

IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1970 / 2018

Plaintiff: Reliance Petrochem Industries (Pvt.) Ltd.
through Mr. Ovais Ali Shah Advocate.

Defendants: Pakistan & others through Mr. Khalid Rajpar
No. 2 to 4. Advocate along with Mr. Muhammad Amir
Thaim Additional Collector and Mr.
Aurangzeb Kalpar Principal Appraiser
Preventive Collectorate.

For hearing of CMA No. 14775/2018.

Date of hearing: 06.11.2018.

Date of order: 06.11.2018.

ORDER

Muhammad Junaid Ghaffar, J. This is a Suit for Declaration and Injunction and through listed application the Plaintiff seeks suspension of letter dated 17.09.2018 (Page 41) issued by Secretary, Tariff, Federal Board of Revenue, Islamabad, enclosing therewith a letter dated 10.9.2018 issued by Executive Director, Oil & Gas Regulatory Authority (“OGRA”). Notice was ordered and today written statement has been filed on behalf of defendant No.2 to 4, whereas, despite notice no one has affected appearance on behalf of OGRA.

2. Learned Counsel for the Plaintiff submits plaintiff is in the business of Textiles and petroleum and petrochemical products, and accordingly imported a consignment of base oil for manufacture of white oil which has been imported and is stored in a Bonded Warehouse after clearance from Customs. Whereas, impugned letter dated 17.9.2018 has been issued by FBR, circulating the letter of OGRA dated 10.9.2018, whereby, restrictions have been put on the import of lube base oil, additives along with supply of base oil through refinery which shall be allowed only to OGRA’s licensed plants. According to him on the basis of this letter of OGRA the Customs authorities have

withheld clearance of the imported consignment and are demanding Licence from OGRA. He submits that firstly, and without prejudice to the other contention, this letter cannot have any retrospective effect so as to restrict the clearance of consignments for which Letter of Credit as well as Bill of Lading has been issued prior in time. Secondly, he submits that the restrictions, if any, on the import of oil products have already been provided in Appendix-B [in in terms of Para 5 (b)(i)&(xi)] in Part-II and the HS Code as well as the corresponding description of the goods has been specifically provided therein, and admittedly the product in question i.e. base oil falling under HS code 2710.1993 is not included in this list. He submits that OGRA has no authority to regulate or restrict any Imports which is the principal job of the Federal Government through Ministry of Commerce. In support he has relied upon the case reported as ***Muhammad Umar V. Federation of Pakistan and others (2004 P T D 94)***.

3. Learned Counsel for Defendants No.2 to 4 along with Mr. Muhammad Amir Thaim Additional Collector of Customs and Mr. Aurangzeb Katpar Principal Appraiser, Preventive Collectorate, submits that they have acted pursuant to Letter dated 17.09.2018 addressed by Secretary Tariff, Federal Board of Revenue to all Collectorates whereby, the letter of OGRA dated 10.09.2018 has been circulated for compliance. He submits that in respect of import of oil the Department invariably is bound by the directions of OGRA; whereas, pursuant to Para 6 of the Import Policy Order, 2016, the prohibition and restrictions as prescribed under any other law and or rules for the time being enforced are applicable, mutatis mutandis, and therefore, the letter of OGRA is to be acted upon.

4. I have heard both the learned Counsel and perused the record. It is not in dispute that the Plaintiff has imported a consignment of base oil which has arrived at Port and thereafter on filing of an In-Bond Goods Declaration, has been shifted and stored in a Custom Bonded Warehouse. On filing of Ex-Bond Goods Declaration(s), the Customs have withheld clearance of the said consignment on the basis of letter of OGRA dated 10.9.2018, circulated to them by FBR vide letter dated 17.9.2018. There are two aspects of this case as contended on behalf of the Plaintiff. The first is that any amendment in the Import Policy is to be effective prospectively and is not applicable on a Letter of Credit or a Bill of Lading issued prior to any such amending restrictions. The second issue as raised on behalf of the Plaintiff is that even otherwise, the product in question does not fall within the prohibitions and restrictions as provided in Part-II of Appendix-“B” of the Import Policy Order, 2016.

5. Insofar as this issue is concerned, I am of the view that the second contention so raised is not required to be further adjudicated in view of the fact that Para 4 of the Import Policy Order, 2016, and the proviso thereof, is squarely applicable to the facts of this case. The proviso to Para 4 *ibid* provides that ***the amendments brought in this Order from time to time shall not be applicable to such imports where Bill of Lading (B/L) or Letters of Credit (L/C) were issued or established prior to the issuance of amending Order.*** Admittedly, the Letter of Credit as reflected from the Goods Declaration placed on record by the Department was established on 17.01.2018, whereas, the date of the Bill of Lading is 25.01.2018. It is settled law that in cases of imports, wherein, letters of credits are duly established or imports have been affected by issuance of Bills of Lading or Airway Bill, they are always protected from any subsequent change

