

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Muhammad Junaid Ghaffar, J.
Agha Faisal, J.

CP No.D-3009 of 2010	:	Shaikh Pipe Mills & Others vs. Federation of Pakistan & Another
CP No.D-3269 of 2010	:	Imran Pipe Mills vs. The Deputy Collector of Customs & Others
CP No.D-3292 of 2010	:	International Industries vs. Federation of Pakistan & Others
CP No.D-3313 & 3314 of 2010	:	Rizwan Industrial Corporation (Pvt.) Ltd. V. Deputy Collector of Customs & Others
CP No.D-3545 of 2010	:	Ruby Steel Corporation (Pvt.) Ltd. & Others vs. Federation of Pakistan & Others
CP No.D-3660 of 2010	:	Pakistan Pipe Industries vs. Federation of Pakistan & Others
CP No.D-258 of 2011	:	Kashmir Pipe Mill vs. Federation of Pakistan & Others
CP No.D-297 of 2011	:	Pak Pipe Steel Industries (Pvt.) Ltd. vs. The Deputy Collector of Customs & Others
CP No.D-612 of 2011	:	Sun Tube (Pvt.) Ltd. vs. The Deputy Collector of Customs & Others
CP No.D-660 of 2011	:	Crescent Steel and Allied Products Ltd. vs. Federation of Pakistan & Another
CP No.D-702 of 2012	:	Steelex (Pvt.) Ltd. vs. Federation of Pakistan & Others
For the Petitioners	:	Mr. Umar Akhund, Sardar Faisal Zafar & Uzair Shoro Advocates.
For the Respondents	:	Mr. Muhammad Khalil Dogar, & Mrs. Masooda Siraj, Advocates Mr. Kafeel Ahmed Abbasi, Dy. Att. General
Date of hearing	:	29.03.2021
Date of announcement	:	29.03.2021

JUDGMENT

Muhammad Junaid Ghaffar, J.: In all these petitions, the petitioners were either issued show cause notices or fresh consignments were withheld by the Respondents on the ground that they are not entitled for exemption under SRO 565(I)/2006 dated 05.06.2006 (“SRO 565”), as according to the Respondents the HS Codes

claimed in the Goods Declarations were not mentioned against Serial No.88 of Table II to SRO 565.

2. Learned Counsel¹ appearing for the petitioners have argued that SRO in question refers to exemption on goods specified in Table II to SRO 565 and not to HS Codes as contended by the Department; that subsequently an amending SRO 475(I)/2011 dated 03.06.2011 (“**SRO 475**”) has been issued, which now covers all HS Codes and can also be given retrospective effect as it is clarificatory in nature and has been issued during pendency of these petitions; that in another exemption SRO 575(I)/2006 dated 5.6.2006 (“**SRO 575**”) a specific reference has been made to description along with HS Codes, which shows the intention which is lacking in this case. Reliance has been placed on various cases².

3. On the other hand, Mr. Muhammad Khalil Dogar, learned counsel for the Department has filed Vakalatnama in CPs No.D-3545, 3009 and 3269 of 2010 and submits that SRO 475 is of no help to the petitioners’ case, as the goods were imported prior to the said amending Notification, whereas, the HS Codes are admittedly not mentioned against Serial No.88 of Table II to SRO 565; hence, they are not entitled for any exemption.

4. We have heard both the learned Counsel and perused the record. Though in all petitions somewhat different facts are involved inasmuch as some have been show cause notices³ and some have been denied the benefit of SRO 565 on importation of fresh consignment(s) and by way of ad-interim orders, all such consignments were ordered to be released after securing the disputed amount before the Nazir of this Court; however, the legal issue is identical as to entitlement of the petitioners to claim exemption under SRO 565, and therefore, in the light of order dated 29.10.2010 in CP No.3009 of 2010 all these petitions are being decided through this common judgment. It would be relevant to

¹ Led by Mr. Umar Akhund Advocate

² 2015 PTD 1532 (Shazeb Pharmaceutical Industries Ltd. vs. Federation of Pakistan & Others), 2020 SCMR 420 (Commissioner Inland Revenue (Legal) vs. Wi-Tribe Pakisan Ltd.) and PTCL 2011 CL 660 (Aisha Steel Mills Ltd. & Others vs. Federation of Pakistan & Others).

