

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

SCRA 756 of 2019	:	The Collector of Customs vs. Pak Arms & Ammunition Dealer
SCRA 757 of 2019	:	The Collector of Customs vs. Mian Anwar Din Arms & Ammunition Dealer
SCRA 758 of 2019	:	The Collector of Customs vs. Hakeemullah Arms & Ammunition Dealer
SCRA 759 of 2019	:	The Collector of Customs vs. Mushtaq & Brothers Arms & Ammunition Dealer
SCRA 760 of 2019	:	The Collector of Customs vs. Imtiaz & Brothers Arms & Ammunition Dealer
SCRA 761 of 2019	:	The Collector of Customs vs. Ahmed & Co. Arms & Ammunition
SCRA 762 of 2019	:	The Collector of Customs vs. Ahmed & Co. Arms & Ammunition
SCRA 763 of 2019	:	The Collector of Customs vs. Fazal & Brothers
SCRA 788 of 2019	:	The Collector of Customs vs. Yahya Sons
SCRA 789 of 2019	:	The Collector of Customs vs. Hatimbhoy Adamjee
For the Applicant	:	Mr. Khalid Rajpar, Advocate
Date of hearing	:	10.03.2021
Date of announcement	:	10.03.2021

### JUDGMENT

**Agha Faisal, J.** It is brought to our notice that these references are identical to SCRAs 311 to 313 of 2020 - Collector of Customs vs. Super Star Company ("Super Star"), judgment wherein has already been rendered. It is considered illustrative to reproduce the operative constituent of the relevant judgment herein below:

"4. The starting point of this deliberation is SRO 1112(I)/2014 ("SRO 1112") that *inter alia* substituted the value based authorization in respect of the concerned consignments to a quantity based authorization. It stipulated that clearance would be made only against a letter of credit issued or a contract executed before commencement thereof and further that a contract covered under the said stipulation would stand cancelled in any event by 30.06.2015. The relevant constituents of SRO 1112 are reproduced herein below:

"3. Substitution of value-based authorizations.-(1) On commencement of this order, a VBA for import of arms and ammunition by an authorized importer shall be required to be substituted by a QBA.

(2) A VA shall be deemed to have been cancelled where no import was made against it during last three years.

(3) For substitution under sub-paragraph (1) of his authorization for import of arms and ammunition, the importer of VBA shall make to the Federal Government an application along with supporting documents specified under paragraph 5.

(4) No VBA shall, on commencement of this order, be valid for opening of letter of credit or execution of contract:

Provided that clearance shall be made by the Customs only against a letter of credit issued or, as the case may be, a contract executed before commencement of this order, if otherwise in order.

Provided further that all contracts made against VBAs prior to the date as specified in column (2) of the Table below shall stand cancelled on the date specified against it in column (3) thereof, namely:

TABLE

S. No.	Contracts made against VBAs	
	prior to	stand cancelled on the
(1)	(2)	(3)
1.	June, 2009	the 31 <sup>st</sup> December, 2014
2.	June, 2011 but after the 31 <sup>st</sup> May, 2009	the 31 <sup>st</sup> March, 2015

Provided also that a contract, other than a contract covered under the second proviso, shall stand cancelled on the 30<sup>th</sup> June, 2015."

It is pertinent to mention that no cavil has been articulated before us to the factum that the respondent's contract was executed on 22.12.2014, hence, within the qualification parameters of SRO 1112. Therefore, the issue to be considered is the implication of the respondent's consignments not having been cleared in the prescribed time.

5. It is imperative to denote at this juncture that the show cause notice/s to the respondents were issued in 2018, post the clearance timeframe enunciated in SRO 1112; however, the respondents were required to demonstrate as to why the relevant import documentation had not been submitted till that date. The ostensible reasons for the delay in seeking clearance, per the respondent's counsel, *inter alia* was belated arrival due to supplier issues and the change in the nature of authorization from value based to quantity based. However, the relevant consignments did in fact arrive post the cut-off date provided in SRO 1112.

6. It deserves to be highlighted that during the pendency of the adjudication proceedings, before the Additional Collector Adjudication, SRO 772(I)/2018 ("SRO 772") was issued on 14.06.2018 and therein SRO 1112 was repealed. It is considered appropriate to reproduce the relevant content herein below:

"the following further amendment shall be made in the Import Policy Order, 2016, namely:

in the aforesaid Order, in Appendix-B, in Part I, in the Table, in column (1), against Sr. No. 65, for the entry in column (4), the following shall be substituted, namely:

"(a) Importable only by individual licence holders or arms dealership licence holders to whom licence is granted by;

- (a) Provincial Home Department, in case of dealers located in that Province; or
- (b) Ministry of Interior, in case of dealers located in Islamabad Capital Territory;

(c) a license holder under condition (a) shall also have certificate from Original Equipment Manufacturer (OEM) in case of imported from an OEM, otherwise a certificate from any of the prescribed PSI companies as listed in Appendix-H of IPO 2016, specifically mentioning,-

- (a) weapon's nomenclature;
- (b) weapon's caliber or bore or gauge; and
- (c) weapon's manufacturer's logo, weapon's serial number embossed thereon and other related information; and

(c) the weapon shall be importable only through air and sea ports."

