

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal**

C.P. Nos. D-4446, D-4513, D-4552, D-6927,
D-4553 and D-4618 of 2022

Hascol Petroleum Ltd., Taj Gasoline (Pvt.) Ltd., Euro Oil (Pvt.) Ltd. (2),
My Petroleum (Pvt.) Ltd., Puma Energy Pakistan (Pvt.) Ltd.

Versus

Federation of Pakistan & others

Date of Hearing: 11.04.2023

Petitioners: Through Mr. Khalid Jawed Khan along with
Mr. Uzair Qadir Shoro and Mr. Masood Anwar
Ausaf along with Mr. Munim Masood
Advocates.

Respondents: Through Qazi Ayazuddin Qureshi, Assistant
Attorney General and M/s. Muhammad Khalil
Dogar and Agha Shahid Majeed Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners in all these petitions have sought benefit of SRO 806(I)/2022 dated 20.06.2022 thereby not liable to pay regulatory duty on their consignments/cargo of “motor spirit”. Since all the petitions are premised on the same footing, we propose to decide the same by this common judgment. The dates mentioned herein below pertains to main petition bearing No.D-4446 of 2022; in the remaining petitions the dates could be different but that will not have any significant effect hence dates of all petitions are not mentioned.

2. Precise facts leading to questions involved in these petitions are that import of motor spirit was subjected to levy of customs duty vide First Schedule to the Customs Act, 1969 till 30.06.2022. By Finance Act this levy was omitted and its imports since 01.07.2022 are not subject to levy of customs duty. This however replaced by regulatory duty @ 10% to

be charged on its import. Cushion of exemption from such regulatory duty however was provided to those imports for which LCs were already established or the consignments were already on high-sea before 20.06.2022.

3. To implement such decision of Federal Government, Revenue Division had issued a notification under section 18 of Customs Act, 1969 as SRO No.806(I)/2022, which is to remain in force till 30th day of June, 2022. The said SRO is as under:

“S.R.O.806(I)/2022.- In exercise of the powers conferred by sub-section (3) of section 18 of the Customs Act, 1969 (IV of 1969), the Federal Government is pleased to levy regulatory duty at a rate of ten per cent on import of motor spirit (PCT Code 2710.1210) with the stipulation that the regulatory duty shall not be levied on cargoes for which LCs had already been opened or were at high seas. The imports of motor spirit where customs duty at a rate of ten per cent is paid shall be exempted from the levy of regulatory duty.

2. This Notification shall remain in force till the 30th day of June, 2022.”

4. This was superseded by SRO No.966(I)/2022 issued by respondent No.1 under section18 of Customs Act, 1969, which levied regulatory duty on the import of goods including the subject goods (motor spirit) identified at Sr. No.128 of the subsequent SRO 966(I)/2022 prescribing rate of regulatory duty @ 10% (PCT 2710.1210).

5. It is petitioners' case that the subject import of consignment has fallen in the later part of SRO 806(I)/2022 i.e. the consignment was at the high seas while the SRO 806(I)/2022 was enforced hence regulatory duty cannot be levied. In support thereof they have relied upon the contracts they entered with the consignor and the Bill of Ladings issued by the shipping agency on behalf of Master of vessel. As claimed, it was notified on 28.06.2022 that the vessel carrying motor spirit had arrived at the outer anchorage of Port Qasim and finally discharged cargo on

16.07.2022. It is thus pleaded that levy of duty under SRO 806(I)/2022 was conditionalized by way of events disclosed therein and petitioners' case has fallen in the later event of being in the high seas and thus addition of Para 2 in the SRO was objected along with applicability of later SRO No.966(I)/2022 dated 30.06.2022 effective from 01.07.2022.

