

IN THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Yousuf Ali Sayeed

Mr. Justice Adnan Iqbal Chaudhry

Constitution Petition No. D-946 of 2013

[Astro Plastic (Pvt.) Ltd. versus Ministry of Finance & others]

- Petitioner : Astro Plastic (Pvt.) Ltd. through
Mr. Khalid Jawed Khan, Advocate.
- Respondents 1&4 : Federation of Pakistan through Mr. Qazi
Ayazuddin Qureshi, Assistant Attorney
General for Pakistan.
- Respondent No.2 : Nemo.
- Respondent No.3 : Collectorate of Customs through Mr. Sardar
Zafar Husain, Advocate along with Mr.
Haroon Waqar Malik, ADC and Mr.
Tauqeer Ahmed, P.A. Customs.
- Date of hearing : 26-12-2022
- Date of decision : 26-12-2022

ORDER

Adnan Iqbal Chaudhry J. - The petition had been dismissed on 03-11-2015. By CMA No. 33906/2022 under Order XXXIX Rule 2 CPC, the Petitioner now seeks to stay the Nazir from releasing to the Customs the money/security deposited by the Petitioner as differential customs duty/taxes.

2. The background is that the Petitioner had challenged the higher duty of 8% on film-grade PET Resin in comparison to the duty of 3% on yarn-grade PET Resin. For release of consignments in the meantime, the Petitioner secured the differential duty with the Nazir by depositing cash and post-dated cheques. On the enactment of the Finance Act, 2015, the duty on film-grade PET Resin was brought at par with that on yarn-grade PET Resin. The Petitioner, therefore, sought disposal of the petition accordingly while moving an application for return of the differential duty deposited with the Nazir. But the learned Division Bench was of the view that the deposit with the Nazir was for the period 2013-2014 when duty on

film-grade PET Resin imported by the Petitioner was still higher than that on yarn-grade PET Resin, and therefore dismissed the petition and the application for returning the deposit. The short order dated 03.11.2015 read:

“For the reasons to be recorded later, these petitions are dismissed. However, the operation of this decision shall not take its effect for a period of two weeks, whereafter the amount lying with the Nazir of this Court shall be released to the Customs Authorities”.

The reasons for the above followed on 20.11.2015.

3. The Petitioner filed a CPLA before the Supreme Court where operation of the High Court’s judgement was suspended. But ultimately, on 30.09.2022, the Petitioner did not press the CPLA stating that it would seek ADR under section 195-C of the Customs Act, 1969. The Supreme Court therefore observed:

“These petitions are accordingly disposed of as not pressed. However, needless to state the petitioners may avail of alternate remedy, if it is available, in accordance with law”.

4. On 17.10.2022, the Petitioner made an application to the FBR for constituting an ADR Committee under section 195-C of the Customs Act, praying that the amendment brought about by the Finance Act, 2015, *viz.* the reduced duty on film-grade PET Resin, may be extended to the consignments imported by the Petitioner prior to said amendment. By letter dated 19.12.2022, the FBR asked the Petitioner to nominate its representative for the ADR. In the meantime, by letter dated 06.12.2022, the Customs approached the Nazir for releasing to it the differential duty, submitting that after withdrawal of the CPLA, the judgment of the High Court was back in the field. It is in this backdrop that the Petitioner has moved this application.

5. Learned counsel for the Petitioner accepts that the judgment of the High Court dismissing the petition and denying return of the differential duty to the Petitioner holds the field, but submits that a temporary injunction can nonetheless be passed ‘after judgment’ under Order XXXIX Rule 2 CPC. Expounding his argument, he submits that should the FBR decide to constitute an ADR Committee as requested by the Petitioner, the

differential duty deposited with the Nazir would be 'deemed to be stayed' by virtue of sub-section (6) of section 195-C of the Customs Act, and it is for the intervening period that the Petitioner seeks to preserve the deposit lying with the Nazir.

6. The short order dated 03.11.2015 dismissing this petition had categorically directed the Nazir to release the deposit to the Customs. While withdrawing its CPLA from the Supreme Court, the Petitioner made no attempt to preserve that deposit with the Nazir. We queried learned counsel that assuming a temporary injunction can follow in such circumstances, whether ADR under section 195-C of the Customs Act is even available at this stage. However, he submits that such analysis should be left for the FBR lest any observation by the Court prejudices the Petitioner's application pending before the FBR. We are not inclined to pass an injunction for the sake of an injunction unless the Petitioner can demonstrate a *prima facie* case. That would necessarily entail an examination of section 195-C of the Customs Act for the purposes of which the injunction is being sought.

7. Per sub-section (1) of section 195-C of the Customs Act, a dispute for which ADR can be invoked is a dispute of the specified type that is "under litigation in any court of law or appellate authority". Sub-section (3) requires the FBR to inform the court or appellate authority as and when an ADR Committee has been constituted. As per sub-section (7), the decision of the ADR Committee is binding on the Collector only if the aggrieved person is satisfied with the decision and withdraws the case from the court or the appellate authority within a specified time. Sub-sections (8) to (10) stipulate that if the ADR Committee cannot decide the dispute within 90 days, then the FBR shall dissolve the Committee and the dispute shall be resolved by the court or the appellate authority "where it is pending".

8. Thus, it is manifest that ADR under section 195-C of the Customs Act can only be invoked if the dispute remains under litigation and is yet to be adjudicated by the court or the appellate authority. The scheme is that if the ADR succeeds, the aggrieved person withdraws his case from the court or the appellate authority where it is pending; and if the ADR

fails, the aggrieved person falls back on the forum where the dispute is pending for adjudication. In other words, and to state the obvious, ADR under section 195-C of the Customs Act is an 'alternate' remedy, not an 'additional' remedy. In the instant case, the dispute as to the deposit lying with the Nazir had been adjudicated by the High Court, and the CPLA there against had been withdrawn by the Petitioner. There is no forum where that dispute remains pending, and thus nothing left for ADR. The application now moved appears only to stall the judgment that had ordered release of the differential duty to the Customs. It is therefore dismissed.

JUDGE

JUDGE

Karachi:
Dated 26th December, 2022