(b) the Commercial Import of Prohibited and Non-Prohibited Weapons and Ammunition (Regulation) Order, 2014 notified vide S.R.O. No. 1112(I)/2014 dated the 16<sup>th</sup> December, 2014 is hereby repealed."

(Underline added for emphasis)

The adjudicating officer did not appreciate the aforementioned SRO in its proper perspective and proceeded to order the outright confiscation of the consignments, pursuant to a notification admittedly repealed during the pendency of proceedings there before.

7. It is trite law that notifications conferring a beneficial effect may be given retrospective effect, as maintained by an earlier Division Bench of this Court in the *Asif Traders case*<sup>1</sup>. The aforesaid maxim has been recognized by the august Supreme Court time and time again, as seen in the *Shahida Anwar case*<sup>2</sup>. The question that merits to be addressed now is whether a beneficial notification issued during the pendency of adjudication proceedings can be given retrospective effect.

8. The aforesaid question was answered by a Division Bench of this Court in the *Rasool Flour Mills case*<sup>3</sup> and it was held that issuance of a beneficial notification may be given qualifying retrospective effect if the matter was pending before the concerned authorities. The said judgment was assailed before the honorable Supreme Court<sup>4</sup>, wherein the pronouncement of this High Court was maintained and the august Court was pleased to complement that a beneficial notification may be given qualifying retrospective effect even if the matter was pending before the adjudicating authority.

9. Notwithstanding the foregoing, it is evident from the record that even in respect of the tenancy of the repealed SRO 1112, waivers were granted by the competent authority in respect of the timelines prescribed vide SRO 1112 and the *otherwise delayed* consignments were released. It is considered illustrative to reproduce the pertinent constituents of a relevant memorandum herein below:

Office Memorandum dated 21.10.2015

"1. The undersigned is directed to state that the requests of different arms importers for release of delayed shipments of arms and ammunition imported in contravention of SRO 1112(I)/2014 dated 16-12-2014, which are currently held up at various ports, have been analyzed and this Ministry has decided to allow release of only those consignments which have been arrived upto 20-10-2015.

2. All concerned Collectorates of Customs may; therefore, allow release of the delayed consignments, imported by authorized commercial importers of arms and ammunitions arrived upto 20-10-2015, after payment of duties/taxes, if otherwise in order."

10. It is our deliberated opinion, rested upon consideration of the reasoning assigned<sup>5</sup> in the Impugned Judgment coupled with our observations herein, that no case has been set forth before us to disentitle the respondent to the retrospective beneficial effect of SRO 772; especially in view of the admitted factum that even in respect of the tenancy of the repealed SRO 1112, waivers were granted from the prescription of timelines therein contained; hence, the Impugned Judgment is maintained.

11. Various argumentative and narrative questions were proposed in the references under consideration, however, it is our considered view that the same did not arise from the impugned judgment. The only question of law before us is "*whether in the present facts and circumstances the respondent was entitled to the retrospective beneficial effect of SRO 772*". This question is answered in affirmative, hence, in favour of the respondent and against the applicant."

2. Since the controversy, sought to be agitated before us herein, has already been determined vide the Super Star judgment; hence, a *de novo* determination in such regard is unmerited.

3. In view hereof, these references are hereby disposed of for the reasons and upon the same terms as the Super Star judgment, particularized supra; i.e. in favor of the respondents and against the applicant. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Customs Appellate Tribunal, as required by section 196(5) of the Customs Act, 1969.

4. The office is also instructed to place copies hereof in all the subject reference applications.

JUDGE

JUDGE

<sup>1</sup> Per Muhammad Junaid Ghaffar J in *Asif Traders & Another vs. Collector of Customs and Another* reported as 2014 PTD 1057.

<sup>2</sup> Per Mian Saqib Nisar J (as he then was) in *Collector of Customs & Others vs. Shahida Anwar* reported as 2012 SCMR 1698.

<sup>3</sup> *Rasool Flour Mills (Private) Limited vs. Federation of Pakistan (CP D 462 of 2013)*; judgment dated 23.11.2018.

<sup>4</sup> *Collector of Customs & Others vs. Rasool Flour Mills (Private) Limited & Others (Civil Petition 2-K of 2019)*; judgment dated 28.05.2019.

<sup>5</sup> Repetition whereof is eschewed as the same is already particularized supra.