

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Mahmood A. Khan

C.P. Nos. D-3068 and D-3070 of 2019

M/s Quick Contractor & Traders  
&  
M/s Rehman Contractor Co.  
Versus  
Federation of Pakistan & others

ALONG WITH

SCRA No.36 of 2019 & 927 of 2017

Collector of Customs  
Versus  
M/s Quick Contractor & Traders  
&  
M/s Rehman Contractor Co.

Date of Hearing: 13.12.2021, 20.12.2021 and 21.12.2021

Petitioners: Through Sardar Muhammad Ishaque  
Advocate.

Respondent in SCRA 36 of 2019: Through Mr. Muhammad Bilal Bhatti  
Advocate.

Respondent in SCRA 927 of 2017: Through Mr. Khalid Rajpar Advocate.

Respondent Federation of Pakistan: Through Mr. Kafeel Ahmed Abbasi, Deputy  
Attorney General along with Mr. Hussain  
Bohra, Assistant Attorney General.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- Aforesaid two Special Customs Reference Applications along with respective connected petitions involve common question of law arising out of Tribunal's judgments and hence have been heard together and are being disposed of by this common judgment along with the petitions which have been filed for implementation of Tribunal's judgments. For the sake of convenience

the Reference Applications are being treated as leading matters as the answers to the questions arising out of the References will decide the fate of the petition as well

2. Respondents in both the References i.e. Rehman Construction Company and M/s Quick Contractors & Traders imported old and used truck-mounted crane. Apparently there is no issue of its valuation but the department contested the importability on the touchstone of Para 9 of Import Policy Order 2013.

3. Preliminary objection of the department is that the appeals were heard by a Single Member of the Tribunal (without Member Technical) and hence under section 194-C of Customs Act, 1969 it is unlawful and on this count alone the impugned judgments are liable to be set aside.

4. On merit, the common objection of the department is that the crane and the truck have been purposely imported as being one unit, though they are not. Two components (crane + truck) of different make were stacked together to make it one unit to bring it within specifications of IPO 2013. The truck under Import Policy Order 2013 is not importable except specialized vehicles and hence under the garb of it being mounted with crane had been imported as being permitted under the aforesaid Import Policy Order 2013 with intention to remove crane for exclusive use of truck for transportation of goods and persons.

5. On merit the objection of the department is based on examination, which suggests that the crane is of a separate make as compared to truck and was purposely welded over it to ensure its one unit and hence after declaring it as a truck mounted crane/crane-mounted truck, the goods are being imported on payment of duties and taxes. This being a defence of the department, arguments were raised and replied by the respective counsels who were heard at length and the record was perused.

6. Insofar as preliminary objection of Mr. Abbasi, learned Deputy Attorney General that before the Tribunal only single Member heard appeal and decided in the absence of Member Technical is concerned, we are satisfied by the argument of learned counsel for respondent in the References that it was an internal administrative arrangement. In this regard he has also placed before us the order as to assignment of appeals which disclosed that the appeals involving amount of less than 0.5 Million may be heard by Single Member of Bench and hence the Chairman was entitled to assign it to any of the Members of the Bench.

7. Same question came before a Division Bench of Lahore High Court in the case of Bagh Ali<sup>1</sup> wherein it has been observed as under:-

*“Thus, considering and construing section 194-C(3)(4) of the Customs Act, 1969 and section 46(9) of Sales Tax Act, 1990, from the plain reading thereof, it is abundantly clear that the Single Member Bench of the Tribunal has the jurisdiction to decide certain class of cases, but the jurisdiction is dependent and circumvented by certain conditions, especially with reference to subsection 4, of entrustment/allocation by the Chairman, which authority of the Chairman is circumscribed that such matter/case should have been earlier allotted to a Bench of which the Single Member should be a part/a Member..... .”*

The above proposition was followed by a Division Bench of this Court in the case of Eastern Construction Co.<sup>2</sup>. This should set the preliminary objection of learned Deputy Attorney General at rest.

