

**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 APPEAL NO.1079 OF 2011 AND C.M.A.2273/2013**

*(Against the judgment dated 08.08.2011 of the High Court of Sindh, Karachi passed in C.P. No.1337/2010)*

Collector of Customs (Export) and others

...Appellant(s)

**VERSUS**

Saifuddin

...Respondent(s)

For the appellant(s): Mr. Shakeel Ahmed, ASC

For the respondent(s): Sardar Muhammad Aslam, ASC  
Ch. Akhtar Ali, AOR

Date of hearing: 17.5.2017

...

**JUDGMENT**

**MIAN SAQIB NISAR, CJ.-** The facts of this appeal are that the respondent (*seller*) entered into various contracts dated 7.7.2009 with a British buyer for the export of copper, aluminum and brass scrap. The customs authorities charged regulatory duty at the rate of 25% *ad valorem* on such export *vide* notification dated 13.03.2010 (*the notification*) issued by the Federal Government in terms of Section 18(3) of the Customs Act, 1969 (*the Act*) which was to remain in force till 30.6.2010. The respondent successfully challenged the notification and the imposition of regulatory duty through a constitution petition before the learned High Court which held that irrespective of the notification, the respondent was not liable to pay regulatory duty. Leave was granted on 7.12.2011 “to consider whether the High Court erred in law to hold that Section 31 and 31-A excludes application of Section 131 of the Customs Act, 1969 for the purpose of calculation of duty and taxes for export purpose.”

2. Heard. To answer the key question as to whether the respondent was liable to pay regulatory duty upon the goods he exported, it must be seen whether regulatory duty was leviable under the law. In this regard, Section 18 of the Act is relevant which reads as under:-

**18. Goods dutiable.-** (1) .....

(1A) .....

(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 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 25A.**

(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) .....

(6) .....

*[Emphasis supplied]*

Section 18 of the Act is a charging section and sub-section (2) thereof provides that no export duty shall be levied on the goods exported from Pakistan. However, under sub-section (3) thereof, the Federal Government is authorized, by notification in the official Gazette, to levy a

regulatory duty on all or any of the goods exported, as specified in the First Schedule, subject to such conditions, limitations or restrictions as it may deem fit. Furthermore, the rate of the duty would not be more than one hundred per cent of the value of such goods, as determined under Section 25 or 25A of the Act. According to sub-section (4), the regulatory duty so levied, would be in addition to any duty imposed under sub-section (1) or under any other law for the time being in force and would be leviable on and from the day specified in the notification, notwithstanding the fact that it was published at any time after that day.

3. In this regard learned counsel for the respondent argued that allowing the Federal Government to impose regulatory duty on exports under Section 18(3) of the Act would render sub-section (2) thereof redundant, and that the notifications issued by the Federal Government under Section 18(3) *supra* constitute subordinate legislation and would thus be subservient to sub-section (2) from which the intention of the legislature is clear, in that no export duty is to be levied on the goods exported from Pakistan. This is also the finding of the learned High Court in the impugned judgment. We disagree. It is worthy to note that sub-sections (2) and (3) of Section 18 of the Act are part of the same provision (*Section 18*) and were introduced at the same time, i.e. in 2005 *vide* Finance Act, 2005 (VII of 2005) when the erstwhile Section 18 was substituted. Therefore, neither of the sub-sections could be said to be subordinate to the other. What is important is the intention of the legislature, which is to be gathered from a holistic reading of Section 18 of the Act. While adopting the rule of harmonious interpretation of statutes, we find that sub-section (2) provides the general rule that all goods exported from Pakistan shall not be charged with export duty, whereas sub-section (3) provides the exception to such general rule, in that it specifically authorizes the Federal Government to impose a

