicting him of customs smuggling and fining him as per the primary decision. Upon notification of the decision to the concerned party on 28/06/1440 AH, he filed an appeal against it on 26/07/1440 AH, requesting its referral to the Appellate Committee. Upon receipt of the documents by this Committee, its file was reviewed, and it was decided to refer the case for study, and then the following decision was issued:

Grounds

In form:

Since the appeal was submitted within the period specified in Article 163/C of the Unified Customs Law, it shall be accepted.

On merits:

The primary decision was based on convicting the Importer of customs smuggling and penalizing him with customs fine and payment in lieu of confiscation as stated in Articles (142, 145) of the Unified Customs Law. This was for violating the written undertaking of no disposal of the consignment in question, which the laboratory decided to be in violation of the specifications and also for the Importer's failure to return the consignment to the customs area. The Appellate Committee, upon reviewing the case file, found that that the attached written pledge was a copy of an undertaking stamped with the establishment's



seal and certified by the Chamber of Commerce, and not the original document, and did not include the details of the consignment in question. The fields pertaining to the consignment were not filled in (import declaration number, date, type of consignment), which confirms that it was signed without completing most of the main details. Perhaps this was what facilitated the import of goods by the Importer exploiting the POA granted to him as suggested by the Appellant. Accordingly, the Importer did not pledge to customs not to dispose of this consignment, as the undertaking that does not include details about the consignment in question cannot be relied upon, as we cannot know what consignment was that, especially since the undertaking form prepared by the Customs Authority is for one consignment and cannot be used for multiple consignments. Moreover, upon examining the undertaking, we found that it included his acknowledgment of receipt of the consignment and his undertaking not to dispose of it, although the undertaking's date was more than a month ahead the arrival of the consignment; therefore, the Importer is deemed to have not pledged not to dispose of this consignment unless the description of consignment was specified by the Customs so that the Importer would be responsible for it and his responsibility would be established in accordance with Article (56/b) of the Unified Customs Law. A valid undertaking imposed on the Importer creates a legal obligation prohibiting the disposal of the goods until the results of their analysis are determined. Should the Importer dispose of the goods without clearance, he would be in breach of this obligation, warranting prosecution for his misconduct. However, for a constructive customs smuggling offense regarding the disposal of a consignment cleared under the non-disposal condition, a fully completed promissory undertaking for the disposed consignment is required. In the absence of such undertaking, no offense is deemed to have occurred, as previously stated. Accordingly, the Importer cannot be convicted of customs smuggling due to insufficient evidence. **In light of the above grounds and having perused Unified Customs Law of GCC States and its Implementing Regulations, the Appellate Customs Committee Dammam decided as follows:**

Decision

First: Accept the appeal submitted against decision No. (1447) dated 30/12/1439 AH issued by the Customs Primary Committee in Al-Batha in form and on merits.

Second: Overturn the primary decision and discharge the Appellant due to insufficient evidence.

Third: This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (554) dated 25/08/1439 AH.

Decision of the Jeddah Appellate Customs Committee No. (81) dated 15/07/1439 AH.



Principle No. 28

- Handing over the consignment to the importer on a temporary basis for storage pending its approval by the competent authority does not constitute its clearance. Rather, it was cleared in exchange for an undertaking from the importer not to dispose of it. Consequently, disposing of these items and violating the undertaking constitutes customs smuggling.

Facts:

The Department convened to consider the Appeal filed by the Importer/... C. R. No. (...) owned by ... holder of National ID No. (...), Against Decision No. 7/2 of 1439 AH, issued by the Second Primary Customs Committee at the General Customs Authority which ruled as follows:

1. ConvictEstablishment, C. R. No. (...) owned by....., holder of Civil ID No. (...), Of customs smuggling in presence.
2. Obligate it to a customs fine equivalent to twice the customs duties, amounting to SAR 3,388 (three thousand three hundred and eighty-eight riyals).
3. Obligate it to the equivalent of the value of the non-compliant items "tiles + toilet seat + washbasin with column) that were disposed of in lieu of confiscation, amounting to SAR 15,900 (fifteen thousand nine hundred riyals), so that the total amount becomes SAR 20,172 (twenty thousand one hundred and seventy-two riyals).

Upon notifying the Appellant of the primary decision on AH, as per the notification document attached to the case file, he submitted his appeal registered with the General Customs Authority under no. (...) dated.../.../.., AH. This means that the appeal was filed by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. Therefore, the appeal is accepted in form.

On merits, the facts of the case are summed up as follows: a consignment of (tiles and mirrors) has arrived through the Dry Port Customs, included in import declaration no. (...) dated.../.../.., AH, in the name of Company, C. R. No. (...) owned by/ (Civil Registry No....) Details are as follows:

SN.	Item	Quantity (Unit)	Value (SAR)	Customs Duties
1	Ceramic Tiles	1382	13,285	1,594
2	Mirrors with Frames	21	303	36
3	Sanitary Ware	464	5,591	671
4	Valves	1330	22,358	1,118
5	Faucets	174	1,671	84
6	Toilet Seat Sets	8	134	16



7	Bathroom Floor Drain	90	1,297	65
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The consignment was cleared with an undertaking not to dispose of it until after obtaining permission for its clearance from the competent authority. Upon presenting a sample of the incoming goods to Laboratory, they sent Letter No..... dated.../.../..., AH, which stated that it was referred to the General Department of Quality Control Laboratories at the Saudi Standards, Metrology and Quality Organization, and their report was received in letter no. (...) dated.../.../.. AH. It indicated the following:

1. "Tiles": Non-compliant with the Saudi Standard Specifications due to the lack of clarification of the type of use, the explanatory data is not in Arabic, and the country of origin is not indicated on the back of the tiles.
2. "Toilet Seat": Non-compliant with the Saudi Standard Specifications due to its non-compliance with the solid waste disposal test specifications, and there is no specification number.
3. "Washbasin with Column": Non-compliant with the Saudi Standard Specifications due to its non-compliance with the specifications of the diameter of the drain outlet opening and the height of the fixtures equipped with an overflow opening, and there is no specification number.

therefore, its clearance was not approved. The Importer was notified by Customs of the laboratory result to return the consignment to the yard in accordance with the undertaking signed by it but the Importer did not respond.

In light of this, the case was referred by Customs to the Legal Department of the General Customs Authority in letter no. (...) dated.../.../.. AH, and then the letter of His Excellency the Director General of Customs no. (...) dated.../.../.., AH, was received, referring it to the Second Primary Customs Committee in Riyadh for consideration and decision.

On.../.../... AH. The Importer's Attorney/ ... appeared before this Primary Committee under POA No. (...) dated.../.../.., AH, and stated that the consignment was installed in a building belonging to the establishment and that the establishment is in his son's name and does not engage in commercial activities. Proof of the installation of the consignment in their private building will be submitted, as well as proof that the commercial registration is expired and not active.

The Primary Committee issued its appealed decision convicting the concerned party of customs smuggling, and imposed the penalty of the fine and confiscation as previously stated, based on the fact that the Importer's handling of the consignment before its clearance by the competent authority and its entry into the country in the manner it arrived constitutes customs smuggling, accordance with Articles (142) and (143) of the Unified Customs Law, leading to imposing the penalties stipulated in Article (145) of the same law.

The Appellant submitted a statement of appeal recorded in the registry of the Customs Authority under no. (...) dated.../.../... AH, which included his objection to the primary decision. The General Customs Authority submitted the appeal to the Appellate Committee by letter no. (...) dated.../.../.... AH, which included acceptance of the appeal in form due to its submission within the legal period stipulated in Article (163) of the Unified Customs Law, and its rejection on merits and upholding of the primary decision. Upon the Customs Appellate Committee's study of the decision and the appeal submitted by the owner of the appealing establishment, a hearing session was scheduled for parties to the case on... ../.../..., AH. The session was attended by Representative of the Customs Authority, ... Legal Consultant, under assignment letter no. (...) dated.../.../... AH. The session was also attended by/ Saudi, Civil Registration No. (...) In his capacity as Attorney for the concerned party under POA issued by Notary Public.... No. (...). dated.../.../.... AH.



The session began with a question addressed to Appellant's attorney: What are your objections to the primary decision, aside from what has been stated in the memorandum you submitted during this session? He answered: The principle with customs is to verify conformity of the goods to the specifications and standards; in order to protect citizens from deception of merchants. We did not sell it and did not dispose of it except in our building, and therefore no one was harmed by this other than us. We have proven this with pictures and a copy of the clearance. We did not obtain a business license, so it was not sold but rather used in our building. Additionally, we included in our attached memorandum dated .../.../.... AH. The following defense:

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, it 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. When Representative of the General Customs Authority was asked: You have heard what the Appellant's Attorney said before the Committee, so what is your response to that? He replied: He did not provide any substantial reason that would exonerate the establishment from its violation of the security registered against it, and since the personal use of the consignment does not mean allowing it to dispose of the consignment, the Importer must adhere to the security registered against him. When the Appellant's Attorney was asked: Do you have anything you would like to add? And what is your final request in the appeal? He replied: All I want to add is that our error was procedural and occurred in good faith, and we had no malicious intent that would warrant punishment (in our view). Our understanding was that if we proved to customs with evidence that these goods were used personally, they would accept our excuse, just as if we had brought it personally, it would not be presented to the laboratory to verify its conformity with the specifications, but would be automatically cleared like other imports of individuals. Accordingly, I request cancellation of the primary decision and cancellation of the fine.

When Representative of the Customs Authority was asked: Do you have anything you would like to add? And what is your request regarding the appeal submitted against the decision? He replied: We have nothing to add to Primary Decision No. 7/2 of 1439 AH. Our request is to reject the appeal submitted by the concerned party and uphold the primary decision.

Grounds

It was established to the Committee that a consignment of "tiles and mirrors" arrived via the Dry Port Customs, included in import declaration no. (...) dated.../.../... AH, in the name of Company, which was handed over to him in exchange for an undertaking not to dispose of it until after its approval by the laboratory in accordance with Article (56.B) of the Unified Customs Law.

the report of the Quality Control Laboratory was received in letter no. (...) dated.../.../.... AH, which stated that samples of the imported goods were referred to the General Department of Quality Control Laboratories at the Saudi Standards, Metrology and Quality Organization, and their report was received in letter no. (...) dated.../.../..., AH, stating non-



conformity of the items "tiles, washbasin with column, and toilet seat" with the Saudi standards and metrology. The Importer's Attorney stated that the consignment was disposed of by installing it in the establishment's private building, and that it is not for the purpose of sale. The Committee, upon reviewing the report of the competent authority, found that the non-compliant samples related to the "tiles" item are non-compliant with the standard specifications due to lack of clarification of the type of use and the explanatory data is not in Arabic. The country of origin is not indicated in violation of the country of origin rules stipulated in Article (25) of the Unified Customs Law. It was found that the non-compliance related to the "washbasin with column" item is its non-compliance with the Saudi standard specifications in terms of the diameter of the drain outlet opening and the height of the fixtures equipped with an overflow opening, and that there is no specification number.

Given that the non-compliance related to the items "tiles, washbasin with column, and toilet seat" is a technical non-compliance related to the quality of the product. the delivery of the consignment to the Importer temporarily for safekeeping pending its approval by the competent authority does not constitute its release, but rather it was released in exchange for an undertaking from the Importer not to dispose of it, therefore this disposal of these items and violation of the commitment constitutes customs smuggling in accordance with Article (142) of the Unified Customs Law, which stipulated that "Smuggling is to bring or attempt to bring goods into or out of the country in contravention to the applicable laws without payment of the customs taxes duties, in whole or in part, or in contradiction to the provisions of prohibition or restriction provided for herein or in the other laws".

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. Additionally, the 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 in its report convicting the Importer/..... Establishment of customs smuggling of "tiles, washbasin with column and toilet seat" items.

And the defenses presented against the appealed primary decision, as previously stated, do not affect its conclusion; which means that the primary decision has complied with the correct application of the law. Based on the above considerations, the Appellate Customs Committee in Riyadh has concluded that the Appellant's arguments do not alter its conviction regarding the validity of the appealed primary decision. Therefore, there is no justification to amend or cancel the ruling.

Accordingly, the Appellate Customs Committee in Riyadh decided as follows:

Decision

First: Accept in form the Appeal filed by Establishment, C. R. No. (...) owned by ... holder of Civil ID No. (...), Against Decision No. 7/ 2 of 1439 AH issued by the Second Customs Committee.

Second: Reject 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.



Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (50) dated 09/08/1440 AH.

Decision of the Jeddah Appellate Customs Committee
No. (81) dated 15/07/1439 AH.



Appellate Customs Committee in Jeddah

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

Principle No. 29

- If the consignment is not cleared due to a non-substantial matter, the incident falls within customs violations and does not amount to a customs smuggling offence.

Facts:

The facts of the case are summed up as follows: A consignment of coffee flavors arrived through Jeddah Islamic Port Customs under the name of ... Establishment. The consignment was recorded under Import Declaration No. (...), dated .../.../..., AH. Its quantity reached (10) pallets with a value of SAR (127,552). The customs referred samples of the consignment to the Saudi Food and Drug Authority (SFDA) Laboratory to carry out the sample withdrawal procedure by the laboratory employee. The customs cleared the consignment under security no. (...) dated .../.../... AH which stipulated non-disposal until the laboratory results were issued. Subsequently, Laboratory Report No. (...), dated .../.../... AH, stating non-compliance due to non-fulfillment of the requirement and non-referring to the trader. The Customs then notified the Importer of the laboratory result by letter no. (...) dated .../.../... AH, requesting settlement of the registered security. However, the Importer failed to respond. Upon referral of the case to Jeddah Primary Customs Committee through letter No. (...) from His Excellency the Director General of Customs, dated .../.../... AH, AH, it delivered its decision as stated above, which ruled as follows:

First: In Form: Convict Company, owned by, in person for customs smuggling.

Second: Obligate the trader to pay a customs fine equivalent to twice the customs duties, amounting to SAR (17,380) seventeen thousand three hundred and eighty riyals.

Third: Obligate the trader to pay the equivalent of the value of the consignment in lieu of confiscation, amounting to SAR (127,552) one hundred and twenty-seven thousand five hundred and fifty-two riyals, so that the total fine imposed in paragraphs (2 and 3) amounts to SAR (144,932) one hundred forty-four thousand nine hundred and thirty-two riyals.

Upon notifying the Company Owner of the decision on .../.../..., AH. The case file was then referred to the Customs the Appellate Committee in Jeddah via letter no. (...) dated (.../.../...) from His Excellency the Director General of Customs, in which he requested that the appeal be accepted in form and dismissed on merits. After reviewing the case file, the committee decided to summon both parties to appear before it and present their defenses. During the hearing held on..., .../.../... AH, Representative of the General Authority of Customs, Consultant/..., and the Appellant's Attorney, /..., attended. The latter stated that the consignment had been destroyed by his client. He also submitted an objection memorandum that included the following defenses:

First: In Form: The laboratory report did not mention non-compliance due to non-fulfillment of the requirement and non-referring to the trader, which means that the coffee



flavors are valid for use. Therefore, the case shall be considered in accordance with Article (30/6) of the Common Customs Law, which stipulates limiting the action to taking a pledge not to repeat the violation and imposing a fine of SAR (1,000), as the violation does not amount to customs smuggling.

Second: His client did not fail to respond regarding the consignment with the customs, but he did not receive verse letters regarding the customs review.

Third: Since the presence of the goods in the warehouse would lead to a major violation due to the expiration of their validity, therefore, they were destroyed by the municipality so that their remaining would not cause harm to the Appellant.

Fourth: The criminal intent to commit customs smuggling is not available.

Fifth: There are previous judicial precedents issued by the Committee in similar cases considering the incident a violation and not a crime, and therefore we request similar treatment.

Sixth: Request application of Circular No. (...) dated .../.../... AH, which stipulates considering the incident a violation if non-compliance of the consignment with the specifications is due to simple reasons that do not affect consumer safety.

He concluded his defenses by requesting cancellation of the primary decision. When this was presented to Representative of the Customs Authority, he replied that what the appellant mentioned was refuted by the fact that the competent authority, "the laboratory," stated that the consignment was non-compliant due to the trader's failure to review it, which is considered a shortcoming on their part, and it does not support their argument that it is fit for human consumption. After reviewing the case file, the Committee decided to contact Jeddah Islamic Port Customs by letter no. (...), dated .../.../... AH, to find out the reasons for the non-compliance of the sample and the extent of the consignment's suitability for human consumption. Letter no. (...) of the Director General of the Legal Department of the General Customs Authority was received, dated .../.../... AH, accompanied by a letter from SFDA, no. (...) dated .../.../... AH. which includes that the samples were fit for human consumption when they arrived but they did not comply with the instructions and specifications due to lack of specifying the flavors, lack of specifying the source of lecithin, and the source of the flavors. The trader did not review to fulfill these requirements; hence, the report was issued not to clear them.

The Committee decided to adjourn the case for deliberation and delivery of its decision.

Grounds

In form:

Since the appeal was submitted within the regular period, it is admissible in form.

On merits:

The trader's appeal focused on the request to consider the matter a mere minor violation, and that the violation does not amount to customs smuggling. The result received from SFDA included that the samples were fit for human consumption, but did not comply with the specifications due to lack of flavor identification.

It was found that Jeddah Port Customs contacted the trader (..... Establishment) under no. (...) on .../.../... AH, requesting the return of the consignment to the customs yards, but it was found that the trader disposed of the consignment. Trader's statement about this was due to the inability to keep the consignment in their warehouse for a long time. It was found that the non-clearance does not indicate a fundamental issue in light of what is established in SFDA's statement; as the samples in the consignment are fit for human consumption, which indicates that the incident falls within the category of customs violations.



Decision

1. Accept the appeal submitted by Trader/.... against Decision No. (182) of 1436 AH, dated 26/05/1437 AH issued by Jeddah Primary Customs Committee in form and on merits.
2. Overturn the primary decision and rule not to convict Establishment, owned by, of the alleged customs smuggling.
3. Classify the case as a customs violation and obligate Trader/ to pay SAR 1000 (one thousand riyals).
4. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (155) dated 04/03/1443 AH.

Decision of the Jeddah Appellate Customs Committee No. (79) dated 10/09/1437 AH.



Principle No. 30

- As long as the commercial registration bears the name of the Establishment Owner, and all consignment documents have been processed and stamped with the Establishment's seal and authenticated by the Chamber of Commerce, the Establishment Owner is considered responsible for the disposal of the consignment.

Facts:

The facts of this case as evident from the primary decision and the appeal submitted against it, are summarized as follows: A consignment arrived for Establishment, C.R. No. (...), on .../.../... issued from the UAE through Al-Bathaa Customs, consisting of the following consignments:

1. A consignment of clothing goods consisting of (425) cartons, with a value of SAR (56733.75) riyals and customs duties of SAR (2836.68), originating from China, under import statistical declaration no. (...) on/../. The consignment was accompanied by Invoice No. (...) dated .../.../... Issued by ... and certificate of origin No.(...) dated .../.../... issued by ... A sample of (women's clothing) was referred to ... Laboratory, which issued report no. (...) on .../.../... stating that the sample result was non-compliant due to failure to pass the wash color fastness test.

Upon following up with the Importer via letter no. (...) from Director General of Customs, on .../.../... No. (...). on.../.../.... No. (...). on .../.../... to return the entire consignment to the customs yard for necessary action, they did not respond to customs.

2. A consignment of clothing goods consisting of (574) cartons, with a value of SAR (56042.10) Thereafter and customs duties of SAR (2802.10), originating from China, under import statistical declaration no. (...) on/../. The consignment was accompanied by Invoice No. (...) on .../.../... issued by were submitted. and certificate of origin No. (...), on .../.../... issued by were submitted. A sample of (women's clothing) was referred to..... Laboratory which issued report no. (...) on .../.../... stating that the sample result was non-compliant due to failure to meet the pH level.

Upon following up with the Importer via letter no. (...) from Director General of Customs, on .../.../... No. (...). dated .../.../.... No. (...). on .../.../... to return the entire consignment to the customs yard for necessary action, they did not respond.

Upon presenting the matter to the General Customs Authority, directives were issued by the Director General of Customs via letter no. (...) on .../.../... No. (...). on .../.../... Upon referring the case to the Primary Customs Committee at Al-Bathaa port for review and adjudication. At the session on .../.../... the Primary Customs Committee summoned the Establishment Owner, who attended and stated that he knew nothing about this



consignment. However, he had previously issued a POA to a person he did not know to establish a contracting company, and the POA was executed for that person. After a while, this person disappeared. He mentioned that his only knowledge came from Zakat and Income, where he was asked to pay the Zakat amount and was informed that he had three establishments. He stated that he could not pay any fines.

