

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NOS. 427 & 428 OF 2009

(On appeal against the judgment dated 27.1.2009 passed by the High Court of Sindh, Karachi in Special Customs Reference Applications No.348 and 349 of 2007)

Collector of Customs

(In both cases)

... Appellant

VERSUS

M/s Best Way Cement

(In CA 427/2009)

M/s Maple Leaf Cement Factory

(In CA 428/2009)

... Respondents

For the Appellants: Raja Muhammad Iqbal, ASC
(In both cases)

For the Respondents: Mr. Salman Akram Raja, ASC
(In both cases)

Date of Hearing: 27.04.2016

JUDGMENT

FAISAL ARAB, J.- The respondent companies of both the connected appeals are cement manufacturing enterprises. The respondent company of Civil Appeal No.427 of 2009 imported sixteen units of Volvo FM 400 Trucks. Seven of such trucks were imported vide IGM No.1151/2006, Index No.20 and Goods Declaration No.196467 dated 24.06.2006 and the remaining nine trucks were imported vide IGM No.1151/2006, Index No.21 and Goods Declaration No.196469 dated 24.06.2006. Similarly, the respondent company of Civil Appeal No.428 of 2009 imported two Volvo FM 400 Trucks vide IGM No.1151/2006, Index No.19 and Goods Declaration No.196468 dated 24.06.2006. All eighteen trucks were shipped to

Karachi port on S.S. 'Iron Butterfly'. Upon arrival of the ship both the respondent companies claimed exemption from duty in excess of 5% in terms of Serial No.21 of SRO 575(I)/2006 dated 5.6.2006 and 0% sales tax in terms of SRO 530(I)/2005 dated 6.6.2005 by declaring that the imported trucks fall within the ambit of plant as provided in SRO 575(I)/2006 dated 5.6.2006. The entire basis for treating the trucks to be part of the plant of their respective cement factories was that the imported trucks were Off-Highway trucks imported for their utilization in the industrial process of their respective cement factories, hence they be regarded as part and parcel of their cement manufacturing activity. Upon physical examination of the imported trucks, the Custom Examination Staff found the imported vehicles to be Volvo FM 400 trucks which were not Off-Highway dump trucks but simply On-Highway trucks. After disagreeing with their claim all eighteen trucks were classified under PCT Heading 8704.2290 which attracted 30% Ad Volverum customs duty and 15% Sales Tax.

2. Having been denied the claim of exemption under the above referred two SROs, the respondent companies challenged the decisions of the Appraisement Collectorate before the Collector Appeals, who concurred with the decisions of the Appraisement Collectorate and dismissed their respective appeals vide orders dated 14.11.2006. The respondent companies then challenged the appellate orders before the Customs and Sales Tax Appellate Tribunal in Customs Appeals No. K-01 and K-32/2007 which allowed their appeals through a common judgment dated 12.04.2007 after following the decision of Sindh High Court in the case of D.G. Khan Cement Limited Vs. Deputy Collector of Customs (2003 PTD 986) and

directed that excess duties and charges recovered from the respondent companies be refunded. The Collectorate of Customs Appraisement was not satisfied with the tribunal's decisions and challenged the same in the High Court of Sindh in two separate appeals bearing Special Customs Appeals No. 348 and 349 of 2007. The High Court dismissed both the appeals vide impugned judgments dated 27.01.2009, also relying on the decision that was rendered in the case of *D.G. Khan Cement Limited* supra. Dissatisfied with the common judgments rendered in both the appeals, the appellants filed petition for leave to appeal in CPLAs No. 289-K/2009 and 290-K/2009 in this Court. Both the petitions after grant of leave were converted into present appeals.

3. In the cement industry, Off-Highway trucks are used at the quarries where the predominant raw-material in the cement production 'limestone' is won by either extraction or blasting and then hauled on Off-Highway dump trucks to the place where the second stage in the cement manufacturing activity i.e. crushing of the raw-material takes place. In a decision of this Court rendered on 25.05.2016 in Civil Appeal No. 1291 of 2005 in the case of Collector of Customs Vs. D.G. Khan Cement Company Limited heard by us alongwith the present appeals, a question arose as to whether the use of Off-Highway dump trucks in the cement industry makes it part of the plant that is engaged in the industrial process of producing cement inspite of the fact that the Off-Highway dump trucks in their utilization remain mobile as against other machinery and equipment of the plant which directly or indirectly remains fastened to the earth. It was on account of the specific design and

utility of Off-Highway Dump Trucks in the industrial process of cement production that we broadened the meaning of the term 'plant' mentioned in SRO 484(I)/92 dated 14.05.1992 bringing the Off-Highway dump trucks within its ambit and thus answered the question in the affirmative. In deciding so, we did not approve the judgment of the High Court of Sindh rendered in the case of D.G. Khan Cement Limited Vs. Deputy Collector of Customs (2003 PTD 986) as it was based on an entirely different reasoning. The judgment of this Court in the case of Collector of Customs Vs. D.G. Khan Cement Company Limited rendered by us on 25.05.2016 in Civil Appeal No. 1291/2005 was based on following reasoning:-

