

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**SUIT No. 751 / 2013**

**Plaintiff:** Atlas Power Ltd. through Mr. Khalid Jawed Khan Advocate.

**Defendant No. 1.** Federation of Pakistan through Mr. Osman A. Hadi Assistant Attorney General.

**Defendant No. 2.** Modeal Customs Collector (Appraisement) through Ms. Afsheen Aman Advocate.

*For hearing of CMA No. 7110/2013.*

**Date of hearing:** 25.03.2019.  
**Date of order:** 25.03.2019.

**O R D E R**

**Muhammad Junaid Ghaffar, J.** Through this Suit the Plaintiff has impugned the action of Department denying benefit of amending notification i.e. SRO 554(I)/2008 dated 11.6.2008, whereby, earlier SRO 575(I)/2006 dated 5.6.2006 was amended, on the ground that Letter of Credit in respect of the consignment in question was opened by the Plaintiff prior to issuance of the amending Notification. The Department's case is that since the Letter of Credit was opened earlier, hence, date of filing of Goods Declaration is irrelevant. To this learned Counsel for the Plaintiff submits that this contention of the Department is against the provisions of Section 30 of the Customs Act, 1969, whereas, similar controversy was dealt with by a learned Division Bench of this Court in the case reported as ***Aisha Steel Mills Ltd. through Director, Karachi and others V. Federation of Pakistan through Secretary, Revenue Division / Chairman Federal Board of Revenue, Islamabad and others (2011 P T D 569).***

I have heard both the learned Counsel and perused the record. On perusal of the same as well the law i.e. Section 30 ibid, read with Para

48 of the judgment as above, the argument so raised on behalf of the Defendant / Department is misconceived. It is the date of filing of Goods Declaration which is relevant for the purposes of determination of rate of duty and taxes and has no nexus with the date of any SRO. Moreover, even otherwise, if some beneficial Notification has been issued during pendency of certain proceedings, or after opening of a Letter of Credit, and before the filing of a Goods Declaration, it is immaterial and would only be governed by the provisions of s.30 of the Customs Act, 1969, and not otherwise. The learned Division Bench has already repelled this argument of Defendants, and again it is being pressed on their behalf which is not justified. It has been held as follows:-

**“48. The respondents had feebly tried to argue that the provisions of the S.R.O. 554(I)/2008 dated 11-6-2008 and S.R.O. 1226(I)/2008 dated 27-11-2008 will not apply to the present petitioners as LCs were issued and the contracts executed in March, 2008 before coming in force of these S.R.Os and these S.R.Os cannot be applied retrospectively. This contention is repelled as when the goods arrived and were cleared these S.R.Os have already been put into operation and therefore in accordance with the provisions of the Customs Act the duty prevailing at the time of filing bill of entry will apply. Even otherwise, these S.R.Os are of beneficial nature and it is a settled law that all beneficial circulars and notifications apply retrospectively to all pending matters.”**

Since only a legal controversy is involved therefore, in terms of Order 14 Rule 2 CPC, following legal issues are settled for adjudication:-

- 1) Whether the rate of duty / concessional rate of duty on the goods imported by the Plaintiff is to be determined with reference to the date of filing of Goods Declaration in terms of Section 30 of the Customs Act, 1969?
- 2) Whether the Plaintiff is entitled to the benefit of SRO 575(I) /2006 dated 5.6.2006 as amended vide SRO 554(I)/2008 dated 11.6.2008 on the goods imported by the Plaintiff including those imported vide Goods Declaration dated 3.11.2008?
- 3) What should the Decree be?”

And in view of the above discussion, it is held that the rate of duty is to be determined with regard to the date of filing of a Goods Declaration in terms of Section 30 of the Customs Act, whereas, Plaintiff is entitled for the benefit of S.R.O. 575(I)/2006 dated 5-6-2006 read with the S.R.O. 554(I)/2008 dated 11-6-2008.

Accordingly, Suit stands decreed in the above terms in favor of the Plaintiff and against the Defendants. Let a decree be prepared accordingly. As a consequence thereof, Nazir is directed to discharge the postdated cheque furnished to him pursuant to order dated 10.6.2013.

**J U D G E**

ARSHAD/