Accordingly, the Primary Customs Committee in Al-Bathaa issued its decision no. (267) dated 13/10/1437 AH which ruled as follows:

First: Convict the Importer/ Establishment (...) C.R. No. (...), on .../.../... in issuing authority, Owned by/ holder of Civil ID No. (...), issued from ... in presence of customs smuggling.

Second: Obligate the Importer to pay a fine equivalent to twice the customs duties due on the violating items, at (999) cartons (clothing) as detailed in the facts and reasons, amounting to SAR (11,277.56) eleven thousand two hundred seventy-seven riyals and fifty-six halalas. Due to the impossibility of confiscation, the Importer is obligated to pay the equivalent of its value as a substitute for confiscation, amounting to SAR (112,775.85) one hundred twelve thousand seven hundred seventy-five riyals and eighty-five halalas, bringing the total amount claimed from the Establishment Owner to SAR (124,053.41) one hundred twenty-four thousand fifty-three riyals and forty-one halalas.

Upon notifying the company owner of the decision on .../.../..., appealed the decision on/.../..., which included his challenge to the primary decision by requesting the referral of the case to the Appellate Customs Committee. Upon referring the case file to this Committee, along with letter no. (...) from the Customs Authority), on .../.../... which included a request to uphold the primary decision, the Appellate Customs Committee in Dammam scheduled a session for .../.../.... At which the Appellant, or someone representing him, did not attend. The Committee reviewed the case file and found that the case was ready for judgment. Since the Appellant is in the position of the Plaintiff, and he is the one who withdrew, it was decided to refer the case for study and issue the necessary decision.

Grounds

Given that the appeal was submitted within the deadline specified in Article (163/C) of the Unified Customs Law, it shall be accepted in form.

On Merits:

..... Establishment imported two consignments of (clothing) that were cleared under a security not to dispose of them until their clearance was authorized by the competent authority. The competent laboratory report stated that the two consignments were non-compliant with the standard, because they failed, respectively, the wash color fastness test and the pH level test. It is established that customs contacted the Establishment at its chosen address to return the two consignments to the customs yard, but they did not respond, the Establishment has thereby violated the security taken from it in this regard. This is not affected by what the Establishment Owner/....., claimed before the Primary Customs Committee that he knows nothing about these consignments at all, in light of his admission that he had previously made a legal power of attorney for a person he does not remember since several years ago and was given six thousand riyals for the purpose of establishing a contracting company, and after a while, that person disappeared, and he knows nothing about him. The commercial registration bears his name and all the documents of the two consignments were completed and stamped with the Establishment's seal and the Chamber of Commerce's authentication; he must bear the consequences of violating the security taken from him not to dispose of them; the benefit bears the burden. The Establishment remains responsible for its disposal of the consignment that Dammam Customs Appellate Committee did not receive approval from



the competent authority, in respect of the validity of securities. The Appellant did not present in their appeal anything that would prompt this committee to amend or overturn the primary decision. The primary decision concluded with the conviction of the establishment in accordance with Article (142) of the Common Customs Law, and obligated them to pay a customs fine equivalent to double the customs duties, with an obligation also to pay an amount equivalent to the value of the two violating consignments in lieu of confiscation in accordance with paragraphs (2-5) of Article (145) of the Common Customs Law, as such it shall be upheld by this Committee as it conforms to the correct law, with the indication that the conviction decision, if issued, must be directed to the Establishment Owner, as the establishment does not have a separate liability from its owner. Thus, having reviewed the Unified Customs Law and its Implementing Regulations and after due examination and deliberation, the Appellate Customs Committee in Dammam unanimously decided the following:

Decision

1. Accept the appeal submitted by/..... Owner of Establishment, Against Decision No. (267) dated 13/10/1437 AH issued by the Primary Customs Committee in Al-Bathaa in form and reject it on merits.
2. Uphold the second paragraph of the primary decision, as well as the first paragraph with its amendment to read as follows: “Convict holder of Civil ID No. (...), the owner of ... C.R. No. (...) on .../.../... issued in presence of customs smuggling”.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Decision of the Jeddah Appellate Customs Committee No. (50) dated 09/08/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (81) dated 15/07/1439 AH.



Principle No. 31

- There is nothing preventing the Importer from disposing of the cleared portion of the consignment, in the event that the clearance of the other part of the consignment is not approved.

Principle No. 32

- Adopting another value in lieu of confiscation for the consignment without confronting the Importer with it cannot be a valid basis for stabilizing the value.

Facts:

The Department convened to consider the Appeal filed by the Importer,Establishment, CR. No. (...), owned by..... ID No. (...), against Decision No. (39) of 1440AH, issued by the Primary Customs Committee in Al-Haditha:

1. Convict Company, CR. No. (...), owned by (...), National ID No. (...), in presence for customs smuggling.
2. Obligate the Company to pay a fine in lieu of confiscation equivalent to the value of the disposed goods, amounting to SAR 351,500 (three hundred fifty-one thousand five hundred riyals).
3. Obligate the Company to pay customs fine of SAR 1,016,500 (one million sixteen thousand five hundred riyals).
4. Confiscate 1,330 cartons of wall switches that were seized.

Upon notifying the Appellant of the primary decision on By the notice attached to the case file, he submitted his appeal registered with the Director of Al-Ahsa Province Police under no. (...), on ../../.. which means that the appeal was submitted by an eligible party within the statutory period specified under Article (163) of the Unified Customs Law, and therefore the appeal must be accepted in form.

On merits, the facts of the case are summed up as follows: a consignment (wall switches) arrived under import declaration no. (...) dated../../.., with a total quantity of 2,033 units valued at SAR 1,165,000 (one million one hundred sixty-five thousand riyals). The accompanying documents declared China as the country of origin. However, upon inspection, it was found that 1,330 cartons (valued at SAR 655,000) bore a removable sticker stating "Made in China." Upon removing the sticker, a permanent marking indicating "Made in England" was discovered. As a result, the goods were seized, and a Commercial Fraud Violation Report No. (...) on ../../.. was issued. Additionally, 703 cartons (valued at SAR 351,500) three hundred fifty-one thousand five hundred riyals were cleared under a commitment not to dispose of them until clearance approval was granted by the competent authority. A report from Saudi Specialized Laboratories Co. (conformity



No. (...)) on/.. was later issued, confirming that the goods did not comply with Saudi standards due to incorrect labeling information. Based on this, the importer was formally requested to return the consignment to customs, but no response was received from the Importer. The Primary Committee summoned the company through its registered addresses. Upon the appearance of the Legal Representative of the Company Owner (...), National ID No. (...) he stated that they had no knowledge of the consignment, as they had authorized a customs broker and had not imported any goods themselves.

The Primary Committee issued the appealed decision, convicting the concerned party of customs smuggling and imposing the fine and confiscation penalties as previously outlined. This ruling was based on the company's failure to return the consignment to the customs yard, despite its release under a commitment and subsequent determination of its non-compliance. This action was deemed customs smuggling under Articles (142 and 143) of the Unified Customs Law, and the penalties under Article (145) of the same law were applied accordingly.

The Appellant submitted its statement of appeal, as previously outlined, including objections to the primary decision. The Saudi Customs Authority referred the appeal to the Appellate Committee under Letter No. (...) dated.../.../..,

A session was scheduled for parties to the case on ...,/..., However, the Appellant or their representative failed to attend despite confirmed notification. Meanwhile, (...), National ID No. (...) attended as ZATCA's Representative under an authorization issued by the Deputy Governor for ZATCA's Legal Affairs and Compliance, Authorization No. (dated.../.../.., When questioned, ZATCA's Representative insisted on upholding the primary decision, arguing that the Company's actions were in violation of the Commercial Fraud Law.

On ...,/..., a remote session was scheduled to consider the case. Upon calling, ... holder of National ID No. (...), appeared in his capacity as the Establishment's Manager according to the AOA attached to the case file. Meanwhile, (...), National ID No. (...) attended as ZATCA's Representative under an authorization issued by the Deputy Governor for ZATCA's Legal Affairs and Compliance, Authorization No. (...), dated.../.../.., The session began by asking the Establishment's Owner about the reasons for his appeal against the decision issued against him. He stated that he would suffice with the submitted memorandum and that the consignment was still present in the warehouses.

When the Committee attempted to contact the Appellant to inquire about his relationship with the person representing the importing company, he did not respond to the Committee's calls. According to the contact report dated .../.../..., two calls were made to Phone Numbers (...) and (...), and Phone Number (...), but no response was received.

Upon reviewing the three-page memorandum submitted by the company owner, the committee found that its summary argued the primary decision incorrectly classified the case, as smuggling did not occur. The owner contended that the goods were released under a commitment, and therefore, their disposal should be considered a violation rather than smuggling. He further argued that the committee did not establish intent or prove that the company owner had any deliberate role in the smuggling act, whether as a principal offender, accomplice, or possessor of smuggled goods. Additionally, the consignment was not disposed of immediately, and it was necessary to match the declaration number with the laboratory report to determine its relevance to the commitment statement.

Accordingly, the Appellate Committee decided to proceed with the case review and scheduled a hearing for Sunday, .../.../.... This decision was made after contacting the Appellant via the mobile number listed in their appeal memorandum. The Customs Committee Regulations stipulate that notification is deemed valid if an employee of the Secretariat contacts the Appellant, as per Article 9 of these regulations. The contact report, recorded in the case file as previously mentioned, confirms this notification. The



committee resolved to rule on the case based on the sufficiency of the documents in the case file, especially after the Appellant was given the opportunity to present their defense in person but failed to do so. Furthermore, the Zakat, Tax, and Customs Authority submitted a response to the Appellant's memorandum on .../.../..., in which it requested upholding the primary decision, affirming that the offense of smuggling was proven, in line with the ruling of the primary decision.

Grounds

The facts of the case establish that the importer's conviction was based on a portion of the consignment, 1,330 cartons of wall switches, seized by customs, as evidenced by the explicit wording of the decision ordering their confiscation. The issue concerning these goods relates to fraud in the indication of origin, as they bore a removable sticker stating "Made in China," while a fixed marking indicated that the goods were manufactured in England. Since the Importer declared the origin as "China", but upon inspection, a conflicting fixed origin marking was found, this constitutes an attempt to introduce goods in a manner that misleads consumers about their true nature. As a result, the importer's actions regarding the consignment confirm the attribution of the customs smuggling offense, as ruled in the primary decision. Furthermore, the grounds of appeal submitted by the Appellant do not negate the findings of the primary decision. The Appellant's objection was solely based on his claim that he did not dispose of the goods and that the commitment agreement should be verified—an argument irrelevant to the part of the consignment still seized by customs. Therefore, the appeal concerning this portion of the goods is not based on valid grounds. Regarding the second part of the consignment, which involved non-compliance with standard specifications due to missing labeling information, the primary decision did not explicitly address this violation. The Primary Committee only convicted the importer for the part of the consignment with fraudulent origin markings, as previously discussed. Given this, it would not be appropriate to examine the details of the Appellant's appeal and customs' response in this regard, as doing so could negatively impact the Appellant. If the appeal were reviewed, it could lead to further legal consequences, whether by classifying it as customs smuggling or another customs violation. Based on this, there is no legal restriction preventing the Importer from disposing of the remaining part of the consignment, as it is not related to the conviction in the primary decision currently under review.

As the estimated value of the violating item in the portion related to the violation, because the origin indication upon which the crime of smuggling was attributed to the Appellant, amounted, according to the case documents, to a total of (1330) cartons out of (2033) cartons, with a value of SAR (51,657) riyals according to the commercial fraud seizure report attached to the case, and as shown by the invoice submitted by the Importer. Therefore, the Committee's action of adopting another value without confronting the Importer with it cannot be a valid basis for stabilizing the value beyond the amount determined by Customs.

Therefore, the only confirmed value is the one acknowledged by the importer. Consequently, this Committee has decided to amend both the fine in lieu of confiscation amount and the customs fine, as specified in the final ruling of this decision.

In light of the above grounds, the Appellate Customs Committee in Riyadh decided as follows:

Decision



First: Accept in form the Appeal filed by Establishment, C. R. No. (...) owned by ID No. (...), against Decision No. (39) of 1442 AH, issued by the Primary Customs Committee in Al-Haditha.

Second: On Merits: The primary decision is upheld regarding the conviction for customs smuggling and the confiscation fine. However, the customs fine is amended to reflect the value of the non-compliant portion of the goods, calculated based on the invoice submitted. As a result, the amount due from the Appellant is adjusted to SAR (103,304) one hundred three thousand three hundred four riyals, in accordance with the reasons and justifications outlined in this decision.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608)
dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626)
dated 05/04/1444 AH.



Principle No. 33

- A subsequent report related to the clearance of the consignment from the competent authority, submitted by the importer to prove the integrity of the consignment, cannot be taken and adopted if it does not refer to the first report, and does not discuss and clarify the reasons for issuing two reports for the same consignment.

Facts:

The Appellate Committee has convened to consider the appeal filed by Importer (...) Company, C.R. No. (.....) against Decision No. (1/3140) of 1444 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh, which ruled as follows:

1. Convict Importer (.....) Company, C.R. No. (.....), in presence of customs smuggling.
2. Impose a customs fine equivalent to the value of the disposed-of, non-authorized consignment to be cleared by the Competent Agency in the amount of (SAR 69,622) (Sixty-nine thousand, six hundred and twenty-two Saudi riyals).
3. Impose a fine in lieu of confiscation equivalent to the value of consignment in the amount of (SAR 69,622) (Sixty-nine thousand, six hundred and twenty-two Saudi riyals), whereby the total amount becomes (SAR 139,244), (one hundred and thirty-nine thousand, two hundred and forty-four Saudi riyals).

Appellant was notified of the appealed decision on .../.../... In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated.../.../..., As such, this appeal is acceptable in form being filed by a person with a legal standing and within the period prescribed by law as per Article (163) of the Common Customs Law.

The facts of the case are summed up as follows: a consignment of (bed sheet sets) was imported through Jeddah Islamic Port Customs, under customs declaration no. (...), dated.../.../..., It was cleared under a security not to dispose of them except after obtaining clearance approval from the competent authority. Upon referring a sample of them to the laboratory, the response was received under report no. (...) dated.../.../..., including non-compliance of the samples with the color fastness specification for dry cleaning.

On ../.../... attended in his capacity as Company's Manager, ID No. (...), When asked about the fate of the consignment, he stated that there was an appeal for retesting of the samples, and indeed, the test was conducted and passed, and he attached documents proving this. Upon writing to Customs, response no. (...) was received, stating that what the concerned party had stated was incorrect and there were no instructions to re-examine the samples, and that the actual result concerning the samples was issued by the competent laboratory stating non-approval for the clearance of the goods.

The Primary Department has reached the conclusion stated in the wording of its decision by convicting Importer of customs smuggling and imposing customs fine and a fine in lieu



of confiscation, as previously stated, based on the fact that the Customs Authority's statement included the invalidity of Importer's argument regarding the re-examination of the samples and that the actual result related to the samples was issued by the competent laboratory, preventing the clearance of the goods. Also, Importer's disposal of the consignment in its name violated Article (56) of Unified Customs Law of GCC States, and that the goods in the condition that existed are considered prohibited goods from entering the Kingdom, which entails customs smuggling committed by Importer in accordance with the provisions of Article (142) of Unified Customs Law of GCC States, considering that Importer has violated the undertaking of non-disposal of the consignment except after approval by the Competent Agency; therefore, Importer's violation of the undertaking by disposing of the goods that were not finally cleared constitutes committing customs smuggling and imposing a fine in lieu of confiscation and a customs fine set forth in the Law, as stated in the appealed decision.

On .../.../... the Appellant submitted an appeal memorandum, which was registered with ZATCA under registration number (...), and the General Customs Authority submitted the appeal to the Appellant Committee in letter no. (...), dated.../.../..., that included the following points:

Appellant maintains its statement that the customs examination is sound and valid and it has no doubt thereto; however, Appellant was entitled to re-examine the samples, as they were in conformity under Report No. Accordingly, Appellant contacted the Customs Authority to approve the clearance of goods, yet the only response that Appellant received was the Primary Department's decision since the samples showed their conformity, as Appellant should have received the Customs Authority's response to determine whether the consignment was approved for clearance; however, Appellant's late response was due to its inability to determine the status of the consignment in question, whether it was approved for clearance, as the unclear procedures hindered the response to Appellant.

After the Appellate Customs Committee studied the decision and the appeal filed by the Appellant Company, set ...,/.../..., to consider the appeal submitted by the Company against primary decision no.(3140/1) for 1442 AH, issued against it by the First Riyadh Primary Customs Committee. Upon calling parties to the case, ... National ID no. (...) attended via video call, In his capacity as the Company's Legal Representative as per the Company's AOA. Meanwhile, holder of National ID No. (...), was present in her capacity as ZATCA's Representative by Authorization Letter No. (.....), dated.../.../..., Issued by ZATCA's Deputy Governor for Legal Affairs and Compliance. After verifying proper attendance of the parties to the case and confirming the capacity of each, the Committee decided to proceed with the case. When asked about the appeal, the Company's Legal Representative answered: "My client imported bed sheet sets, and upon referring them to the laboratory, report no. (...) stating non-compliance of the samples with the color fastness specification for dry cleaning. My client then requested a re-examination, and the laboratory issued report no. (...), stating the integrity of the consignment and its compliance with the specifications. Based on this, my client requests overturning of the primary decision". When this was presented to the ZATCA's Representative, she responded: "I request a time extension to verify the validity of what the appealing company is raising and to contact the relevant customs to inquire about the issuance of two conflicting reports".

On..../.../... Response of ZATCA's Legal Department was received via email, which included, dated .../.../..., the following summary:

We inform you that the test mentioned by the Company's Legal Representative, stating that report no. (...) included compliance of the consignment with the specifications, we inform you that the test mentioned by the Company's Representative is not approved, and was conducted at a later date. The approved test, which was issued by the laboratory on



behalf of Customs, is number (...), which showed that the consignment was non-compliant due to the color fastness for dry cleaning; therefore, it cannot be cleared.

The Appellate Committee, having taken cognizance of documents included in Case file, requests, defenses, pleas, and memorandums raised by parties thereto; and having briefed with the Case facts and satisfied with the submitted documents to establish its satisfaction and deliver its adjudication thereto, concluded that the Case has become ripe for adjudication on its merits.

Grounds



It is established that a consignment of (bed sheet sets) was imported through Jeddah Islamic Port Customs, under customs declaration no. (...), dated.../.../.., It was cleared under a security not to dispose of them except after obtaining clearance approval from the competent authority. Upon referring a sample of them to the laboratory, the response was received under report no. (...) dated.../.../.., including non-compliance of the samples due to color fastness for dry cleaning. As the importing company did not comply with the undertaking not to dispose of the consignment and disposed of it under the pretext that another report number ... was issued, including the consignment passing the specifications, the subsequent report submitted by the importing company cannot be taken or relied upon to prove the integrity of the consignment. This is because this report was issued after report no. ..., and it did not refer to the first report, nor did it discuss and clarify the issuance of two reports. Therefore, the Appellate Committee concludes that the Company's disposal of the consignment without regard to the result of the first report and without referring to customs constitutes customs smuggling, and it is not permissible to deny the attribution of the customs smuggling crime to it. Consequently, it concludes by confirming the primary decision in its entirety, including the conviction of customs smuggling and the imposed fine in lieu of confiscation. However, the Committee noted that the primary decision was based on considering the consignment in question as prohibited goods by applying the penalty for the customs fine under Article (145.4), while the item in question is not originally prohibited goods, but the prohibition was due to its non-compliance with specifications. Therefore, this Committee decides to amend the amount of the customs fine to be equivalent to twice the customs duties, so that the amount claimed from the Importer becomes as stated in the operative part of this decision.

In light of the above grounds, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

First: Accept Importer's (... Company, C.R. No.) appeal filed against Decision No. (1/3140) of 1442 AH, in form.

Second: Dismiss Importer's appeal, uphold the Primary Department's decision as to the conclusion it had regarding the conviction of Importer for customs smuggling and the imposition of a fine in of confiscation, and amend value of the customs fine to become twice the customs duties, whereby the total amount becomes SAR 90,508 (Ninety thousand, five hundred and eight riyals), based on the grounds stated herein.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608) dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626) dated 05/04/1444 AH.



