

IN THE HIGH COURT OF SINDH, KARACHI

**Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal**

1.	C. P. D- 5887/2022	M/s. Toplink Packaging (Pvt) Limited & others Vs. Federation of Pakistan & others.
2.	Const. P. 5064/2022	Health and Hygiene Products VS Fed. of Pakistan and Others
3.	Const. P. 5112/2022	M/s Santex Products Pvt Ltd VS Fed. of Pakistan and Others
4.	Const. P. 5182/2022	M/s Sultan & Co. & another VS Fed. of Pakistan and Others
5.	Const. P. 5215/2022	M/s Converters International VS Fed. of Pakistan and Others
6.	Const. P. 5578/2022	M/s Shah Brothers Ind VS Fed. of Pakistan and Others
7.	Const. P. 5625/2022	M/s TF Hygiene (Pvt) Ltd VS Fed. of Pakistan and Others
8.	Const. P. 5776/2022	M/s Sultan & Co. VS Fed. of Pakistan and Others
9.	Const. P. 6034/2022	Kamran Khan VS Fed. of Pakistan and Others
10.	Const. P. 6075/2022	M/s International Brands Distributions VS Fed. of Pakistan and Others
11.	Const. P. 6097/2022	M/s Popular Food Ind VS Fed. of Pakistan and Others
12.	Const. P. 6140/2022	M/s Hafeez Sons Enterprises & Others VS Fed. of Pakistan and Others
13.	Const. P. 6410/2022	M/s Sultan & Co. & another VS Fed. of Pakistan and Others
14.	Const. P. 6513/2022	M/s TF Hygiene (Pvt) Ltd VS Fed. of Pakistan and Others
15.	Const. P. 6514/2022	Santex Products (Pvt) Ltd VS Fed. of Pakistan and Others
16.	Const. P. 6601/2022	M/s Popular Food Ind Pvt Ltd VS Fed. of Pakistan and Others
17.	Const. P. 6616/2022	M/s Kosher Pvt Ltd VS Fed. of Pakistan and Others
18.	Const. P. 6957/2022	M/s Sultan & Co. VS Fed. of Pakistan and Others
19.	Const. P. 7004/2022	M/s Popular Food Ind Pvt Ltd VS Fed. of Pakistan and Others
20.	Const. P. 7030/2022	M/s Kosher Pvt Ltd VS Fed. of Pakistan and Others
21.	Const. P. 7364/2022	M/s Toplink Packaging Pvt Ltd & Others VS Fed. of Pakistan and Others
22.	Const. P. 7610/2022	M/s Popular Food Ind Pvt Ltd VS Fed. of Pakistan and Others
23.	Const. P. 7744/2022	M/S Kosher (Pvt) Ltd & Others VS Federation of Pakistan & Others
24.	Const. P. 7971/2022	M/s World Trade Link VS Fed. of Pakistan and Others
25.	Const. P. 8024/2022	M/s TF Hygiene (Pvt) Ltd VS Fed. of Pakistan and Others
26.	Const. P. 139/2023	M/s Sultan & Co. & another VS Fed. of Pakistan and Others

27.	Const. P. 14/2023	M/s Swan International VS Fed. of Pakistan and Others
28.	Const. P. 186/2023	M/s Toplink Packaging Pvt. Ltd & others VS Fed. of Pakistan and Others
29.	Const. P. 220/2023	M/s Wrold Trade Link VS Fed. of Pakistan and Others

For the Petitioners:

M/s. Shahab Imam, Muhammad Fazle-e-Rabbi Rana Sakhawat Ali, Syed Asif Ali, Imran Iqbal Khan, Advocates.

For the Respondents:

M/s. Khalid Rajpar, Irfan Mir Holepota, Aamir Ali Shaikh, Muhammad Taseer Khan, Masooda Siraj, Javed Hussain, Zahid Korai holding brief for Khalid Mehmood Siddiqui, Mir Ali Nawaz Khan, Amir Raza and Ghulam Mujtaba Sahto, Muhammad Bilal Bhatti, Ch. Mehmood Anwar, Advocates.

Mr. Qazi Ayazuddin Qureshi, Assistant Advocate General Sindh.

Date of hearing:**08.02.2023****Date of Order:****08.02.2023.****J U D G M E N T**

Muhammad Junaid Ghaffar, J: Through these Petitions, the Petitioners have impugned levy of Regulatory Duty imposed under Section 18(3) of the Customs Act, 1969 by way of SRO 966(I)/2022 dated 30.06.2022 and as amended by SRO 1571(I)/2022 dated 22.08.2022, primarily on the ground of it being confiscatory and discriminatory in nature.

