

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 NO. 1291 OF 2005**

(On appeal against the judgment dated  
1.1.2003 passed by the High Court of Sindh,  
Karachi in Special Customs Appeal No.  
142/2002)

Collector of Customs

... Appellant

**VERSUS**

M/s D.G. Khan Cement Co Ltd

... Respondents

For the Appellant: Raja Muhammad Iqbal, ASC

For the Respondent: Mr. Salman Akram Raja, ASC

Dates of Hearing: 13.04.2016 & 27.04.2016

**JUDGMENT**

**FAISAL ARAB, J.-** In order to encourage industrialization in certain areas of the country, the Federal Government from time to time has been granting exemptions from customs duty and sales tax. One such incentive was contained in SRO 484(I)/92 dated 14.05.1992. Under this notification, plant and machinery, not manufactured locally, imported for setting up a new unit or for expansion or balancing, modernization and replacement of an already existing unit in certain areas was granted exemption from the whole of the customs duty and sales tax subject to fulfilling certain conditions.

2. The respondent company, a cement manufacturing enterprise, imported three Caterpillar Off-Highway dump trucks, which were shipped to Karachi port through S.S. 'Chitral'. Letter of Credit for the import of such trucks was opened on 27.2.1995 and the Bill of Entry was filed on 29.6.1995 i.e. well before the arrival of the ship. Upon arrival of the ship on 16.7.1995, benefit of total exemption from customs duty and sales tax was sought under Notification No. SRO 484(I)/92 dated 14.05.1992, but the same was denied to the respondent company for two reasons. Firstly it was maintained that the exemption was applicable only to such imports that arrived at the port on or before 30.06.1995 whereas in the present case the ship carrying the Off-Highway dump trucks arrived on 16.7.1995. The other reason for denying benefit of exemption was that the Off-Highway dump truck being mobile vehicle, cannot be termed as a plant hence does not fall within the ambit of SRO 484(I)/92. The customs authority thus assessed the consignment on the basis of PCT Heading that is applicable to dump trucks and imposed 30% Ad Volverum duty as well as the applicable rate of sales tax and other charges.

3. Having being denied the benefit of exemption under SRO 484(I)/92 dated 14.05.1992, the respondent company challenged the assessment of the customs authority in the Lahore High Court and on the basis of an interim order obtained release of the consignment upon furnishing personal bonds of its directors. The Lahore High Court then relegated the respondent company to contest the matter before the forum provided under the Customs

Act. All the three forums upto the Customs and Sales Tax Appellate Tribunal held that the exemption cannot be availed on Off-Highway dump trucks on the ground that the same being vehicles cannot be termed as 'plant'. The respondent company challenged the decision of the Tribunal before the High Court of Sindh in Special Customs Appeal No. 142/2002. The High Court after framing the question of law *"Whether Dump Trucks imported by the appellant fall within the purview of plant and machinery as contemplated in SRO-484(I)/92 dated 14.5.1992"*, vide impugned judgment dated 1.1.2003 answered it in the affirmative. Being aggrieved by such decision, the appellant filed CPLA No. 256-K/2003 before this Court giving rise to the present appeal.

4. Mr. Raja Muhammad Iqbal, learned counsel for the appellant, argued that Off-Highway dump trucks imported by the respondent company being mobile vehicles, fall under PCT Heading 8704.1090 and do not fall under any entry listed in PCT Heading 84 and 85, which lists the items of machinery, appliances and equipments, therefore not being part of the plant of respondents' factory it was not entitled to claim exemption under SRO 484(I)/92 dated 14.05.1992. He next submitted that the power to classify any item for customs tariff lies exclusively with the government and as the Off-Highway dump truck is separately classified in PCT headings and not included in the items of machinery listed in SRO 484(I)/92, the same does not fall within the ambit of plant. In support of this contention he relied upon the case of Big Mak Foods Ltd Vs. Deputy Collector of Customs (1994 SCMR 537). He

next argued that in the present case the Bill of Entry was filed on 29.6.1995 at the time when the ship carrying the consignment in question had not even arrived. The ship arrived on 16.7.1995 and at that time the benefit of exemption granted under SRO 484(I)/92 was no longer available as by that time the period of exemption had already expired. He submitted that in terms of the first proviso to Section 30 of the Customs Act where Bill of Entry is filed in advance of the arrival of the conveyance, the applicable rate of duty would be such that was chargeable on the date the manifest of the conveyance is delivered, which in the present case was 16.07.1995. Therefore, he maintained that the filing of Bill of Entry before the cut-off date i.e. 30.06.1995 would not bring any benefit for the respondent company under SRO No. 484(I)/92. In support of this argument, the learned counsel for the appellant relied upon the case of Fauji Cement Company Limited Vs. Federation of Pakistan (2014 SCMR 994). He also relied upon the cases of Pakistan Telecommunication Corporation Vs. Federation of Pakistan (2011 PTD 2175) and Collector of Customs Vs. Ismail & Co (2015 SCMR 1383).

