

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

**CIVIL PETITION NOS. 1812-L TO 1815-L, 1962-L TO 1970-L,
1981-L TO 1983-L TO OF 2017**

(On appeal against the judgment dated 14.04.2017 passed by the Lahore High Court, Lahore in ICA Nos. 1196/2015, 1340/2015, 1344/2015, 1635/2015, 1197/2015, 1252/2015, 1258/2015, 1300/2015, 1455/2015, 1495/2015, 1500/2015, 1733/2015, 1821/2015, 1388/2015, 1467/2015 & 1535/2015)

M/s Advance Telecom	(In CP 1812-L/2017)
M/s M.I. Sanitary Store etc	(In CP 1813-L/2017)
M/s Marosh etc	(In CP 1814-L/2017)
M/s Dar Ceramics Trading Co etc	(In CP 1815-L/2017)
M/s Fincera (Pvt) Ltd, Lahore	(In CP 1962-L/2017)
M/s Usman & Umer Enterprises, Lahore etc	(In CP 1963-L/2017)
M/s Saad International Lahore etc	(In CP 1964-L/2017)
M/s Tayyab Traders, Lahore etc	(In CP 1965-L/2017)
M/s Commercial Corporation, Lahore etc	(In CP 1966-L/2017)
M/s Waheed Sons, Lahore etc	(In CP 1967-L/2017)
M/s Sara Enterprises, Lahore etc	(In CPs 1968 & 1969-L/17)
M/s Ibrahim Traders, Lahore etc	(In CP 1970-L/2017)
M/s Qureshi Sons, Lahore etc	(In CP 1981-L/2017)
M/s Umair International, Lahore etc	(In CP 1982-L/2017)
M/s Hussain Traders, Lahore etc	(In CP 1983-L/2017)
	... Petitioners

VERSUS

Federation of Pakistan etc	(In all cases)
	... Respondents

For the Petitioners: Mr. Shafqat Mehmood Chohan, ASC
Mian Muhammad Athar, ASC

For the Respondents: Ch. Muhammad Zafar Iqbal, ASC
Mr. Walayat Umar Ch, AOR

Date of Hearing: 22.09.2017

JUDGMENT

FAISAL ARAB, J.- Under Article 8 of the Bilateral Free Trade Agreement between Pakistan and China, the Customs duty on the goods originating in the territories of each country was to be progressively eliminated. Pursuant to such agreement, the Government of Pakistan issued SRO No.659(I)/2007 dated 30.06.2007 whereby the rate of customs duty was gradually

reduced in four stages and in certain cases goods became duty free. Exercising the powers contained in Section 18(3) of the Customs Act, 1969, the Federal Government imposed regulatory duty on 397 goods imported vide SRO No. 869(I)/2008 dated 27.08.2008. However, regulatory duty was not chargeable on goods covered under Free Trade Agreement. Imposition of regulatory duty was again repeated vide SRO No. 482(I)/2009 on the same terms as was imposed under SRO 869(I)/2008.

2. In 2014, the Federal Government issued notification bearing SRO No. 568(I)/2014 dated 26.06.2014 whereby regulatory duty was imposed but this time no exception was made for the goods covered under the Free Trade Agreement. The petitioners, who are importers of goods covered under the Free Trade Agreement challenged the imposition of regulatory duty in Writ Petitions filed in the Lahore High Court on the ground that in the presence of the Free Trade Agreement, regulatory duty could not have been charged as it amounts to imposing customs duty in the garb of regulatory duty. The learned single Judge of the High Court, allowed the Writ Petitions on the ground that the regulatory duty being a kind of customs duty could not have been validly imposed in violation of the provisions of the Free Trade Agreement. It was further held that the present bilateral Free Trade Agreement is an offshoot of GATT and, therefore, be considered as a multilateral agreement as envisaged under the proviso of Section 18(5) of the Customs Act. Aggrieved by such decision, the Federation of Pakistan preferred Intra Court Appeals before the Division Bench of the Lahore High Court, which were allowed and imposition of regulatory duty was declared to be

valid vide impugned judgment dated 14.04.2017. Hence, these petitions.