8. Import Policy Order 2013 in terms of Para 9(ii) provides import of used plant, machinery and equipment which may be summarized as secondhand specialized machinery by construction, mining and petroleum sector. The aforesaid Import Policy Order 2013 provides that the construction companies duly registered with Pakistan Engineering Council are allowed to import secondhand plant, machinery and equipment actually required for their projects in Pakistan subject to

<sup>1</sup> 2010 PTD 1024 (Director Intelligence & Investigation v. Bagh Ali)

<sup>2</sup> 2015 PTD 963 (Collector of Customs v. Eastern Construction Company)

pre-shipment certification by any one of the prescribed pre-shipment inspection companies listed at Appendix 'H' to IPO 2013 to the effect that the plant, machinery and equipment are in good working condition and are not older than ten years. Sub-Para (6) of (ii) of Para 9 of Import Policy Order 2013 provides further that commercial importers were also allowed to import used plant, machinery and equipment excluding specialized vehicle-mounted machinery or transport equipment on behalf of construction companies duly registered with Pakistan Engineering Council subject to the conditions mentioned in Sub-Para (1) of Para 11 of 9 of IPO 2013, as observed above.

9. There is no denial that in both the cases/references the certificate of registration of Pakistan Engineering Council are available, however, it was objected by Mr. Abbasi, learned Deputy Attorney General, that the pre-shipment certificate was issued by the agent of the principal and hence does not qualify the requirement of Para 9 of the Import Policy Order 2013 as it ought to have been issued by the principal itself and not the agent.

10. In this regard, Appendix-H to the Import Policy Order 2013 provides list of pre-shipment inspection companies which includes:-

- A) Messrs Lloyds of London;
- B) Messrs Quality Tech, LLC;
- C) Messrs ABS;
- D) Bureau Veritas;
- E) Messrs SGS; and
- F) Messrs IMTECH

11. Now considering Mr. Abbasi's arguments, does it suggest that goods could only be imported from countries where these companies are registered, No.

12. Insofar as M/s Lloyds of London is concerned, all it suggests is that M/s Lloyds is (London) UK based wholly owned by the Lloyd's Register Foundation, a UK research-based organization, having headquarter in

London (UK). Similarly SGS is Hong Kong based surveyor. They operate throughout the world through their agents, wherever the services are required. The truck-mounted crane in one of the References was imported from Dubai and the authorized agent of Lloyds at Dubai issued a certificate to the satisfaction of Customs as far as Reference No.927 of 2017 is concerned. In the connected Reference No.36 of 2019 pre-shipment certificate of SGS Hong Kong Limited (listed at Serial 'E' of Appendix-H to IPO 2013) is available at page 49 of the file and no objection to it appears to have been raised on behalf of the respondents at any stage of the proceedings. The department has not denied the contents of pre-shipment inspection report/certificate but in fact it is stated that this has been issued by the agent having no authority of principal and hence not of those listed in Appendix-H of IPO 2013.

13. We are afraid that the objection of the department and/or Deputy Attorney General insofar as issuance of certificate by agent is concerned, is not tenable under the law as M/s Lloyds of London and SGS Hong Kong, acting for M/s Lloyds, (as it appears), as demonstrated above, are operating throughout the world either themselves or through their agents and/or acting as agent of other listed company, duly recognized and authorized. It is not the case of the applicants/customs authorities/DAG, that they are not acting as a lawful agent but in fact their stand is that an agent under the law is not recognized by IPO 2013. We are of the view that the pre-shipment inspection report issued through agent is deemed to have been issued by the principal itself and the Import Policy Order 2013 does not restrict the registration of such companies in the countries from where the goods were imported.

14. Insofar as age of subject vehicle is concerned, we have been informed that in one of the Reference i.e. 927 of 2017 the model year of the vehicle is disclosed as 2001 whereas in the other Reference No.36 of

2019 it is disclosed as 1999 whereas they were imported in 2015. However, learned Deputy Attorney General himself has acknowledged the fact that this objection of their age, being older than ten years was nowhere taken, either in the show-cause or before any of the two forums below, hence this question does not arise from the pleadings and/or proceedings below. We would refrain from answering this arguments as question does not arise out of proceedings.