Principle No. 34

- Non-compliance of the consignment with the requirements of the Medical Devices and Products Control Regulations, such as failure to complete the corrective action plan for the consignment, even if minor, constitutes a material observation. Therefore, the importer's disposal of the consignment is considered a violation of the undertaking taken against him.

Facts:

The Committee convened to consider the Appeal filed by..... C.R. No., owned by Mr., National ID No. against Decision No. (1082/1) of 1444 AH delivered by the First Department for Resolution of Customs Violations and Disputes in Riyadh, which ruled to:

1. Convict Establishment, C.R. No. (...), owned by....., Hussein, National ID No. (...), from customs smuggling.
2. Obligate the Establishment to pay a customs fine equivalent to the value of the disposed-of, non-authorized violating items to be cleared by the Competent Agency in the amount of SAR 230,499 (two hundred thirty thousand four hundred ninety-nine riyals).
3. Obligate the Establishment to pay a fine in lieu of confiscation equivalent to the value of the disposed-of violating items in the amount of SAR 230,499 (two hundred thirty thousand four hundred ninety-nine riyals), whereby the total amount becomes SAR 460,998 (four hundred sixty thousand nine hundred ninety-eight riyals).

Appellant was notified of the appealed decision on .../.../... In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated.../.../..., this requires that the appeal is accepted in form, as it was submitted by a party having capacity and within the statutory period in accordance with Article (163) of the Unified Customs Law. The facts of the case are summed up as follows: A consignment (medical bags) belonging to the Importer arrived through Riyadh Dry Port Customs under import declaration No. (...) dated.../.../..., with a declared value of SAR (230.499). The consignment was cleared with a commitment not to dispose of it until it was approved by the competent entity. After examining the sample by SFDA, their response was received in report no. (...) on ../../. which included non-compliance of the samples with the requirements of the Medical Devices and Products Control Regulations; as the Importer did not complete the corrective action plan for the consignment.

On/..../. Owner of the Establishment, ... National ID No. (...), appeared in his capacity as the Owner of the Establishment. Having asked the owner regarding the goods, he stated that they were destroyed by the Establishment, by throwing the same in municipal barrels and that the imported goods were small first aid kits for vehicles. Having asked



Importer whether disposing of the consignment constitutes a breach of the written undertaking upon clearing the consignment, which resulted in the application of the Unified Customs Law of GCC States, he stated that he was not aware of the undertaking, that the destruction of the consignment was in good faith, that the notifications from the Customs Authority were not received, and that the customs broker did not notify the Establishment of SFDA's results.

The primary committee reached the conclusion included in the operative part of the decision, convicting the Importer of customs smuggling and imposing a customs fine in addition to payment in lieu of confiscation as previously stated, based on grounds that the Importer's disposal of the consignment violated Article (56) of the law, and that the goods in the condition they were in are considered among the goods prohibited from entering the Kingdom, and therefore this is considered customs smuggling as per Article (142) of the Unified Customs Law, given that the Importer violated the undertaking of no disposal except after the consignment is approved by the competent authority. Accordingly, this action may inflict harm on the consumers' safety, and their money as they purchase goods that do not conform to specifications. The Importer's disposal of the consignment, which violated technical requirements due to his failure to complete the corrective action plan for its release, involves actions that affect consumer safety, as long as the consignment was not finally cleared. Thus, the violation of the no-disposal undertaking by the Importer for the goods that were not finally cleared is considered customs smuggling, and consequently he shall be subject to customs fine and payment in lieu of confiscation as prescribed by the law, as stated in the appealed decision.

On .../.../... The Appellant presented an appeal request registered with ZATCA under No. (...). The Saudi Customs Authority then forwarded the appeal to the Appellate Committee via letter No. (...) dated.../.../..,

The Appellate Customs Committee in Riyadh, upon reviewing the decision as well as the appeal filed by the Appellant, Est., scheduled a hearing on, ../.../..., to consider the appeal. At that session, ZATCA representative, Legal Researcher (...), holder of National ID No. (...), appeared under Authorization Letter No. (...) dated .../.../... Issued by ZATCA's Deputy Governor for Legal Affairs. Also present was, holder of National ID No. (...), in his capacity as the establishment's Attorney under PoA No. (...) dated ../.../... Having asked the representative regarding the reasons for his objection to the appealed decision, he stated that he requests an extension to submit a memorandum of appeal. Accordingly, the Department decided to grant the Appellant's representative a one-week period from the date of this session to submit a statement of objection against the appealed decision. Subsequently, ZATCA's representative was given one week from the date of receipt of the statement of objection to respond.

The Appellant submitted a three-page statement of appeal, requesting the reversal of the primary decision and its ruling convicting the Appellant, as well as the classification of the violation related to the consignment as 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. The Customs Authority's response to the statement of appeal, which was received by the Appellate Committee on (.../.../...), 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.

Grounds

The Appellate Committee determined that the case is now ready for adjudication, given the sufficiency of the submissions presented before it and the documents contained in the case file. Whereas it has been established that the Importer disposed of the consignment in violation of the 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 with the requirements of the Medical Devices and Products Control Regulation, 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 Medical Devices and Products Control Regulation. 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 classified the consignment as prohibited materials, this contradicts the nature of the consignment, as the violation was related to specifications and restrictions that have no bearing on categorizing the consignment as prohibited materials originally barred from entering the country. Whereas the matter is as stated, this Committee has concluded that the customs fine imposed should be adjusted to amount to 10% of the value of the consignment, considering it as duty-exempt goods, in accordance with Paragraph (3) of Article (145) of the Unified Customs Law, contrary to the ruling of the primary decision. Furthermore, the defenses raised by the Appellant do not affect the outcome of the decision regarding the conviction of the Importer of customs smuggling and the penalty of confiscation in lieu thereof. Accordingly, the primary decision shall be upheld, and the importing establishment's appeal shall be dismissed, with the adjustment of the customs fine amount, resulting in the total amounts claimed from the Appellant as outlined in the operative part hereof.

Therefore, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

First: Accept in form the appeal filed by ... Est., CR No. (...), owned by, holder of National ID No. (...) against Primary Decision No. (...) of issued by the First Primary Customs Committee in Riyadh.

Second: On merits, dismiss the appeal and uphold the primary decision in its ruling convicting the Appellant of customs smuggling and imposing the fine in lieu of confiscation, with the adjustment of the customs fine to amount to 10% of the value of the exempted consignment. Consequently, the total amount claimed from the importing establishment is SAR 253,548 (two hundred fifty-three thousand five hundred forty-eight riyals), for the reasons and considerations outlined herein.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608) dated 12/04/1444 AH.
Riyadh Appellate Customs Committee Decision No. (626) dated 05/04/1444 AH.



Appellate Customs Committee in Riyadh

Decision No. (589)

Date of Decision: 01/04/1444
AH

Principle No. 35

- The non-compliance of the power capacity specifications with the required standards constitutes a critical product defect that directly impacts consumer safety.

Principle No. 36

- The Importer's failure to return the consignment is indicative of his disposal thereof, thereby fulfilling one of the forms of customs smuggling.

Facts:

Consider the appeal filed by the Importer/, CR No. (...), owned by, holder of National ID No. (...), against Primary Decision No. (2/1318) of 1441 AH issued by Riyadh Second Primary Customs Committee, which ruled as follows:

1. ConvictEstablishment, CR No. (...), owned by (...), National ID No. (...), in person of custom smuggling.
2. Order the establishment to pay a customs fine equivalent to the value of the disposed consignment that was not authorized for clearance by the competent authority, amounting to SAR 5,460 (five thousand four hundred sixty riyals).
3. Order the establishment to pay a fine in lieu of confiscation equivalent to the disposed consignment value, amounting to SAR 5,460 (five thousand four hundred sixty riyals). Thus, the total amount claimed from the Importer is SAR 10,920 (ten thousand nine hundred twenty riyals).

Appellant was notified of the appealed decision on .../.../... Since the Appellant submitted their memorandum of appeal on/.../.... under an official letter issued by the Director of Khafji Customs addressed to the Chairman of the Second Primary Committee in Riyadh, this entails the formal acceptance of the appeal, as it was submitted by an authorized party within the statutory period, in accordance with Article (163) of the Unified Customs Law. On merits, a consignment of (fans) belonging to the aforementioned Importer arrived through Al-Bathaa Customs under Import Declaration No. (...) dated.../.../..., with a total value of SAR 5,460. The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) on/.../.. was issued, indicating that the samples did not conform to specifications regarding labeling, instructions, power, and current, as detailed in the case documents and the primary decision, which is referenced here to avoid repetition. Afterward, the Importer was notified of the results, but no response was received.

On.../.../... Upon summoning the concerned party to appear before the Primary Committee based on the statement submitted by ZATCA in the case filed, the owner of Est., holder of National ID No. (...), appeared. When questioned about the fate of the consignment,



he submitted a letter stating, "I have transferred the commercial registration to the clearance office... and verbally agreed with them to notify me of all consignments issued under my name and to ensure they are in good condition. Additionally, I required the merchant to sign an acknowledgment confirming that the goods belonged to them and that, under this acknowledgment, they would bear full responsibility for all customs-related consequences and requirements. I also stipulated that each consignment must have a separate acknowledgment, pertaining to the current one. The commercial registration was issued for this purpose on .../.../.... However, after I handed over the same to them, all communication was cut off, and I was neither informed nor contacted regarding any of the consignments. Consequently, the commercial registration was immediately revoked on .../.../..., as its duration did not exceed five months. I remained completely unaware of what had transpired until my services were suspended, and I received a call from the Customs Authority informing me of the case. At that time, I had no knowledge that the goods could potentially be returned, that they should not be disposed of, or that sample analyses, laboratory testing, and similar procedures were required. Due to my lack of experience in import and export matters and the associated procedural requirements, I was unaware of these regulations. Living on a modest salary and struggling to make ends meet, I saw leasing the commercial registration as a potential opportunity. However, it ultimately brought me no benefit—only harm—given my lack of familiarity with customs clearance regulations and my complete lack of prior experience in the field."

The Primary Committee concluded with the decision to convict the Importer of customs smuggling, impose a custom fine, and require payment of fine in lieu of confiscation as previously stated. This decision was based on the fact that the Importer's handling of the consignment violated Article (56) of the law and that the goods, in their condition, were considered prohibited from entering the Kingdom, constituting customs smuggling by the Importer under Article (142) of the Unified Customs Law, given that the Importer breached the non-disposal undertaking until approved by the competent authority. Such action jeopardized consumer safety and financial well-being due to purchasing non-compliant goods. Therefore, the Importer's breach of the restriction and handling of goods not yet fully cleared constitutes customs smuggling, warranting the penalties prescribed in Paragraphs (4) and (5) of Article (145) of the Unified Customs Law, including the imposition of customs fines and a fine in lieu of confiscation.

The Appellant presented his statement as outlined above, objecting to the primary decision. In summary, he asserted that he had no connection to the goods and that he was merely receiving a fee for having the goods imported under his name. He further stated that he believed the messages received on his mobile phone were intended for the customs broker, who was responsible for handling the matter with the Customs Authority. Additionally, he pleaded for leniency due to his difficult financial circumstances.

The Appellate Customs Committee in Riyadh, upon reviewing Decision No. (2/1318) of 1441 AH along with the appeal filed by the Appellant, Est., scheduled a hearing on Sunday,/... Upon calling the parties to the case, no representative from ZATCA attended, nor did any representative of the establishment appear, despite confirmation of their notification of the scheduled date.

Accordingly, the committee decided to rely on the submissions contained in the case file and proceeded with deliberations among its members to issue a decision on the appeal, after granting the Appellant the opportunity to present his defense, which he failed to do.

Grounds



The committee, upon hearing the statements of the parties involved and reviewing the documents in the case file, along with the memoranda prepared regarding the appeal against the contested decision, concluded that the case is now ready for adjudication in its



current state. The committee has fully acquainted itself with the facts of the case, and the evidence and submissions presented are sufficient to form its conviction and render a decision.

On merits, a consignment of (fans) belonging to the aforementioned Importer arrived through Al-Bathaa Customs under Import Declaration No. (...) dated.../.../.., with a total value of SAR 5,460. The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) on/../. indicating that the samples did not conform to specifications regarding labeling, instructions, power, and current.

Since the Importer did not prevent the release of the consignment as per the undertaking he had signed, and given that the laboratory results did not merely indicate procedural violations but confirmed, based on the sample, non-compliance with the required specifications for power and current, which are critical product specifications directly impacting consumer safety, the Importer's failure to return the consignment serves as evidence of his disposal thereof, which constitutes a violation falling under one of the forms of customs smuggling as stipulated in Article (142) of the Unified Customs Law, thereby leading to his conviction for customs smuggling.

The Appellant's claim that he had no knowledge of the goods and was merely receiving a fee for importation thereof under his name does not negate his responsibility for those goods, as the importation documents were issued in his name. Consequently, the Appellate Committee determined that the objections raised against the appealed primary decision, as outlined earlier, do not affect its validity, confirming that the primary decision correctly established the facts in accordance with the proper application of the law. Based on all the foregoing, the Appellate Customs Committee concluded that the arguments presented by the Appellant Company do not alter its conviction regarding the correctness of the appealed primary decision, and thus, there is no justification for amendment or annulment thereof.

As such, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

First: Accept in form the appeal filed by the Importer, ... Est., CR No. (...), owned by....., holder of National ID No. (...), against Primary Decision No. (2/1318) of 1441 AH issued by Riyadh Second Primary Customs Committee.

Second: On merits, dismiss the appeal and uphold the primary decision in its entirety, for the reasons and grounds outlined herein.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608) dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626) dated 05/04/1444 AH.



Principle No. 37

- The Importer's assertion of non-disposal and intended return of the consignment is rendered ineffectual by his failure to respond within the previously granted grace period.

Facts:

Consider the Appeal filed by the Importer, Est., CR No. (...), owned by, holder of National ID No. (...), against Primary Decision No. (1946/1) of 1441 AH issued by Riyadh First Primary Customs Committee, which ruled as follows:

1. Convict, holder of National ID No. (...), the owner of Est., CR No. (...), in person of customs smuggling.
2. Order the establishment to pay a customs fine equivalent to the non-compliant item, amounting to SAR 8,090 (eight thousand ninety riyals).
3. Order the company to pay a fine in lieu of confiscation equivalent to the value of the disposed non-compliant item that was not authorized for clearance by the competent authority, amounting to SAR 8,090 (eight thousand ninety), bringing the total amount claimed from the company to SAR 16,180 (sixteen thousand one hundred eighty riyals).

As the Appellant was notified of the appealed decision on / .., and since his statement of appeal was filed with ZATCA under No. ... dated 04/04/1442 AH, this necessitates the formal acceptance of the appeal, as it was submitted by an authorized party within the statutory period, in accordance with Article (163) of the Unified Customs Law.

Facts of the case are summarized that a consignment of (fans) belonging to the Importer arrived through Riyadh Dry Port Customs under Import Declaration No. (...) dated.../.../..., with a total value of SAR 8,090 (eight thousand ninety riyals). The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) on/.. was issued, indicating that the samples did not conform to specifications regarding labeling, instructions, and power capacity, as detailed in the case documents and the primary decision, which is referenced here to avoid repetition. Afterward, the Customs Authority notified the Importer of the results, but no response was received.

On..../... Following the summoning of the concerned party to appear before the Primary Committee based on the statement of claim submitted by ZATCA, the legal representative/..... Est., Civil Registry No., under PoA No. (...) dated.../.../..., attended and stated that the non-compliant and unapproved item was present in the establishment's warehouse. When questioned about the establishment's commitment to the Customs Authority to return the non-compliant and unapproved item to the customs yard in accordance with the undertaking given during clearance, he indicated his willingness to return thereof to the customs yard after confirming its presence in the establishment's



warehouse and promised to inform the Committee in writing within two weeks. However, he failed to fulfill his commitment before the Committee regarding the fate of the unapproved item.

The Primary Committee concluded with the decision to convict the Importer of customs smuggling, impose a customs fine, and require payment of fine in lieu of confiscation as previously stated. This decision was based on the fact that the Importer's handling of the consignment violated Article (56) of the law and that the goods, in their condition, were considered prohibited from entering the Kingdom, constituting customs smuggling by the Importer under Article (142) of the Unified Customs Law, given that the Importer breached the non-disposal undertaking until approved by the competent authority. Such action jeopardized consumer safety and financial well-being due to purchasing non-compliant goods. Therefore, the Importer's breach of the restriction and handling of goods not yet fully cleared constitutes customs smuggling, warranting the penalties prescribed in Paragraphs (4) and (5) of Article (145) of the Unified Customs Law, including the imposition of customs fines and a fine in lieu of confiscation.

On .../.../... The Appellant presented a statement of appeal registered with ZATCA under No. ... The General Authority of Customs submitted the appeal to the Appellate Committee under letter number ... dated.../.../..,

The Appellate Customs Committee, upon reviewing the decision and the appeal submitted by the Appellant/... Est., set ..., ../../..., to consider the appeal. However, neither ZATCA's representative nor the Appellant or their representative attended the session. Whereas the Appellant's representative had previously submitted an appeal request on ../.../..., in which he merely stated his objection to Decision No. (...) dated.../.../.., and the financial penalty imposed therein.

The Appellate Committee determined that the case was ready for adjudication in its current state, having been fully briefed on its facts and satisfied with the sufficiency of the case file to form its judgment and issue a ruling. This decision was made after the Appellant had been given the opportunity to present their defense before the committee but failed to do so.

On ..., on ../../.. ../../..., The Appellate Customs Committee in Riyadh held its first session in Riyadh to review the appeal filed by Est., C. R. No. (...) against Decision No. (1946/1) of 1443 AH delivered by the First Primary Customs Committee in Riyadh. Having called parties to the case, neither the Appellant nor their representative attended. However,, Civil Registry No. (...), attended in her capacity as ZATCA's representative by virtue of Authorization No (...) dated ../..... issued by ZATCA's Vice Governor for Legal & Enforcement. During the session, the Department noted that it was the second scheduled session for the Appellant, who failed to appear despite being duly notified thereof. When asked for her position regarding the appeal, the Defendant's representative responded: The Appellant failed to submit a memorandum outlining the grounds for objection and requested the confirmation of the primary decision.

Grounds

Whereas it has been established that a consignment of (fans) belonging to the aforementioned Importer arrived through Riyadh Dry Port Customs under Import Declaration No. (...) dated.../.../.., with a declared value of SAR 8,090 (eight thousand and ninety riyals). The consignment was cleared under a non-disposal undertaking pending approval for release by the competent authority. Upon inspection of the sample by the laboratory, Report No. (...) dated.../.../.., was issued, indicating non-compliance of the samples with the specifications in terms of labeling, instructions, and power capacity. Afterward, the Importer was notified of the results under several letters, but no response was received.



Whereas the core of the dispute in this case revolves around whether the responsibility for the offense of customs smuggling is established by the Appellant's handling of the consignment cleared under a non-disposal undertaking, which was found to be in violation according to the laboratory report. The violations related to labeling, instructions, and power capacity constitute a fundamental violation warranting a conviction for customs smuggling. Consequently, the Importer's breach—disposing of the consignment despite the recorded violations and the non-disposal undertaking until approval was obtained—justifies liability. The Appellant's argument that the establishment intended to return the consignment after verifying its presence in the warehouse is unavailing, especially given that an extension was granted but no response was received. Accordingly, the committee upholds the primary decision regarding the conviction and the fine in lieu of confiscation, while adjusting the customs fine to be twice the customs duties for the non-compliant consignment.

In light of the foregoing, the Appellate Customs Committee in Riyadh concluded the following:

Decision

First: In Form: Accept in form the Appeal filed by Est., CR No. (...), owned by, holder of National ID No. (...), against Primary Decision No. (602/1) of 1440 AH issued by Riyadh First Primary Customs Committee.

Second: Dismiss the appeal on merits and uphold the primary decision in its ruling convicting the Appellant of customs smuggling and imposing the fine in lieu of confiscation, with the adjustment of the customs fine to be twice the applicable customs duties. Consequently, the total amount claimed from the establishment is SAR 8,899 (eight thousand eight hundred ninety-nine riyals), for the reasons and considerations outlined herein.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (608) dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626) dated 05/04/1444 AH.



Appellate Customs Committee in Riyadh

Decision No. (616)

Date of Decision: 05/04/1444
AH

Principle No. 38

- "The Importer's claim of lacking criminal intent for smuggling is untenable, given their awareness that the consignment was subject to a non-disposal undertaking prior to its clearance.

