

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE YAHYA AFRIDI

**CIVIL APPEALS NO.1077 AND 1078 OF 2011**

(On appeal against the judgments dated 21.09.2010 & 26.7.2010 passed by the High Court of Sindh, Karachi in C.P. No. D-1547/2009 & D-252/2009)

Collector of Custom  
FBR and another

In C.A.1077/2011  
In C.A.1078/2011  
**...Appellant(s)**

**VERSUS**

M/s Fittery Pakistan (Pvt.) Ltd.

**...Respondent(s)**  
(In both cases)

For the appellant(s): Raja Muhammad Iqbal, ASC  
(In both cases)

For the respondent(1): Mr. Qadir Hussain Sayed, Sr. ASC  
(In both cases)

For the respondent (2): Ex-parte

Date of hearing: 25.02.2020

**ORDER**

**UMAR ATA BANDIAL, J.**-The respondent imported Artificial Filament Tow falling under PCT Heading 5502.0090 of the Pakistan Customs Tariff ("**PCT**"). The said imported item has an abbreviated name of AFCAT. In the year 2008-09 when the import was made by the respondent, the items falling under Chapters 55 to 63 of the PCT were exempt under the provision of SRO 509(I)/2007 dated 09.06.2007. The item imported by the respondent was sought to be cleared under the exemption granted by the afore-mentioned notification. This was declined and the respondent challenged the assessment order before the departmental authorities up to the stage of order in appeal which

was passed on 18.09.2009 (at page 43 of Civil Appeal No. 1078 of 2011). During the pendency of his appeal, the respondent also thought it appropriate to approach the High Court for relief on 14.02.2009 by filing a constitution petition. That petition was allowed vide the impugned judgment dated 26.07.2010 whereby the respondent was granted relief of exemption under the claimed notification.

2. Being a case for exemption from a taxing provision, the rule laid down is that the assessee/taxpayer must bring his case within the terms of the exemption, which are to be read strictly because the exemption operates as an exception from the general rule regarding the burden of taxes. For that reason, the terms of the exemption are relevant, which are reproduced below:-

"GOVERNMENT OF PAKISTAN  
MINISTRY OF FINANCE, ECONOMIC AFFAIRS,  
STATISTICS AND REVENUE  
(REVENUE DIVISION)

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Islamabad, the 8<sup>th</sup> June, 2007

**NOTIFICATION  
(SALES TAX)**

S.R.O. 509(I)/2007. - In exercise of the powers conferred by clause (c) of section 4 of the Sales Tax Act, 1990, and in supersession of the Notification No. S.R.O. 625(I)/2006, dated the 5<sup>th</sup> June, 2006, the Federal Government is pleased to notify the goods specified in column (2) of the Table below, falling under the PCT Heading No. mentioned in column (3) of the said Table, to be the goods on which sales tax shall be charged at the rate of zero per cent on the supply and import thereof, namely:-

**TABLE**

Sr. No	Description of goods	PCT Heading No.
(1)	(2)	(3)
1.	Leather and articles thereof including artificial leather footwear	41.01 to 41.15, 64.03, 64.04, 6405.1000, 6405.2000 and other respective headings
2.	Textile and articles thereof	Chapter 50 to Chapter 63, and other respective headings
3.	Carpets	57.01 to 57.05

3. It is clear from the language of the notification that goods specified in column (2) of the notification have been exempted from sales tax. Column (2) of the notification provides the primary condition for exemption of such goods to be their generic description as "*textiles and articles thereof*". The third column provides the different chapters whereunder the exempted articles of various descriptions fall; but the conditions in column (2) confines the exemption to those articles that are either "*textiles and articles thereof*". We asked the learned counsel for the respondent to explain whether the imported goods fall under the afore-noted description. He explained that the imported goods are Artificial Filament Tow and such item has different applications. He urged that so long as the imported goods fall within the classification heading under the PCT namely from Chapters 55 to 63 thereof, the exemption remains available to the respondent.

4. It is a condition of the exempting provision that the imported item must be "*textiles or an article thereof*". It is clear that the Artificial Filament Tow may be used in a textile but it is not a textile item itself. This is the factual finding given in the order in appeal dated 18.09.2009 which the respondent did not challenge before the learned Appellate Tribunal. In the present case, the Artificial Filament Tow has been imported by the respondent for filter rods in cigarettes. That application of the Artificial Filament Tow makes it different from textiles or from being an article thereof. Exemptions are an exception to the general liability imposed by a tax. Therefore when an exempting provision is susceptible to two interpretations, the one going against the tax payer is preferred. Reliance is placed on Messrs Army Welfare



Sugar Mills Ltd. and others Vs. Federation of Pakistan and others (1992 SCMR 1652) and Messrs Bisvil Spinners Ltd. Vs. Superintendent, Central Excise & Land Customs Circle Sheikhpura and others (PLD 1988 SC 370). We consider that in the facts of the present case adopting a literal construction of the description given in the present exemption is called for. The learned High Court has applied the correct principles whilst interpreting the exemption notification but has assumed that the Artificial Filament Tow is a textile item. In fact the departmental fora have held that it is neither a textile item nor in the present case, it is an item that is used as an article of textile. Given that perspective, we find that the impugned judgment of the learned High Court has committed an error. Accordingly, we set aside the same and allow these appeals.

Islamabad, the  
25<sup>th</sup> of February, 2020  
Not Approved For Reporting  
Khurram