³ for short recovery of duty and taxes on the ground that the goods imported by them under various HS Codes were not entitled for exemption against Serial No.88 of Table II to SRO 565; hence, the exemption granted at the time of import of the goods was by way of a mistake and, therefore, they are liable to make payment of the short levied amount of duty and taxes.

refer to SRO 565 and entry No.88 of Table-II to the said Notification which reads as under:

“Notification No. S.R.O. 565(I)/2006, dated 5th June, 2006.—In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), and in suppression of Notification No. S.R.O. 565(I)/2005, dated the 6th June, 2005, the Federal Government **is pleased to exempt raw materials, sub-components, components, sub-assemblies and assemblies, ³[***] specified in column (3) of the Table below⁴**, imported for the manufacture of goods specified in column (2) of the said Table, from so much of customs-duty leviable under the First Schedule to the Customs Act, 1969 (IV of 1969), as are in excess of the rates specified in column (5) of that Table, subject to certain exclusion specified below, the special conditions as specified in column (6) of the Table and the following general conditions, namely:-...”

(1)	(2)	(3)	(4)	(5)	(6)
88.	Welded Steel Pipes	<u>Raw materials, sub-component and components,</u> (1) Welding flux. (2) Hot rolled steel coils/strips. (3) Cold Rolled Steel Coils (Prime Quality). (4) Welding wire. (5) Coated electrodes of base metal. (6) Coated rods and cord wire.	3810.9000 7208.1090 7209.1590 7217.9000 8311.1000 8311.3000	5% ad val	Nil

5. Perusal of the aforesaid Notification reflects that the Federal Government has been pleased to exempt raw material, sub-components, components, sub-assemblies, assemblies specified in Column (3) of the Table below and imported for manufacturing of goods specified in Column (2) from so much of the customs duty leviable under the First Schedule to the Customs Act are in excess of the rates specified in the Column (5) of that Table, and subject to certain exclusion and for the present purpose, the only controversy is to the effect that since various HS Codes under which the petitioners have imported their goods are not mentioned in Column (4) against serial No.88 of Table II to the exemption SRO, whether the petitioners are still entitled for such exemption merely on the basis of description of goods as mentioned in column (3). It appears that insofar as the description of goods (as per Column 3) is concerned, there is no dispute as the goods imported by the Petitioners are fully covered against the description

⁴ Emphasis supplied

mentioned therein, and while confronted the same has been not been controverted. On a bare perusal of the description as above⁵, it appears that the petitioners have imported goods which are fully covered under and with the description mentioned in the Column (3) thereof. It may be pertinent to take note of that SRO 565⁶ is granting exemption which is in relation to the **goods specified in Column (3) of the Table** and is not in respect of HS Codes mentioned in Column (4) thereof. In fact, the HS Codes given in the said table for the present purposes have no nexus with the description mentioned in Column (3), as the entire and complete description of the goods has been mentioned for grant of exemption without qualifying or restricting the same with respect to its size or otherwise, which may attract classification in different HS Codes of the Customs Tariff. This in fact, is further reflected and supported from subsequent SRO 475 through which Serial No.88 of Table II to the SRO has been substituted which has also been relied upon for giving it a retrospective effect; however, we do not deem this necessary and relevant for the present purposes. SRO 475 clearly provides for the description along with their sizes / width their respective HS Codes. Therefore, it clearly reflects that prior to this amending Notification, the exemption was available on the entire description of the goods / items mentioned against Serial No.88 of Table II to SRO 565 in Column (3) and HS Codes mentioned thereof in Column (4) were neither appropriate HS Codes; nor the exemption could have been restricted by omission and or insertion of these HS Codes. It was never based on these HS Codes as the preamble clearly grants exemption **to goods mentioned in Column (3)**. Wherever the intent is to specifically limit the exemption to goods that fall under a particular classification of the Import Tariff, then reference is made to the relevant heading therein. Other things being equal, it is then the description as given in the Import Tariff that will apply. Wherever the exemption does not specifically refer to a heading in the Import Tariff, then any term or words used therein ought not to be read as limited only to the Import Tariff; the words are to be interpreted and applied on their own footing⁷.