3. Learned counsel for the petitioners mainly argued two points. First, it was contended that while imposing regulatory duty under SRO 869(I)/2008, it was clearly mentioned that regulatory duty would not be chargeable on the goods imported under the Free Trade Agreement and unless this SRO, which created an exception to the imposition of regulatory duty on goods covered under Free Trade Agreement is withdrawn, such duty could not be validly imposed at any subsequent stage. Second, it was argued that proviso to Section 18(5) of the Customs Act, 1969 is attracted to the case, therefore, duty could not be levied on goods covered under a multilateral trade agreements and the Free Trade Agreement being an offshoot of General Agreement on Tariff and Trade (GATT), hence it is to be regarded as a multilateral agreement for the purposes of the proviso to Section 18(5). Thus it was contended that imposition of regulatory duty be declared *ultra vires* of the proviso.

As regards to the argument that the regulatory duty is part of the customs duty and once rate of duty has been reduced or became duty free pursuant to the Free Trade Agreement, no further regulatory duty could have been imposed, this question stands settled by a decision of this Court in the case of Collector of Customs and others Vs. Ravi Spinning Ltd and others (1999 SCMR 412) wherein it has been held as under:-

"The statutory duty prescribed under the First Schedule to the Act has nexus only with the duty levied under section 18(1) of the Act. Therefore, on the language of these S.R.Os., it is not possible to hold that the exemption granted under these notifications also applied to the customs duty levied in

addition to the statutory duty under section 18(2) of the Act or under other laws for the time being enforced. We have already pointed out earlier in this judgment that in contradiction to the customs duty levied under section 18 (1), of the Act, which is prescribed and predetermined, the regulatory duty is neither prescribed nor pre-determined but is levied at a rate which may vary according to the circumstances. Therefore, regulatory duty imposed by the Government under section 18(2) of the Act though a species of customs duty, is a duty in addition to the duty prescribed under the First Schedule to the Act to meet a particular situation, not covered by the statutory duty. (page 458)

14. Regulatory duty, on the other hand, is neither fixed nor pre-determined. It is imposed in exercise of the delegated authority, by the Government subject to limitations mentioned in clauses (2) to (4) of section 18,.... The regulatory duty, therefore, by its very nature is a transitory measure intended to cover and meet a situation or condition not covered by the statutory duty prescribed under section 18(1) of the Act....." (pages 430-431)

4. This view was reiterated in another judgment of this Court in the case of Indus Trading and Contracting Company Vs. Collector of Customs (Preventive) Karachi and others (2016 SCMR 842). It was held as under:-

"5. Under section 18 of the Customs Act, 1969, customs duties are levied under different nomenclatures. Under section 18(1) statutory customs duty is imposed whereas under section 18(2) (after amendment regulatory duty is covered under section 18(3) of the Customs Act) the legislature has empowered the Federal Government to impose regulatory duty through notifications. Therefore, statutory duty under section 18(1) and regulatory duty under section 18(2) are two distinct categories of duties. One should not be taken to be the same as the other. It is by now well settled by the judicial pronouncements of this Court that where import or export of any commodity enjoys exemption from statutory customs duty, even then the Federal Government can impose regulatory duty, within the confines described in section 18(2) of Customs Act through subordinate legislation. Where the legislature grants exemption from the payment of customs duty that falls under section 18(1), the same cannot be made basis to avoid payment of regulatory duty imposed subsequently unless there is also a promise that such concession would also be applied to regulatory duty in case it is levied in future. As the exemption in the present case does not contain such a promise it is to be applied only to duty that was chargeable under section 18(2) and not to a duty which can be competently levied under a different nomenclature."

5. Insofar as the proviso to Section 18(5) of the Customs Act is concerned, the issue already stands resolved by the judgment of this Court in the case of Majeed and Sons Steels (Pvt) Ltd and

others Vs. Federation of Pakistan through Secretary M/o Economic Affairs, Islamabad etc. (2016 SCMR 655) wherein it has been held that bilateral agreements cannot be read into the proviso of Section 18(5) of the Customs Act. As to the other argument that under the first SRO 896(I)/2008 an exception from regulatory duty was created for goods covered under the Free Trade Agreement and as long as the exception granted by said SRO is not withdrawn, regulatory duty could not be charged, suffice it is to state that the earlier SRO was not in relation to grant of exemption from regulatory duty on goods covered under Free Trade Agreement. It only imposed regulatory duty on certain items which did not cover goods that were part of Free Trade Agreement. In these circumstances, the Government was well within its right to impose regulatory duty on such goods as well at any stage, which it did vide SRO 568(I)/2014. It was not necessary at all to first withdraw the exception granted earlier in SRO whereby the regulatory duty was imposed only on goods not covered under the Free Trade Agreement.

6. For what has been discussed above, we do not find any merit in these petitions, which are accordingly dismissed and leave is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
22nd of September, 2017
Approved For Reporting
Khurram