Principle No. 39

- The Importer's plea of prolonged inspection duration is inconsequential, as he is expected to proactively engage with the Customs Authority to ascertain the examination results. Failure to do so renders him liable for any actions contrary to his undertaking.

Facts:

Consider the Appeal filed by the Importer, Est., CR No. (...), owned by (...), National ID No. (...), against Primary Decision No. (442) of 1441 AH issued by Ar Ruqi Primary Customs Committee, which ruled as follows:

1. Convict Pursuant to C.R. No. (...), from customs smuggling.
2. Order the establishment to pay a customs fine of SAR 126,000 (one hundred twenty-six thousand riyals), equivalent to the goods value.
3. Order the establishment to pay an amount of SAR 126,000 (one hundred twenty-six thousand riyals), equivalent to the consignment value. Thus, the total fine value is SAR 252,000 (two hundred fifty-two thousand riyals).

Appellant was notified of the appealed decision on .../.../... In addition, Appellant's statement of appeal was registered with ZATCA under No. (...) dated.../.../..., As such, this appeal is acceptable in form being filed by a person with a legal standing and within the period prescribed by law as per Article (163) of the Common Customs Law.

Facts of the case are summarized that a consignment of (pajamas) belonging to the Importer arrived through Ar Ruqi Customs under Import Declaration No. (...) dated.../.../..., with a total value of SAR 126,000 (one hundred twenty-six thousand riyals). The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Reports No. (...) and No. (...) on/.../.. were issued, confirming that the samples did not comply with specifications in terms of colorfastness to washing, visual inspection, and raw materials composition. The concerned party was notified under multiple letters, but failed to respond. Consequently, the case was referred to the Primary Customs Committee in Ar Ruqi, which issued Decision No. (...) of 1440 AH, ruling as follows:

- Convict the owner of Establishment from customs smuggling. Order the owner to pay a customs fine of SAR 126,000 (one hundred twenty-six thousand riyals).



- Order the establishment to pay an amount of SAR 126,000 (one hundred twenty-six thousand riyals), equivalent to the goods value.

The Defendant, upon being notified of the decision on .././....., presented a statement of appeal. After the case was referred to the Appellate Committee in Dammam, the committee issued Decision No. (...) dated.../.../.., ruling as follows:

1. accept Appeal in form.
2. Annul the aforementioned primary decision and refer the case back to the Primary Customs Committee, the issuing authority, for reconsideration in light of the grounds set forth herein.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

The decision was approved by the Minister of Finance's Letter No. (...) dated.../.../.., thereby rendering the decision final and enforceable.

Whereas the case was remanded to the Primary Committee, the issuing authority of the decision, due to the Importer's failure to be properly represented before the judicial authority. The committee postponed the session, citing an incomplete power of attorney. However, the session minutes lacked any record of the power of attorney's reference number. The Primary Committee summoned the concerned party to appear before it in Ar-Ruqi. In response, the representative/..... attended the session under under POA No. (...), issued by Hafar Al Batin Notary Office on ../.../.... He stated that his client had disposed of the consignment and argued that the violation was merely procedural, posing no risk to consumer health or safety. He requested clemency for his client.

The Primary Committee concluded the same as the appealed decision to convict the Importer of customs smuggling, impose a customs fine, and require payment of fine in lieu of confiscation as previously stated. This decision was based on the fact that the Importer's handling of the consignment violated Article (56) of the law and that the goods, in their condition, were considered prohibited from entering the Kingdom, constituting customs smuggling by the Importer under Article (142) of the Unified Customs Law, given that the Importer breached the non-disposal undertaking until approved by the competent authority, following her failure to meet specifications. Furthermore, the Primary Committee reaffirmed the penalties imposed on the Importer, as outlined in the previous primary decision.

The Appellate Committee scheduled a session for, on ../.../.. to review the appeal, where the representative of the establishment's owner attended under POA No. (...), on ../.../.. along with the representative of ZATCA. When asked by the Appellate Committee about the reasons for objecting to the primary decision, the establishment's owner's representative stated that the consignment consisted of clothing and pajamas, asserting that the they were in good condition, and that the relevant observations were merely procedural, posing no risk to consumer safety. When questioned about the status of the consignment, the representative stated that the entire consignment had been disposed of and requested the annulment of the primary decision, relying solely on the memorandum of appeal previously submitted. In contrast, ZATCA's representative requested the confirmation of the primary decision in its entirety.

Grounds



Upon reviewing the memorandum of appeal submitted to challenge the decision, the Appellate Committee noted that its summary is based on the fact that the Customs Authority failed to notify the establishment of the outcome until after the lapse of three months, and that the consignment violation is procedural in nature. Additionally, there was no criminal intent on the part of the Importer and the violation is merely procedural,



making it impossible to establish the existence of customs smuggling at the time of its commission.

The committee, upon reviewing the case file, including the submitted documents, the Appellant's request, the memorandum of appeal, and the statements made by the legal representative of the importing establishment, determined that the case was ready for adjudication in its current state. Furthermore, there is no fault on the part of the appellate body adopting the conclusions of the primary decision, as it correctly applied the relevant law, given that the defenses raised by the importing establishment do not affect the outcome of the decision regarding the conviction for customs smuggling and the fine in lieu of confiscation. The Appellant's claim that the observations were merely formal does not undermine this conclusion, as the Importer is not entitled to unilaterally approve the consignment. Instead, the Importer should have waited for the laboratory results from the Customs Authority. Proceeding otherwise constitutes a breach of the undertaking and a disregard for its substance, especially since the consignment had multiple observations related to the lack of a clear statement of raw materials composition, visual inspection, and colorfastness to washing. As for the claim that there was no criminal intent regarding smuggling, this argument is not valid given that the importer was aware that the consignment was subject to a non-disposal undertaking pending approval. By knowingly violating this restriction, the Importer cannot claim a lack of intent. Furthermore, the excuse of a prolonged inspection period does not alter this conclusion, as it was the Importer's responsibility to follow up with the Customs Authority to determine the outcome. Failure to do so makes the Importer accountable for acting contrary to the undertaking provided.

However, the Appellate Committee did not observe any grounds for imposing the customs fine as decided by the Primary Committee, which had based its decision on the premise that the consignment constituted prohibited goods. In reality, the consignment was non-compliant with specifications rather than inherently prohibited, as evidenced by the Customs Authority's communication with the Importer requesting re-exportation. Given this distinction, the Appellate Committee concluded that the customs fine should be applied at twice the amount of the customs duties, as stipulated in Paragraph (2) of Article (145) of the Unified Customs Law, contrary to the primary decision, which applied Paragraph (4) of Article (145) of the same law when imposing the customs fine on the importing establishment. Accordingly, the Appellate Committee concluded to uphold the primary decision in its ruling convicting the Importer of customs smuggling and imposing the fine in lieu of confiscation, with the adjustment of the customs fine as outlined in the operative part of the decision.

In light of the above grounds, the Appellate Customs Committee in Riyadh unanimously decided as follows:

Decision

First: Accept in form the appeal filed by, CR No....., owned by, holder of National ID No. (...), against Primary Decision No. (440) of 1440 AH issued by Ar Ruqi Primary Customs Committee.

Second: On merits, dismiss the appeal and uphold the primary decision in its ruling convicting the Appellant of customs smuggling and imposing the fine in lieu of confiscation, with the adjustment of the customs fine to be twice the applicable customs duties. Consequently, the total amount claimed from the Importer is SAR 138,600 (one hundred thirty-eight thousand six hundred riyals), for the reasons and considerations outlined herein.



Similar decisions

Riyadh Appellate Customs Committee Decision No. (608)
dated 12/04/1444 AH.

Riyadh Appellate Customs Committee Decision No. (626)
dated 05/04/1444 AH.



Principle No. 40

- By destroying the pledged goods under customs supervision, the merchant has effectively honored their non-disposal undertaking, rendering their conviction unsustainable.

Facts:

Facts of the case can be summarized that a consignment of ready-made garments arrived through King Abdulaziz International Airport in Jeddah under the name of ... Establishment, as per Import Declaration No. (...) dated 30/10/1432 AH. The consignment comprised 23 packages with a total value of SAR (98,410).. Thereafter, the Customs Authority referred samples from the consignment to the laboratory of ... Company for testing, in accordance with the standard sampling procedure conducted by the laboratory's staff member. The consignment was cleared by the Customs Authority under Undertaking No. (...) dated.../.../.., which stated that the consignment was non-compliant due to a violation of the raw material composition. Subsequently, the Customs Authority notified the Importer of the laboratory results via letter No. (...) dated.../.../.., requesting the settlement of the undertaking registered under his name. However, the Importer failed to respond. By referring the case to the Primary Customs Committee in Jeddah pursuant to the letter of HE the Director General of Customs No. dated.../.../.., the committee issued its decision as follows:

First: In Form: Convict ... Est., owned by /, from customs smuggling.

Second: Order the merchant to pay a customs fine equivalent to the consignment value, amounting to SAR 9,841 (nine thousand eight hundred forty-one riyals).

Third: Order the merchant to pay a fine in lieu of confiscation equivalent to the consignment value, amounting to SAR 98,410 (ninety-eight thousand four hundred ten riyals). Accordingly, the total fine imposed under Paragraphs (2) and (3) amounted to SAR 108,262 (one hundred eight thousand two hundred sixty-two riyals).

The establishment owner, upon being notified of the decision on 03/08/1437 AH, presented a statement of appeal registered with Jeddah Islamic Port Customs under No. (...) dated.../.../.., including his objection to the referenced decision. The case file was referred to the Appellate Customs Committee in Jeddah, under the letter of His Excellency the Director General of Customs No. (...) dated 27/9/1437 AH, requesting the appeal to be accepted in form but dismissed on merits. After reviewing the case file, the committee decided to summon both parties to appear before it and present their defenses. In the hearing session held on/ .../... the Saudi Customs Authority's representative, legal researcher/ attended, along with the concerned party in person (...). When questioned about the status of the goods cleared under the promissory undertaking, he stated that the goods were still stored in his warehouses. He further acknowledged that he had previously



informed the primary Committee that the consignment had been disposed of. He 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.

When the Saudi Customs Authority's representative was questioned regarding his response to the Appellant's statement, he requested the confirmation of the primary decision based on its reasoning, given the Appellant's admission of having disposed of the consignment. The committee, upon deliberating on the request submitted by the Appellant's representative, decided to grant the request and provide a 45-day deadline from the date of this session for the Appellant to follow up with the Customs Authority and settle the promissory undertaking issue. Upon the expiration of this period, the committee would proceed with reviewing the case and issuing its decision.

Grounds

In form:

Since the appeal was filed within the statutory period, it must be accepted in form.

On merits:

It is established that a consignment of ready-made garments was received by the mentioned establishment and was cleared under a non-disposal undertaking pending approval from the competent authority. Samples from the consignment were referred to the relevant laboratory, which reported that the sample did not comply with the standard specifications, thereby preventing its clearance. The merchant, in his personal capacity, argued that the non-compliant consignment is still in his warehouses and that he is fully prepared to present it to the Customs Authority for re-export or destruction. The records confirm that the destruction covered the entire consignment of 23 packages, as specified in Import Declaration No. (...) dated 30/10/1432 AH. Since the Customs Authority supervised the destruction process, as documented in Destruction Report No. (353/M) dated 27/12/1438 AH, and given that the merchant fulfilled his commitment to the Customs Authority, the grounds for his conviction are no longer valid. Accordingly, the primary decision must be reversed in all its provisions, and the merchant must be acquitted of the customs smuggling charge. The Appellate Customs Committee in Jeddah, upon reviewing the Unified Customs Law and its Implementing Regulations and following thorough examination and deliberation, unanimously decided as follows:

Decision

1. Accept the appeal filed by the merchant/ ..., owner of Establishment, against Jeddah Primary Customs Committee Decision No. (162) of 1437 AH dated 20/05/1437 AH in form and on merits.
2. Reverse the primary decision in its entirety and exonerate the merchant from the alleged offense.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (9) dated 09/05/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (60) dated 23/06/1439 AH.



Principle No. 41

- The finding of non-conformity in a consignment sample, as reported by the testing facility, stemming from issues amenable to Importer rectification or oversight, does not represent a substantive breach and, as such, cannot be classified as a customs smuggling offense.

Facts:

Facts of the case can be summarized that a consignment of tea was imported through Jeddah Islamic Port Customs under the name of, a branch of the export establishment, registered under Import Declaration No. (...) dated .../.../... AH, The consignment contained 2,150 cartons with a total value of SAR 253,969. Thereafter, the Customs Authority referred samples of the consignment to the laboratory of SFDA as part of the standard sampling procedure conducted by the laboratory staff member. The consignment was cleared under Undertaking No. (...) dated .../.../... AH, prohibiting disposal thereof until the laboratory results were issued. Subsequently, the laboratory issued Letter No. (...) dated 01/03/1433 AH, confirming non-compliance due to a violation of specification No. (...), specifically the failure to indicate the type of tea in Arabic. Since the merchant failed to follow up, he was notified by the Customs Authority of the laboratory results under Letter No. (...) dated 09/03/1433 AH, requesting settlement of the registered undertaking. However, he failed to respond. The Primary Customs Committee in Jeddah, upon referral of the case under the letter of His Excellency the Director General of Customs No. (...) dated 08/03/1435 AH, issued its decision, as outlined above, ruling as follows:

First: In Form: Convict the branch of Establishment from customs smuggling.
Second: Order the merchant to pay a customs fine equivalent to 10% of the consignment value, amounting to SAR 25,396.90 (twenty-five thousand three hundred ninety-six riyals and ninety halalas). Third: Order the merchant to pay a fine in lieu of confiscation equivalent to the consignment value, amounting to SAR 253,969 (two hundred fifty-three thousand nine hundred sixty-nine riyals). Accordingly, the total fine imposed under Paragraphs (2) and (3) amounted to SAR 279,365.90 (two hundred seventy-nine thousand three hundred sixty-five riyals and ninety halalas). Upon notifying the concerned party on .../.../..., presented a statement of appeal registered with Jeddah Islamic Port Customs under No. (...) dated.../.../..., including his objection to the referenced decision. The case file was referred to the Appellate Customs Committee in Jeddah by the letter of HE the Director General of Customs No. dated.../.../..., , who requested that the appeal be accepted in from and dismissed on substantive grounds. After reviewing the case file, the committee decided to summon both parties to appear before it and present their defenses. In the hearing session held on/.../..., the Customs Authority's representative was present, while the Appellant did not attend, either in person or through an authorized



representative. The committee, upon reviewing the case file, established that the concerned party had submitted a letter registered with the committee under No. (...) dated.../.../..., seeking a postponement of the session until the month of Ramadan due to his father's health condition. Accordingly, the committee decided to grant his request.

In the hearing session held on/.../..., the committee, upon reviewing the case file, established that the concerned party had submitted a letter registered with the committee under No. (...) dated.../.../..., seeking a postponement of the session due to his father's health condition. Accordingly, the committee decided to grant his request. In the hearing session held on/.../..., the Customs Authority's representative, legal researcher/, was present, along with the concerned party in person. The Appellant, upon questioned regarding status of the consignment cleared under a promissory undertaking, responded that the goods had been disposed of through sale. He added that the violation was minor as it pertained to the product name. The 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 Customs Authority 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. The committee, upon presenting the memorandum of objection to the Customs Authority's representative, requested a response to the defenses raised therein. The representative replied that the Customs Authority seeks the affirmation of the primary decision, relying on its stated reasons. The Committee decided to adjourn the case for deliberation and delivery of its decision.

Grounds

In form:

Since the appeal was filed within the statutory period, it must be accepted in form.

On merits:

Since the Appellant's objection was based on the argument that the violation was minor, as it pertained only to the product name. Since SFDA's report stated 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 given that the violation is not considered a fundamental one, it does not rise to the level of a customs smuggling offense. Since the primary decision ruled to convict the Appellant of customs smuggling, this committee has decided to reverse the decision and instead impose a fine of SAR 500 (five hundred riyals) on the Appellant for violating customs procedures, in accordance with Article (31) of the Implementing Regulations of the Unified Customs Law. The Appellate Customs Committee in Jeddah, after reviewing the Unified Customs Law and its implementing regulations, and following careful study and deliberation, unanimously decided as follows:

Decision

1. Accept the appeal submitted by the merchant/, owner of the branch of Establishment, against Jeddah Primary Customs Committee Decision No. (13) of 1437 AH dated 26/02/1437 AH in form.
2. On merits, reverse the primary decision in its entirety. consider the incident a customs violation, and order the Appellant to pay a fine of SAR 500 (five hundred riyals).

This decision shall be implemented after being approved by HE the Minister of Finance.



Similar decisions

Dammam Appellate Customs Committee Decision No. (9) dated 09/05/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (60) dated 23/06/1439 AH.



Principle No. 42

- A conviction is not established unless the quantity and value of the non-compliant item in the consignment are verified and specifically determined.

Facts:

Facts of the case can be summarized that a consignment of ready-made garments was imported through Jeddah Islamic Port Customs under the name of ... Establishment, registered on the import declaration No. dated.../.../..., The consignment comprised 391 cartons with a total value of SAR (48,603). Thereafter, the Customs Authority referred samples from the consignment to the laboratory of Company, in accordance with the standard sampling procedure conducted by the laboratory's staff member. The consignment was cleared by the Customs Authority under Undertaking No. (...) dated.../.../..., prohibiting disposal thereof until the laboratory results were issued. Subsequently, the laboratory issued Letter No. (...) dated.../.../..., indicated that the shirt model (R2022) was non-compliant due to a violation of the raw material composition. Subsequently, the Customs Authority notified the Importer of the laboratory results via letter No. (...) dated 20/4/1433AH, requesting the settlement of the undertaking registered under his name. However, the Importer failed to respond. By referring the case to the Primary Customs Committee in Jeddah pursuant to the letter of HE the Director General of Customs No. dated 16/07/1434 AH, issued its decision, as outlined above, ruling as follows:

First: In Form: ConvictEstablishment, owned by ... from customs smuggling.

Second: Order the merchant to pay a customs fine equivalent to twice the customs duties, amounting to SAR 17,478 (Seventeen thousand four hundred seventy-eight riyals).

Third: Order the merchant to pay a customs fine equivalent to twice the customs duties, amounting to SAR 4,860 (four thousand eight hundred and sixty riyals).

Third: Order the merchant to pay a fine in lieu of confiscation equivalent to the consignment value, amounting to SAR 48,860 (forty-eight thousand eight hundred and sixty riyals). Accordingly, the total fine imposed under Paragraphs (2) and (3) amounted to SAR 53,463 (fifty-three thousand four hundred and sixty-three riyals).

The establishment owner, upon being notified of the decision on 14/07/1437 AH, presented a statement of appeal registered with Jeddah Islamic Port Customs under No. (...) dated.../.../..., including his objection to the referenced decision. The case file was referred to the Appellate Customs Committee in Jeddah, under the letter of His Excellency the Director General of Customs No. (...) dated.../.../..., who requested that the appeal be accepted in from and dismissed on substantive grounds. The committee, upon reviewing the case file, decided to summon both parties to appear before it and present their defenses.



In the hearing session held on, the Saudi Customs Authority's representative, Adviser/ attended, along with the Appellant's legal representative/ When asked about the reasons for his client's objection to the primary decision, he responded that he had presented a statement of appeal in which he requested his client's acquittal based on the following:

1. 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 Customs Authority 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 product referenced in the laboratory report under model number (R2022) does not belong to his establishment and was not included in the invoices or 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.

The Appellant's legal representative, upon being questioned regarding the status of the consignment cleared under a promissory undertaking, responded that the goods had been disposed of through sale. He confirmed that the product referenced in the laboratory result was not included in the invoice or packing list, and added that there might have been confusion on the part of the laboratory when preparing the report. When the Customs Authority's representative was questioned regarding his response to the statements made by the Appellant's attorney, he replied that it is established that the merchant disposed of the consignment which constitutes a violation of the promissory undertaking. Accordingly, the Customs Authority requested affirmation of the primary decision based on its grounds. Subsequently, the committee contacted the Legal Department of the Customs Authority to provide clarification regarding the value of the non-compliant product and its customs duties. In response, the Legal Department issued Letter No. (...) dated 09/02/1439 AH, stating that after reviewing the attached invoice and certificate of origin, it was not possible to determine the quantity and customs duty value of the non-compliant item. The Committee decided to adjourn the case for deliberation and delivery of its decision.

Grounds

In form:

Since the appeal was submitted within the regular period, it is admissible in form.

