

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE EJAZ AFZAL KHAN.

MR. JUSTICE QAZI FAEZ ISA.

CIVIL PETITIONS NO. 2532 TO 2549 AND 2580 OF 2015 AND 2594 TO 2600 OF 2015 AND 2602 TO 2603 OF 2015 AND 2608 TO 2633 OF 2015.

(On appeal against the judgment dt. 28.08.2015 and 8.9.2015 passed by the High Court of Sindh Karachi in Constitution Petitions No.D-1494, D-873, D-1581, D-1582, D-1583, D-1729, D-1730, 2442, D-2758, D-2759, D-2760, D-3541, D-4015, D.4016, D-4087, D-4187, D-4521, 4583, D-4561, D-4563, D-4381, D-4289, D-2414, D-4769, D-4014, D-4218, D-4562, D-4564, D-4380, D-4565, D-4767, D-2972, D-4289, D-4218, 4377-D, 2387, D-4218, D-4072, 4032-D, 4370-D, 4402-D, 4217-D, 4886-D, 4218-D, D-344, D-4768, D-4217, D-1877, D-2387, D-4370, D-4378, D-344, D-4796, D-4288 of 2015).

Majeed and Sons Steels (Pvt) Ltd.
(in CP.2532/15)

Shanghai Industries (Pvt) Ltd.
(in CP.2533/15)

Razaque Steels (Pvt) Ltd. and another.
(in CP.2534/15)

Nawab Brothers Steel Mill (Pvt) Ltd and another.
(in CP.2535/15)

Dewan Steel Mills.
(in CP.2536/15)

M/s Union Steel Industries.
(in CP.2537/15)

Dewan Steel Mills.
(in CP.2538/15)

Shanghai Industries(Pvt) Ltd.
(in CP.2539/15)

Dewan Steel Mills.
(in CP.2540/15)

M/s Union Steel Industries.
(in CP.2541/15)

Nawab Brothers Steel Mills (Pvt) Ltd.
(in CP.2542/15)

Shanghai Industries (Pvt) Ltd.
(in CP.2543/15)

Ittehad Steel Industries.
(in CP.2544/15)

M/s Union Steel Industries and another.
(in CP.2545/15)

Dewan Steel Mills.
(in CP.2546/15)

Razaque Steels (Pvt) Ltd.
(in CP.2547/15)

Shanghai Industries (Pvt) Ltd.
(in CP.2548/15)

Shanghai Industries (Pvt) Ltd.
(in CP.2549/15)

M/s Umer Traders and others.
(in CP.2580/15)

Abdul Wahab.
(in CP.2594/15)

Sheikh Nadeem Anwar.
(in CP.2595/15)

Khizer Arif.
(in CP.2596/15)

Abdul Salam.
(in CP.2597/15)

M/s BBJ Pipe Industries Ltd.
(in CP.2598/15)

M/s Bashir Pipe Industries (Pvt) Ltd.
(in CP.2599/15)

M/s Supreme Tube Industries (Pvt) Ltd.
(in CP.2600/15)

M/s AN Industries (Pvt) Ltd.
(in CP.2602/15)

M/s Khalid Pipe Mills (Pvt) Ltd.
(in CP.2603/15)

Mansoor Ahmed Khan.
(in CP.2608/15)

Sheikh Nadeem Anwar.
(in CP.2609/15)

M/s National Tubes (Pvt) Ltd.
(in CP.2610/15)

Shahid Majee.
(in CP.2611/15)

M/s Sheikh Pipe Mills (Pvt) Ltd.
(in CP.2612/15)

M/s Win Pipe Industries (Pvt) Ltd.
(in CP.2613/15)

M/s Modern Pipe Mills (Pvt) Ltd.
(in CP.2614/15)

M/s AKK Enterprises (SMC-Pvt) Ltd.
(in CP.2615/15)

M/s Mehboob Steel Pipe Industry.
(in CP.2616/15)

M/s M.P. Industries (Pvt) Ltd.
(in CP.2617/15)

