

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 3340 of 2025

[M/S L'oreal Pakistan PSRM (Pvt) Limited v. Federation of Pakistan and others]

Before.

Mr. Justice Zulfiqar Ali Sangi

Mr. Justice Nisar Ahmed Bhanbhro

Petitioner : M/S L'oreal Pakistan (Pvt) Ltd.
through Mr. M. Inzimam Sharif Advocate
Respondents 1 to 3 : Collectorate of Customs Karachi
through Mr. Sardar Zaffar Hussain Advocate
Date of Hearing : 23.07.2025.
Date of Short Order: 23.07.2025.

J U D G M E N T

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioner has claimed the following relief.

- i. Declare that no demand or recovery of custom duty and taxes can be made or enforced by the Officers of the Respondents through impugned Assessment or the Assessment Note, without exhaustion of at least one appeal by an independent judicial forum outside the hierarchy of department and without providing an opportunity of hearing to the Petitioner on its appeal and stay application.***
- ii. Direct the Respondents to release the subject consignment on securing the differential amount of duty and taxes in the shape of pay order / bank guarantee before the Nazir of this Honorable Court, during the pendency of the appeal before Respondent No 5.***

2. Case of the Petitioner is that it is a private limited company engaged in the business of sale and import of cosmetic and beauty products. That the Petitioner imported cosmetic goods to Pakistan. On arrival of the imported goods at Karachi port Company filed goods declaration No KAPW-HC-1952 dated 03.07.2025 required under section 79 of the Customs Act 1969 (TCA). The declaration was selected for scrutiny and authorized officer examined the consignment and Goods Declaration was forwarded for assessment under section 80 of TCA. The Officer of the Customs assessed the goods under valuation ruling No 1606 of 2022 dated 02.03.2022 rather than the valuation method prescribed under section 25 of TCA which resulted in levy of duty and tax. The consignment of the Petitioner was covered under exception clause for payment of duty and tax. Petitioner filed

an appeal section 193 of TCA before Respondent No 5 against the assessment and volunteered to clear the consignment by depositing the amount determined under provisional assessment but Respondent refused to release the consignment, hence this Petition.

3. Mr. M. Inzimam Sharif Learned Counsel for the Petitioner contended that the determination of amount of duty and taxes on imported goods through final assessment dated 07.07.2025 issued by the Customs Authorities was arbitrary, illegal, without any lawful authority and purely on account of misapplication of law. The imported goods were covered by exemption of tax and duty tendered by the government but assessment officer failed to apply the correct valuation reading and assessed the tax and duty beyond the provisions of section 25. Petitioner filed appeal before Respondent No 5, which has been allowed and matter has been referred back for fresh assessment but the Respondents are not releasing the imported goods. He prayed for allowing the Petition.

4. Mr. Sardar Zaffar Hussain Learned Counsel for the Respondents controverting the stance of Petitioner submitted that the imported goods were not covered under exemption of duty and tax. He contended that assessment of tax and duty was rightly done. He contended that the goods of the Petitioner were not detained, Company might get clearance of the goods subject to the payment of assessed amount. He prayed for dismissal of the Petition.

5. Heard Arguments, Perused material available on record.

6. Examination of the record transpired that the Petitioner imported the consignment and filed Goods Declaration under section 79 of TCA raising claim that the goods imported by the Company were covered under the exemption clause for payment of duty, tax and other charges. Petitioner claimed that duty, tax and other taxes were not leviable on the imported goods and sought release of the goods under exception. On examination of the imported goods the claim of the Petitioner was not acceded to and assessment of imported goods was ordered by the authorized officer. The goods were assessed and an amount of Rs 33,763,225 was determined as against the declaration of Rs 10,547,388 by the Petitioner. The assessment was disputed by the Petitioner by filing customs appeal under section 193 of TCA before the Collector of Customs (Appeal) / Respondent No 5. During pendency of the instant Petition, Respondent No 5 decided the appeal and accepted the claim as to exception of imported goods from Customs Duty and Taxes vide order dated 11.07.2025, operative part of the order reads as under:

“In view of the above discussion it is concluded that the current imports by the multinational fall within the exception vide note (iii) para 5 of the VR 1809/2023. The goods under this appeal are directed to be reassessed

accordingly under the provisions of the Customs Act, 1969. The appeal is disposed of with the above direction.”