2. Learned Counsel for the Petitioners¹ have contended that the levy is confiscatory in nature; is discriminatory; is against the National Tariff Policy as announced by the Ministry of Commerce. It has been further contended that it imposes Regulatory Duty on raw materials and intermediary goods; whereas when finished goods being produced and manufactured by the Petitioners are imported by commercial importers, they have not been subjected to any such Regulatory Duty, and therefore, such imposition is ultra vires to the Constitution being discriminatory in nature. In support, reliance has been placed on the cases reported as ***Collector of Customs and others Vs. Ravi Spinning Ltd and others (1999 SCMR 412)***, ***Messrs Elahi Cotton Mills Ltd. And others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 Supreme Court 582)***, ***Abu Bakar Siddiqui and***

¹ Led by Mr. Shahab Imam Advocate

others Vs. Collector of Customs, Lahore and others (2006 SCMR 705), Bharat Gold Mines Officers Association and others Vs. Union of India and others (AIR 2001 Karnataka 257), Video Electronics Pvt. Ltd and another Vs. State of Punjab and another (1990) 3 Supreme Court Cases 87, State of A.P. and others Vs. Nallamilli Rami Reddi and others (2001) 7 Supreme Court Cases 708, Federation of Hotel & Restaurant Vs. Union of India and others (AIR 1990 Supreme Court 1637) and unreported order of Honourable Supreme Court passed in Civil Appeal No. 2092/2019 dated 14.09.2022 (M/s Lucky Cement Ltd. Through its General Manager Vs. Khyber Pakhtunkhwa through Secretary Local Government and Rural Development, Peshawar & others).

3. On the other hand, Respondents' Counsel have argued that it is within the competence of the Federal Government to levy such Regulatory Duty under Section 18(3) of the Customs Act, 1969 and no exception can be drawn; whereas, if at all it is the case of the Petitioners that some Policy has been violated, they may approach the concerned Ministry or department to seek redressal of their grievance. In support they have relied upon the cases reported as ***M/s. N.S. Enterprises Karachi Vs. Government of Pakistan through Ministry of Finance and others (PTCL 1997 CL. 146), Messrs Advance Telecom and others Vs. Federation of Pakistan and others (2018 SCMR 1).***

4. We have heard all the learned Counsel and perused the record. Through impugned Notifications i.e. SRO 966(I)/2022 dated 30.06.2022 read with SRO 1571(I)/2022 dated 22.08.2022, while exercising powers conferred under Section 18(3)² of the Act and in supersession of its earlier notification, the Federal Government has been pleased to levy Regulatory Duty on import of goods specified in Column-III of the Table to the said SRO falling under respective PCT Codes of the First Schedule to the said Act specified in Column-II of the said Table at the rates specified in Column-IV thereof. Insofar as the powers and authority of the Federal Government to levy any Regulatory Duty under Section 18(3) of the Act is concerned, the same has been time and again decided by the High Courts

² 18(3) The Federal Government may, by notification in the official Gazette, levy, subject to such conditions, limitations or restrictions as it may deem fit to impose, a regulatory duty on all or any of the goods imported or exported, as specified in the First Schedule at a rate not exceeding one hundred per cent of the value of such goods as determined under section 25 [or, as the case may be, section 25A].

of this country including Honourable Supreme Court in respect of such imposition through various Notifications and in all such cases it has been the consistent view of the High Courts as well as Honourable Supreme Court that levy of Regulatory Duty is within the competence of the Federal Government and no exception can be drawn. It has been further held that even in cases, wherein, import duty under Section 18(1) & (2) of the Act is exempt or zero rated, Regulatory Duty can be imposed and no exception can be drawn to the authority vested in the Federal Government by way of Section 18(3) of the Act. The arguments of the Petitioners' Counsel that it is discriminatory and confiscatory in nature has also been addressed in the said cases; whereas, for the present purposes, we have not been assisted in any manner as to what discrimination has been meted out to the present Petitioners. Admittedly, the Regulatory Duty has been levied across the board on the items imported by the Petitioners as well as others. The arguments that some finished products imported by the commercial importers have not been left out, is *per-se* not a case of any discrimination insofar as the import of raw materials and intermediary goods is concerned. At best, the Petitioners can approach the National Tariff Commission or any other authority to address their grievance in this regard. Insofar as Tariff Policy issued by the Ministry of Commerce is concerned, apparently it has no nexus with the powers exercised by the Federal Government under Section 18(3) of the Act and is of no help to the cases of the present Petitioners.