M/s Steel Craft (Pvt) Ltd.
(in CP.2618/15)

M/s Samad Pipe Industries Ltd.
(in CP.2619/15)

M/s Jamal Pipe Industries Ltd.
(in CP.2620/15)

M/s Grandeur Metals (Pvt) Ltd.
(in CP.2621/15)

M/s Abdul Haq Pipe Industries (Pvt) Ltd.
(in CP.2622/15)

M/s Farooq Steel Industries (Pvt) Ltd.
(in CP.2623/15)

M/s Bilal Steel Industries.
(in CP.2624/15)

Shahid Majeed.
(in CP.2625/15)

Muhammad Amjad Sharif.
(in CP.2626/15)

Kamran Butt.
(in CP.2627/15)

Muhammad Amjad Sharif.
(in CP.2628/15)

M/s Pak Pipe Steel Industries (Pvt) Ltd.

(in CP.2629/15)

M/s Karachi Tube Mills (Pvt) Ltd.
(in CP.2630/15)

Sheikh Nadeem Anwar.
(in CP.2631/15)

M/s Win Pipe Industries (Pvt) Ltd.
(in CP.2632/15)

M/s Win Pipe Industries (Pvt) Ltd.
(in CP.2633/15)

... Petitioners

Versus

Federation of Pakistan through its Secretary,
M/o Economic Affairs, Islamabad and others.

... Respondents
(in all cases)

For the petitioners: Mr. Munir A. Malik, Sr. ASC
Syed Rafaqat Hussain Shah, AOR
Mr. Shahbaz Butt, ASC
Mr. Khurram Saeed, ASC
Mr. Mehmood A. Sheikh, AOR
Mr. Faiz-ur-Rehman, AOR.

For the respondents: Raja Muhammad Iqbal, ASC
Raja Abdul Ghafoor, AOR
Mr. Khurram Raza, ASC
Mr. Ali Waheed Khan, Dy. Director of
Customs MCC-Appraisement (EAST)
Karachi

Date of hearing: 15.09.2015. (Judgment Reserved)

J U D G M E N T

EJAZ AFZAL KHAN, J.- These petitions for leave to appeal have arisen out of the judgment dated 28.08.2015 of a Division Bench of Sindh High Court whereby it dismissed the petitions filed by the petitioners.

2. The issue urged by the petitioners before the High Court through a Constitution Petition and now before this Court through a petition for leave to appeal is that the cumulative incidence of

customs-duties leviable under sub-sections (1), (3) and (5) of section 18 of the Customs Act shall not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements. The learned ASC by referring to clause 5 (b) of Article XXIV of the General Agreement on Tariffs and Trade contended that duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of free trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be. The learned ASC by referring to proviso to sub-section 5 of section 18 of the Customs Act contended that the cumulative incidence of customs duties leviable under sub-sections (1), (3) and (5) shall not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements. Any duty, the learned ASC maintained, levied in derogation of clause 5(b) of Article XXIV and proviso to sub-section 5 of section 18 of the Customs Act shall not have any effect. Bilateral agreement, the learned ASC added, doesn't find mention in proviso to sub-section 5 of section 18 of the Customs Act but this will not have much significance as every agreement even if bilateral in nature becomes multilateral when it passes through the mechanism provided by clauses 7 and 8 of Article XXIV of the General Agreement on Tariffs and Trade. The learned ASC by winding up his arguments contended that where the duty at the time of conclusion of the General Agreement on

Tariffs and Trade was 5% it could not exceed that thereafter. When asked what does the expression "rates agreed to" used in the proviso mean, the learned ASC by answering the question again referred to clause 5(b) of Article XXIV of the Customs Act.

3. The learned ASC appearing on behalf of the respondents contended that the question posed by the bench is answered by Part-A-2 of the table. He, by referring to the relevant table of tariffs and import by product groups contended that the maximum duty agreed to is 75% while for the most favoured nations the maximum is 35%. If this aspect of the case, the learned ASC contended, is taken into account, then the duties in any form do not exceed what was agreed to by the Government of Pakistan under the multilateral trade agreement. The impugned judgment, the learned ASC maintained, having been rendered after considering all the conceivable aspects of the proposition is unassailable from whatever angle it is looked at.

