

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-4099 / 2020 a/w
C. P. NO. D-4100 / 2020

Date _____ Order with signature of Judge _____

PRIORITY.

C. P. NO. D-4099 / 2020

- 1) For hearing of CMA No. 17212/2020.
- 2) For hearing of main case.

C. P. NO. D-4100 / 2020

- 1) For hearing of CMA No. 17215/2020.
- 2) For hearing of main case.

02.11.2020.

Mr. M. Amir Khosa Advocate for Petitioner.
Mr. Kafeel Ahmed Abbasi Deputy Attorney General.
Mr. Khalid Rajpar Advocate for Respondent.

Perusal of memo of petition and the ad-interim orders passed by this Court reflects that the controversy as raised herein is similar to that in CP No.1650 of 2020 (*Gas & Oil Pakistan Limited v Federation of Pakistan*) in that on what rate(s), the petroleum levy is to be paid by the Petitioners; whether at the rate prevailing at the time of filing of GD; Or at the time of making payment of the same along with customs duty; Or the one prevalent at the time of actual / physical removal of goods from the Bonded Warehouse. The said petition now stands decided vide judgment dated 29.10.2020. The relevant finding thereon reads as under;

12. Therefore, in view of the settled proposition of law as above, merely for the reason that by virtue of machinery provisions in the 1961 Ordinance, petroleum levy is being collected in the same manner as the Customs Duty, it will not make the levy as a customs duty, and the provisions of the Act as they are applicable on a customs duty, including the crystallization of the rate of duty in terms of section 30 *ibid*; would not ipso facto apply on rate of petroleum levy which shall still be governed under the 1961 Ordinance. In the present case the controversy is only to the extent that when the GD's were filed on 29.2.2020, the rate of duty was fixed for 7 days in terms of s.30 read with s.104 of the Act; however, the rate of petroleum levy would be the one which is prevailing at the time of making of actual payment of the same which in the instant matter would have been the rate on 2.3.2020 when according to the Petitioner itself the pay orders were prepared and presented and not the one which was prevailing prior to 29.2.2020.

13. Before parting we may observe that though not relied or referred to in the arguments by the departments Counsel; however, in their comments reference has been made to some opinion of Ministry of Law, Justice and Parliamentary Affairs dated 21.6.2011, whereby, it has been advised

that petroleum levy is recoverable at the time of physical / actual removal of goods from the Bonded Warehouse. Though it is settled law that such an opinion is definitely not binding nor has any legal force; but even otherwise on perusal of the same it appears that the same is against the very basis of the law under consideration. The same appears to have been issued on the basis of two judgments¹; however, perusal of these two judgments clearly reflects that any reliance on them is misplaced. In both these cases the issue was in respect of removal of bonded goods from Customs warehouse without even filing of GDs and payment of duty, and in that context it was held that in such situation the rate of duty and taxes would be the one applicable at the time of removal of goods and without reference to the filing date of any GD. If reliance would still be placed on these two judgments in respect of all duties to be paid on warehoused goods, then perhaps we may say that it would be against the very spirit and purpose of the Act and its relevant provisions. **In our view the applicable rate of petroleum levy pursuant to the 1961 Ordinance as of today would be the one notified by the Government at the time of making payment of the customs duty with the department and not otherwise.** If the intention is as pleaded in the comments and even on the advice of Ministry of Law, then perhaps an amendment is to be carried out in the 1961 Ordinance first to cater to it. In section 3A(2) of the 1961 Ordinance, it is clearly provided that petroleum levy shall be collected in respect of imports in the same manner a customs duty is collected.

14. In view of hereinabove facts and circumstances of this case, we are unable to agree with the contention of the learned Counsel for the Petitioners that the petroleum levy is in fact a customs duty and on filing of goods declaration on 29.02.2020, any vested right accrued to the Petitioner or for that matter the rate of petroleum levy was crystalized and remained valid for 7 days as is the case of the customs duty for a GD filed under s.104 of the Act. We are of the considered view that the petroleum levy is to be charged and paid on the basis of Notification issued by the Ministry of Petroleum, Government of Pakistan from time to time and its applicability and determination has no nexus with filing of GD (except the mode and manner of its collection and payment) if any, or for that matter with fixation of rate of customs duty pursuant to filing of Goods Declaration under Section 30 of the Customs Act, 1969. **The petroleum levy is to be charged / levied and paid at the rate(s) as notified under the 1961 Ordinance and as prevalent at the time of actual payment of the same along with Customs Duty.**

Since in the present petition(s), from the facts as available on record it appears the Customs has already accepted and received the Customs Duty before the increase of rate of petroleum levy; therefore, both these petitions are disposed in the above terms and reasons so recorded in the judgment dated 29.10.2020 (Supra). The department shall act accordingly.

J U D G E

J U D G E

Arshad/

¹ Saira Industries v Collector of Customs (2002 CLC 616) & National Construction Company Ltd. V Government Of Pakistan (PLD 1989 Karachi 174)