On merits:

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 09/02/1439 AH, this committee has decided to reverse the primary decision due to the lack of the necessary elements to establish the offense. After review and deliberation, the Appellate Customs Committee in Jeddah unanimously decided as follows:

Decision

1. Accept the appeal submitted by the merchant/, the owner of ... against the decision of the Primary Customs Committee in Jeddah No. (154) of 1437 AH dated 30/04/1437 AH in form and substance.
2. Reverse the primary decision in its entirety and exonerate the merchant from the alleged offense.

This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (9) dated 09/05/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (60) dated 23/06/1439 AH.



Principle No. 43

- By correcting the discrepancy in the pledged goods, the merchant has effectively honored their non-disposal undertaking, rendering their conviction unsustainable.

Facts:

Facts of the case are summarized that a consignment of underwear was received through Duba Port Customs under the name of Establishment, recorded on Import Declaration No. (...) dated 23/3/1436 AH. Thereafter, the Customs Authority referred samples from the consignment to Company under Duba Port Customs Letter No. (...) dated 29/3/1436 AH. The test report No. (...) dated .../.../... concluded that the items were non-compliant. The Importer was notified under several letters to return the consignment to its origin, the last of which was Letter No. (...) dated 6/5/1436 AH. However, the Importer failed to respond, implying that the consignment was disposed of. The Primary Customs Committee in Halat Ammar, upon referring the case under the letter of His Excellency the Director General of Customs No. (...)

dated 08/08/1436 AH, issued its decision as outlined above, ruling as follows:

First: In Form: Convict Est., owned by, in person of customs smuggling.

Second: Order the establishment to pay a customs fine equivalent to 10% of the non-compliant items value, amounting to SAR (23,719).

Third: Order the establishment to pay a fine in lieu of confiscation equivalent to the disposed consignment value, amounting to SAR (237,719). Accordingly, the total fine imposed under Paragraphs (2) and (3) amounted to SAR (260,916).

The establishment's owner's legal representative, upon being notified of the decision on 25/03/1437 AH, presented a statement of appeal registered with the Saudi Customs Authority under number (...) dated 18/4/1437 AH, including her objection to the referenced decision. The case file was referred to the Appellate Customs Committee in Jeddah, under the letter of His Excellency the Director General of Customs No. (...) dated/.../..., requesting the appeal to be accepted in form but dismissed on merits. The committee, upon reviewing the case file, decided to summon both parties to appear before it and present their defenses. During the hearing held on..., .../.../... the Customs Authority's representative was present, along with the Appellant's legal representative/.....When asked about the status of the goods cleared under a promissory undertaking, the legal representative stated that the goods were still in his client's warehouses and requested an on-site inspection of the consignment to verify its presence and rectify the violation by affixing the explanatory details label and washing instructions.

When asked about his response to the Appellant's representative, the Customs Authority's representative replied that the public interest necessitates affirmation of the primary



decision but left the matter to the committee's discretion to take whatever action it deems appropriate.

Accordingly, the committee decided to grant the Appellant's representative's request and to notify the Legal Department of the Customs Authority of the committee's decision. The committee, upon expiration of the granted period, would proceed to review the case and issue a decision. The committee received a letter from the Director General of the Legal Department under No. (184-39-81977) dated 30/04/1439 AH, in reference to the letter from the Director General of Riyadh Dry Port Customs No. (...) dated .././..... stating that an on-site inspection of the Importer's warehouses was conducted and the observations regarding the consignment had been rectified. Accordingly, the committee decided to proceed with reviewing the case and issuing a decision.

Grounds

In form:

Since the appeal was submitted within the period prescribed by law, it is acceptable in form.

On merits:

Whereas the violation pertains to the non-clearance of the consignment due to the identification label lacking explanatory details and washing instructions. Whereas the Appellant's attorney argued before the primary Committee and before this committee that his client did not dispose of the consignment and requested the rectification of the violation by affixing the explanatory details label to the imported product. Given that the letter from the Director General of Riyadh Dry Port Customs confirmed the consignment's presence in the Importer's warehouses and the rectification of the violation, the grounds for the conviction no longer stands due to non-disposal of the consignment. Consequently, the primary decision must be reversed in its entirety, and the establishment acquitted of the customs smuggling offense. Having reviewed the Common Customs Law and its Implementing Regulations, and after due examination and deliberation, the Appellate Customs Committee in Jeddah decided unanimously:

Decision

1. Accept the appeal filed by the merchant/ ..., owner of Establishment, against Halat Ammar Primary Customs Committee Decision No. (79) of 1436 AH dated 22/08/1436 AH in form and on merits.
2. Reverse the primary decision in its entirety and exonerate the merchant from the alleged offense.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (9) dated 09/05/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (60) dated 23/06/1439 AH.



Principle No. 44

- The consignment's proven compliance with all safety and security related testing parameters, with the laboratory's observation limited to the absence of Arabic labeling and instruction manuals as mandated by the specification, does not constitute a material discrepancy sufficient to categorize the Importer's actions as customs smuggling.

Facts:

Consider the appeal submitted by Co., CR No. (...), against Riyadh First Primary Customs Committee Decision No. (639/1) of 1441 AH, which ruled as follows:

1. Convict Company, C.R. No. (...), from customs smuggling.
2. Order the company to pay a customs fine equivalent to the value of the disposed items that were not authorized for clearance by the competent authority, amounting to SAR 516,637 (five hundred sixteen thousand six hundred thirty-seven riyals).
3. Order the establishment to pay a fine in lieu of confiscation equivalent to the value of the disposed items that were not authorized for clearance by the competent authority, amounting to SAR 516,637 (five hundred sixteen thousand six hundred thirty-seven riyals). Thus, the total amount claimed from the Importer is SAR 1,033,274 (one million thirty-three thousand two hundred seventy-four riyals).

The Appellant was notified of the decision on 7/6/1442 AH and the appeal was submitted on 5/7/1442 AH, the appeal is therefore admissible in form, as it was filed within the statutory period prescribed under Article (163) of the Unified Customs Law.

As on merits, the case revolves around the arrival of a consignment of computer parts belonging to the Appellant Company through Al-Bathaa Customs under Import Declaration No. (216684) dated 14/11/1436 AH, with a declared value of SAR 516,637. The consignment was cleared under a non-disposal undertaking until approved by the laboratory. Upon examination of the samples, Reports No. (E015003924) and (E015003925), dated 28/11/1436 AH, were issued, confirming that the (Power Supply Unit) and (Server) did not conform to labeling specifications. Having proved that the Customs Authority had formally requested the company to return the consignment due to its rejection—without receiving any response—the Saudi Customs Authority filed a case against the company. The case was based on the presumption that the company had disposed of the consignment in violation of the undertaking it had provided, as it failed to comply with the directives to return the consignment.

Upon summoning the company to appear before the committee for the hearing, the representative (...) attended Under PoA No. (...) dated 22/01/2016 issued by Dubai courts. He stated that the consignment had been disposed of through sale, asserting that



the goods complied with the required specifications and that the product is typically supplied without a power cord and is regularly imported.

The Primary Committee concluded that the importing company's disposal of the consignment without laboratory approval constituted customs smuggling, as it violated the promissory undertaking in accordance with Article (142) of the Unified Customs Law. Consequently, the committee imposed penalties on the company, classifying the consignment as prohibited goods pursuant to the provisions of Article (145), in line with the ruling of the appealed decision previously referenced.

The Appellate Customs Committee, upon reviewing the importing company's appeal, scheduled a hearing to consider the appeal on Sunday, 10/08/1443 AH. A representative of (...) Company attended, holder of National ID No. (...), , under POA N. (...), as well as (...) Acting as ZATCA's representative by virtue of Authorization No (212) dated 04/01/1443 AH issued by ZATCA's Deputy Governor for Legal Affairs. When questioned by the committee regarding the grounds for the appeal, the company's representative argued that the violation associated with the consignment was not of a fundamental nature, and that disposing of the consignment under such circumstances does not constitute customs smuggling as indicated in the primary decision. Having asked ZATCA's representative regarding their response to the Appellant Company's attorney's statements, she stated that the consignment's entry with the noted violation and the Importer's disposal thereof being bound by a non-disposal undertaking until approval was obtained constitute grounds for classifying the company's actions as customs smuggling. When the committee asked the Appellant Company's representative regarding his request, he responded by requesting the reversal of the primary decision in its entirety. As a secondary request, he argued that the disposal of the consignment should be considered merely a customs procedural violation, rather than customs smuggling. In contrast, ZATCA's representative requested the confirmation of the primary decision in its entirety.

Grounds



Upon reviewing the two laboratory reports mentioned, it was found that the observation regarding the two disputed items was limited to the absence of labeling data and the lack of Arabic-language details in the accompanying manual, as required by the specifications. Since such observation does not constitute material violations that would justify classifying the disposal of these items as customs smuggling, as determined in the appealed decision, the committee found that this classification was unwarranted. This is particularly the case given that both items had successfully passed all other testing criteria related to product safety.

Given the foregoing, the Importer's disposal of the two items constitutes a customs violation as stipulated in Article (31.6) of the Implementing Regulations of the Unified Customs Law. Accordingly, a fine of SAR 1,000 per item shall be imposed on the importing company, as detailed in the operative part hereof.

This committee noted that the operative part of the primary decision, in imposing the fine and fine in lieu of confiscation, referred to obligating the "establishment," whereas the Defendant Importer is a "company" and not an "establishment." Since this observation does not alter the conclusion reached by this committee, and based on the foregoing, the committee has decided the following:

Decision

1. Accept in form the Appeal filed by (...) Company, C. R. No. (...) against Primary Decision No. (639/1) of 1441 AH issued by Riyadh First Primary Customs Committee.



2. Accept the appeal on merits and reverse the primary decision in its entirety with respect to the Appellant Company, for the reasons and grounds outlined herein.
3. The Importing company's disposal of the two disputed items is deemed to warrant the imposition of a customs fine of SAR 1,000 (one thousand riyals) per item, bringing the total fine to SAR 2,000 (two thousand riyals). This ruling is based on the reasons and grounds set forth herein.

Similar decisions

Decision of the Jeddah Appellate Customs Committee
No. (57) dated 07/09/1440 AH.

Decision of the Jeddah Appellate Customs Committee
No. (79) dated 10/09/1437 AH.



Principle No. 45

- By re-exporting the pledged goods, the merchant has effectively honored their non-disposal undertaking, rendering their conviction unsustainable.

Facts:

Facts of the case can be summarized that a consignment of shrimp was imported through Jeddah Islamic Port Customs under the name of ... Establishment, registered on the import declaration No. dated .../.../... The consignment contained 2,000 cartons with a total value of SAR 630.865. Thereafter, the Customs Authority referred samples of the consignment to the laboratory of SFDA as part of the standard sampling procedure conducted by the laboratory staff member. The consignment was cleared under Undertaking No. (...) dated/.../..., prohibiting disposal thereof until the laboratory results were issued. Subsequently, the laboratory issued Letter No. (...) dated/.../..., confirming that the frozen shrimp (PD) did not comply with regulations due to microbial contamination. Accordingly, the Customs Authority notified the Importer of the laboratory results via Letter No. (...) dated (.../.../...), requesting the settlement of the undertaking registered under his name. However, the Importer failed to respond.

Jeddah Primary Customs Committee, upon referring the case under the letter of His Excellency the Director General of Customs No. (...) dated/.../... It delivered its decision as stated above, which ruled to:

First: In Form: Convict ... Est., owned by ... from customs smuggling.

Second: Order the merchant to pay a customs fine equivalent to the non-compliant item value, amounting to SAR 281,437.50 (two hundred eighty-one thousand four hundred thirty-seven riyals and fifty halalas).

Third: Order the merchant to pay a fine in lieu of confiscation equivalent to the non-compliant item value, amounting to SAR 281,437.50 (two hundred eighty-one thousand four hundred thirty-seven riyals and fifty halalas). Accordingly, the total fine imposed under Paragraphs (2) and (3) amounted to SAR 562,875 (five hundred sixty-two thousand eight hundred seventy-five riyals).

Upon notifying the company owner of the decision on .../.../..., he presented a statement of appeal registered with the Primary Customs Committee in Jeddah on (.../.../...), outlining his objection to the decision but failed to present any arguments that would challenge its validity or legality. The case file was referred to the Appellate Customs Committee in Jeddah, under the letter of His Excellency the Director General of Customs No. (...) dated/.../..., who requested that the appeal be accepted in from and dismissed on substantive grounds. After reviewing the case file, the committee decided to summon both parties to appear before it and present their defenses.



During the hearing session held on ...,/.../..., the representative of the Customs Authority, Advisor/..., attended, as did the concerned party in person. When questioned regarding the consignment, the Appellant presented a seven-page memorandum of objection, accompanied by copies of the establishment's letter to the Customs Authority, the import declaration, the laboratory test result form, and the re-export declaration. The Appellant's memorandum included a request to reverse the primary decision and the acquittal of the establishment, based on the following grounds:

1. The establishment re-exported the non-compliant portion of the consignment under Re-Export Declaration No. (...) dated (.../.../...).
2. The absence of criminal intent on his part.

The committee, upon presenting the memorandum and its attachments to the Customs Authority's representative, requested a response to the defenses raised therein. The representative stated that the Appellant had not provided any documents proving the fulfillment of the promissory undertaking. Furthermore, the Primary Committee had clarified in the reasoning of its decision that the re-exported goods pertained to a different consignment rather than the consignment in question. Additionally, the violation, according to the primary decision, was limited to a portion of the consignment, amounting to 900 cartons. The Customs Authority's representative concluded by reiterating the authority's request to uphold the primary decision, based on its stated reasoning. When asked if he had anything further to add, the Appellant requested a 14-day period from the date of the hearing to refer the matter to the relevant customs authority and provide the committee with documents proving the fulfillment of the promissory undertaking. The committee granted the Appellant's request and will correspond with the relevant customs authority to seek clarification. The case will be referred for review and a decision will be issued after the expiration of the period granted to the Appellant. Accordingly, the committee sent Letter No. (...) dated (.../.../...), requesting Jeddah Islamic Port Customs to provide the inventory report for the consignment and to confirm whether the re-export declaration submitted by the Appellant pertains to the consignment in question. The committee received a letter from Jeddah Islamic Port Customs, Letter No. (...) dated (.../.../...), stating that after reviewing the re-export declaration submitted by the Appellant under No. (...) dated .../.../..., it was determined that the re-exported goods pertain to the consignment registered under Import Declaration No. (...) dated (.../.../...), as indicated in the attached inspection report, and do not pertain to the consignment in question. Additionally, the Appellant submitted a letter stating that the copy of the re-export declaration provided to the Appellate Committee does not pertain to the consignment in question. Instead, he claimed that the consignment in question was re-exported under Re-Export Declaration No. (...) dated (.../.../...). Jeddah Islamic Port Customs further stated that, upon contacting the Director of the General Administration for Customs Audit at the Authority's headquarters, they received confirmation that Re-Export Declaration No. (...) dated (.../.../...) had been destroyed due to the expiration of more than five years since the completion of its procedures. The committee had previously corresponded with the Director General of the Legal Department at the Customs Authority via Letter No. (...) dated.../.../..., regarding Primary Decision No. (150) dated 29/4/1437 AH. In response, the Director General of Jeddah Islamic Port Customs issued Letter No. (...) dated.../.../..., stating that after reviewing the documents related to Re-Export Declaration No. (...) dated.../.../..., it was confirmed that the re-exported consignment pertains to the consignment registered under Import Declaration No. (...) dated.../.../...,

The Committee decided to adjourn the case for deliberation and delivery of its decision.



In form:

Since the appeal was submitted within the regular period, it is admissible in form.

On merits:

The Appellant's appeal was based on the claim that he had re-exported the non-compliant portion of the consignment. He approached the Customs Authority and requested Re-Export Declaration No. (...) dated .../.../... AH, The Customs Authority, in turn, contacted the Director General of Customs Audit at the Authority's headquarters under Letter No. (...) dated .../.../... AH, requesting provision of Re-Export Declaration No. (...) dated.../.../..., The Ministry of Commerce and Investment replied with letter number dated.../.../..., confirmed that the re-export declaration had been destroyed due to the expiration of more than five years since the completion of its procedures. Furthermore, Letter No. (...) dated (.../.../...) from the Director General of Jeddah Islamic Port Customs confirmed that the consignment registered under the import declaration in question had been re-exported. "Therefore, the foundation upon which the conviction was based has been invalidated, and there is no basis to assert that the Appellant breached the promissory undertaking or committed the customs smuggling offense. Accordingly, this committee decides to reverse the primary decision. The Appellate Customs Committee in Jeddah, after reviewing the Unified Customs Law and its implementing regulations, and following careful study and deliberation, unanimously decided as follows:

Decision

1. Acceptance of the appeal submitted by trader/ the owner of ... Against Jeddah Primary Customs Committee Decision No. (248) of1437 AH dated 25/07/1437 AH in form and dismiss it on merits.
2. Reverse the primary decision in its entirety.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (9) dated 09/05/1440 AH.

Decision of the Jeddah Appellate Customs Committee No. (129) dated 17/10/1439 AH.



Principle No. 46

- The Importer's failure to cooperate with the authority in verifying the consignment's disposition constitutes presumptive evidence of disposal thereof.

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Tuesday, 13/09/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal filed by ... Est., CR No. (...), against Primary Decision No. (207/3) of 1443 AH, issued by the Third Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict ... Est., CR No. (...), in absentia of customs smuggling.
2. Order the establishment to pay a customs fine equivalent to three times the value of the disposed consignment that was not authorized for clearance by the competent authority, amounting to SAR 54,369 (fifty-four thousand three hundred sixty-nine riyals).
3. Order the establishment to pay a fine in lieu of confiscation equivalent to the non-compliant item value, amounting to SAR 18,123 (eighteen thousand one hundred twenty-three riyals), bringing the total amount claimed from the establishment to SAR 72,492 (seventy-two thousand four hundred ninety-two riyals).

Since the Appellant was notified of the appealed decision on 24/05/1443 AH, and he filed an appeal against the decision on 16/06/1443 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

Facts of the case are summarized that a consignment of (children's toy cars) belonging to the Importer arrived via Riyadh Dry Port Customs, under Import Declaration No. (...) dated .../.../1436 AH, with a declared value of SAR 18,123 (eighteen thousand one hundred twenty-three riyals). The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the samples at the relevant laboratory, Report No. (...) was issued, indicating that the samples did not conform to specifications due to the detachment of a wheel during a tensile test, posing a puncture hazard. Afterward, the Importer was notified of the results under several letters, but no response was received.

The Primary Committee convened a session to review the case; however, the Importer failed to attend, despite being notified through publication in the Official Gazette (Umm Al-Qura), Issue No. (...) dated .../.../1442 AH. Accordingly, the committee proceeded with the case based on the available documents and issued its previously stated decision,



convicting the Importer of customs smuggling and imposing the corresponding penalties. The decision was based on the Importer's disposal of the non-compliant consignment, which was found to be defective due to the detachment of a wheel during a tensile test, posing a puncture hazard, constituting a technical violation that carries direct negative implications for children's safety and health.

The Appellate Customs Committee, upon reviewing the statement of objection presented by, Civil Registry No. (...), in his capacity as the owner of Est., CR No. (...), noted that the statement stated that the entire consignment in question remains stored in the establishment's warehouses and is ready for destruction under the supervision of the authority. The objection concluded with a request to annul the contested decision and to permit the destruction of the goods.

The Appellate Customs Committee in Riyadh, on Tuesday, 06/09/1444 AH, convened a session to review the appeal submitted by Establishment against Decision No. (207/3) of 1443 AH, issued by the Third Primary Customs Committee in Riyadh. The committee, upon reviewing the case file and the appeal, following the communication made with ZATCA to ascertain the status of the consignment in question, and given that the Authority reported the Appellant's failure to respond, resolved to adjourn the session and deliberate on the submitted appeal in preparation for issuing a decision.