4. We have gone through the record, the relevant provisions and considered the arguments addressed at the bar.

5. Before we appreciate the controversy stirred before us at the bar, it is worthwhile to refer to section 18 of the Customs Act which reads as under :-

"18. Goods dutiable.— (1) Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on. –

a) goods imported into Pakistan.

b) goods brought from any foreign country to any customs station, and without payment of duty there, transshipped or transported for, or thence carried to, and imported at any other customs station; and

c) goods brought in bond from one customs station to another.

- 2) No export duty shall be levied on the goods exported from Pakistan.
- 3) The Federal Government may, by notification in the official Gazette, levy, subject to such conditions, limitations or restrictions as it may deem fit to impose, a regulatory duty on all or any of the goods to be imported or exported, as specified in the First Schedule at a rate not exceeding one hundred per cent of the value of such goods as determined under section 25, or as the case may be, section 25-A;
- 4) The regulatory duty levied under sub-section (3) shall, -
 - a) be in addition to any duty imposed under sub-section (1) or under any other law for the time being in force; and
 - b) be leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.
- 5) The Federal Government may, by notification in the official Gazette, levy an additional customs-duty on such imported goods as are specified in the First Schedule, at a rate not exceeding thirty-five per cent of value of such goods as determined under section 25, or as the case may be, section 25-A:

Provided that the cumulative incidence of customs-duties leviable under sub-sections (1), (3) and (5) shall not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements.

6. The additional customs-duty levied under sub-section (5) shall be -
 - a) in addition to any duty imposed under sub-sections (1) and (3) or under any other law for the time being in force; and
 - b) leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the official Gazette in which such notification appears is published at any time after that day."

6. How far clause 5 of Article XXIV of the General Agreement on Tariffs and Trade is restrictive of the duties to be imposed on the goods imported in Pakistan also merits a careful look which reads as under :-

"Accordingly, the provisions of this Agreement shall not prevent, as between the territories of contracting parties, the formation of a customs union or of a free-trade area or the

adoption of an interim agreement necessary for the formation of a customs union or of a free-trade area; provided that :

a) with respect to a customs union, or an interim agreement leading to a formation of a customs union, the duties and other regulations of commerce imposed at the institution of any such union or interim agreement in respect of trade with contracting parties not parties to such union or agreement shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union or the adoption of such interim agreement, as the case may be;

b) with respect to a free trade area, or an interim agreement leading to the formation of a free-trade area, the duties and other regulations of commerce maintained in each of the constituent territories and applicable at the formation of such free-trade area or the adoption of such interim agreement to the trade of contracting parties not included in such area or not parties to such agreement shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area, or interim agreement as the case may be.

c) any interim agreement referred to in sub-paragraphs (a) and (b) shall include a plan and schedule for the formation of such a customs union or of such a free-trade area within a reasonable length of time."

7. A look at the proviso to sub-section 5 of section 18 of the Customs Act in general and the words "rates agreed to" in particular shows that rates have all along been agreed to. Reference to Part-A-2 of the relevant table will clinch the whole matter as it not only provides final bound duties but also duties prescribed for the most favoured nations. Regulatory duty imposed through the impugned S.R.O does not in any case exceed the duties prescribed by the table. Once the table referred to above shows the rates agreed to, reference to any other provision of the General Agreement on Tariffs and Trade would not be of much significance. When we asked the learned ASCs as to how does the expression "rates agreed to" imply or contemplate the duties in force at the time of executing the multilateral agreement when