7. Respondent No 5 decided the fate of the appeal filed by Petitioner on 11.07.2025, it is shocking to notice that pursuant to the orders passed in appeal reassessment of the duty and tax has not been done as yet as confirmed by the Learned Counsel for the Customs. Petitioner since the very date of arrival of goods on port was ready to pay disputed amount by securing the same through Bank Guarantee or pay order subject to the outcome of appeal. Respondents No 2 to 4 did not consider such request, which in our view ought to have been. The fresh development came as a result of the decision in customs appeal filed by the Petitioner, wherein claim to exception of duty and tax has been recognized, in the said circumstances Respondents No 2 to 4 were under an obligation to reassess the amount keeping in view the order passed in appeal and release the goods without any loss of time as delay in delivery of goods might result in financial loss to the company.

8. Learned Counsel representing the Customs Department, when confronted to this fresh development, resisted the release of consignment and insisted that Petitioner must pay the amount of duty and tax assessed by the authority under section 80 of TCA. He contended that the customs would not be in a position to recover the disputed amount if the higher forum reversed the order passed by the Respondent No 5, he however conceded to the fact that order dated 11.07.2025 passed by the Respondent No 5 was not challenged by customs before Appellate Tribunal. Under section 25 of TCA officer of customs may determine the amount of customs duty and tax payable on imported and exported goods. Legislation in its own wisdom empowered the Federal Government under section 39 of TCA to exempt the payment of customs duty whenever circumstances so existed to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests etc. subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under TCA. The Officers of Customs on declaration of goods for assessment are under an obligation to examine the claim of owner of the imported goods seeking exemption in lieu of any SRO issued by the Federal Government. For academic purposes the section 39 of TCA is reproduced below:

***39. General power to exempt from customs-duties.-** (1) The Federal Government, whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations, protection of national economic interests in situations arising out of abnormal fluctuation in international commodity*

prices, implementation of bilateral and multilateral agreements, and to any international financial institution or foreign government-owned financial institution operating under a memorandum of understanding an agreement or any other arrangement with the Government of Pakistan or to implement an agreement of the Government of Pakistan with any entity, subject to such conditions, limitations or restrictions, if any, as it deems fit to impose, may, by notification in the official Gazette, exempt any goods imported into, or exported from, Pakistan or into or from any specified port or station or area therein, from the whole or any part of the customs-duties chargeable thereon and may remit fine, penalty, charge or any other amount recoverable under this Act.

(2) A notification issued under sub-section (1) shall be effective from the day specified therein, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.

(3) Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or court, no person shall, in the absence of a notification by the Federal Government published in the official Gazette expressly granting and affirming exemption from customs duty, be entitled to or have any right to any such exemption from or refund of customs duty on the basis of the doctrine of promissory estoppel or on account of any correspondence or admission or promise or commitment or concessionary order made or understanding given whether in writing or otherwise, by any government department or authority.

(4) The Federal Government shall place before the National Assembly all notifications issued under this section in a financial year.

(5) Any notification issued under sub-section (1) after the commencement of the Finance Act, 2015 shall, if not earlier rescinded, stand rescinded on the expiry of the financial year in which it was issued

Provided that all such notifications, except those earlier rescinded, shall be deemed to have been in force with effect from first day of July, 2016 and shall continue to be in force till thirtieth day of June, 2018, if not earlier rescinded:

Provided further that all notifications issued on or after the first day of July, 2016, and placed before the National Assembly as required

under sub-section (4) shall continue to be in force till thirtieth day of June, 2024, if not earlier rescinded by the Federal Government or the National Assembly.

10. It is not disputed that on arrival of the imported goods at port, Petitioner filed a declaration under section 79 claiming the exemption of Customs duty, tax and other charges. Pursuant to the declaration filed by Petitioner, the goods were examined by the Officer of Customs authorised in that behalf. During examination it was found that the imported goods were not covered by the SRO issued by Federal Government benefitting Petitioner for exemption of duty, tax and other charges, however assessment in question could not hold field before Collector of Customs Appeal and was reversed accordingly. Petitioner was willing to seek clearance of imported goods but the same was declined under an apprehension of recovery of charges in case customs wins its claim before appellate tribunal if an appeal is filed, which in our view is not a correct approach and violated the mandate given to the officers of the customs conferred under section 80 and 81 of TCA.

