

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE TARIQ PERVEZ

CIVIL APPEAL NO. 1600 OF 2006

(On appeal against the judgment dated 8.3.2006 passed by the High Court of Sindh, Karachi in C.P Nos. 223, 224, 225 & 226 of 2003)

Indus Trading and Contracting Company

... Appellant

VERSUS

Collector of Customs (Preventive) Karachi and others

... Respondents

For the Appellant: Mr. Issaq Ali Qazi, ASC

For the Respondent (1): Raja Muhammad Iqbal, ASC
Raja Abdul Ghafoor, AOR

For Respondents (2-3): Ex-parte

Date of Hearing: 04.01.2016

JUDGMENT

FAISAL ARAB, J.-Brief facts of this appeal are that at the end of 1995 and early 1996, the appellant imported two consignments of medicines said to be living saving drugs. The import of such drugs was free from Customs duty on the basis of the concession granted under the Finance Act of 1995. Before these consignments arrived at the port, the Federal Government issued SRO No. 1050(1)/95 dated 29th October, 1995 imposing 5% *ad valorem* regulatory duty which the appellant paid and got the consignments released. Subsequently, the appellant challenged the levy of regulatory duty on the consignments in Constitution Petition No. D-1659/1996 that was filed in the High Court of Sindh. Thereafter, on

07.08.2002, the appellant withdrew it after seeking permission to file it afresh. A couple of months later, the appellant filed another constitution petition bearing No. D-226/2003 challenging the imposition of the same regulatory duty. This petition was dismissed vide impugned judgment dated 08.03.2006, after holding regulatory duty was rightly charged on goods exempted from customs duty. The appellant then turned to this Court for relief in the present proceedings.

2. Learned counsel for the appellant, Mr. Issaq Ali Qazi argued that as long as import of such goods is free from duty on the basis of the concession granted under the Finance Act, 1995, no duty, much less regulatory duty, could have been lawfully charged and the imposition of regulatory duty under the impugned SRO No. 1050(1)/95 being based on subordinate legislation was therefore illegal. He maintained that that imposition of regulatory duty in effect nullified the concession of duty free import that was granted under the provisions of Finance Act, 1995. He further submitted that had the customs duty on such drugs and medicines been zero-rated probably then the regulatory duty could have been levied but as the import was free from customs duty, no duty under any nomenclature could be lawfully imposed and the learned Judges in the High Court failed to appreciate such distinction. He concluded by submitting that this Court may order refund of the regulatory duty that had been unlawfully charged from the appellant at the import stage on the consignments in question.

3. On the other hand, learned counsel for the respondent No. 1 argued that the regulatory duty was charged and paid by the appellant as far back as 1995 without any protest and thereafter no departmental proceedings were initiated by it to challenge the same. He submitted that even the first Constitution petition was withdrawn after the decision of this Court in the case of Collector of Customs Vs. Ravi Spinning Ltd (1999 SCMR 412) which validated levy of regulatory duty, hence this appeal is liable to be dismissed.

4. Before examining the merits of the case, we find it necessary to state that at the stage when regulatory duty was charged, the appellant ought to have challenged the same before the forum provided under the Customs Act. Instead of doing that, the appellant invoked the jurisdiction of the High Court under Article 199(1) of the Constitution of Pakistan. Ordinarily, the jurisdiction of the High Courts under Article 199 of the Constitution should not be invoked where alternative forum under a special law, duly empowered to decide the controversy is available and functioning. Where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. The very purpose of creating a special forum is that disputes should reach expeditious resolution headed by quasi judicial or judicial officers who with their specific knowledge, expertise and experience are well equipped to decide controversies relating to a particular subject in a shortest possible time. Therefore, in spite of such remedy being made available under the

law, resorting to the provisions of Article 199(1) of the Constitution, as a matter of course, would not only demonstrate mistrust on the functioning of the special forum but it is painful to know that High Courts have been over-burdened with a very large number of such cases. This in turn results in delays in the resolution of the dispute as a large number of cases get decided after several years. These cases ought to be taken to forum provided under the Special law instead of the High Courts. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199(1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate forum is fully functional, the High Courts must deprecate such tendency at the very initial stage and relegate the parties to seek remedy before the special forum created under the special law to which the controversy relates. We could have relegated the appellant to seek remedy before the appropriate forum, however, as the dispute in the present case is now more than twenty years old, we for this reason only as matter of indulgence, proceed to decide the controversy on its merits.