they were in force independently of such agreement, he could not give any satisfactory reply and rightly so because proviso to sub-section 5 of section 18 of the Customs Act being clear and unequivocal does not admit of the interpretation sought to be placed thereon by the learned ASCs for the petitioner. Had the proviso been inserted before the execution of the agreement, the argument advanced by the learned ASC would have had some force. But where the insertion of the proviso was made long after the execution of the agreement, the words "agreed to" cannot be lightly ignored. The rates reflected in the relevant heading viz-a-viz the most favoured nations clearly point to what was agreed to. An effort was made to turn the bilateral agreement into a multilateral agreement by alluding to what has been provided by clauses 7 and 8 of Article XXIV of the General Agreement on Tariffs and Trade but an agreement which is essentially bilateral cannot be given multilateral hue especially when it is between the two nations. Much stress was laid on Article 8 of Free Trade Agreement between Government of Islamic Republic of Pakistan and the Government of Peoples Republic of China providing for progressive elimination of Customs Duty on goods originating in the territory of another party but it does not provide anywhere that the rates agreed to would cease to have effect as soon as the agreement is entered into. The words "progressive elimination" used in the Article envision step by step rather than immediate elimination of the duties.

8. Absence of the word bilateral from the proviso to sub-section 5 of section 18 of the Customs Act being significant and self-speaking further narrows the gamut of controversy. We, thus cannot read bilateral in the proviso when it is not there. When the provisions

of the Customs Act are clear and unambiguous, we would not like to supply omission and read in the statute what has been deliberately omitted. "It is not our function, as was held by Mr. Justice Walsh, in the case of **Attorney General. v. Bihari, re Australia Factors Limited** (1966) 67 S. R. (N.S.W) 150; to repair the blunders that are to be found in the legislation." Let them be corrected by the legislature itself if at all they constitute blunders.

9. The questions whether an agreement or treaty be it bilateral or multilateral, can be stretched to alter or override an express and unambiguous provision of the statute and whether its breach, if any, can be sought to be repaired through the Courts of law unless they have been vested with such jurisdiction? In the case of **Ms. Shehla Zia. v. Wapda** (PLD 1994 SC 693), this Court while dealing with a similar question held as under :-

"The concern for protecting environment was first internationally recognized when the declaration of United Nations Conference on the Human Environment was adopted at the Stockholm on 16.6.1972. Thereafter it had taken two decades to create awareness and consensus among the countries when in 1992 Rio Declaration was adopted. Pakistan is a signatory to this declaration and according to Dr. Perwaiz Hasan although it has not been ratified or enacted, the principle so adopted has its own sanctity and it should be implemented, if not in letter, at least in spirit. An international agreement between the nations if signed by any country is always subject to ratification, but it can be enforced as a law only when legislation is made by the country through its legislature. Without framing a law in terms of the international agreement the covenants of such agreement cannot be implemented as a law nor do they bind down any party."

In the case of **Societe Generale De Surveillance S.A. v. Pakistan through Secretary, Ministry of Finance, Revenue Division, Islamabad** (2002 SCMR 1694), this Court reaffirmed what was held in the case of Ms. Shehla Zia held as under :-

"Admittedly, in Pakistan, the provisions of the Treaty were not incorporated through legislation into the laws of the

Country, therefore, the same did not have the effect of altering the existing laws, as such, rights arising therefrom called treaty rights cannot be enforced through Court as in such a situation, the Court is not vested with the power to do so.

It may be significantly mentioned here that according to Article 175 (2) of the Constitution of Islamic Republic of Pakistan, no Court has any jurisdiction unless conferred by or under any law or the Constitution, therefore, treaty unless was incorporated into the law so that it become part of Municipal Laws of the Country, no Court shall have jurisdiction to enforce any right arising therefrom."

10. Above all else, when cumulative incidence of customs-duties leviable under sub-section (1), (3) and (5) of section 18 of the Customs Act does not exceed the rates agreed to by the Government of Pakistan under multilateral trade agreements, we don't think the petitioners could make out a case for issuance of the writ asked for. The view taken by the High Court thus appears to be correct and un-exceptionable.

11. For the reasons discussed above, these petitions being without merit are dismissed and the leave asked for is refused.

Judge

Judge

Announced in open Court at Islamabad on 18.09.2015.

Judge

'Not Approved For Reporting'
MAZ