or restriction in the Import and or Export of any commodity, as the case may be. The proviso as above is in line with it. In this matter it does not appear to be the case of defendants that letter(s) dated 10.9.2018 and 17.9.2018, have been issued prior to the import in question, or have been given any categorical retrospective effect on all consignment for which L.C's had already been established. The Lahore High Court in the case of ***Kaghan Impex v. Central Board of Revenue & Others (PLD 1982 Lahore 608)*** had the occasion to examine an amendment made in the Import Policy Order, whereby in terms of SRO dated 13.10.1980 an amendment was made in Para 8(4) of the Import Policy Order, 1980, which resultantly read as ***“Import of goods from India (including goods of Indian Origin from any country) will be allowed to public sector agencies”***....., whereas, previously the words read as ***“Import of goods from India (including goods of Indian origin) will be allowed to public sector agencies”***... The petitioner imported its consignment from Singapore prior to the amending SRO dated 13.10.1980, however, when it arrived in Pakistan, the same was confiscated on the basis of the amending Notification that goods from India and of Indian Origin from any country are no more importable by the private sector. The learned Lahore High Court was pleased to hold as under:

The change in the import Policy Order, 1980, through the amending provisions cannot affect past and closed transactions and the petitioners have a vested right to demand that their case be decided according to the law as it existed when the action was begun, unless the amendment shows a clear ; intention to the contrary. I am, however, of the considered view that the amendment does not operate retrospectively. Reference may also be made to *B. G. N. Bhandari v. Rehabilitation Authority, Lahore (2)* and *Ahmad Ali Khan v. Muhammad Raza Khan and others (3)*, wherein it was held that a subsequent change in the law cannot affect past and closed transactions.

6. In appeal the matter went before the Hon'ble Supreme Court and the case is reported as ***Central Board of Revenue v. Messrs Kaghan***

Impex and another (PLD 1989 SC 463), wherein the Apex Court observed as under;

There is force in these submissions. As already stated the ban contained in the Import Policy Order, 1979, was directed only to goods of Israel, South Africa, Taiwan a province of the People's Republic of China, Rhodesia or goods originating from any of these countries. It was only later on i.e. on 13-10-80 that a similar ban was imposed for the first time in relation to goods originating from India. The Government apparently was becoming wiser by lapse of time and by stages, but the amendment made on 13-10-1980 could not, as rightly pointed out by the High Court, apply to the goods E which were imported much earlier.

In the result when the disputed goods were imported by the respondents and arrived in Pakistan notwithstanding the fact that they were goods of Indian origin having been imported not from India but from another country (Dubai) they were not liable to confiscation in terms of Import Policy Order, 1979, then in force.

7. Similarly in the case reported as ***Government of Pakistan through Ministry of Finance v Manzoor Brothers (1995 SCMR 516)***, the Hon'ble Supreme Court had the occasion to examine the judgment of the learned Lahore High Court in respect of a similar situation, wherein, on the basis of a Ruling dated 15.8.1993 issued by the Chief Controller of Imports and Exports, the clearance of consignments for which the Bills of Entries were filed prior in time i.e. on 20.2.1983 and 31.5.1983, was withheld by the Customs, and the Apex Court approved the observations of learned Lahore High Court in the following manner;

In this case, the respondent firm had presented the Bills of Entry in one case on 20-2-1983 and in the other on 31-5-1983. The Policy ruling was given on 15th August, 1983. This ruling could not affect goods imported before 15-8 1983. We, therefore, agree with the following observation of the High Court:

"The present goods were imported in March 1983 and if at all the ruling of the Controller-of Imports and Exports had to be applied, it should only

have been in respect of imports made on or after 15-8-1983 which was the date of the ruling of the Controller. The application of the Controller's decision retrospectively on the case of the petitioner cannot be permitted, because the goods were imported by the petitioner around March 1983."

No good ground for interference with the orders of the High Court has been made out. Accordingly, these appeals must be dismissed. No costs.

8. In this case it is not in dispute, rather admitted that both the Letter of Credit as well as Bill of Lading are much prior in time. It is not in dispute that import has been effected and consignment has been allowed to be removed to the Bonded Warehouse. Therefore, in the given facts even if the Letter dated 10.09.2018 issued by the OGRA is treated as a restriction under Para 6 of the Import Policy Order, 2016, (and this is without touching merits to the effect that whether such a letter falls within this clause), the same is even otherwise, not applicable on the import in question as per the Proviso to Para 4 of the Import Policy Order, 2016.

9. In view of hereinabove facts and circumstances of the case the plaintiff has made out a prima facie case for indulgence, hence, listed application is allowed in the terms that the consignment covered by the Letter of Credit and Bill of Lading in question, shall be released by the Customs Department / Defendant No.2 to 4, without applying and or being influenced by Letter(s) dated 10.09.2018 issued by OGRA and letter dated 17.9.2018 issued by FBR.

10. Applications is allowed as above.

J U D G E

ARSHAD/