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 sub-ordinance 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. On this question, the decision of this Court in the case of Collector of Customs Vs. Ravi Spinning Ltd. (1999 SCMR 412) at page 443 can be referred with considerable advance. In that case it was held as follows:

".....It is not disputed that customs duties are not levied only under section 18(1) of the Act but they are also levied though under different nomenclature, under section 18(2) of the Act and the Finance Act. The issuance of an exemption notification under section 19 of the Act, therefore, presupposes that the goods exempted are already subject to an existing charge of the customs duty. The exemption notification, therefore, ordinarily will not have within its purview a duty or tax not in force or in existence, on the date of issuance of the exemption notification. The exemption notification, while exempting the goods from the existing charge of customs duty,

may, however, also provide that any future levy of customs duty will also be exempted on to goods exempted from the current and existing charge of customs duty. Therefore, the conclusion that the exemption notification not only applied to the existing charge of customs duty but also covered the future levy of the customs duties will depend on the language used in the notification."

6. Then in the same judgment at page 458, this Court further held as follows:-

"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. The notification issued by the Government under section 19 of the Act granting exemption wholly or partially from payment of customs duty prescribed under the First Schedule to the Act, could not therefore, in our view, cover the customs duty subsequently levied by the Government by way of additional customs duty to meet or cover a situation arising subsequent to the issue of the exemption notification. If the Government intended to exempt any future levy of the customs duty as well while granting exemption from the existing

prescribed customs duty, it could provide so in the exemption notification as has been done on a number of occasions. As the exemption notifications referred to above, did not exempt the goods which were exempted from statutory customs duty, also from the payment of regulatory duty, the exemption did not apply to the regulatory duty imposed by the Government subsequently although the regulatory duty may be a species of the customs duty."

7. As to the distinction which the learned counsel for the appellant tried to make between "duty free imports' and "zero-rated import" to justify that regulatory duty cannot be imposed where goods are free from customs duty, suffice is to state that in the impugned judgment it has been sufficiently explained that the term "zero-rated" is not used in Customs Act as such a term is used in the Sales Tax only and that too for the purpose of adjustment of input-tax with the output-tax. Hence, nothing turns on making such a distinction. We may also mention here that a question may arise where the import is totally exempted from customs duty how can then the regulatory duty, which is to be charged *ad valorem* be computed. Such a question came up before this Court in the case of Yousuf Re-Rolling Mills Vs. Collector of Customs (PLD 1989 SC 232). It was held that such a levy is to be computed on the basis of the value of the goods to be determined under the provisions of Section 25 of the Customs Act. At page 241 of the Yousuf Re-Rolling Mills supra it was held as under:-

"If the rate of duty of the articles is specified in the 'First Schedule then no, discretion is left to the Federal Government to exceed the limit prescribed namely fifty per cent. But if no rate is prescribed in the First Schedule such as in the case of those articles which are imported free of customs duty, it is

only then that the maximum of the second part can be levied on the value of the articles determined under section 25. The restriction to levy regulatory duty is accordingly explicit in case the articles imported fall under the first part in regard to which the rate of duty is prescribed in the First Schedule and while imposing the levy of regulatory duty the Federal Government is under this restraint."

8. The judgment above cited not only established as to how a regulatory duty is to be computed where the import of any item is free from customs duty but it also supports our finding that the Federal Government can impose regulatory duty even on goods which are free from customs duty.

9. From the above discussion, it is evident that chargeability of regulatory duty has no nexus with the chargeability or grant of exemption with regard to the statutory customs duty falling under Section 18(1). We, therefore, find this appeal as having no merit and the same is accordingly dismissed.

JUDGE

JUDGE

JUDGE

Islamabad, the
4th of January, 2016

Approved For Reporting
Khurram