5. In rebuttal, Mr. Salman Akram Raja, learned counsel for the respondent company, argued that by definition an industrial plant comprises of equipments, machines and apparatus that are applied in an industrial process to produce a desired result and respondent company's industrial process of cement manufacturing starts from the quarrying of the limestone. He explained that the Off-Highway dump trucks are meant for

transporting the quarried limestone to the place where it is further processed, thus being an integral part of industrial process entitled the respondent company to avail the benefit of exemption granted under SRO 484(I)/92 dated 14.05.1992. In support of his argument that even a moving vehicle can be described as part of a 'plant', Mr. Salman Akram Raja placed reliance upon the case of Collector of Customs Vs. Fauji Fertilizer Co. Ltd (PLD 2005 Supreme Court 577) and also on a judgment from English jurisdiction rendered way back in the year 1887 and reported as *Yarmouth Vs. France* (1887 LIR. 19 Q.B.D. 647). In this case, the plaintiff was an employee of a wharfinger. He brought an action against his employer under the Employers' Liability Act, 1880 after being injured by the employer's horse that pulled the trolley on which the plaintiff used to deliver consignments on the instructions of his employer. The plaintiff for his injury claimed compensation in the suit. The defendant resisted the action on the ground that neither the plaintiff was a 'workman' nor the horse a 'plant' within the meaning of the Employers' Liability Act, 1880' therefore, the claim was not maintainable. The Divisional Court, while affirming the decision of the Trial Court, held that the horse which drove the trolley was the most material part of the assignment of the plaintiff and hence can be described as 'plant'. Mr. Salman Akram Raja maintained that if a horse can be described as a 'plant' then by analogy the moving vehicle Off-Highway dump trucks engaged in an industrial process can also be described as a 'plant' and the exemption under SRO 484(I)/92 can be sought on their import for use in a cement factory.

6. We have read the above referred judgment in *Yarmouth supra* case and also the dissenting view of one of the three judges and find ourselves to be in agreement with the reasoning given in the dissenting note in the above referred English judgment which stated that the term 'plant' is to be confined to fixtures and others unanimated chattels used in trade or business but nothing which is animate can be termed as a 'plant' as the living creatures can in no sense be considered as 'plant'. The plant as is ordinarily defined means machines, apparatus and equipment that are utilized at various stages of an industrial process in order to produce some industrial product. Nothing that is animate, whether man or animal, can be defined as a 'plant' even though any machine, apparatus or equipment may not become operational without the physical labour of a man or an animal. Merely for the reason that in the 19<sup>th</sup> century a carriage could only be driven by a domesticated animal like a horse or a donkey does not make that animal part of a plant. If the description of a plant is also attributed to an animal then a man who pulls a cart would also be described as a material part of a plant as he does so by applying manual labour. The distinction between the plant and the worker or animal that operates it has to be maintained otherwise the workers of a factory would also be defined as 'plant'. Even the land on which the 'plant' is placed and the building where it is housed are not regarded as 'plant' then how could anything which is animate could be regarded as 'plant'.

7. Having discussed these two cases, it is pertinent to mention here that the basis of respondent company's claim for exemption under SRO 484(I)/92 dated 14.05.1992 was that as the Off-Highway dump trucks were imported for their use in the industrial process of a cement factory, therefore, the same be regarded as part of the plant and machinery of the cement factory. In order to make a determination to this effect, we shall firstly proceed to examine the function of an Off-Highway dump truck and then seek to resolve whether its use 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 such trucks in their utilization remain mobile as against other machinery and equipment of the plant which, directly or indirectly remains fastened to the earth.

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 since 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.

11. The matter with regard to grant of exemption under SRO 484(I)/92 dated 14.05.1992 however does not end here. It is an admitted position that the respondent company opened the letter of credit on 27.2.1995 well within cut-off date mentioned in SRO 484(I)/92 whereas the consignment was delivered at Karachi port after the cut-off date. Learned counsel for the appellant had argued that in terms of the first proviso to Section 30 of the Customs Act where the Bill of Entry (now called Goods Declaration) is filed in advance of the arrival of the conveyance, the relevant date for the purposes of rate of duty would be when the manifest of the conveyance is delivered at the port of first entry and mere filing of Bill of Entry when the SRO 484(I)/92 was applicable was not sufficient as the goods had not arrived by the cut-off date of 30.06.1995. In support of this argument learned counsel for the appellant relied upon the case of Fauji Cement Company Limited Vs. Federation of Pakistan (2014 SCMR 994) wherein this Court

while dealing with the imports under the same SRO which is subject matter of these proceedings i.e. SRO No. 484(I)/92 held that date on which 'Letter of Credit' was established or steps were taken in respect of import of machinery are not relevant and it is the date of import which determines applicability of the customs duty. In response to this, learned counsel for the respondent company relied upon another Notification No. SRO No. 978(I)/95 dated 4.12.1995 which gives continuity to the benefit of exemption granted under SRO 484(I)/92 dated 14.05.1992 to a certain extent. This notification provides that where Letter of Credit for the import of plant and machinery, intended to be cleared under the notification No. SRO 484(I)/92, had already been opened prior to the cut-off date i.e. 30.6.1995 but the consignment was delivered at the port after the expiry of such cut-off date, then the benefit of exemption granted under Notification No. SRO 484(I)/92 can be availed. We are of the view that in terms of the decision of this Court in the case of Fauji Cement supra, the respondent company was not entitled to seek exemption granted under SRO 484(I)/92 in its entirety. However, the respondent company was entitled to exemption to a limited extent on the import of Off-Highway dump trucks by virtue of SRO No. 978(I)/95 which exempts duties and charges over and above 25% of the leviable customs duty and sales tax and no more. To such extent the impugned judgment stands modified. The customs authority shall be justified in recovering customs dues and Sales Tax on the imported Off-Highway dump trucks accordingly.

12. This appeal is disposed off in light of the discussion undertaken above.

JUDGE

JUDGE

JUDGE

Islamabad, the

Announced on \_\_\_\_\_ by Hon’ble Mr. Justice Faisal Arab

Approved For Reporting  
**Khurram**