⁵ Relevant being items at serial (2) Hot Rolled steel coils / strips and (3) Cold Rolled Steel Coils (Prime Quality)

⁶ In its preamble

⁷ 2015 PTD 1532 (Shahzeb Pharmaceutical Ind. Ltd v Federation of Pakistan)

6. Reliance has also been placed by the petitioners on SRO 575⁸ and the dissimilarity in use of words in the preamble; and it has been argued that whenever required, exemption has been restricted by way of specific HS Codes against the description of goods; and therefore, insofar as SRO 565 is concerned, such non restriction of HS Codes is intentional and done consciously; hence, the stance of the Department is unjustified. Perusal of the aforesaid Notification reflects that in that case the Federal Government was pleased to exempt plant, machinery, equipment, apparatus, including capital goods, specified in column (2) of the Table below, **falling under HS Codes specified in column (3)** of that Table from so much of the customs duty specified in First Schedule to the said Act, as is in excess of the rates specified in column (4) thereof. The use of the words ***“falling under HS codes specified in column (3)”*** clearly reflects that while granting exemption not only the description was specified in Column (2); but so also, it was linked with the relevant HS Codes specified in Column (3) thereof. In that case an exemption can only be validly claimed when not only the description; but so also the HS Code correspond to the goods on which an exemption is being claimed. Both have to be fulfilled at the same time. Therefore, even on this plane it can be safely said that insofar as SRO 565 is concerned, the intention was never to link or restrict the description in Column (3) with any of the HS Codes mentioned Column (4), and if the goods imported are matched with the description, then the exemption cannot be denied. The principles relating to the proper interpretation and application of exemption clauses in fiscal legislation are well established and require only a brief recapitulation; Firstly, the onus lies on the taxpayer to show that his case comes within the exemption; Secondly, if two reasonable interpretations are possible the one against the taxpayer will be adopted. *But, thirdly, if the taxpayer's case comes fairly within the scope of the exemption then he cannot be denied the benefit of the same on*

⁸ “Notification No. S.R.O. 575(I)/2006, dated 5th June, 2006.—In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), and clause (a) of sub-section (2) of section 13 of the sales Tax Act, 1990, and in suppression of its Notification No. S.R.O. 575(I)/2005, dated the 6th June, 2005, the Federal Government is pleased to exempt plant, machinery, equipment and apparatus, including capital goods, specified in column (2) of the Table below, **falling under the HS Codes specified in column (3) of that Table**⁸, from so much of the customs-duty specified in the First Schedule to the said Act, as is in excess of the rates specified in column (4) thereof, and the whole of Sales Tax leviable under the Sales Tax Act, 1990, subject to the following conditions, besides the conditions specified in column (5) of the Table, namely:-...”

*the basis of any supposed intention to the contrary of the legislature or authority granting it*⁹.

7. Recently, in a case before the Hon'ble Supreme Court a Petitioner was claiming benefit under an SRO only on the basis of HS Codes in the table to the SRO, whereas, it was not fully covered with the description of goods, (though in that case the wording of the SRO was more akin to SRO 575 as above); however, the contention of the Petitioner was repelled by the Hon'ble Supreme Court on the ground that primarily the exemption is on the description of the goods and not merely by virtue of the HS Codes¹⁰. This interpretation fully supports the case of the Petitioners.

8. In view of herein above facts and circumstances of the case, it appears that the respondents have seriously erred in interpreting the SRO in question as the exemption with relation to the "*description of goods*" was admittedly available to the petitioners, which fact has not been controverted; hence, the petitioners case merits consideration and therefore, these petitions are allowed to the extent as above; the impugned show cause notices are hereby quashed, whereas, securities furnished before the Nazir of this court pursuant to ad-interim orders, respectively, are hereby discharged. Nazir to release the same upon proper identification and verification. Nazir's fee is settled at Rs.5000/- for each security which shall be paid by the Petitioners before release / discharge of the same.

9. All listed petitions are allowed; pending applications stand disposed of.

JUDGE

JUDGE

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⁹ 2019 SCMR 235 (Oxford University Press v. Commissioner Income Tax)

¹⁰ Collector of Customs v Filters Pakistan (Pvt.) Limited (2020 SCMR 1157)