

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MIAN SAQIB NISAR

MR. JUSTICE GULAR AHMED

MR. JUSTICE MAQBOOL BAQAR

**CIVIL APPEAL NO.1125 OF 2007**

(On appeal against the judgment dated 18.1.2005 of the High Court of Sindh, Karachi passed in CP No.D-516 of 2004)

The Federation of Pakistan and others ... Appellants

Versus

M/s Delta Innovations Ltd. ... Respondent

For the appellants: Dr. Farhat Zaffar, ASC.  
Raja M.Iqbal, ASC  
Mr.Asaf Fasihuddin Verdak, ASC  
Raja Abdul Ghafoor, AOR.

For the respondent: Mr.Tariq Javed, ASC.

Date of hearing: 21.4.2015

## JUDGMENT

appellants have assailed the judgment dated 18.1.2006 of a learned Division Bench of the High Court of Sindh, Karachi whereby Constitution Petition No.D-516 of 2004, filed by the respondent, was allowed.

2. The respondent is engaged in the business of manufacture and assembly of motorcycles in Pakistan. For the said purpose, he imports parts/components of motorcycles. The controversy in the matter is, as to whether the parts/ components imported by the respondent for manufacture and assembly of his motorcycles are amenable to custom duty @ 25% ad-voleram

under PCT heading 87.14, as claimed by the respondent, or @ 90% as prescribed under PCT heading 87.11, as contended by the appellants.

3. The respondent has contended that since he imported parts/components of motorcycles that fall within PCT heading 87.14 which provides for duty @ 25% ad-voleram and do not fall within the description of PCT heading 87.11 which provides for duty @ 90% ad-voleram, his consignments are chargeable to duty @ 25% ad-voleram only.

4. It is indeed true that parts/accessories of vehicles, including that of motorcycles are chargeable to duty as prescribed under PCT heading 87.14, but at the same time PCT heading 87.11, which provides for duty on motorcycles @ 90% ad-voleram, also provides for 30% exemption on such duty in respect of components for manufacturing of motorcycles in terms of SRO No.436(1)/2001 dated 18.6.2001, as follows:-

"Assessable rates on account of Exemption or Regulatory Duty etc.  
Exemption: (a) Components for the manufacture of motorcycles  
falling under heading 87.11 [See S.R.O.No.436(1)/2001, reported  
as PCTL 2001 St.950] 30% ad.val"

And therefore, it can clearly be seen that prescription under PCT heading 87.14 is not available to parts/components imported for the manufacture/assembly of motorcycles and such consignments are amenable to duty under heading 87.11, however, with partial exemption, where the same is available in terms of SRO 436(1)/2001, whereas the duty provided under heading 87.14 is for commercial imports only. The above arrangement/scheme as shall be discussed herein later has been designed to encourage indigenization of the local automotive industry.

5. The respondent, in view of the foregoing, cannot successfully claim to be falling under PCT heading 87.14 and his subject imports are clearly chargeable to duty under heading 87.11. He may, however, avail exemption under the aforesaid SRO upon meeting the pre-requisite therefor and if he qualifies for the same.

6. We have noted that contrary to his present stance, that duty on his imports is leviable under heading 87.14, the respondent, way back in the January 2003, has himself applied for availing the concession/partial exemption under the aforesaid SRO, and was in fact so keen to avail the same that he obtained an order from the learned Lahore High Court for issuance of the requisite survey certificate to enable him to avail the SRO, through writ petition No.307 of 2004, and in pursuance of the said order, a provisional survey certificate was issued to the respondent.

7. Since, as noted above, the respondent has been issued requisite survey certificate and has also obtained a deletion programme in terms of the aforesaid SRO, and since the appellants have alleged violation and non-adherence to the terms of the SRO. We first need to examine the relevant aspects of the SRO and note the allegations, before issuing any directive in the matter.

8. According to the appellants, the Government of Pakistan in order to promote indigenization of automotive industry, introduced concessionary regime through SRO No.436(1)/2001 dated 18.6.2001. In terms of the said SRO, and subject to certain conditions prescribed thereby, the automotive

industry has been granted partial exemption in customs duty on their import of components for the vehicles manufactured by them. To avail the above concession, the recognized assemblers has to obtain an approved deletion programme from Engineering Development Board (EDB), which programme is devised after a survey of the manufacturing facility by the Federal Board of Revenue, whereupon a survey certificate is issued. The exemption is granted in respect only of such components which are not manufactured locally and are imported for the manufacture of vehicles falling under PCT heading 87.11, including motorcycles. Amongst the various conditions prescribed under the SRO is the condition that manufacturer shall chalk out an indigenization programme spreading over a maximum period of five years, within which period, he shall achieve such minimum indigenization of the manufacture of vehicle as approved by the indigenization committee of the EDB and that in case of any default in the indigenization programme, the components imported in violation of the indigenization programme shall attract statutory duty chargeable on the relevant CBU vehicles.

9. The appellants, have alleged that the respondent imported parts/components as an exempted importer and got them cleared as spare parts @ 25% duty, and it was only after they realized that the customs authorities are no more oblivious of his clandestine import of CKD kits, the respondent approached EDB and the FBR and applied for provision of deletion programme and the survey certificate. The respondent was issued provisional survey certificate along deletion programme on 13.3.2004. However, instead of observing the said deletion programme, the

respondent again attempted to clear his goods on lower rate of duty of 25% instead of 30% as provided under the aforesaid SRO. It is further alleged that through the consignment in question, the respondent has imported Main switch assembly R/L Chain, and Handle Bar Pipe upper/lower, to be used in the assembly of motorcycles and claimed assessment thereof under tariff head 87.14 which according to the appellants is prescribed for commercial import and not for the industrial import, and that the said consignment, if not covered under the aforesaid SRO is chargeable to duty @ 90%.

10. In the circumstances, and having already held that the parts/components being imported by the respondent are chargeable to duty under PCT heading 87.11 and that the concession under the SRO 436(1)/2001 shall only be applicable to the respondent in case he fully adhere to the terms and conditions thereof. We, feel it appropriate to remand the matter to the concerned adjudication office of the FBR to decide the same accordingly.

Judge

Judge

Judge

Islamabad the  
21<sup>st</sup> April 2015  
(*Aamir Sh.*)

'NOT APPROVED FOR REPORTING'