Grounds

Whereas the Appellate Customs Committee has determined that the evidence presented and the documents included in the case file are sufficient to decide the outcome of the submitted appeal; It was established that a consignment of children's toy cars was cleared under a non-disposal undertaking pending approval by the competent authority; Whereas the sample examination results indicated non-compliance with the specifications due to the detachment of the toy wheel during the tensile test, posing a puncture hazard; Whereas, upon reviewing the case documents, the committee issued its decision based on the fact that the Importer's disposal of the consignment cleared under a non-disposal undertaking constitutes customs smuggling under Article (142) of the Unified Customs Law; Whereas, after considering the statement of appeal submitted by the Appellant and noting the Importer's failure to cooperate with the authority to verify the fate of the consignment, which indicates his disposal thereof; Whereas, upon reviewing the laboratory results for the consignment in question, which indicate that the violation is technical and carries direct negative implications for children's safety and health, the Appellate Committee finds it appropriate to uphold the primary decision while adjusting the fine amount to be twice the value of the disposed consignment. Accordingly, the committee ruled as follows:

Decision

1. Accept in form the appeal filed by ..., Civil Registry No., in his capacity as the owner of Est., CR No. (...), against Primary Decision No. (207/3) of 1443 AH issued by the Third Primary Customs Committee in Riyadh.
2. As on merits, uphold the primary decision in its entirety, while adjusting the customs fine amount to be twice the value of the disposed consignment, amounting to SAR 36,246 (thirty-six thousand two hundred and forty-six riyals), for the reasons and justifications stated herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Similar decisions

Riyadh Appellate Customs Committee Decision No.
(115) dated 18/07/1444 AH.



Money Laundering



Principle No. 47

- Conviction for money laundering does not preclude prosecution for customs smuggling.

Facts:

Facts of this case—as outlined in the primary decision and the appeal filed against it—indicate that on/..../..., a vehicle of type (...), bearing Saudi Plate No. (...), arrived at the passenger customs checkpoint, driven by a Saudi national,, under National ID No. (...) on/..../. issued by, Upon registering the vehicle under entry number (...), the registration officer grew suspicious of the traveler due to the high frequency of his movements within the month. Consequently, he alerted the inspection officer to conduct a thorough check on the traveler. The officer then referred the vehicle for an X-ray scan, which revealed an area of high density in the dashboard section. However, a manual inspection of that area did not uncover the source of the density. As a result, the head of the passenger customs section reviewed the vehicle's previous movement records and found that it had undergone an X-ray scan during a prior entry. Upon comparing the previous X-ray image with the current one, a discrepancy was observed in the suspected area, confirming the presence of an unusual density. The traveler was asked whether he was carrying any contraband, to which he denied. Subsequently, the entire dashboard was dismantled and removed from the interior, and a metal layer was detached from the upper part near the engine compartment. Inside the hood, (16) tin-wrapped packages were discovered. Upon opening them, a quantity of crafted gold was found as follows: 691 necklaces weighing 583.3 grams, 454 pendants weighing 10,842 grams, 10 bracelets weighing 72.1 grams, 861 earrings weighing 4,063.4 grams, 500 rings weighing 2,619.7 grams, 157 armbands weighing 5,190.7 grams, and 173 medallions weighing 2,047.5 grams, with a total quantity of 2,846 pieces and a total weight of 3,655.7 grams, equivalent to 3 kilograms and 655.7 grams. A seizure report was issued under No. (...) dated.../.../..., The individual in question was referred to the border police station to complete the necessary procedures as per their jurisdiction. Additionally, the Financial Investigations Unit at the Ministry of Interior was notified via Letter No. (...) dated/..../. issued by the Director General of Al-Bathaa Customs. Upon requesting the chief goldsmith of Al-Ahsa to assess the value, purity, and weight of the seized items, he arrived at Al-Bathaa Customs, where the yellow gold jewelry was evaluated and determined to be 22 karats, with a total weight of 39,85.40 grams (thirty-nine thousand eight hundred eighty-five grams and forty milligrams) and a total estimated value of SAR 4,337,956 (four million three hundred thirty-seven thousand nine hundred fifty-six riyals). Additionally, one accessory bracelet was found among the seized items, valued at SAR 50,000 (fifty thousand riyals). Accordingly, an official letter was issued by the Director General of Customs under No. (...)



dated.../.../..., Upon referring the case to the Primary Customs Committee in Dammam for adjudication, the Saudi national, ..., appeared before the committee during the session held on .../.../... . He stated that the seized quantity of gold belonged to him personally and had been purchased from Dubai from ... Store. The total quantity was approximately 30,657 grams, consisting of 22 and 21-carat gold of Indian and Singaporean origin. The purchase price amounted to AED 4,151,011, and he initially had an invoice for the quantity, which he admitted to destroying in the United Arab Emirates out of fear of it being discovered by customs. He further stated that the gold was brought into the country with the intention of selling it to both local shops and relatives. According to him, the purchase amount was transferred in installments, with each payment ranging between SAR 50,000 and SAR 55,000, and after making an initial payment of SAR 800,000, he received the gold, and the remaining amount was covered through promissory notes to be paid in installments after the sale. He also admitted that he did not declare these amounts when exiting through customs. Additionally, he confessed to concealing the gold in the described manner out of fear of customs duties and due to his lack of knowledge. He mentioned a previous instance where he had brought in a gold set worth SAR 20,000 with an accompanying invoice. He denied engaging in any commercial activity in the gold trade, stating that he had previously worked in the stock market, later selling his shares and taking out loans before shifting to the gold business. Consequently, the Primary Customs Committee in Al-Bathaa issued its Decision No. (199) dated 20/07/1437 AH, which ruled as follows:

1. Convict the driver,, Saudi National, under National ID No. (...) on/.. issued by, in person of attempted customs smuggling.
2. Confiscate the seized gold, including 691 necklaces weighing 583.3 grams, 454 pendants weighing 10,842 grams, 10 bracelets weighing 72.1 grams, 861 earrings weighing 4,063.4 grams, 500 rings weighing 2,619.7 grams, 157 armllets weighing 5,190.7 grams, and 173 medallions weighing 2,047.5 grams, with a total quantity of 2,846 pieces and a total weight of 30,985.4 grams (thirty thousand nine hundred eighty-five grams and forty milligrams).
3. Order the driver to pay a customs fine equivalent to twice the customs duties owed on the seized gold items, totaling SAR 433,795.60 (four hundred thirty-three thousand seven hundred ninety-five riyals and sixty halalas).
4. Confiscate the vehicle of (...) type, bearing Saudi Plate No. (...),

Upon notifying the concerned party/ on/.. he filed a statement of appeal on (...), stating that he is currently imprisoned, serving a sentence of four years and six months starting from the date of the case. He also mentioned that he has been fined SAR 2,100,000 (two million one hundred thousand riyals) and that the judgment is still being reviewed between the Criminal Court in Al-Ahsa and the Court of Appeal. He also stated that he is indebted to a gold shop in the United Arab Emirates, as the total invoice value amounted to AED 800,000 (eight hundred thousand dirhams), with an outstanding amount secured by promissory notes totaling AED 3,351,011 (three million, three hundred fifty-one thousand, and eleven dirhams). Additionally, he is required to repay loan installments to ... Bank And ... Bank, as well as debts owed to some colleagues and relatives. He claimed to be completely unable to make any payments due to the aforementioned reasons. He concluded his statement of appeal by requesting the waiver of the total fine amount, if such authority lies with the committee, or referring the matter to the relevant authority with the jurisdiction to waive the entire amount. Moreover, the Customs Authority presented its Letter No. (...) dated.../.../..., requesting the endorsement of the primary decision as issued. Upon referring the case documents to the Appellate Customs Committee in Dammam, , a session was scheduled on,/..., where the committee reviewed the case file and subsequently decided to correspond with the prison administration in ... Governorate to inquire whether the prisoner had any additional



statements to add to his previously submitted appeal. This decision was made in light of the Appellant's claim that a judicial ruling had been issued against him, sentencing him to four years and six months in prison and imposing a fine of SAR 2,100,000 (two million one hundred thousand riyals) and that this ruling was still under review between the Criminal Court in Al-Ahsa and the Court of Appeal. As a result, this committee sent Letter No. (...) dated 18/04/1438 AH to the Criminal Court in Al-Ahsa, requesting clarification on whether the Legal Deed No. (...) on ../../.. attached to the case file, had become final. The response was received via Letter No. (...) on ../../.. confirming that the ruling had become final and was upheld following the last procedural step by the Criminal Circuit of the Court of Appeal in the Eastern Province under Decision No. (...).

Since the committee was uncertain about the specific meaning of "the last procedural step" mentioned in the decision of the Criminal Circuit of the Court of Appeal in the Eastern Region, it communicated with the Criminal Court in Al-Ahsa under Letter No. (...) seeking clarification. The response confirmed that the notation on page 12 of the deed dated ../../.. represented the final procedural step and no further actions had been taken, confirming that the judgment was ratified and had become final. In the session held on, ../../.., the Appellate Committee reviewed the entire case file along with the response received from the Criminal Court in Al-Ahsa. The committee then decided to submit the case for further review, deliberation, and the issuance of the necessary ruling.

Grounds

In form:

Since the appeal was submitted within the period specified in Article (163/C) of the Unified Customs Law, it must be accepted in form.

On merits:

The case revolves around the actions of ..., who attempted to smuggle a large quantity of gold using a highly technical and concealed method, making it undetectable by routine inspection. The hidden gold was only discovered after the X-ray scan identified the suspicious area, leading to the complete dismantling of the vehicle's dashboard from the inside.

There is no necessary connection between the judgment issued by the Criminal Court (as outlined in the facts and upheld by the Court of Appeal) and the decision issued by the Primary Customs Committee. It is evident that the Criminal Court addressed charges related to money laundering and failure to disclose, and its ruling to dismiss the Public Prosecutor's request for the confiscation of the gold was based on the application of the Anti-Money Laundering Law. Since, according to Article 4 of the Anti-Money Laundering Law, money laundering is considered an independent offense from the underlying crime, punishing the perpetrator for the original offense does not preclude their punishment for money laundering, whether committed inside or outside the Kingdom, provided that it is deemed a criminal offense under the laws of the country where it occurred and in accordance with the laws of the Kingdom. Given the confirmed commission of the customs smuggling offense, the primary decision is deemed worthy of affirmation.

This principle has previously been affirmed in Decision No. (...) issued by this committee dated ../../.., which was approved by His Excellency the Minister of Finance under Letter No. (...) dated ../../.., Since the appeal did not present any arguments compelling the committee to annul or amend the primary decision, the committee decided to uphold the decision as issued, based on its original reasoning, in addition to the grounds stated herein. The Appellate Customs Committee in Dammam, after reviewing the Unified Customs Law and its implementing regulations, and following careful study and deliberation, unanimously decided as follows:



Decision

1. Accept the appeal submitted by/..... against the decision delivered by the Primary Customs Committee in Dammam No. (199) dated 20/7/1437 AH in form and dismiss it on merits.
2. Uphold the primary decision in its entirety.
3. This decision shall be implemented after being approved by HE the Minister of Finance.

Similar decisions

Dammam Appellate Customs Committee Decision No. (185) dated 10/10/1438 AH.

Dammam Appellate Customs Committee Decision No. (79) dated 10/05/1438 AH.

Customs Smuggling - Similar Decisions:



Customs Smuggling



Appellate Committee:
Appellate Customs Committee in Riyadh

Decision No. (CR-2022-13)
Delivered in Appeal No.
(PC-142113-2022)

Principal No. (48)

- **The criterion for classifying a customs procedural violation is that it does not compromise product safety or document validity, and that the reason for the laboratory's refusal to authorize product clearance is immaterial. Such a violation is categorized as a breach of customs procedures, warranting the imposition of legally prescribed penalties.**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Wednesday, 06/05/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal submitted by the Importer, Est., CR No. (...), against Primary Decision No. (1380/1) of 1443 AH issued by Riyadh First Primary Customs Committee, which ruled as follows:

1. Convict the Importer, Est., C. R. No. (...) from customs smuggling.
2. Order the Importer to pay a customs fine of SAR 51,813 (fifty-one thousand eight hundred thirteen riyals), equivalent to the value of the consignment that was not authorized for clearance by the competent authority.
3. Order the Importer to pay a fine in lieu of confiscation equivalent to consignment value, amounting to SAR 51,813 (fifty-one thousand eight hundred thirteen riyals), bringing the total amount claimed from the establishment to SAR 103,626 (one hundred three thousand six hundred twenty-six riyals).

Since it has been established that, holder of National ID No. (...), filed the appeal as the company's representative under PoA No. (...) within the statutory period specified in Article (163.C) of the Unified Customs Law and Article (33) of Customs Committees Procedures, the appeal is therefore admissible in form.

Facts of the case are summarized that a consignment of (electrical appliances) belonging to the Importer arrived through Jeddah Islamic Port Customs under Import Declaration No. (...) dated 09/07/1434 AH with a total value of the disposed items of SAR (51,813). The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (E-.....) dated .././2013, was issued, indicating that the samples did not conform to specifications regarding labeling and dimensions.

Thereafter, the Customs Authority notified the Importer under several letters, but no response was received. When the case was brought before the Primary Committee on Monday, 3/1/2022, the legal representative,, holder of National ID No. (...), under PoA



No. (...) appeared before the committee. When asked about the status of the goods, he stated that they had been disposed of.

The Appellant's legal representative, on 30/07/1443 AH, presented a statement of objection, summarized as follows: The tested item was one out of seven models included in the consignment. The laboratory results were limited to this specific model and did not extend to the other items, as no testing was conducted on the remaining models. The laboratory report did not specify whether the violation was technical or procedural and that the decision of the Primary Committee was based on assumption and speculation. The legal representative requests the reversal of the primary decision in its entirety and consideration of the violation as procedural, as long as it does not directly and negatively impact consumer safety and health.

The Appellate Customs Committee in Riyadh, upon reviewing Decision No. (1380/1) of 1443 AH, as well as the appeal filed by the Appellant/ ... Est. for Trading, convened its first session in Riyadh on Monday, 24/01/1441 AH, corresponding to 22/08/2022 at 02:00 PM to consider the appeal filed by Est., CR No. (...), against Riyadh First Primary Customs Committee Decision No. (1380/1) of 1443 AH. Upon calling the parties to the case, the following parties attended via video conference: ... holder of National ID No. (...), in her capacity as the Appellant's representative under PoA No. (...) and Lawyer's License No. (...). Additionally,, Civil Registry No. (...), attended in his capacity as ZATCA's representative by virtue of Authorization No (...) dated ../01/1443 AH. issued by ZATCA's Vice Governor for Legal & Enforcement. After verifying the attendance and confirming the identities of all parties, the committee proceeded with the case. When asked about the grounds for the appeal, the Appellant submitted a five-page memorandum via email to the committee, accompanied by two supporting documents. The memorandum outlined the reasons for the appeal, the most significant of which is that the violation pertains to only a portion of the consignment and not the entire of which. The Appellant further argued that the violation was procedural rather than substantive and did not pose any harm to consumer health or safety. When asked to respond, ZATCA's representative reaffirmed the findings of the primary decision. The Appellant's representative, upon being asked about his requests, reiterated the points raised in the appeal memorandum and formally requested the complete annulment of the primary decision, emphasizing that the violation should be classified as procedural. When asked about his requests, ZATCA's representative responded by requesting the affirmation of the primary decision in its entirety.

Grounds

Upon reviewing the case file and the statement of appeal presented by the Appellant, as well as examining laboratory Report No. (E-.....) dated ../../2013 regarding the consignment in question, it was found that the report indicated non-compliance with specifications regarding labeling and dimensions, which are procedural violations that do not affect the quality, safety of the product, or consumer health. Based on Circular No. (M/220/21) dated 18/3/1437 AH, communicated via Letter No. (1830) dated 10/3/1437 AH from His Excellency the Minister of Finance, which states in Paragraph (1) that: "In instances where the reason for the laboratory's denial of clearance is non-substantial, the incident shall be classified as a customs violation." The characterization of this offense falls under a procedural customs violation, warranting the imposition of a customs fine amounting to SAR 1,000 (one thousand riyals) upon the Importer, as stipulated in Article (31.6) of the Implementing Regulations of the Unified Customs Law. Consequently, this committee concludes that the Importer's failure to comply with the undertaking and his disposal of the consignment does not exceed a procedural customs violation, which



warrants the imposition of a customs fine of SAR 1,000 (one thousand riyals), as per Article (31.6) of the Implementing Regulations of the Unified Customs Law.

Whereas, after reviewing the findings of the primary decision and the penalties imposed on the two Appellees, and whereas it has been established that both Appellees, and, were not duly notified of the primary decision, and whereas the reasons presented by the Public Prosecution for imposing stricter penalties indicate that the penalties sought by the Prosecution were not specified in a manner that would allow for an examination of their request and its alignment with the penalties stipulated in the Unified Customs Law, and whereas the adjudicating authority holds full discretion in determining the appropriate penalty that aligns with the circumstances and context of the case as well as the conduct of the offender, and whereas the Prosecution did not identify any errors in the application of the law in this matter, limiting its request to a mere plea for a harsher penalty, it follows that the Appellate Committee must disregard the request of the Public Prosecution due to the absence of substantive grounds to examine and address the Prosecution's request for a review of the imposed penalty.

Decision

1. Accept in form the Appeal filed by Est. for Trading, CR No. (...), against Primary Decision No. (1380/1) of 1443 AH issued by Riyadh First Primary Customs Committee.
2. On Merits: Annul the primary decision and consider the Importer's actions a violation under Article (31.6) of the Implementing Regulations of the Unified Customs Law, and impose a violation fine of (1,000) one thousand riyals, in accordance with grounds and merits mentioned herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

against Riyadh Appellate Customs Committee Decision No. (142135) dated 22/11/1444 AH

Riyadh Appellate Customs Committee Decision No. (142207) dated 24/08/1444 AH.

Riyadh Appellate Customs Committee Decision No. (152400) dated 15/09/1444 AH



Appellate Committee:
Appellate Customs Committee in Riyadh

Decision No. (CR-2022-1)
Delivered in Appeal No.
(2022-142143-PC)

Principal No. (49)

- **Customs smuggling is a deliberate criminal offense that can only be established upon the fulfillment of its material and moral elements, where the latter of which hinges on the presence of criminal intent as stipulated in the Unified Customs Law. Furthermore, a criminal offense cannot be established on the basis of conjecture or speculation; rather, it requires conclusive evidence and certainty.**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Sunday, 05/04/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal submitted by the Importer, Est., for Trading, CR No. (...), owned by, holder of National ID No. (...), against Primary Decision No. (245/1) of 1442 AH issued by Riyadh First Primary Customs Committee, which ruled as follows:

1. Convict the Importer, Est., Trading Corporation, registered under C.R. No. (...) owned by, holder of National ID No. (...), in absentia of customs smuggling.
2. Order the Importer to pay a customs fine equivalent to the value of the consignment that was not authorized for clearance by the competent authority, amounting to SAR 58,308 (fifty-eight thousand three hundred and eight riyals).
3. Order the Importer to pay a fine in lieu of confiscation equivalent to consignment value, amounting to SAR 58,308 (fifty-eight thousand three hundred and eight riyals), bringing the total amount claimed from the establishment to SAR 116,616 (one hundred sixteen thousand six hundred and sixteen riyals).

Whereas it is established in the case file that the Appellant, ... Est. for Trading, CR No. (...), received the primary decision on ../07/1443 AH and submitted the appeal request on ../08/1443 AH by, holder of National ID No. (...), acting as an authorized representative under PoA No. (...). Consequently, the appeal request was submitted within the statutory period specified under Article (163.C) of the Unified Customs Law and Article (33) of the Customs Committees Procedures, the appeal is therefore admissible in form.

Facts of the case are summarized that a consignment of (men's clothing) belonging to the Importer arrived through Al-Bathaa Customs under Import Declaration No. (...) dated .../.../1437 AH with a total value of SAR 58,308. The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) dated .../.../1437 AH was issued, indicating non-compliance due to the visual inspection of the explanatory label data and care instructions.



Thereafter, the Customs Authority notified the Importer under several letters, to which he failed to respond or appear before the committee. As a result, the committee proceeded to request his notification to appear by publication in the Official Gazette (Umm Al-Qura), Issue No. (...) dated .../05/1440 AH. However, the Importer failed to appear, prompting the Committee to adjudicate the case and issue the aforementioned primary decision.

The Appellant's legal representative, on ../08/1443 AH, presented a statement of appeal, which included the following:

Defenses:

He stated that the material facts of the case do not correspond to the legal definition of smuggling as stipulated in Articles 142 and 143 of the Unified Customs Law. The committee based its decision on the fact that the Importer had disposed of the consignment that had not been cleared for release, despite having previously committed to refrain from any disposal until the laboratory results were issued. This decision was further supported by the report from the competent authority with respect to the visual inspection of the explanatory label data and care instructions. The response to this argument is as follows:

1. The laboratory results are non-compliant due to the visual inspection of the explanatory label data and care instructions, which constitutes a formal discrepancy rather than a technical issue related to the essential specifications. Moreover, this non-compliance does not affect consumer safety when using the imported item.
2. The committee that issued the appealed decision failed to consider that the violation attributed to the Importer was of a procedural nature.
3. The consignment is regularly imported and cleared without any remarks.
4. The committee did not take into consideration the long-time span between the arrival of the consignment on ../4/1437 AH and the case Initiation Letter No. (...) dated ../4/1442 AH. This delay is inconsistent with commercial practices, which rely on the turnover of goods to maintain cash flow, avoid prolonged freezing of funds, and comply with the directive issued by His Excellency the Minister of Finance under Letter No. (1830) dated 10/3/1437 AH.

