

**IN THE HIGH COURT OF SINDH AT KARACHI**

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Justice Mrs. Rashida Asad

C.P. No. D-2322 of 2024

Muhammad Umair  
Versus  
Federation of Pakistan & others

Date of Hearing: 12.06.2024, 13.06.2024 and 21.06.2024

Petitioner: Through Mr. Zain A. Jatoi along with Mr. Mustafa Mamdani Advocates.

Respondents No.1 to 3: Through Mr. Kashif Nazeer, Assistant Attorney General and Ms. Wajeeha Mehdi, Deputy Attorney General.

Respondent No.4: Through Mr. Muhammad Ishaque Pirzada and Mr. Abdul Mannan Advocates.

**J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Petitioner, being proprietor of Saqib Impex, has imported “Shelled Almonds” from U.S.A. The import of the subject goods are governed by Pakistan Plant Quarantine Act, 1976 (1976 Act) and Pakistan Plant Quarantine Rules, 2019 (Quarantine Rules), in compliance whereof the officials and officers of respondents No.2 and 3 supervise and oversee the prerequisites and upon whose instructions and directions based on 1976 Act and rules, the consignment is dealt with by the concerned collectorate of the customs.

2. The petitioner imported 20.412 Metric Tons of USA origin “Almonds in shell Monterey” and filed Goods Declaration on 09.04.2024 to that effect. The Phytosanitary Certificate as required was however issued much earlier for the subject consignment by United States Department of Agriculture (USDA) on 29.01.2024 in the name of petitioner’s business concern with the endorsement that ‘no import

permit was presented, as at that time there was none. The customs officials “held” the subject consignment on the count that necessary Import Permit number was not “endorsed” in the Phytosanitary certificate issued by USDA, as objected and informed by Quarantine Department.

3. It is petitioner’s case that the Import Permit and the shipment was made on the same date and at the same time (change of dates because of time-zone difference) and hence it is not violation of either Import Policy, Import Permit or any of the conditions/provisions of 1976 Act and the 2019 Rules/Quarantine Rules framed thereunder. It is urged that the consignment was inspected and fumigated (Methyl Bromide) on 17.04.2024 with the observation that no insect, disease or noxious weeds were intercepted and it was not marked for treatment. It is claimed that despite there being no hazardous situation, release of the consignment was denied for non-endorsement of Import Permit number on the Phytosanitary certificate issued by USDA. This endorsement is shown to be a condition precedent for the import but it is not borne out of the Quarantine Rules framed under the 1976 Act, as claimed. Hence, through this petition petitioner has challenged the action of the respondents for holding the subject consignment to be illegal and sought release of the subject consignment.

4. Mr. Kashif Nazeer, learned Assistant Attorney General, has taken us to the requirement of restricted goods in terms of Import Policy and also rules i.e. Quarantine Rules framed under 1976 Act and the Act itself. It is urged that Plant Protection Adviser and Director General of the Department of Plant Protection (DPP) under the rules may prescribe Phytosanitary import conditions for the import of agriculture goods in Pakistan in terms of Rule 96(10) of Quarantine Rules. These conditions are required to be fulfilled in the country of origin/export, prior to the

export/shipment as per Phytosanitary import conditions of DPP of the country where goods are being imported and guidelines of International Plant Protection Convention (IPCC) and Codex Alimentarius Commission (CAC), which is claimed to have been overlooked at the time of shipment.

5. We have heard learned counsel appearing for the parties as well as learned Assistant Attorney General and perused material available on record.

6. The import of goods in the country are always subjected to the Imports & Exports (Control) Act, 1950 and the import is regulated in terms of Import Policy issued under section 3 of the ibid Act. It includes different appendixes, Appendix 'B' is in relation to the restricted items where the subject good falls. Part IV of it deals with the import of plant and plant products. Its' Sr. No.106 and PCT Code 0802.1100 deals with the subject goods i.e. Almonds (excluding roasted almonds) in shell. The import requirements are as under:

*“Importable subject to:*

- (i) Valid Import Permit issued by DPP and*
- (ii) Phytosanitary Certificate from National Plant Protection Organization of PPO as country of origin and Phytosanitary Certificate for re-export (if the country of export is other than country of origin);*
- (iii) Compliance with Phytosanitary safety requirement and*
- (iv) Plant protection release order of DPP”*

7. The 1976 Act also deals with the subject goods i.e. plant and agriculture products. Section 3 of it deals with the power to prohibit or regulate import of certain articles. Section 10 of the ibid Act enables the Federal Government to make rules by notifying them in official gazette for carrying out the purposes of this Act. Subsection (2) of ibid section also provides that in particular and without prejudice to the generality

of the foregoing powers (to make rules) such rules may provide for all or any of the following matters namely:

- a) The method and manner of examination and treatment of goods and articles of plant origin likely to cause infection to any crop or plant;*
- b) The form of certificate of non-infection;*
- c) The documents to be produced before goods or articles of plant origin are accepted for carriage ; and*
- d) The fees to be levied under this Act.*

8. With this provision that enabled the Federal Government to notify rules, the rules were notified on 12.11.2019 i.e. Pakistan Plant Quarantine Rules, 2019 (Quarantine Rules) whereby valid permit is required from the Department of Plant Protection prior to importation of plant, plant products and other regulated goods or articles on commercial scale, specified in Schedule 3. Sub Rule 2 of Rule 8 of these Rules provides that a permit may be issued by the department to authorize importation subject to conditions assigned therein. The subject import/consignment was held by the customs officials on the count that a clearance from the department (DPP) has not been issued, primarily on the count that the “number of import permit” was not endorsed in the Phytosanitary Certificate issued by the country of origin and hence they suspect that the conditions prescribed for import are not fulfilled. This is the primary question as the customs officials have no other objection except the objection taken by the Quarantine Department (DPP).

9. Sub Rule 3 of Rule 35, which relates to the requirement of permits deals with an application to be made on prescribed form along with prescribed fee and contain specified information with supporting documents to the department in writing in advance of the action proposed on the permit application under these rules. Sub Rule 4 of Rule 35 of Quarantine Rules also provides that the application for a relevant

permit to import regulated goods or goods or articles into Pakistan shall be submitted at prescribed time under these Rules prior to shipment/ importation.

10. Rule 37 of Quarantine Rules deals with the conditions for permits. It provides that the permits other than Controlled Import Permit (CIP) issued for importation of plant, plant product or regulated article shall be valid for a period of six months from the date of issue and valid for successive shipment, provided the exporter and importer, country of origin and Phytosanitary certificate are same for the entire consignment. Sub Rule 2 of ibid Rule 37 however provides an extension for another period of six months.

11. Emphasis was made on Sub Rule 2 of Rule 38 which caters for a situation when there is no fault of the importer. When a consignment of plant, plant products or regulated goods or goods or articles subject to a requirement under these rules i.e. a permit be issued prior to consignment's shipment, arrives at Pakistan Port before a permit is received, the consignment may be held under suitable safeguards prescribed by the authorized officer in custody at the risk and expense of the importer pending issuance of permit or authorization from the department.

12. In terms of Rule 57 a Phytosanitary Certificate from the country of origin is to be provided, which though is produced, but it contains the date of 29.01.2024 i.e. much before date of permit and shipment. In order to understand the situation Rule 96 of Quarantine Rules is important. Sub Rule (10) of Rule 96 provides that Plant Protection Adviser may prescribe and set Phytosanitary Certificate requirements in the permit for importation of plants, plant products or regulated goods or articles into Pakistan to protect the domestic agriculture and natural resources. Rule 98 enables the authorized officer to conduct inspection

of the imported plants, plant products or regulated articles to verify compliance with the Import requirements stipulated by the department for issuance or denial of biosecurity clearance or plant protection release order. Sub-Rule 9 of ibid Rule provides that the authorized officer may issue official certificate under this Rule after necessary evaluation of technical information or quarantine inspection or testing or treatment or Phytosanitary compliance. This exercise seemingly is for overseeing the compliance required under the Import Policy.

13. A model import permit is also available in the notified rules to be issued under Quarantine Rules in compliance of Rules 9(4), 96(11), 98(9) and 101 of the ibid Rules. Rule 101 is for an authorized offer to issue official certificates after conducting inspection related to sanitary and Phytosanitary related duties with respect to plant/plant products or regulated goods or articles and issue official certificates.

14. Column 11 of the Import Permit, as issued to petitioner, required that the importation and biosecurity clearance or plant protection release order of the consignment shall be subject to the “fulfillment of Phytosanitary requirements of this import pathway in Pakistan specified by the department on the import permit or on attachment to this import permit”, emphasis applied, (other import conditions on reverse side or as an attachment). NPPO of export country is thus under an obligation to consider import permit’s requirements and its attachment for compliance of requirement specified by the department and shall not issue Phytosanitary Certificate without import permit’s prerequisites in order to process Phytosanitary actions, as intended in the permit.