12. Apprehension of the Respondents that the customs department cannot enforce the recovery of government dues or liability if the goods are released, is ill founded and offends the fundamental rights of the Petitioner as to lawful trade and business guaranteed under article 18 of the Constitution. Petitioner being a multinational company operates its business in Pakistan under memorandum signed with the Ministry of Trade and Commerce government of Pakistan and enjoys the same protection of law as available to the other business concerns of the country. This right to lawful trade and business cannot be encroached upon by the executive authority in a slip shod manner. The executive authority is under obligation to discharge its duties in accordance with law. For recovery of government dues the legislature in its own wisdom has conferred unfettered powers to the Officers of Customs subject to legal limitations. To enforce recovery of government dues officers of the customs can take coercive measures, which may result in the arrest of defaulters. Since the Petitioner is operating its business within Pakistan, its business is subject to all the taxes and duties payable under the law. At the same time Petitioner is entitled to enjoy an exception or exemption of tendered by the Government of Pakistan. Petitioner is under obligation to pay the duty and tax leviable and in case of default in payment of duty or tax on imported goods, the same can be recovered by the officer of customs by invoking the powers conferred under section 202 of TCA, which reads as under:

202. Recovery of Government dues.- (1) *When, under this Act or under any other law for the time being in force, which provides for any tax, duty or other levy being collected in the same manner as customs-duties are collected, a penalty is adjudged against, or notice or demand is served upon, any person calling for the payment of any amount unpaid which may be payable by way of penalty or by way*

of duty, tax or other levy or under any bond guarantee or other instrument executed under this Act or such other law or the rules made there under, the appropriate officer-

- (a) *may deduct or require any other officer of Customs, or Inland Revenue to deduct such amount from any money owing to such person which may be under the control of the Customs, or Inland Revenue authorities; or*
- (b) *if it cannot be so recovered, may recover, or may require any other officer of Customs, or Inland Revenue to recover, such amount by detaining and selling any goods belonging to such person which are under the control of the Customs, or Inland Revenue authorities*

Provided that notwithstanding anything contained in any other law for the time being in force, if a defaulter sells or transfers ownership of his assets, the defaulted amount of duty and taxes shall be the first charge on the business so transferred.

(2)

13. Since the Respondent No 5 has granted the appeal and the Petitioner accepting its claim to exception in duty and tax. The Respondents No 2 to 4 if aggrieved by the orders passed by the Respondent No 5 may avail the remedy provided under section 194A of TCA by filing an appeal before the Customs Appellate Tribunal. But detention of the imported goods by the Officers of Customs was beyond the bounds of law, when the owner of imported goods was willing to secure the disputed amount through bank guarantee. This Court believes in the institutional autonomy and avoids entertaining the matters that may result in judicial overreach or encroachment of the powers of executive authority. This Court believes that the matters like the release of consignment, levy of duty and tax must be handled and resolved at the levels provided under the law and only the matters in the shape of customs references or any issue involving the interpretation of law should come before this Court. But unfortunately, due to lackadaisical approach of the officers of customs this Court is clogged with unnecessary litigation seeking indulgence of this Court to issue writ for release of the consignment under section 81 of TCA. Inaction on the part of the officers of the Customs to act timely in the matter of release of consignment is highly deplorable.

14. Sequel to the above discussion and reasons recorded hereinabove, We are of the considered view that impugned action on the part of Respondents No 2 to 4 for refusal to release the imported consignment of the Petitioner is without any lawful authority, perverse and illegal, thus subject to the judicial review of this Court in its powers conferred under article 199 of the Constitution. This Petition is therefore allowed. The Respondents No 2 to 4 are directed to reassess the imported goods of the Petitioner in terms of the order dated

11.07.2025 passed by the Respondent No 5 and release the goods on payment of admitted amount within a period a of ten days from today. In case of dispute over amount of tax and duty, the Respondents No 2 to 4 shall release the consignment provisionally by exercising powers available under section 81 of TCA, the parties shall be at liberty to file appropriate proceedings if aggrieved by the orders of assessment if so advised and final adjudication of the duty and tax shall be subject to the decision of final ultimate forum provided under the Customs Act1969 and any other law in force.

The Petition stands disposed of in above terms along with pending applications with no order as to the costs.

JUDGE

JUDGE