Moreover, the charge against the Importer is customs smuggling, which is a deliberate criminal offense that can only be established upon the fulfillment of its material and moral elements, where the latter of which hinges on the presence of criminal intent as stipulated in Article (144) of the Unified Customs Law. Furthermore, a criminal offense cannot be established on the basis of conjecture or speculation; rather, it requires conclusive evidence and certainty.

Furthermore, the absence of proof that the Importer was informed of the laboratory results, which is a prerequisite under Clause (2) of the undertaking, confirms that the Importer did not breach the undertaking, as he was not notified of the analysis results.

Additionally, no review was conducted regarding the authorization and its regulatory compliance, especially considering that the Importer followed up with the Customs Authority regarding all consignments he was notified about and settled any resulting obligations, which confirms the Importer's good faith.

He also raised the issue of the prolonged time frame, as the consignments covered by the import declaration mentioned above date back to 1437 AH, while the case was not initiated until 1442 AH, with the Importer remaining unaware thereof for nearly five years. This delay in notifying the Importer is inconsistent with commercial practices, which rely on the turnover of goods to maintain cash flow and avoid prolonged freezing of funds. Furthermore, there is no evidence that the Importer was informed of the laboratory results, in addition to the delay in filing the case, which necessitates the annulment of the appealed decision.



The consignment consists of clothing, which is not among the prohibited goods, and the circumstances leading to the conviction are not related to consumer safety when using the imported product.

Since the penalty is disproportionate to the violation attributed to the importer, even assuming that the violation constitutes customs smuggling, and whereas the Primary Committee that issued the appealed decision imposed a fine on the Importer equivalent to the consignment value, amounting to SAR (116,616), based on Article (145/4) of the Unified Customs Law, which stipulates "the penalty shall be a fine not less than the value of the goods and not exceeding three times their value, ..., or one of these two penalties if the smuggled goods are prohibited." However, since the goods in question are not prohibited, there is no justification for imposing a fine of this magnitude under the circumstances described.

He concluded his statement by requesting the reversal of the primary decision in its entirety.

The Appellate Customs Committee in Riyadh, upon reviewing Decision No. (245/1) of 1442 AH, as well as the appeal filed by the Appellant/ ... Est. for Trading, convened its first session in Riyadh on Monday, 17/01/1444 AH, corresponding to 15/08/2022 at 02:00 PM to consider the appeal filed by Est. Trading Corporation, registered under C.R. No. (...) against Riyadh First Primary Customs Committee Decision No. (245/1) of 1442 AH. Upon calling the parties to the case, the following parties attended via video conference:, holding National ID No., attended as the Plaintiff Establishment's representative under PoA No....., and , Civil Registry No. (...), attended in her capacity as ZATCA's representative by virtue of Authorization No (...) dated ../01/1443 AH. issued by ZATCA's Vice Governor for Legal & Enforcement. The committee, upon verifying the attendance and identities of the parties and reviewing the case file, decided to adjourn the session for deliberation.

Grounds

The Appellate Committee, upon reviewing the case file and documents in light of the Appellant's claim of not being notified of the laboratory results, found no evidence confirming that the Appellant was informed of the analysis results. Whereas the primary decision was based on the existence of the alleged violation, stating that the consignment in question had direct negative effects on consumers and did not comply with specifications, and since the case file lacks proof of such notification, the fundamental basis on which the primary decision was issued collapses.

Decision

1. Accept in form the Appeal filed by Establishment, for Trading, CR No. (...), owned by, holder of National ID No. (...), against Primary Decision No. (...) of 1442 AH issued by Riyadh First Primary Customs Committee.

- 2. On Merits:**

Reverse the decision in its entirety and refer the case to Riyadh First Primary Customs Committee, based on the reasons and justifications outlined herein.

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



Similar decisions

Riyadh Appellate Customs Committee Decision No. (438) dated 24/08/1444 AH.

Riyadh Appellate Customs Committee Decision No. (1) dated 05/04/1444 AH.



Appellate Committee:
Appellate Customs Committee in Riyadh

Decision No. (CR-2022-29)
Delivered in Appeal No.
(2022-142280-PC)

Principle No. 50

- In cases involving multiple items within a single consignment, it is imperative that the assessment of culpability consider the distinctions between formal and substantive observations per item and impose the prescribed penalty determined for each respective violation.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 18/05/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal submitted by the Importer, Est. for Trading, CR No. (...), against Primary Decision No. (861/3) of 1443 AH issued by Riyadh Third Primary Customs Committee, which ruled as follows:

1. Convict the Importer, International Est., CR No. (...), in person of customs smuggling.
2. Order the establishment to pay a customs fine of SAR 160,428 (one hundred sixty thousand four hundred twenty-eight riyals), equivalent to three times the value of the consignment that was not authorized for clearance by the competent authority.
3. Order the establishment to pay a fine in lieu of confiscation equivalent to consignment value, amounting to SAR 53,476 (fifty-three thousand four hundred seventy-six riyals), bringing the total amount claimed from the establishment to SAR 213,904 (two hundred thirteen thousand nine hundred four riyals).

Since the Appellant was notified of the appealed decision on 14/07/1443 AH, and he filed an appeal against the decision on 16/07/1443 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

Facts of the case are summarized that a consignment of (food products) belonging to the Importer arrived through Jeddah Islamic Port Customs under Import Declaration No. (...) dated .../.../1436 AH with a total value of SAR 53,476. The consignment was cleared under a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) dated .../.../1436 AH was issued, indicating non-compliance with specifications, including the absence of a product name indicating the product type, the presence of unauthorized health claims according to specification GSO 23/1998 (E1234), non-compliance regarding the presence of color, and discrepancies between the Arabic and English ingredient lists. Afterward, the Importer was notified of the result under several letters, but no response was received.



The Defendant was notified to appear before the primary Committee to present their defense via e-mail. However, neither the Defendant nor their representative attended. Accordingly, the committee decided to rule on the case based on the available documents and issued the previously mentioned decision.

On 14/07/1443 AH,, holder of National ID No. (...), in his capacity as the owner of the Appellant Establishment, submitted a statement of objection stating that the conviction was based on the entire consignment, whereas the violation pertained to only one item within the consignment, and that SFDA's report was issued two months after the arrival of the consignment. He concluded his statement of appeal with a request for acquittal of the entire consignment and exemption from the fine.

On Tuesday, 11/10/2022, the Appellate Customs Committee in Riyadh held its first session in Riyadh to review the appeal filed by ... International Est. against Decision No. (861/3) issued by the Third Primary Customs Committee. The committee, upon reviewing the case file and the appeal submitted by the Appellant, decided to adjourn the session and deliberate on the appeal before issuing its decision.

Grounds

Facts of the case are summarized that a consignment of (food products) belonging to the Importer arrived through Jeddah Islamic Port Customs under Import Declaration No. (...) dated .../10/1436 AH, consisting of eight items, seven of which were referred for analysis. The initial analysis results showed that two of the items were compliant, while the final results indicated that the remaining five items were non-compliant. Upon reviewing the final analysis results, the Appellate Committee found that there were no substantive observations regarding four of these items, while one item, namely (...) was associated with a substantive violation related to the presence of a prohibited color additive. Consequently, the Appellate Committee concludes that the conviction should be limited to this particular item, as the Appellant's importation of this non-compliant item constitutes customs smuggling under Article (142) of the Unified Customs Law. As for the other items associated with violations that were not proven to be substantive, the Appellant's disposal in breach of the undertaking constitutes a violation under Article (31/6) of the Implementing Regulations of the Unified Customs Law, warranting the imposition of a fine of SAR 1000 per item.

Decision

First: In Form: Accept in form the Appeal filed by International Est., CR No. (...), against Primary Decision No. (861/3) of 1443 AH issued by Riyadh Third Primary Customs Committee.

Second: Dismiss the appeal on merits, amend the primary decision to limit the conviction to the non-compliant item (...), impose a fine in lieu of confiscation of SAR 1,780 (one thousand seven hundred and eighty riyals), and a customs fine equivalent to the non-compliant item value, based on the justifications and reasons outlined herein.

Third: Consider the Appellant's handling of the four items flagged by the laboratory as a violation governed by Article (31.6) of the Implementing Regulations of the Unified Customs Law and impose a fine of SAR 1,000 per item, based on the justifications and reasons outlined herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.



Similar decisions

Riyadh Appellate Customs Committee Decision No. (46) dated 26/05/1444 AH.

Riyadh Appellate Customs Committee Decision No. (60) dated 25/05/1444 AH.



Appellate Committee:
Appellate Customs Committee in Riyadh

Decision No. (CR-2022-56)
Delivered in Appeal No.
(2022-142234-PC)

Principle No. 51

- The plea of document destruction due to the extended period elapsed for a consignment that was not definitively cleared does not affect the characterization of the incident as customs smuggling; **as the plea of limitation in customs smuggling offenses is only applicable after the expiration of the statutory period.**

Facts:

Praise be to Allah Almighty and may His blessings and peace be upon our Prophet Muhammad and upon all his Family and Companions.

On Monday, 08/07/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal filed by, holder of National ID No. (...), in his capacity as the owner of Establishment against Primary Decision No. (814/3) of 1443 AH, issued by the Third Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict the Importer, ... Est., CR No. (...), in person of customs smuggling.
2. Order the establishment to pay a customs fine of SAR 149,706 (one hundred forty-nine thousand seven hundred six riyals), equivalent to the value of the item that was not authorized for clearance by the competent authority.
3. Order the establishment to pay a fine in lieu of confiscation equivalent to the item value, amounting to SAR 149,706 (one hundred forty-nine thousand seven hundred six riyals), bringing the total amount demanded to SAR 299,412 (two hundred ninety-nine thousand four hundred twelve riyals).

Since the Appellant was notified of the appealed decision on 21/07/1443 AH, and he filed an appeal against the decision on 16/08/1443 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

Facts of the case can be summarized that a consignment of (fabrics) belonging to Est. arrived through Jeddah Islamic Port Customs under Import Declaration No. (...) dated .../.../1433 AH. The consignment was cleared based on a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (T-.....) dated .../.../1433 AH was issued, indicating non-compliance with specifications concerning colorfastness to rubbing. Afterward, the Importer was notified of the results under several letters, but no response was received.

The Primary Committee held its session to review the case on Monday, 01/06/1443 AH. The session was attended by the Authority's representative and the owner of the Defendant Establishment,, holder of National ID No. (...). When asked about the fate of the consignment, the establishment's owner responded: "The fabric sales activity was discontinued approximately ten years ago. No one demanded that the goods be returned to the customs yard and they were subsequently sold." When asked, "Based on the



promissory undertaking you signed; did you notify the Customs Authority of the sale?" He responded: No. When asked about the Defendant's statement, the Authority's representative responded: "The Defendant has acknowledged disposal and we request a ruling on the case." Accordingly, the Primary Committee issued its decision as previously stated.

Grounds

Upon reviewing the statement of appeal presented by, holder of National ID No. (...), in his capacity as the owner of Establishment, against Primary Decision No. (814/3) of 1443 AH, the Appellate Customs Committee noted that the summary of the objection is as follows: 1. The statement of claim and all relevant documents were requested upon notification of the session; however, the authority failed to do so. As a result, I was unable to present my full defenses during the session. 2. The claim was made after a period of ten years, which is a considerable length of time, during which the documents were destroyed and the business was terminated. Furthermore, in smuggling offenses, a conviction cannot be established without conclusive evidence, and any doubt should be interpreted in favor of the accused. The statement of appeal concluded with a request to accept the submitted appeal and annul the primary decision in its entirety.

The Appellate Customs Committee in Riyadh, on Tuesday, 17/06/1444 AH, convened a session to review the appeal submitted by Establishment against Decision No. (814/3) of 1443 AH, issued by the Third Primary Customs Committee. The committee, upon reviewing the case file and the appeal filed by the Appellant, resolved to adjourn the session and deliberate on the submitted appeal in preparation for issuing a decision.

The committee, upon hearing the statements of the parties involved and reviewing the documents in the case file, along with the concerned party's statement of appeal and its attachments challenging the contested decision, concluded that the case is now ready for adjudication in its current state. The committee has fully acquainted itself with the facts of the case, and the evidence and submissions presented are sufficient to form its conviction and render a decision.

As the laboratory report No. (T-...-...) dated .../.../1433 AH confirmed that the goods did not comply with specifications regarding colorfastness to rubbing—considered a fundamental technical violation—and since the Importer admitted to having disposed of the consignment, which had not been fully cleared, despite previously committing not to do so until the laboratory results were issued, the case constitutes customs smuggling under Article (142) of the Unified Customs Law. This is due to the Appellant's failure to adhere to the non-disposal undertaking. Accordingly, the classification of customs smuggling under Article (142) of the Unified Customs Law applies in this case, supported by the provisions of Paragraphs (4&5) of Article (145) of the same law. Consequently, the committee concludes to uphold the primary decision in its entirety.

Decision

1. Accept in form the appeal filed by ..., holder of National ID No. (...), in his capacity as the owner of Est., CR No. (...), against Primary Decision No. (814/3) of 1443 AH issued by the Third Primary Customs Committee in Riyadh.
2. Dismiss the appeal on merits and uphold the primary decision in its entirety for the reasons and grounds stated herein.

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



Similar decisions

Riyadh Appellate Customs Committee Decision No. (142175) dated 26/11/1444 AH

Riyadh Appellate Customs Committee Decision No. (60) dated 25/05/1444 AH.



Appellate Customs Committee in Riyadh

Decision No. (22)

Date of Decision:
24/06/1444 AH

Principle No. 52

- Prohibited goods are those that are inherently banned, not due to a supervening characteristic.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Tuesday, 24/06/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal filed by ... Est., CR No. (...), against Primary Decision No. (497/3) of 1443 AH, issued by the Third Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict the Importer, ... Est., CR No. (...), in person of customs smuggling.
2. Order the Importer to pay a customs fine of SAR 327,785 (three hundred twenty-seven thousand seven hundred eighty-five riyals), equivalent to the value of the item that was not authorized for clearance by the competent authority.
3. Order the Importer to pay a fine in lieu of confiscation equivalent to the item value, amounting to SAR 327,785 (three hundred twenty-seven thousand seven hundred eighty-five riyals), bringing the total amount demanded to SAR 655,570 (six hundred fifty-five thousand five hundred seventy riyals).

Since it has been established that, holder of National ID No. (...), in his capacity as the representative of the establishment's owner, submitted the appeal request on 24/06/1443 AH and received the primary decision on 10/06/1443 AH, the appeal was filed within the statutory period specified in Article (163.C) of the Unified Customs Law.

Facts of the case are summarized that a consignment of (men's shirts) belonging to the Importer arrived through Jeddah Islamic Port Customs under Import Declaration No. (...) dated .../08/1434 AH, with a total value of SAR 327,785 (three hundred twenty-seven thousand seven hundred eighty-five riyals). The consignment was cleared based on a non-disposal undertaking pending approval from the competent authority. Upon testing the sample at the lab, Report No. (...) dated .../08/1434 AH was issued, indicating non-compliance with specifications concerning fabric composition and pH level. Afterward, the Importer was notified of the results under several letters, but no response was received. The Third Primary Committee held its session to review the case on Tuesday, 25/04/1443 AH. When asked about the absence of the Authority's claims and import declaration numbers in the statement of claim, the Authority's representative responded: "The statement of claim covered all relevant declarations in the case." When asked about the fate of the consignment, the establishment's owner stated that the goods remained in their possession until 1438 AH, when a fire broke out in the warehouse, destroying the goods in the seventh month of 1438 AH. Accordingly, the Primary Committee issued its decision



as previously stated, convicting the Importer of customs smuggling and imposing the corresponding penalties as outlined in its ruling. This decision was based on the fact that the consignment was temporarily cleared under an undertaking by the Importer to store it in his warehouse until final clearance was granted. The committee determined that the Importer had disposed of the goods in violation of this undertaking. By doing so—while the consignment remained in violation based on the laboratory report—the Importer's actions constituted the customs smuggling offense.

Grounds

The Appellate Customs Committee, upon reviewing the statement of appeal submitted by, in his capacity as the representative of the owner of the mentioned establishment, under PoA No. (...) dated ../03/1443 AH, noted that the Appellant stated in his appeal that the Authority filed the claim more than eight years after the consignment's arrival, and therefore, its right to initiate legal action is time-barred. Additionally, the Appellant pointed out that the Authority's representative stated in the claim that it covered all items in the consignment, whereas the laboratory report indicated that the only non-compliant item was the "girls' dress with pants," identified by item number (...) with a value of SAR 530.16 (five hundred thirty riyals and sixteen halalas). Consequently, even assuming a violation existed, imposing a penalty on the entire consignment would be contrary to regulations, as the violation is limited to the specific non-compliant item. As for the fate of the consignment, the establishment did not dispose of it, as a fire broke out in its warehouses where the goods in question were stored. A fire incident report is attached as evidence. He concluded his statement by requesting the annulment of the primary decision in its entirety. On Tuesday, 17/06/1443 AH, the Appellate Customs Committee in Riyadh held its first session in Riyadh to review the appeal filed by Est. against Decision No. (497/3) issued by the Third Primary Customs Committee in Riyadh. The committee, upon reviewing the case file and the appeal submitted by the Appellant, decided to adjourn the session and deliberate on the appeal to complete the review of the case.

The committee, upon hearing the statements of the parties involved and reviewing the documents in the case file, along with the concerned party's statement of appeal and its attachments challenging the contested decision, concluded that the case is now ready for adjudication in its current state. The committee has fully acquainted itself with the facts of the case, and the evidence and submissions presented are sufficient to form its conviction and render a decision.

The Appellant's claim regarding the statute of limitations, which, according to the appeal, should result in the dismissal of the customs smuggling case, as facts of the case do not meet the conditions for the statute of limitations to apply, in light of provisions of the Unified Customs Law that specify the statute of limitations for customs smuggling cases as fifteen years.

Laboratory Report No. (...) dated ../08/1434 AH confirmed that the consignment did not comply with specifications concerning fabric composition and pH level. This violation is considered substantial, and the Importer's disposal of the consignment while it was laden with such violations constitutes customs smuggling, as it contravenes the undertaking signed. Regarding the Importer's claim that the non-compliant item was destroyed in a fire, and the submission of a fire incident report as evidence, the Appellate Committee, upon reviewing Fire Incident Report No. (...) dated ../11/1440 AH, found that the fire occurred in a warehouse adjacent to the Appellant's warehouses and there was no proof that the non-compliant item was affected by the fire. Therefore, the Appellant's claim that the consignment in question was destroyed remains unsubstantiated, lacking supporting evidence, contrary to the established fact that the consignment was in their warehouses. Furthermore, the import declaration for the consignment was issued in 1434



AH and the laboratory results for the shipment were issued around the same time, while the fire incident report dates back to 1440 AH, which is a significantly long period during which it is unreasonable to assume that the consignment remained in the merchant's warehouses, as merchants typically strive to sell their goods promptly. It is also expected that the merchant would have followed up with the Customs Authority at the time to verify the clearance status of the consignment and complete the necessary procedures, especially since the period between the registration of the import declaration and the issuance of the laboratory results did not exceed two weeks. Furthermore, the Appellant failed to return the non-compliant consignment as outlined herein and was unable to prove that they did not dispose of it or substantiate their claim that it was destroyed in the fire. As for the Appellant's argument that the violation, if any, should be limited to a single item identified in the referenced laboratory report, the Appellate Committee, after reviewing the case file, found merit in this claim. It was established from the external purchase invoice attached to the case documents that the laboratory report specifically pertained to item (...) and that its recorded value was SAR 530.16 (five hundred thirty riyals and sixteen halalas). Since the Authority did not provide any evidence to the contrary, the Appellate Committee upheld the conviction for customs smuggling but limited the confiscation penalty to the non-compliant item only, as it was the sole item for which the smuggling offense was established, necessitating the adjustment of the customs fine to be twice the applicable customs duties, due to the fact that the Primary Committee waived the customs fine for the Appellant based on Paragraph (4) of Article (145) of the Unified Customs Law, which applies specifically to prohibited goods. However, the non-compliant item in this case is not classified as a prohibited good, as prohibited goods are those that are inherently banned, not due to a supervening characteristic. Accordingly, the Appellate Committee determined that Paragraph (2) of Article (145) should apply in imposing the customs fine.