6. Agha Shahid Majeed, learned counsel appearing for respondents, disputed the maintainability of petitions on the touchstone that before GDs for clearance could be filed, these petitions have been filed and thus cause to file these petitions was not matured. The goods claimed to have fallen under PCT Heading 2710.1210 attracting customs duty @ 0% under First Schedule of Customs Act, 1969, as amended, whereas it attracts regulatory duty @ 10% under SRO 966(I)/2022 dated 30.06.2022 (Entry No.128) effective from 01.07.2022.

7. Heard counsels and perused record.

8. Federal Government has imposed 10% regulatory duty on import of motor spirit vide SRO 806(I)/2022 dated 20.06.2022 subject to condition that said regulatory duty shall not be levied on cargoes for which Letter of Credit had been established before the effective date i.e. 20.06.2022 or carrier vessels of which were in high seas before promulgation of SRO 806(I)/2022. It further exempts levy of regulatory duty in case the import is subjected to condition that customs duty is paid at the concessionary applicable rate of 10% under erstwhile Fifth Schedule of Customs Act, 1969.

9. SRO 806(I)/2022 is a protection to those transactions which were already at the verge of being materialized i.e. either Letter of Credits have been established or in relation to a "commercial transaction" the goods are in the high seas carrying cargoes for the petitioners. The two limbs of SRO 806(I)/2022 is not completely isolated i.e. for a cargo in the high seas it has to be established that they are on the way to discharge

their cargo for consignee and not waiting for a call from any potential buyer as these kind of cargo vessels are invariably available at high seas for a prompt response to any commercial call.

10. Bill of Lading relied upon is from the Master of Vessels though is of 27.05.2022 but would turn nothing as far as independent transaction between buyer and supplier is concerned. Presence of vessel in the high seas alone does not demonstrate that it was there for petitioners. The spirit of SRO 806(I)/2022 is to save matured transaction in between 20th to 30th June 2022, otherwise the very purpose of this protection will be lost.

11. If the cargo was on the high seas for petitioners why was there a need to establish the Letter of Credit on 29.06.2022 and 03.07.2022 respectively. It simply shows that cargo vessel was not there in the high seas for the petitioners, which is the essence and spirit of the SRO 806(I)/2022 i.e. to save bonafide conclusive transactions. Vessel reached at port on 16.07.2022 and petitioners sought clearance for inbonding (warehousing) under Section 79 of Customs Act, 1969 after the lapse/expiry of SRO 806(I)/2022 dated 20.06.2022 which thus invites the levy of 10% regulatory duty since they have fallen beyond the protection period given in the said SRO followed by new regime of SRO 966(I)/2022 dated 30.06.2022 made effective from 01.07.2022.

12. Under section 30 of Customs Act, 1969 the rate of duty applicable to any import shall be the rate of duty in force which in the present case is by virtue of SRO 966(I)/2022. Neither vessel's Bill of Lading nor private contract would establish that the cargo was at high seas for a matured commercial understanding between supplier and buyer. These kinds of vessels are always available on the high seas¹ waiting for a call from potential buyer but this arrangement would not be matured or seen as

¹ All parts of the mass of saltwater surrounding the globe that are not part of the territorial sea or internal waters of a state.

one within the spirit of protection provided in the subject SRO 806(I)/2022.

13. Like Letter of Credits, which essentially establishes the intent and commercial transaction the presence of vessel at high seas has to be seen within the same frame i.e. it is there for petitioners and such has not been established via vessel's Bill of Lading or private contracts as they are easily gettable. Thus, Letter of Credits were not opened prior to 20.06.2022, presence of vessel at high seas does not demonstrate that it was there for petitioners on account of some commercial transaction recognized by law, which then could be saved by SRO 806(I)/2022; the vessel reached port on 16.07.2022; and LCs were opened on 29.06.2022 and 03.07.2022. If the LCs were required, it should have been prior to Bill of Lading issued from Master.

14. Petitioners as such are not entitled to the protection and benefit under SRO 806(I)/2022 and petitions as such merit no consideration and are accordingly dismissed along with pending applications.

15. Above are the reasons of our short order announced on 11.04.2023.

Dated:

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