8. *The layout plan of a cement factory determines what equipment, engineering and construction is required to complete the industrial process that is to be undertaken. Ordinarily, a cement factory is located where the main raw-material to produce cement such as limestone is found in abundance. So the industrial process of a cement factory starts from quarrying of the limestone. Where the layout of the cement factory is so designed that it starts its industrial process from extracting its raw materials from quarry then the same has to be hauled to the facility where the raw-materials are to be first crushed. The entire set of machines used in conjunction with other apparatus and electrical and mechanical equipments, required for undertaking and completing the industrial process, starting right from quarrying till the finished product that is produced is to be regarded as part of the plant of the respondent company. Off-Highway dump trucks, also called Off-Road dump trucks, are specifically designed for use in difficult terrain where the activity of mining, quarrying and construction of big buildings is carried out. These Off-Highway dump trucks, on account of their specific utility, have low payload capacity as well as low speed in comparison with the ordinary dump trucks that we see every day on roads and highways. Other than such use, the Off-Highway dump truck cannot be economically used as an ordinary means of transportation of goods.*

9. *In cement industry Off-Highway trucks are used at the quarries where the predominant raw-material in the cement production 'limestone' is won from the quarry by either extraction or blasting following which it is hauled on Off-Highway dump trucks to the place where the second stage in the cement manufacturing i.e. crushing of the raw-material takes place. Thus there is direct nexus between the use of Off-Highway dump truck at the quarry of a cement manufacturing factory with its industrial process. This nexus brings the Off-High way dump truck within the definition of 'plant'. When the industrial process of a cement factory starts with the quarrying activity of a cement factory, we see no reason why Off-Highway dump trucks' utilization cannot be treated as part of the industrial process of a cement factory. Thus Off-Highway dump trucks cannot be excluded from being treated as part of the plant of a cement factory, where their utility forms an integral function in the manufacturing of the cement. So irrespective of the fact that Off-Highway dump trucks required to be operated at the very first stage in the cement manufacturing activity i.e. quarrying of the raw materials, are mobile vehicles, nevertheless these trucks are utilized to further the industrial process without which the industrial process of a cement factory would get interrupted and hindered at the very initial stage.*

10. *It may not be out of place to mention here that extracting limestone and clay from the quarry can itself be a complete industrial process undertaken only to sell limestone in the market as its finished product. The customer of such enterprise could be a cement factory which is either not designed to start its industrial process from extracting limestone or for some reason the quarrying facility of a cement factory may have become dysfunctional and has to purchase limestone from elsewhere and transport it to its crushing facility. In such a situation the activity of transportation of raw-materials from the place of procurement to the place of crushing facility of a cement factory, would not make such activity part of cement factory's industrial process as mere transportation of a product from one facility to another, where it is utilized as raw material, does not make the act of transportation part of the industrial process of either of the two enterprises. However this does not seem to be the case with the respondent company as in the present case the quarrying of materials is undertaken by one and the same enterprise which after completion of the remaining stages involved in the manufacturing of cement (crushing, blending, heating, cooling, clinkering and milling) ends with*

the portable cement being produced in bulk or bags for consumption. The respondent company in the present case seems to be so designed that its' Off-Highway dump trucks involved in the industrial process are to be regarded as part of the 'plant' of the cement factory. We are therefore left with no other option other than to hold that the very use of Off-Highway dump trucks at the quarries make them part and parcel of the industrial process of a cement factory and thus such trucks fall within the definition of the respondent company's cement plant.

4. In the present case, however, all eighteen trucks imported by the respondent companies are Volvo FM 400 trucks. Volvo is a world renowned truck manufacturing company. It manufactures many kinds of trucks, which include both Off-Highway and On-Highway trucks. Volvo FM 400 trucks that were imported by the respondent companies being On-Highway trucks are designed for long distance highway transportation. These trucks can mount container on its chassis for loading goods. As On-Highway truck is meant for long hauls, it also has a bunk in its cabin for its use as driver's sleeping area. In contrast to such utility, the Off-Highway dump truck, as decided by us in the case of Collector of Customs Vs. D.G. Khan Cement Company Limited is specifically designed for use in difficult terrains where the activities of mining, quarrying or construction of big buildings are carried out. Purely on account of the specific design and utility of Off-Highway dump trucks in the industrial process of cement production that the same were brought within the ambit of plant. On the other hand, Volvo FM 400 trucks that were imported by the respondent companies, being On-Highway trucks and not Off-Highway dump trucks, were rightly treated by the Appraisal Collectorate of the Customs as not being a part of the plant of a cement factory.

5. In view of the above discussion, we hold that the respondent companies were not entitled to claim exemption under SRO 575(I)/2006 dated 5.6.2006 and SRO 530(I)/2005 dated 6.6.2005 on Volvo FM 400 trucks that were imported by them as the same were found to be On-Highway trucks and not Off-Highway dump trucks. The customs authorities shall recover the customs duties and Sales Tax on all eighteen Volvo FM 400 trucks imported by both the respondent companies in terms of PCT Heading 8704.2290. These appeals are allowed in the above terms.

JUDGE

JUDGE

JUDGE

Islamabad, the
Announced on _____ by Hon'ble Mr. Justice Faisal Arab

Approved For Reporting
Khuram