

## **JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No. 3412 of 2009.

M/S Indus Rags Karachi & 03-others

***Vs***

Govt. of Pakistan through M/O Finance, Islamabad & 03-others.

**DATES OF HEARING: 19-4-2012, 23-4-2012 & 26-4-2011.**

**PETITIONERS BY:** M/s Safqat Mahmood Chohan, Monem Sultan, Niaz Ullah Khan Niazi, Barrister Umer Riaz, Ch. Muhammad Bashir, Mirza Tazeem Baig and Danish Afzaal Advocates.

**RESPONDENTS BY:** Dr Rana M. Shamim , Hafiz Munawar Iqbal, Binyamin Abbasi, Riaz Hussain Azam, Mrs Naziran Malik, Raja M. Iqbal, and Mojeeb-ur-Rehman Warriach Advocates.

**INTERVENER/  
RESPONDENT BY:** Mr Javaid Iqbal Butt, Standing Counsel. Barrister Yousaf Khosa and Barrister Saad Shoaib Wyne. (in W.P. Nos. 3412, 3336, 2088, 2089 & 2096 of 2009).

**RIAZ AHMAD KHAN, J.-** This judgment is directed to dispose of instant writ petition alongwith following petitions:

- i) W.P. No. 2088 of 2009, re: M/S Home Life, Lahore ***Vs*** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;

- ii) W.P. No. 2089 of 2009, re: M/S Waheed Sons & 02-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- iii) W.P. No. 2096 of 2009, re: M/S Home Life, Lahore & 03-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- iv) W.P. No. 3336 of 2009, re: M/S Zoaib Ali Company, Hyderabad, Sindh and 03-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- v) W.P. No. 1159 of 2011, re: M/S Classic Ceramics Centre, Rawalpindi and another **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 02-others;
- vi) W.P. No. ~~1495~~ 1495 of 2011, re: M/S Tasneem International Hyderabad and another **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- vii) W.P. No. 1588 of 2011, re: M/S Abdullah Tiles, Karachi and 09-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- viii) W.P. No. 1618 of 2011, re: M/S M.I. Sanitary Store Lahore and 03-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- ix) W.P. No. 1643 of 2011, re: M/S Orange International Lahore **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- x) W.P. No. 1661 of 2011, re: M/S Chaudhry Art, Lahore **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;

- xi) W.P. No. 1709 of 2011, re: M/S Makkah Enterprises, Karachi & 03-others **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xii) W.P. No. 1866 of 2011, re: M/S Warraich Traders, Lahore and 03-others **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xiii) W.P. No. 2030 of 2011, re: M/S W.H.Traders, Lahore & 02-others **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xiv) W.P. No. 2088 of 2011, re: M/S Mian Sons Sialkot and 02-others **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xv) W.P. No. 2341 of 2011, re: M/S Dotview Importer, Lahore and 02-others **Vs** Ministry of Commerce, Govt. of Pakistan, through Secretary Commerce, Islamabad and 03-others;
- xvi) W.P. No. 2401 of 2011, re: M/S Khaliq Trading Company, Lahore **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xvii) W.P. No. 2483 of 2011, re: M/S Daniyal Enterprises, Karachi **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xviii) W.P. No. 2550 of 2011, re: M/S MZ Ceramics Karachi **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xix) W.P. No. 2804 of 2011, re: M/S Umer Trading Company, Lahore **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;

- xx) W.P. No. 2914 of 2011, re: M/S Imperial Trading Corporation Karachi **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxi) W.P. No. 3056 of 2011, re: M/S Platinum Trading Company, Karachi and another **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxii) W.P. No. 3182 of 2011, re: M/S 3-Star Trading Company, Gujranwala & 05-others **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxiii) W.P. No. 3272 of 2011, re: M/S M.S. Trading Company Gulstan **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxiv) W.P. No. 3426 of 2011, re: M/S Muhammad Trading Company Karachi and another **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxv) W.P. No. 26 of 2012, re: M/S S.Abdullah Co. Karachi and another **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxvi) W.P. No. 141 of 2012, re: F&R Importers Rawalpindi **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxvii) W.P. No. 369 of 2012, re: M/S Arshad & Sons, Sialkot **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;
- xxviii) W.P. No. 416 of 2012, re: M/S Mian Sons, Lahore **Vs** Govt. of Pakistan though M/O Finance, Islamabad & 03-others;

- xxix) W.P. No. 543 of 2012, re: M/S Classic Ceramics Pvt. Ltd. Lahore **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;
- xxx) W.P. No. 941 of 2012, re: Al-Nafeh Trading Company, Gujranwala **Vs** Federal Board of Revenue through its Chairman, Islamabad & 03-others;
- xxxi) W.P. No. 958 of 2012, re: M/S Golden Enterprises Karachi **Vs** Govt. of Pakistan through M/O Finance, Islamabad & 03-others;