15. As apparent in the instant case the Phytosanitary Certificate for the subject goods was issued on 29.01.2024, seemingly not in compliance of requirements disclosed in the Import Permit. In fact it indicated that no import permit was presented at the time of this

Phytosanitary Certificate. The importer must have contacted the exporter for the subject goods and got the Phytosanitary Certificate issued from USDA on the conditions which may or may not be similar to the conditions required under subject Import Permit. The Department of Plant Protection however got the subject goods inspected and found as under:-

- i) Insect intercepted - No
- ii) Disease intercepted - No
- iii) Noxious weeds intercepted - No
- iv) Marked for treatment - No

16. Methyl Bromide fumigation was carried out but that fumigation may also be meant for export purposes, as discussed above and in no way fulfills the prescribed conditions on permit. On 09.04.2024 however the customs officials held the goods due to Import RO/NOC-PSW. The permit for import of plant or plant product or regulated goods or article for consumption or processing was issued on 10.02.2024 and it contains a condition that the import permit number must be endorsed on Phytosanitary Certificated issued by exporting country of origin. The Bill of Lading claimed to have been issued for the importer on the same day i.e. 10.02.2024.

17. It may not be a strict requirement under the Rules that the nomenclature of Import Permit must be endorsed in the Phytosanitary Certificate of the country of origin but perhaps the wisdom behind is that the consignment must have seen all the prerequisites and tests required before the goods could be shipped to a country where the goods are being imported which could only be cleared subjected to the compliance required under the Import Permit. Even if we are to score off such requirement of endorsing the number of Import Permit then the

Phytosanitary Certificate and/or its attachments, issued by the country of origin must reflect on its own, all the required tests and prerequisites desired in the Import Permit, as only then the import conditions could be said to have been met.

18. The Phytosanitary Certificate of USDA in Column No.2 does not disclose if the consignment was subjected to all such tests, which compliance was obligatory upon shipper/country of origin, under the Import Permit of the importing country i.e. Pakistan. More importantly Phytosanitary Certificate of USDA was issued on 29.01.2024 which is much before the date of Import Permit issued to the petitioner i.e. on 10.02.2024. The subject consignment must have been prepared without having the knowledge of such treatment likely to be provided. Again the Phytosanitary Certificate could have disclosed that the treatments are required internationally or under the Import Permit but as we could see the treatment column does not show any such compliance.

19. The import of subject goods is not banned but is restricted as required under SRO 545(I)/2022 issued on 22.04.2022. It however under PCT Code require valid Import Permit. Sub Rule 2 of Rule 38, which is heavily relied upon by Mr. Jatoi is in respect of a situation when there is no fault of the importer and a consignment of plant, plant product or regulated goods or articles arrives at Pakistani Port before a permit is received, the consignment may be held under suitable safeguard prescribed by the authorized officer in custody at the risk and expense of the importer pending issuance of permit or authorization from the department. The situation that is governed by Rule 38(2) is when there is “no fault” of the importer. For example when the goods were shipped there was no such requirement to produce permit, and at the time of arrival of the ship it was made necessary. The situation here is different. The importer was/is aware of prescribed conditions to import the



regulated goods (Shelled Almonds) and notwithstanding the fact that number of Import Permit is not reflected in Phytosanitary Certificate of country of origin, but the importer must have ensured that at least it must reflect that prescribed tests have been undertaken on 29.01.2024; the date when Phytosanitary Certificate was issued by USDA; it was/is the requirement that the import of such goods shall be restricted/ subject to the conditions prescribed in the Import Permit. It may have been shipped on the same day i.t. 10.02.2024 when Import Permit was issued but in essence that would not serve the purpose unless it is shown that the goods were subject to the treatment required under the Import Permit. Such requirements of endorsement of Import Permit on certificate could only then be ignored not otherwise, as otherwise it will be difficult to regulate goods under 1976 Act and rules framed thereunder.

20. Section 15 deals with prohibition whereas section 16 of the Customs Act, 1969 deals with the power to prohibit and restrict importation and exportation of goods. Section 17 is for detention, seizure and confiscation of goods imported in violation of Section 15 or 16 of the ibid law. The customs officials have only held the goods and have not passed an order as required under section 17 of Customs Act, 1969 that whether on account of such deviation and in the light of Methyl Bromide test/fumigation having been performed and certificate of physical inspection having been issued by the Department of Plant Protection whether the subject consignment could be subjected to the detention, seizure, confiscation or could be subjected to the fine/ penalty only or otherwise.

21. Under these circumstances, the customs officials may invoke/ exercise their powers under Customs Act, 1969 read with Imports & Exports (Control) Act, 1950 further read with Appendix 'B' Part-IV Sr.

No.106 of the current Import Policy Order and decide the fate of the subject consignment of the petitioner, at the earliest, in view of above analyses.

22. Petition stands disposed of in the above terms along with pending applications.

Dated:

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