Decision

1. Accept in form the appeal filed by ... Est., CR No. (...), against Primary Decision No. (497/3) of 1443 AH issued by the Third Primary Customs Committee in Riyadh.
2. Dismiss the appeal on merits and uphold the primary decision on the customs smuggling conviction while amending the decision to limit the confiscation penalty to the non-compliant item identified in the laboratory report and adjusting the customs fine to be twice the customs duties applicable only to the non-compliant item from the consignment, rather than the entire consignment value, in accordance with grounds and merits mentioned herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (65) dated 14/07/1444 AH.

Riyadh Appellate Customs Committee Decision No. (142149) dated 14/09/1444 AH.

Riyadh Appellate Customs Committee Decision No. (60) dated 24/06/1444 AH.



Appellate Customs Committee in Riyadh

Decision No. (37)

Date of Decision:
03/05/1444 AH

Principle No. 53

- The confirmed destruction of the consignment under governmental oversight effectively nullifies the grounds for the Importer's customs smuggling conviction.

Facts:



Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Sunday, 03/05/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal submitted by the Importer, Est. against Primary Decision No. (1327) of 1443 AH issued by Riyadh First Primary Customs Committee, which ruled as follows:

1. Convict the Importer, ... Establishment, CR No. (...), owned by (...), National ID No. (...), in person of customs smuggling.
2. Order the Importer to pay a customs fine of SAR 259,989 (two hundred fifty-nine thousand nine hundred eighty-nine riyals), equivalent to three times the value of the consignment that was not authorized for clearance by the competent authority.
3. Order the Importer to pay a fine in lieu of confiscation equivalent to the consignment value, amounting to SAR 86,663 (eighty-six thousand six hundred sixty-three riyals), totaling SAR 346,652 (three hundred forty-six thousand six hundred fifty-two riyals).

Since the Appellant was notified of the appealed decision on 15/07/1443 AH, and he filed an appeal against the decision on 04/08/1442 AH, therefore, this appeal should be accepted in form for being submitted by a person with the capacity within the period prescribed in Article (163) of the Common Customs Law.

On merits, the facts of the case are summarized that a consignment of (basil seed beverage) arrived through King Abdulaziz Port under Import Declaration No. (...) dated .../.../1438 AH, with a declared value of SAR 86.663. The consignment was cleared based on the Importer's request, accompanied by a non-disposal undertaking pending approval for release by the competent authority. sending samples of the imported goods to SFDA, Report No. (...) dated .../.../1439 AH was issued, indicating that the sample did not comply with the specifications due to the confirmed presence of an artificial color component (124) and the absence of the required artificial color warning, which is prohibited for addition to food products.

In light of this, ZATCA convicted the Importer and referred the case to the Third Primary Customs Committee in Riyadh for review and adjudication, based on the letter from His Excellency the Governor of the Saudi Customs Authority, registered under No. (10957) and dated 03/08/1440 AH.

The Primary Committee concluded its decision by convicting the Importer of customs smuggling, imposing a customs fine, as well as a fine in lieu of confiscation as previously



stated. This decision was based on the Importer's handling of the consignment after the laboratory results confirmed the presence of the artificial color component (124) and the absence of the required artificial color warning, which is classified as technical violation that carries significant negative consequences for consumer health and also impacts their financial resources.

The Appellate Customs Committee in Riyadh, on Thursday, 02/04/1444 AH, corresponding to 27/10/2022, at 1:00 PM, held its second session in Riyadh, during which it reviewed the Appellant's supplementary memorandum, in which he requested the annulment of the appealed decision, arguing that there was no criminal intent in handling the consignment. He asserted that the destruction of the consignment was due to the accumulation of goods in the establishment's warehouses and the impact of the COVID-19 pandemic. Consequently, he approached the East Dammam Municipality to conduct the disposal under its supervision. As proof, he submitted destruction reports issued by the East Dammam Municipality along with photographs documenting the disposal process. He argued that, although the destruction was not carried out under the supervision of the relevant customs authority, it was conducted under the oversight of a governmental entity, namely the East Dammam Municipality. Therefore, he requested the annulment of the appealed decision, as detailed in the aforementioned memorandum. The committee also reviewed ZATCA's memorandum of reply, which reaffirmed that the consignment did not conform to the required specifications and standards. ZATCA emphasized that the Importer violated his commitment by resorting to the East Dammam Municipality and proceeding with the destruction of the items, as documented in a report signed by the authority on .../.../1443 AH—four years and nine months after the test results were issued. The Importer failed to coordinate with the relevant customs authority, rendering the destruction process unauthorized. Consequently, ZATCA maintained that any documents related to the destruction are not valid unless the process is conducted under the supervision of the competent customs authority. Accordingly, ZATCA requested the dismissal of the appeal and the affirmation of the primary decision.

Grounds



Since the Appellant asserted that he did not dispose of the consignment and that the destruction of the non-compliant items was carried out under the supervision of the East Dammam Municipality, and given that the destruction reports confirm the disposal of the non-compliant items, since the primary decision to convict the Importer of customs smuggling was based on the Importer's alleged disposal of the non-compliant consignment, and considering that the consignment was destroyed under the supervision of the East Dammam Municipality, the committee concludes that this undermines the basis for the Importer's conviction for customs smuggling. This conclusion is not undermined by the argument presented by ZATCA that the destruction process was not officially approved because it was not carried out under its supervision. The process was conducted under the supervision of a governmental entity, namely the East Dammam Municipality, and the Authority does not dispute the validity of the destruction itself.

Since the matter stands as mentioned, the Appeal Committee has concluded to annul the appealed primary decision in its entirety.

Accordingly, the Appellate Customs Committee concluded the following:

Decision

1. First: In Form: Accept in form the appeal submitted by the Importer, Est., CR No. (...), owned by (...), National ID No. (...), against Decision No. (1327) of 1443 AH



delivered by Riyadh First Primary Customs Committee at the Saudi Customs Authority.

2. Second: Accept the appeal on merits and annul the primary decision in its entirety, in accordance with the reasons stated.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (38)
dated 03/05/1444 AH.

Riyadh Appellate Customs Committee Decision No. (39)
dated 03/05/1444 AH.

Riyadh Appellate Customs Committee Decision No. (142150)
dated 12/11/1444 AH



Appellate Customs Committee in Riyadh

Decision No. (43)

Date of Decision:
09/06/1444 AH

Principle No. 54

- Established jurisprudence dictates that the determination and selection of a penalty, appropriate to the offense, is the prerogative of the adjudicating committee, based on their reasoned evaluation of the specific circumstances and the accused's status.

Facts:

Praise be to Allah and blessings and peace be upon his Prophet, all his Family and Companions.

On Monday, 09/06/1444 AH, the Appellate Customs Committee in Riyadh convened to review the appeal filed by the Public Prosecution against Primary Decision No. (3001) of 1443 AH, issued by the First Primary Customs Committee in Riyadh, which ruled as follows:

1. Convict the Defendant,, a Syrian national, holding Passport No. (...), from customs smuggling.
2. Order the Defendant to pay a customs fine of SAR 3,600 (three thousand six hundred riyals).
3. Confiscate the means of transport used in the smuggling.

Since the appeal filed by the Public Prosecution on 10/01/1444 AH and the Public Prosecution received the decision on 11/12/1443 AH, this necessitates accepting the appeal in form, as it was submitted within the statutory period stipulated in Article (163) of the Unified Customs Law.

The Appellate Customs Committee in Riyadh, on Thursday 02/04/1444 AH, corresponding to 27/10/2022, held its first session in Riyadh to review the appeal filed by the Public Prosecution against the decision of the First Primary Customs Committee in Riyadh, Decision No. (3001) of 1443 AH. The case facts are summarized that while a truck of type (...) Model (...), with license plate number (...) driven by (...)— a Syrian national— was arriving at the customs yard at the Customs Security Section of the Al-Khafji Customs, suspicions arose regarding the vehicle. Upon inspection, 9 packs of [Brand] tobacco were found concealed inside the truck's dashboard after it was dismantled, without being declared. Additionally, there were three prior violation reports against the driver: the first under No. (...) dated 02/02/1442 AH, the second under No. (...) dated 19/01/1442 AH, and the third under No. (...) dated 19/11/1441 AH. The seized goods were valued at SAR (1,800), according to the inventory and valuation report. A seizure Report No. (...) dated ../04/1442 AH was prepared and the seized items were confiscated. Riyadh First Primary Customs Committee, upon reviewing the case, issued its Decision No. (3001) of 1443 AH, convicting in person of customs smuggling, imposing a fine of SAR (3,600), and confiscating the seized items in question, as well as the means of transport used in the



smuggling. The Public Prosecution, upon being notified of the decision, presented a memorandum of appeal requesting a review of the case and a ruling that imposes a penalty proportionate to the offense committed by the driver to ensure that the punishment serves as a deterrent to prevent the driver from reoffending and as a warning to others against committing similar violations.

Grounds



The Public Prosecution, in its memorandum of objection, requests a reconsideration of the appealed decision and the imposition of a penalty proportionate to the severity of the offense committed by the Defendant to ensure that the punishment serves as a deterrent to prevent the driver from reoffending and as a warning to others against committing similar violations. The Appellate Customs Committee has established that jurisprudence dictates that the determination and selection of a penalty, appropriate to the offense, is the prerogative of the primary adjudicating committee, based on their reasoned evaluation of the specific circumstances and the accused's status, within the limits prescribed by the law. Notably, the Public Prosecution did not provide any grounds necessitating the consideration of a harsher or more severe penalty than the one imposed, which would warrant addressing its request in this regard. Consequently, this Appellate Committee concludes that the appealed primary decision aligns with Article (145) of the Unified Customs Law. Accordingly, the committee decides to reject the Public Prosecution's argument for lack of valid legal grounds.

Accordingly, the Appellate Customs Committee concluded the following:

Decision

1. Accept in form the appeal filed by the Public Prosecution against Primary Decision No. (3001) of 1443 AH issued by the First Primary Customs Committee in Riyadh.
2. Dismiss the Public Prosecution's appeal and uphold the primary decision in its entirety, for the reasons and grounds outlined herein.

May Allah Blessings and Peace be upon our Prophet Muhammad, his Family and Companions.

Similar decisions

Riyadh Appellate Customs Committee Decision No. (42) dated 09/06/1444 AH.

Riyadh Appellate Customs Committee Decision No. (95) dated 15/07/1444 AH.



Principle No.	Principle	Subject	Page No.
1	The serving of a notice is the means of notifying the Defendant of the case, and the dues process requires that the case parties be duly notified to attend the hearings and plead their case.	Decisions based on formal aspect:	6
2	Should the appellant submit material evidence to the Appellate Committee, and to preserve the litigants' right to a full course of legal proceedings, the Appellate Committee is entitled to remand the case to the Primary Committee.	Decisions based on formal aspect:	9
3	Where general courts have rendered final judgments on specific elements of customs disputes, the committee is barred from re-adjudication due to the principle of res judicata.	Decisions based on formal aspect:	11
4	The customs authority has no concern with the relationship between the importer and third parties in relation to import and running the business activity.	Decisions based on formal aspect:	13
5	The importer's claim against third parties for damages due to the existence of a contractual relationship related to the consignment in issue is outside the jurisdiction of the customs committees.	Decisions based on formal aspect:	13
6	Judicial precedents are merely interpretations used to adjudicate a ruling and do not preclude alternative interpretations in subsequent cases. Consequently, judicial precedents are not binding, but rather serve as persuasive authority that may be reviewed without obligation.	Decisions based on formal aspect:	17
7	The penalties requested by Public Prosecution must be specifically specified in order to be considered and verified for conformity and consistency with the penalties included in the common customs law.	Decisions based on formal aspect:	20
8	The statute of limitations does not fall within the provisions of Article (176) of the Common Customs Law in the collection of customs duties, if this is due to an exemption decision issued by a competent non-customs authority and it withdrew it due to subsequent findings.	Collection	23
9	In the event of an objection to an administrative decision issued by a competent authority outside the customs framework, the customs committees lack jurisdictional competence to adjudicate such an objection.	Collection	23
10	The payment of customs duties is a separate matter from the criminal aspect related to the suspicion of smuggling, as what customs requires from the Importer is the payment of duties that were not collected from it, without any error on the part of Customs Authority in this regard.	Collection	34



11	Give the correct classification of the imported goods is not based on Importer's declaration but rather on the actual nature of the goods, as verified through consignment's catalogs.	Collection	39
12	The inclusion of duty-free goods in a consignment does not absolve the requirement for declaration, regardless of the entire consignment's exempt status.	Declaration	45
13	Absent evidence corroborating the shipper's error and disproving the importer's violation, the importer's declaration of a discrepancy between the declared and imported goods does not, as a general rule, validate their claim of shipper's error.	Declaration	45
14	Ideally, should an importer detect an error within a consignment, they are to notify the relevant authorities before proceeding with the customs clearance process.	Declaration	45
15	The crucial factor is the actual nature of imported goods and their conformity with the classification adopted by each country in accordance with its customs regulations, rather than claiming that different classifications and tariff treatments exist across various countries.	Customs Tariff	51
16	The customs authority is the technically qualified entity to determine the classification of imported goods. Consequently, a mere objection and a request for an external expert opinion do not alter the established classification.	Customs Tariff	55
17	Concealing smuggled goods is evidence of knowledge and intent to bring the seized items into the country unlawfully. The claim of ignorance of customs laws does not negate this fact.	Prohibited Goods	59
18	Prohibited goods are deemed prohibited in and of themselves, not due to a condition that arises upon their entry into the Kingdom when they fail to meet the required specifications.	Prohibited Goods	61
19	The conviction of the Importer is not established unless the reasons for the refusal of clearance are verified.	Restricted Goods	65
20	The lack of a production and expiration date on the packaging constitutes a material violation that affects product quality and consumer safety.	Restricted Goods	67
21	The claim that the imported consignment was intended for personal use cannot be relied upon to absolve the Importer of responsibility for disposing of the consignment in violation of the undertaking.	Restricted Goods	71
22	Importing a consignment bearing a registered trademark, which is identical to the original mark, is deemed a violation of the Trademark Law. Consequently, this act fulfills the criteria for customs smuggling, a charge that cannot be dismissed solely	Trademark	75



	by asserting an absence of intention. The very act of allowing such infringing goods to enter substantiates the intent to engage in customs smuggling.		
23	Establishing the validity of the trademark found on the imported goods results in the importer not being convicted of trademark infringement.	Trademark	84
24	The use of a registered trademark on consignments by someone other than the trademark owner, without a relationship between the importer and the trademark owner, constitutes a violation of the trademark law.	Trademark	86
25	The presence of a proven indication of origin that contradicts reality establishes the availability of the two elements of criminal liability: knowledge and intent on the part of the Importer.	Indication of Origin	90
26	The importer's disposal of the consignment, while it bears non-substantive remarks from the laboratory, does not constitute customs smuggling on the part of the importer.	Written Undertaking	95
27	The importer's disposal of the consignment released under the written undertaking before its approval constitutes a breach of the commitment registered against him with customs, which entails responsibility for violating the provisions of prohibition and restriction stipulated in the law that address customs smuggling.	Written Undertaking	97
28	Handing over the consignment to the importer on a temporary basis for storage pending its approval by the competent authority does not constitute its clearance. Rather, it was cleared in exchange for an undertaking from the importer not to dispose of it. Consequently, disposing of these items and violating the undertaking constitutes customs smuggling.	Written Undertaking	99
29	If the consignment is not cleared due to a non-substantial matter, the incident falls within customs violations and does not amount to a customs smuggling offence.	Written Undertaking	103
30	Given that the commercial registration bears the name of the establishment's owner and all consignment papers have been duly completed, bear the establishment's official stamp, and are certified by the Chamber of Commerce, the establishment's owner is responsible for the disposal of the consignment.	Written Undertaking	106
31	The importer is not prohibited from handling the cleared segment of a consignment if the clearance of the remaining segment is withheld.	Written Undertaking	109
32	Establishing a substitute confiscation value for the consignment without affording the importer an opportunity to address it does not provide a sound foundation for the value's determination.	Written Undertaking	109



33	The later-issued clearance report provided by the importer, concerning the consignment's clearance to demonstrate the consignment's integrity, cannot be accepted or relied upon from the competent authority if it fails to reference the initial report and does not address or clarify the reasons for the issuance of two reports for the same consignment.	Written Undertaking	113
34	Non-compliance of the consignment with the requirements of the Medical Devices and Products Control Regulations, such as failure to complete the corrective action plan for the consignment, even if minor, constitutes a material observation. Therefore, the importer's disposal of the consignment is considered a violation of the undertaking taken against him.	Written Undertaking	116
35	The non-compliance of the power capacity specifications with the required standards constitutes a critical product defect that directly impacts consumer safety.	Written Undertaking	119
36	The Importer's failure to return the consignment is indicative of his disposal thereof, thereby fulfilling one of the forms of customs smuggling.	Written Undertaking	119
37	The Importer's assertion of non-disposal and intended return of the consignment is rendered ineffectual by his failure to respond within the previously granted grace period.	Written Undertaking	122
38	"The Importer's claim of lacking criminal intent for smuggling is untenable, given their awareness that the consignment was subject to a non-disposal undertaking prior to its clearance.	Written Undertaking	125
39	The Importer's plea of prolonged inspection duration is inconsequential, as he is expected to proactively engage with the Customs Authority to ascertain the examination results. Failure to do so renders him liable for any actions contrary to his undertaking.	Written Undertaking	125
40	By destroying the pledged goods under customs supervision, the merchant has effectively honored their non-disposal undertaking, rendering their conviction unsustainable.	Written Undertaking	128
41	The finding of non-conformity in a consignment sample, as reported by the testing facility, stemming from issues amenable to Importer rectification or oversight, does not represent a substantive breach and, as such, cannot be classified as a customs smuggling offense.	Written Undertaking	130
42	A conviction is not established unless the quantity and value of the non-compliant item in the consignment are verified and specifically determined.	Written Undertaking	132
43	By correcting the discrepancy in the pledged goods, the merchant has effectively honored their non-	Written Undertaking	135



	disposal undertaking, rendering their conviction unsustainable.		
44	The consignment's proven compliance with all safety and security related testing parameters, with the laboratory's observation limited to the absence of Arabic labeling and instruction manuals as mandated by the specification, does not constitute a material discrepancy sufficient to categorize the Importer's actions as customs smuggling.	Written Undertaking	137
45	By re-exporting the pledged goods, the merchant has effectively honored their non-disposal undertaking, rendering their conviction unsustainable.	Written Undertaking	140
46	The Importer's failure to cooperate with the authority in verifying the consignment's disposition constitutes presumptive evidence of disposal thereof.	Written Undertaking	143
47	Conviction for money laundering does not preclude prosecution for customs smuggling.	Money Laundering	147
48	The criterion for classifying a customs procedural violation is that it does not compromise product safety or document validity, and that the reason for the laboratory's refusal to authorize product clearance is immaterial. Such a violation is categorized as a breach of customs procedures, warranting the imposition of legally prescribed penalties.	Customs Smuggling	151
49	Customs smuggling is a deliberate criminal offense that can only be established upon the fulfillment of its material and moral elements, where the latter of which hinges on the presence of criminal intent as stipulated in the Unified Customs Law. Furthermore, a criminal offense cannot be established on the basis of conjecture or speculation; rather, it requires conclusive evidence and certainty.	Customs Smuggling	154
50	In cases involving multiple items within a single consignment, it is imperative that the assessment of culpability consider the distinctions between formal and substantive observations per item and impose the prescribed penalty determined for each respective violation.	Customs Smuggling	157
51	The legal pursuit of customs smuggling crimes remains valid for a period of fifteen years from the date of their perpetration.	Customs Smuggling	160
52	Prohibited goods are those that are inherently banned, not due to a supervening characteristic.	Customs Smuggling	162
53	Destruction undertaken by an official governmental body provides assurance of the destruction process's authenticity.	Customs Smuggling	165



54	Established jurisprudence dictates that the determination and selection of a penalty, appropriate to the offense, is the prerogative of the adjudicating committee, based on their reasoned evaluation of the specific circumstances and the accused's status.	Customs Smuggling	168
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