2. Facts constituting the background of all the above said writ petitions, are that Govt. of the Islamic Republic of Pakistan entered into an agreement with Govt. of the Peoples Republic of China; consequently, an 'International Treaty' known as 'Pak-China FTA' dated 24-11-2006 was executed. According to the said treaty, the commodities, which were to be imported from China, were divided into six categories. Regarding commodities falling in Category-I, it was decided that customs duties shall be removed in four stages and after three years the commodities falling in this category will become duty free. In respect of Category-II, it was decided that customs duties shall be reduced to 5% or below within five years. Regarding Category-III, it was decided that import customs duties shall be reduced by margin of 50% within five years. In respect of Category-IV, it was decided that import customs duties shall be reduced

by margin of 20% within five years. Regarding Category-V, it was decided that no concession would be provided to the commodities falling in this category. In respect of the commodities falling in Category-VI, it was decided that the treaty would not apply to the commodities falling in this category.

3. The petitioners are engaged in the business of import from China and commodities which they import, fall in category-V, but at the time of execution of treaty, the customs duty was 25% on the goods imported by the petitioners. According to the petitioners, this duty was to remain static, because no concession was provided, but the rate of customs duty was mentioned in the treaty. The Govt. of Pakistan through Finance Act, 2008 increased the duty on the commodities being imported by the petitioners, from 25% to 35% and in this respect notification was issued. The petitioners, feeling aggrieved of the increase of customs duty from 25% to 35% w.e.f. 01-7-2008, filed the above said writ petitions.

4. Mr Shafqat Mehmood Chohan Advocate, learned counsel for the petitioners (in most of the aforementioned writ petitions) submitted that the 'Free Trade Agreement' executed between Govt. of the Islamic Republic of Pakistan

and Govt. of the Peoples Republic of China, is an agreement between the parties to give benefit of customs duties to the individuals of the country; such agreements are fiscal in nature and implemented through delegated legislation like SROs, Notifications, etc. by the Government. The delegated legislation is law of land. The learned counsel contended that section 18 (C) of the Customs Act, 1969 was introduced through Finance Act, 2005 to enable the Federal Government to levy duties at lower rate than statutory rates within the context of Free Trade Agreement. It was further submitted that pursuant to the Free Trade Agreement the Federal Govt. issued notifications for the implementation of FTA through the rules, which are called the 'China-Pakistan Free Area Rules of Origin, 2005. The same is law of land; so, grievance of the petitioners can be redressed under the said law. The Free Trade Agreement thus enjoys the status of statutory law. The treaty is executed under the fiscal laws for fiscal benefits and needs no separate or independent legislation. Since, regarding the FTA, SRO No. 1286/2005 was issued, therefore, the said SRO is law of the land. The learned counsel, in support of his contentions, referred to the case law, reported as PLD 1988 S.C. 670 and PLD 1971 S.C. 205. The learned counsel further submitted that the treaty was to facilitate the importers from China slowly and gradually by

eliminating the customs duties. In the agreement, the duty was provided 25% and it was to remain static, provided that no concession could be provided to the importers falling under this category, but at the same time increase in the customs duty could not be made. It is because of the above stated position, that the impugned increase is totally unlawful and liable to be set aside. All the learned counsel for other petitioners adopted the arguments advanced by Mr Shafqat Mehmood Chohan Advocate.

5. On the other hand, learned counsel for respondent No. 5/Intervener (in W.P. Nos. 3412, 3336, 2088, 2089 & 2096 of 2009) argued that the writ petitions are not maintainable as under article 199 of the constitution of the Islamic Republic of Pakistan, a writ can be issued for implementation of law and not for enforcement of any treaty, even if the same has been entered into by the Govt. of Pakistan under the executive authority. The learned counsel further submitted that article 77 of the Constitution provides that it is the exclusive prerogative of the parliament to impose, exempt or otherwise deal with federal taxes in Pakistan. According to the learned counsel, the impugned treaty has not been ratified by the parliament; so, the same has not assumed the status of law and the same can not be implemented through writ petition. It was further submitted that to hold



that the treaty itself is law of land and even superior to the Finance Act, 2008 issued by the parliament, is legal impossibility under the constitutional law. The learned counsel further submitted that the intent in devising a 'No Concession List' is that the items on the list are highly sensitive, as there exists a domestic industry producing such goods and the same may be at an infant stage, thus, in need of protection from well-established international competition. It was because of this that no concession was granted to the goods enumerated in Category-V. It would, however, be a misunderstanding to hold that duties in respect of these commodities would not be increased with the passage of time.

