

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MAQBOOL BAQAR  
MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**CIVIL APPEAL NO.570 OF 2011**

(On appeal against the judgment dated  
27.09.2010 of the High Court of Sindh  
at Karachi passed in C.P.No.D-2486  
of 2010)

Federation of Pakistan through Chairman ... **Appellants**  
FBR & others

**Versus**

Saleem Raza ... **Respondent**

For the Appellants : Raja Muhammad Iqbal, ASC.

For Respondent: : Ex-parte.

Date of Hearing : 04.02.2020

**ORDER**

**YAHYA AFRIDI, J. -**This Court had granted leave to appeal in this case moved by Federation of Pakistan through Chairman FBR, against the decision of the Division Bench of the High Court Sindh at Karachi dated 27.09.2010 passed in C.P. No. D-2486 of 2010 in terms that:

"Heard the learned ASC. He, inter alia, contends that doctrine of discrimination has been misapplied by the learned Division Bench of the High Court, thereby causing serious prejudice to the interest of the petitioners.

Contention raised needs consideration. Leave to appeal is accordingly granted. Appeal paper books shall be prepared on the basis of the available record. However, parties are liberty to file additional documents, if any, within six weeks."

2. In essence, the issue for the determination in the instant appeal is whether the amendment introduced in the proviso to section 79 (1) of the Customs Act, 1969 ("**Act**") was discriminatory or otherwise.

3. Section 79 of the Act provides, *inter alia*, the mode and manner in which an owner of the imported goods seeks the release thereof. Initially, under the proviso of sub-section (1) of the Section 79, the importer of all types of goods, new and used, could request the officer of the customs not below the rank of the Assistant Collector to permit the examination of the imported goods and for declaration, assessment and payment of the due duties, taxes and other charges. The change introduced *vide* the amendment in the proviso restricted the said option to only importers of used goods, and that too, after seeking permission of an officer of the custom not below of the rank of Additional Collector of Customs.

4. It is noted that the High Court was persuaded to declare the said amendment as discriminatory under the touchstone of Article 25 of the Constitution essentially of two grounds: firstly, based on precedent<sup>1</sup>, that the classification of used imported goods was arbitrary and not founded to any rational intangible differentia of goods from other imported goods; secondly, that no valid reasons were given in the Budget Instructions by the FBR<sup>2</sup>.

5. We are afraid, the impugned judgment has failed to appreciate the cardinal principle of interpretation of statute that the Courts are to presume constitutionality of a law enacted by the legislature, and where two diverse views are reasonably possible,

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<sup>1</sup>  
<sup>2</sup>

I.A Sherwani's case (1991 SCMR 1041)  
Budget Instructions for the year 2010-2011  
dated 5-6-2010  
vide letter No. 6(1)/2010-CB

the one leaning in favour of its constitutionality is to be adopted and applied to save the enactment.<sup>3</sup> More so, when a challenge is made to strike down a provision of a fiscal statute, discretion is to be sparingly exercised by a constitutional Court, and that too when there is glaringly blatant ground for the same.<sup>4</sup> In fact, by now a doctrine of judicial deference has developed in Common Law jurisdictions for the constitutional courts to endeavour to preserve fiscal enactments passed by the competent legislature, respecting and recognizing economic policy of the executive. It is only when all efforts fail to save the fiscal statute, are the Courts to declare it unconstitutional<sup>5</sup>.

6. In the instant case, the aim of restricting the option to importers of used goods, as compared to other goods, was manifest from the amendment itself. The public policy of ensuring accurate declaration of imported goods for ease of assessment and payment of duties and taxes has always been the paramount theme envisaged in the Act. However, given the adverse penal consequences for an inaccurate declaration made by an importer, it appears that the legislature deemed it appropriate to provide a safeguard to the importers of used goods, who often import in lots, without clear information as to the age and previous use of such goods. Thus making an accurate declaration regarding the same under Section 79 of the Act was rather difficult, if not possible. In such circumstances, providing the importer of used goods an option to seek pre-declaration examination of the imported goods to file an accurate declaration for a correct assessment and payment of duties and taxes, appears to be a valid object to

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<sup>3</sup> Sui Sothern v. Federation of Pakistan (2018 SCMR 802)

<sup>4</sup> Elahi Cotton Mills's case (PLD 1997 SC 582)

<sup>5</sup> East India Tobacco's case (AIR 1962 SC 1733), R.K Carg's case (1981) 4 SCC 675, P.Laxmi Devi's case (2008) 4 SCC 720, and Morey v. Doud (354 US 457)

classify separately “used goods” compared to other goods. The intangible differentia between the two types of goods is not only evident but also reasonable, and that too in the furtherance of the main object of the Act.

7. We are also not persuaded that non-mentioning of the reasons for the said amendment in the Budget Instructions issued by the CBR could be a valid ground for striking down the Amendment being discriminatory. Neither the legislature nor the executive is to rendered separate reasons for introducing amendments in fiscal statutes. It is for the courts to appreciate the enactment under challenge and to see whether the same offends the fundamental rights enshrined in the Constitution for the same to be struck down as unconstitutional.

8. Accordingly, for the reasons stated above, the impugned judgment of the High Court dated 27.09.2010 is set aside, and the present appeal is allowed in the above terms.

Judge

Judge

Judge

Islamabad,  
04.02.2020

Not approved for reporting.