5. As to the levy of Regulatory Duty under Section 18 of the Act, and the same being within the competence of the Federal Government the first of such cases decided by the Honourable Supreme Court is reported as ***Sh. Abdul Rahim, Allah Ditta V/s. Federation of Pakistan and others (PLD 1988 Supreme Court 670)***. This was thereafter followed in a number of cases and finally in the case of ***Collector of Customs and others Vs. Ravi Spinning Ltd. and others (1999 SCMR 412)***; the Hon'ble Supreme Court has dealt with all minute aspects of the matter including the challenge to such levy on various grounds as have been raised in this matter. The Hon'ble Supreme Court has been pleased to hold that levy of Regulatory Duty is within the competence and powers of the Legislature and that the Government is entitled to exercise discretion to levy Regulatory Duty and the argument that it can be levied only when certain circumstances exist, would not necessarily mean that such powers cannot be exercised without first mentioning those circumstances to justify imposition of the Regulatory Duty. It has been further held that

the powers to impose Regulatory Duty by the Government is subject only to those conditions and limitations which are mentioned in Section 18(2) (3) and (4) of the Act; and therefore no other condition or limitation not mentioned in the Section could control the exercise of powers by the Government in this behalf. It has been further held that the absence of reasons / justification in the Notification, imposing Regulatory Duty did not render exercise of powers / discretion by the Government under Section 18(2) of the Act defective or invalid. It is further held that neither the powers to exercise discretion can be curtailed; nor anything can be read into the provision of the statute not provided for by the legislature.

6. Once again the matter of levy of Regulatory Duty ended up before the Honourable Supreme Court in the case of ***Indus Trading and Contracting Company Vs. Collector of Customs (Preventive) Karachi and others (2016 SCMR 842)***, and it was held that the Government is competent to levy such Regulatory Duty. This was then followed in the case of ***M/s. Advance Telecom and others Vs. Federation of Pakistan and others (2018 SCMR 1)***, wherein, the issue raised was that no levy of Regulatory Duty can be justified in cases, wherein, there are bilateral agreements, and by following the dicta laid down in the earlier cases, once again the levy of Regulatory Duty was sustained.

7. In view of hereinabove facts and circumstances and the ratio of the judgments of the Honourable Supreme Court as above; whereby, the imposition of Regulatory Duty under Section 18(3) of the Act has been sustained from time to time; whereas, no case for exception to the aforesaid dicta laid down by the Honourable Supreme court has been made out, we do not see any reason or justification on the part of the Petitioners to once again come to the Court and agitate the same issue which already stands decided up to the level of Hon'ble Supreme Court time and again. Such practice on the part of the Petitioners must be deprecated, whereas, not only this, they have even managed to obtain ad-interim orders from the Court on the very first date(s) of hearing. Additionally, these petitions being meritless and against the law settled by the Court have unduly wasted the time of the Court depriving it from attending to more lawful and genuine claims pending before it. Such frivolous litigation clogs the pipelines of justice causing delay in dispensation of justice, thereby impairing the right to expeditious justice of a genuine litigant. Such vexatious and frivolous petitions add to the pendency of cases which over-burdens the Court dockets and slows down

the engine of justice. Such vexatious and frivolous litigation must be dealt with firmly and strongly discouraged. (See *Qazi Naveed ul Islam v District Judge Gujrat-unreported judgment of the Hon'ble Supreme Court dated 12.01.2023 in CP 3127 of 2020*). The conduct of the Petitioners has resulted in sheer wastage of Court's precious time in a matter which already stands decided, and therefore, all these Petitions were dismissed by us on 08.02.2023 by imposing cost(s) upon the Petitioners by means of a short order³ and these are the reasons thereof.

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Avaz p.s.

³ For reasons to be recorded later on, all these petitions are dismissed with cost of Rs. 10,000/-, on each petitioner in respective petitions, which shall be deposited in the account of Sind High Court Clinic within 15 days from today, failing which CNIC's of the Petitioners shall be blocked by the office through NADRA. The sureties furnished pursuant to respective ad-interim orders passed by this Court in the listed petitions from time to time stand forfeited in favour of the concerned Respondents / Collectorate. Nazir's office to act accordingly.