15. Next argument of learned Deputy Attorney General and the department insofar as two independent units being stacked or assembled or welded together to make it one unit is concerned, this has been clarified by the Ministry of Commerce vide their letter dated 12.03.2012 when earlier Import Policy Order 2009 was in vogue. Para 9 of IPO 2009 is pari materia to Para 9 of Import Policy Order 2013. With reference to Para 9 of Import Policy Order 2009, the Ministry of Commerce clarified the objections of the customs raised on the same propositions that the crane lorry over the truck was stacked and welded and does not seem to be a factory-fitted and of different makes. The letter of Ministry for the sake of convenience is reproduced as under:-

*“The Ministry has received the attached correspondence whereby Shaheen Builders, Islamabad has stated that Customs are refusing to release truck-mounted crane lorries despite the fact that all conditions mentioned in para 9(ii)(5) read with Appendix-I of the IPO 2009 have been fulfilled. Customs have objected on the grounds that the crane system is welded and does not seem to be factory fitted. The ministry had clarified that the items imported under the aforementioned Para of IPO should meet the conditions mentioned therein and should be fit for the specified use as such. However the matter remained un-resolved.*

2. *It is again clarified that the stipulations of IPO 2009 stand fulfilled when the conditions mentioned therein (para 9(ii)(5) in the instant case) are duly met. The specialized vehicles being imported are to meet the standards etc. mentioned in the IPO and should be classified as the vehicle described therein i.e. Truck Mounted Crane/Crane Lorry in this case. The IPO, 2009 does not restrict this import to factory fitted specialized vehicles only. The conditions regarding used ambulances, waste disposal trucks, fire fighting equipment (S.Nos.19-*

20, Part-II of Appendix B of IPO may be seen as an analogy).

3. *In view of above the truck-mounted crane imported by Shaheen Builders Islamabad, GD No.KCSI-HC-11298 and KCSI-HC-11302, dated 25.01.2012 may be released if it fulfills the conditions mentioned in the IPO and is otherwise in order.”*

16. With this observation since Import Policy Order 2013 in its present form is exactly the same (for present purpose) as it stood in 2009, the clarification will be carried forward and the objections of the department insofar as the two dissimilar brands/makes i.e. crane and truck are concerned, would not be tenable. It was never the requirement of Import Policy Order 2013 that a truck-mounted crane should be factory-fitted or that the crane and truck should not be dissimilar as far as their makes are concerned.

17. The above issue was also raised before a Bench of this Court in case of Collector of Customs v. Eastern Construction Company reported as 2015 PTD 963 which has addressed all queries including that of powers of Single Member of the Bench. The judgment was maintained by Hon’ble Supreme Court in Civil Petition No.159-K of 2015 in the following manner:-

*“3. The first question was answered by the learned High Court in positive and Raja Muhammad Iqbal ASC, in view of the judgment of this Court in the case titled Director, Intelligence and Investigation vs. Bagh Ali (2010 PTD 1024) did not press this question. As to the second question, Raja Muhammad Iqbal learned counsel, while referring to the examination report of the shed staff, contended that the Concrete Transit Mixer was made up of a low gauge material and was lifted/welded with ordinary iron steel drum on the truck and many essential characteristics were missing to qualify it as a Concrete Transit Mixer and that it was most likely that after removal of the drum, the vehicle would be used as Truck and, therefore, the Department has rightly confiscated the vehicle.*

*4. On the other hand, learned ASC for the respondent contended that the import is within the parameters of para 9(ii)(5) of the Import Policy Order 2013 and the petitioner, merely on the basis of apprehensions and*

*presumptions, could not confiscate the subject vehicle. We have heard the learned counsel for the respective parties and have minutely scrutinized the record. We are of the view that the apprehension of the petitioner has been very aptly responded in para 10 of the impugned judgment....”*

18. The effect of pre-shipment certificate was also highlighted by Hon’ble Supreme Court in the case of Collector of Customs v. M/s Muhammad Tahir Construction taken up in Civil Petition No.435-K of 2019 and also in the case of Collector of Customs v. Khan Gul in Civil Petition No.657 of 2018. In presence of pre-shipment certificate, no extraneous material, unless it is establish otherwise, can be taken into consideration in forming a view other than described in pre-shipment certificate.

19. The only question that arises out for consideration of this Bench is whether the subject vehicle having two components of different makes (i.e. crane and truck) are restricted by Import Policy Order 2013? The question is answered in negative in view of above facts and circumstances. The impugned judgments thus do not call for any interference and the Special Customs Reference Applications are dismissed whereas the petitions are allowed as prayed.

20. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to learned Customs Appellate Tribunal Benches, Karachi, as required by section 196(5) of Customs Act, 1969.

Dated: 24.12.2021

**Judge**

**Judge**