

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-2022/ 2010

Date	Order with signature of Judge
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- 1) For hearing of fresh case.
- 2) For hearing of Misc. 8201/2010.

15.10.2015.

Mr. Ammar Athar Saeed Advocate for the Petitioner.
Mr. Ainuddin Khan DAG.
None for respondents No. 2 & 3.

Through instant petition the petitioner has impugned notices dated 5.4.2010 and 17.3.2010 whereby the petitioner has been asked to pay regulatory duty on the export of cooper scrap.

Counsel for petitioner contends that vide Notification dated 13.3.2010 the Federal Government had imposed a regulatory duty at the rate of 25% ad valorem on export of waste and scrap of cooper, whereas, the petitioner had entered into a contract for export on 9.3.2010 for export of cooper scrap for a quantity of 25 metric tons, on which date there was no export/regulatory duty. Counsel also submits that the issue in question has already been decided by a Division Bench of this Court in the case of *Saifuddin V. Federation of Pakistan through Secretary Revenue Division, Ministry of Finance Islamabad and 2 others [(2012) 105 TAX 55 (H.C.Kar.)]*, whereby it has been held that even in cases where the goods declaration were filed on or after the date of imposition of regulatory duty, but contracts had been entered before such imposition, the regulatory duty would not be payable.

On 21.9.2015 we had directed the Counsel for petitioner to place on record verification from the Bank to establish that the payment as detailed in annexure "H" to the petition was received in consequent to purchase contract dated 9.3.2010 so as to establish that valid verifiable contract was enforced before the imposition of regulatory duty. On 6.10.2015 the Counsel for petitioner had placed on record letter dated 1.10.2015 issued by NIB Bank, Muhammadi House Branch, Karachi certifying that the amount of US \$ 49951.31 was received against E-Form

No. NIB 0081974 for US \$ 16535.50 and NIB 0081975 for US \$ 33,415.81, on 10.3.2010. On that date such letter/certificate of the Bank was supplied to the Counsel for respondents. Mr. Shakeel Ahmed who sought time to verify the same and the matter was adjourned for 15.10.2015. Today, the Counsel for respondents has chosen to remain absent without any intimation and therefore, instant petition is being disposed of with the assistance of the Counsel for petitioner and learned DAG.

On perusal of the record, it appears that the case of the petitioner is fully covered by the judgment of this Court in the case of Saifuddin (supra) whereby a learned Division Bench of this Court has been pleased to hold that export regulatory duty levied through Notification dated 13.3.2010 would not be applicable on cases in which goods declaration have been filed prior to such date of imposition of regulatory duty as well as on goods declaration that have been filed on or after 13.3.2010, but contracts in respect of which were entered into before imposition of such regulatory duty. It has come on record that the export proceeds in respect of the shipment in question were received much prior to the imposition of regulatory duty on 10.3.2010 pursuant to contract entered into by the petitioner with his buyers abroad. The regulatory duty was imposed on 13.3.2010 and by virtue of the dicta laid down by a Division Bench in the case of Saifuddin (supra) the regulatory duty could only be applicable in respect of consignments in which contracts were entered into on or after 13.3.2010.

In view of hereinabove facts and admitted position on record, we see no reason not to allow instant petition on the basis of the judgment in the case of Saifuddin (supra). Accordingly, instant petition is allowed and the impugned notices dated 5.4.2010 and 17.3.2010 are hereby set aside. Petition stands allowed.

JUDGE

JUDGE

ARSHAD/