regulatory duty, by notification in the official Gazette, on all or any of the goods imported or exported. A combined reading of both the sub-sections makes it abundantly clear that neither do they conflict with each other nor does either have supremacy over the other. 'Regulatory duty' has been examined in the judgment reported as Messrs Sh. Abdur Rahim, Allah Ditta Vs. Federation of Pakistan and others (PLD 198 SC 670) wherein the rationale for conferring the power to impose such duty was discussed. This Court held in the judgment (*supra*) that regulatory duty is meant to remove/check distortions in the market and to ensure stability, and that the Federal Government was validly delegated with the power/discretion to impose the same (*regulatory duty*). Therefore, the two sub-sections are consistent. Hence, the notification issued by the Federal Government under Section 18(3) of the Act imposing a regulatory duty on certain export items is valid and legal and such duty would be chargeable from the date of the notification, i.e. 13.3.2010 till 30.6.2010.

4. In order to answer the question as to whether regulatory duty was in fact payable by the respondent, we need to examine the relevant date for determination of the rate of duty on exported goods. In this regard, Section 31 of the Act is relevant which reads as under:-

***31. Date for determination of rate of duty on goods exported.- The rate and amount of duty applicable to any goods exported shall be the rate and amount chargeable at the time of the delivery of the goods declaration under section 131:***

*Provided that where the export of any goods is permitted without a goods declaration or in anticipation of the delivery of such a declaration, the rate and amount of duty applicable shall be the rate and amount chargeable on the date on which loading of the goods on the outgoing conveyance commences:*

*Provided further that the Federal Government may, by notification in the official Gazette, for any goods or*

*class of goods, specify any other date for determination of the rate of duty.*

*[Emphasis supplied]*

As per this Section, the relevant time for determination of the rate of duty on goods exported is the date of the delivery of the goods declaration under Section 131 of the Act, which reads as below:-

***131. Clearance for exportation.- (1) No goods shall be loaded for exportation until-***

- (a) the owner of any goods to be exported has made a declaration in such form and manner as prescribed by the Board, by filing a goods declaration to Customs containing correct and complete particulars of his goods, and assessed and paid his liability of duty, taxes and other charges, if any;***
- (b) the claim of duty drawback, if any, has been calculated and reflected in the declaration filed for export through Customs Computerized System;***
- (c) Customs has, on the receipt of goods declaration under clause (a), satisfied itself regarding the correctness of the particulars of export, including declaration, assessment, and payment of duty, taxes and other charges and verified the admissibility of the duty drawback claimed as specified in clause (b); and***
- (d) the appropriate officer has permitted passenger's baggage or mail bags, to be exported notwithstanding clauses (a), (b) and (c).***

***(2) .....***

*[Emphasis supplied]*

Section 131 *ibid* deals with the clearance of goods for exportation for which there are various elements [*parts (a) to (d) of sub-section (1)*] out of which one, i.e. sub-section (1) part (a), is that no goods shall be loaded for exportation until the owner has **made a declaration by filing a goods declaration to the customs authorities**. This is the sole element which Section 31 *ibid* refers to. From a plain reading of both Sections 31 and

131 [particularly sub-section (1)(a)] of the Act, it is manifest that the common feature is that of **goods declaration** and therefore duty shall be charged at the rate applicable on the date when the goods declaration is delivered or filed.

5. In this context, as regards the goods for which the declarations were filed on or after the date of the notification, i.e. 13.3.2010, in the light of the above discussion on Sections 31 and 131 of the Act, we find that such export goods were liable to regulatory duty as envisaged by the notification. In juxtaposition, those goods for which the declarations were filed prior to the issuance of the notification, such export goods were not liable to regulatory duty under the notification. However, the learned counsel for the appellant submitted that with respect to the latter category of goods, though the declarations were filed prior to the issuance of the notification, they too were liable to regulatory duty as they (*goods declarations*) were subsequently amended after the date of the notification. In this regard it is pertinent to note that the instant appellant raised this objection before the learned High Court but the respondent explained that the amendments to the goods declarations were necessitated due to the change of the vessel on which the scrap was to be exported. The learned High Court accepted this explanation on the ground that as long as the 'particulars of the goods', required to be correct and complete as per Section 131(1)(a) of the Act, remained the same, then any subsequent substitution, amendment or revision in respect of any other information to be contained in the declaration, is immaterial for the purpose of Section 31 of the Act. We find that the view taken by the learned High Court in this regard is correct and uphold the same.