6. Learned counsel for the respondents/FBR and Collector Customs, submitted that the petitioners were required to approach the Customs Department in its own hierarchy and since the alternative remedy was available, therefore, writ petitions were not maintainable. It was further submitted that the goods were imported at Karachi; as such cause of action arose at Karachi and writ petitions were filed at Islamabad; so, this Court lacks territorial jurisdiction.

7. I have heard learned counsel for the parties and have also perused the record.

8. Admitted position in the present case is that the Free Trade Agreement was executed between Govt. of the Islamic Republic of Pakistan and Govt. of the Peoples Republic of China on 24-11-2006. It is also admitted that the said treaty was never incorporated in any law. The Hon'ble Supreme Court of Pakistan in case titled Ms. Shehla Zia and others Vs WAPDA, reported as PLD 1994 Supreme Court 693 held that International agreement between the nations if signed by any country is always subject to rectification, but same 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 they bind down any party.

9. Similarly, in case re: Societe Generale De Surveillance S.A. Vs Pakistan through Secretary M/O Finance Revenue Division, Islamabad, reported as 2002 SCMR 1694, it was held that if provisions of the Treaty were not incorporated into the laws of the country through legislation, such provisions would not have the

effect of altering the existing laws, as such, rights arising therefrom, called treaty rights, could not be enforced through Court, as in such a situation, the Court was not vested with the power to do so. No Court had any jurisdiction unless conferred by or under any law or the constitution. Treaty unless was incorporated into the law so that the same became part of Municipal laws of the country, no Court shall have the jurisdiction to enforce any right arising therefrom. In the present case, the treaty, executed between Govt. of the Islamic Republic of Pakistan and Govt. of the Peoples Republic of China, is neither law of Pakistan nor this treaty has altered the prevailing law of Pakistan. Writ can be issued either in respect of violation of law or for the enforcement of any right recognized by law; but in the present case, the writ is for enforcement of right arising out of the treaty, which does not enjoy status of law and therefore, no writ can be issued.

10. The contention that since the treaty was in respect of fiscal matter, therefore, the same enjoys a better position and is therefore, to be considered as law, is also not correct.

11. It is also to be kept in view that the petitioners are not party to the above said treaty and for the enforcement

of rights arising out of the treaty, only parties to the agreement have a right to agitate the violation of rights and not a third party.

12. The contention that by virtue of section 18(C) of the Customs Act, 1969 the treaty stands ratified, again is not correct. Section 18 (C) (1) of the Customs Act. 1969 is to the following effect:

**"18( C ). RATES OF DUTY AND TAXES AND DETERMINATION OF ORIGIN UNDER TRADE AGREEMENTS.- (1)** Whereunder a trade agreement between the Government of Pakistan and the Government of foreign country or territory, duty at a rate lower than that specified in the First Schedule is to be charged on articles which are the produce or manufacture of such foreign country or territory, the Federal Government may, by notification in the official Gazette, make rules for determining if any article is the produce or manufacture of such foreign country or territory and for requiring the owner to make a claim at the time of importation, supported by such evidence as may be prescribed in the said rules, for assessment at the appropriate lower rate under such agreement."

The above stated section of law provides that if there is a treaty between Pakistan and a foreign country, then on production of evidence to the effect that the goods were produced at the foreign country, the duty would be charged at a lesser rate, but sub section 4 of section 18 (C) *ibid*

provides as under:

**"18( C ). RATES OF DUTY AND TAXES AND DETERMINATION OF ORIGIN UNDER TRADE AGREEMENTS.- (4)** Notwithstanding anything contained in sub-section (1) and (20), where the Federal Government is satisfied that, in the interests of trade including promotion of exports, it is necessary to take immediate action for discontinuing the preferential rate or increasing the preferential rate to a rate not exceeding the standard rate, or decreasing the preferential rate, in respect of an article specified in the First Schedule, the Federal Government may, by notification in the official Gazette, direct discontinuation of, or increase or decrease, as the case may be, the preferential rate."

Keeping in view the above stated provision of law, it becomes clear that the Federal Government has power to increase or decrease the preferential rate.

13. In addition to the above, if the petitioners feel that u/s 18 (C) *ibid* they are entitled to reduced rate of duty, they can raise this objection before the Customs Authorities in appeal. In this respect, the petitioners have got alternate and adequate remedy and on that score too, writ can not be issued.

14. In view of the aforementioned facts, I find no force in these petitions and accordingly all the writ petitions are dismissed.

**(RIAZ AHMAD KHAN)**  
**JUDGE**

Announced in open Court, on 27<sup>th</sup> of April, 2012.

**JUDGE],**

Tanveer Ahmed.