

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 2226 OF 2016

(On appeal against the judgment dated 20.04.2016
passed by the Islamabad High Court, Islamabad in
Customs Reference Application No. 31/2015)

M/s Al-Haj Enterprises (Pvt) Ltd

... Petitioner

VERSUS

Collector of Customs, Model Customs Collectorate (MCC) etc

... Respondents

For the Petitioner: Mr. Wasim Sajjad, Sr. ASC
Mr. Mehr Khan Malik, AOR

For the Respondents: Mr. Muhammad Habib Qureshi, ASC
Mr. M.S. Khattak, AOR
Mr. Shahid Jan, Deputy Collector Customs

Date of Hearing: 22.05.2017

JUDGMENT

FAISAL ARAB, J.- Under some arrangement, Attock Petroleum Limited exports POL products to International Security Assistance Force (ISAF) in Afghanistan, which is transported by road through bonded carriers who hold license for such purpose under the Customs Rules, 2001. One such bonded carrier is the petitioner who transports POL products on its fleet of tankers. Rule 564(4) of the Customs Rules, 2001 requires that in case there is a variation of more than one percent in the quantity declared in terms of Rule 563 of the Custom Rules and the one certified by ISAF at the place of destination, action under appropriate provisions of the Customs Act, Sales Tax Act and other applicable law shall be taken against the concerned carrier and other persons found involved.

2. In a post export audit of Attock Petroleum Limited, it transpired that POL products exported to Afghanistan were short supplied. To be precise,

16,985 liters of HSD, 396,921 liters of JP8 and 4083 liters of PMG were short delivered that did not reach the destination. These shortages were in excess of the one percent permissible under Rule 564(4). This resulted in issuance of show cause notices to Attock Petroleum Limited as well as to the petitioner to whom Attock Petroleum Limited entrusted the consignments for transportation to Afghanistan, which were found short. Thereafter, the matter was adjudicated by the Collector of Customs, who passed Order-in-Original dated 28.03.2014 requiring the petitioner to pay taxes and duties of the short supplies amounting to Rs.6,070,342/- along with default surcharge. The petitioner appealed before the Customs Appellate Tribunal, Islamabad, which was partially allowed only to the extent of downward revision of the quantum of duties and penalty from Rs.6,070,342/- to Rs.3,622,683/-. The petitioner then filed Customs Reference Application in the Islamabad High Court which upheld the decision of the Tribunal. Hence, this petition.

3. Learned counsel for the petitioner argued that a strict regimented procedure is followed for delivery of POL products as the tankers are locked and sealed and yet evaporation in hot weather is bound to take place that could reach beyond one percent limit for which the petitioner cannot be held responsible. With regard to the restriction contained in the provisions of Rule 564(4) of the Customs Rules, 2001, he submitted that the correct interpretation of the Rule ought to be that in case of variation beyond one percent, then there should be some adjudication as to the real cause behind the shortage. He submitted that in case the carrier justifies the loss for no fault of his own then he should not be penalized for the breach of the limit provided in the Rule. He lastly submitted that in the present case, in absence of allegation that the locks and seals of the tankers were broken or it was a case of pilferage or theft en-route to Afghanistan then merely on account of excessive evaporation beyond the control of the carrier, ought not to have been made basis for imposition of liability under the Rules.

4. The argument of learned counsel would have been worth considering had the consequence for short supply beyond one percent not been provided in Rule 564(4) of the Custom Rules, 2001. As the provisions of the said Rule were fully attracted to the case of the petitioner and accordingly applied in the present case, we find that no legal error was committed by any of the forums below, which require interference from this Court. This petition is, therefore, dismissed and leave is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
22nd of May, 2017
Approved For Reporting
Khurram