6. It is the respondent's case that the contracts for the sale of goods to be exported had been entered into on 7.7.2009 before 13.3.2010

which is the date of the notification. Therefore, on the basis of the judgment reported as **Al-Samrez Enterprise Vs. The Federation of Pakistan (1986 SCMR 1917)** no duty can be imposed and collected from the respondent. It is the case of the appellants that the respondent is not entitled to the benefit of the law laid down in **Al-Samrez**'s case (*supra*) which has been nullified by the legislature through the insertion of Section 31A in the Act according to which, for the purposes of Section 30, 30A and 31, the rate of duty applicable to any goods shall include: (a) any amount of duty imposed under Section 18, 18A and 18C; and (b) the amount of duty that may have become payable in consequence of the withdrawal of the whole or any part of the exemption or concession from duty; **whether before or after the conclusion of a contract or agreement for the sale of such goods** or opening of a letter of credit in respect thereof. Thus, according to the learned counsel for the appellant, the time of conclusion of the contract becomes irrelevant and thus the respondent would be liable to pay regulatory duty upon his export goods. For ease of reference, Section 31A is reproduced hereunder:-

**31A. Effective rate of duty.-** (1) *Notwithstanding anything contained in any other law for the time being in force or any decision of any Court, for the purposes of section 30 69, 30A and 31, the rate of duty applicable to any goods shall include any amount of duty imposed under section 18, 18A and 18C and the amount of duty that may have become payable in consequence of the withdrawal of the whole or any part of the exemption or concession from duty whether before or after the conclusion of a contract or agreement for the sale of such goods or opening of a letter of credit in respect thereof.*

(2) .....

7. As mentioned in the earlier portion of this opinion, according to Sections 31 and 131 of the Act, the only relevant factor is that of

delivery of the goods declaration. It is worthy to note that the two said sections make no reference whatsoever to the date of entering into or conclusion of contract. This Court in Al-Samrez's case (*supra*) held that if a binding contract was concluded between the parties (*importer and the foreign exporter*) or steps were taken by the importers creating a vested right under the existing notification granting exemption, the benefit of an exemption could not be taken away and destroyed in modification of the earlier one. In order to overcome the said decision, Section 31A *supra* was inserted in the Act, wherein the legislature used the words "*before or after the conclusion of a contract or agreement for the sale of such goods or opening of a letter of credit*". However, we find that this has absolutely no nexus to the issue at hand for which "*delivery of the goods declaration*" is relevant as per Sections 31 and 131 of the Act, as mentioned above. Thus, as the decisive factor remains to be **delivery of the goods declaration**, Section 31A *ibid* would have no relevance or application to the instant case.

8. In the light of the above, this appeal is partly allowed. It is dismissed to the extent that where the goods declarations were filed before the date of the notification, i.e. 13.3.2010, no regulatory duty was payable by the respondent. However, where the goods declarations were filed on or after such date, the respondent was liable to pay regulatory duty as envisaged by the notification and to this extent, the appeal is allowed.

**C.M.A. No.2273/2013**

9. As we have heard the learned counsel for the respondents, therefore this application is disposed of accordingly.

10. The foregoing are the reasons for our short order of even date which reads as under:-

*"For the reasons to be recorded later, this appeal is partly allowed, in that it is dismissed to the extent of the Goods*



*Declaration (GD) filed by the respondent for export of his goods before the imposition of Regulatory Duty on 13.03.2010, and is allowed to the extent that the GD was filed, and even if not filed, on or after 13.03.2010.”*

CHIEF JUSTICE

JUDGE

JUDGE

ISLAMABAD.

17<sup>th</sup> May, 2017.

Approved for reporting

Mudassar/☆