

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

1. C.P. No.D-4036/2023 : M/s. Young's (Private) Limited v. Federation of Pakistan and another
2. C.P. No.D-3091/2023 : M/s Young's (Pvt) Ltd v. Fed. of Pakistan and Others
3. C.P. No.D-5467/2023 : M/s Young's (Pvt) Ltd v. Fed. of Pakistan and Others
4. C.P. No.D-5819/2023 : M/s Young's (Pvt) Ltd v. Fed. of Pakistan and Others

PETITIONERS (in all Petitions) : Through Mr. Imran Iqbal Khan along with Mr.Aneel Zia, Advocate.

Respondents in CP No.D-4036/2023 : Through Mr. Khalid Mahmood Siddiqui, Advocate.

Respondents in CP No.D- 3091/2023 : Through Mr. Faheem Raza, Advocate.

Respondents in CP No.D-5467 & 5819/2023 : Through Mr. Khalid Mehmood Rajpar, Advocate

Respondents in CP No.D-5467/2023 : Through Mr. Agha Shahid Majeed, Advocate.

Respondents in CP No.D-1740 & 2574/2024 : Through Mr. Sardar Zafar Hussain, Advocate along with Mr. Tariq Aziz, Assistant Collector, SAPT.

Federation of Pakistan : Through Mr. Kashif Nazeer, Assistant Attorney General.

Date of Hearing : 27.08.2024

Date of Short Order : 27.08.2024

JUDGMENT

Muhammad Junaid Ghaffar, J: Through these Petitions the Petitioners have sought a declaration that no additional customs duty is leviable on the importation of Cocoa Powder (HS Code 1805.0000) pursuant to Clause 3(vi) of SRO 967(I)/2022 dated 30.06.2022 ("**SRO 967**") with a further prayer that at the same time, the petitioners are also entitled to the benefit of exemption of customs duty under SRO 1261(I)/2007 dated 31.12.2007 ("**SRO 1261**")

2. Learned counsel appearing on behalf of the petitioners has contended that the petitioners have claimed exemption from customs duty in terms of SRO 1261 which has not been disputed or denied; however, at the same time, the Petitioners are also entitled for exemption from additional customs duty in terms of Serial No.3(vi) of SRO 967 read with, Serial No.2, Chapter-VII, Part-II, Table-B of Fifth Schedule to the Customs Act, 1969, whereas Respondent department is of the view that the petitioners cannot claim exemption under two different Notifications/SROs simultaneously. He has further submitted that as to claiming exemption under two different Notifications/SROs, earlier, FBR vide its letter dated 05.06.2012 has affirmed the view of Port Qasim Collectorate by holding that the importer can claim the benefit of more than one Notification at a time, and therefore, all these petitions be allowed as prayed.

3. On the other hand, learned counsel appearing for the respondents in CP No.D-5467/2023 has contended that the petitioners are not entitled for exemption from additional customs duty in terms of SRO 967, as the same is available only to such imports, which are chargeable to the customs duty under the Fifth Schedule to the Customs Act, 1969, whereas, the Petitioner's goods have been charged to customs duty under the First Schedule to the Act. According to him, it is not a case of claiming of exemption under two different Notifications/SROs simultaneously; rather the petitioners are otherwise not entitled to claim any exemption under SRO 967.

4. Heard learned counsel for the parties and perused the record. Record reflects that the petitioners have imported Cocoa Powder (HS Code 1805.0000) and claimed exemption from customs duty leviable under Section 18(1) read with the First Schedule to the Act, under SRO 1261 and to that extent, there is no dispute as the department has in fact conceded that

the petitioners qualify for such exemption. At the same time, petitioners have also claimed exemption from Additional Customs Duty levied under Section 18(5) of the Act vide SRO 967 which also provides exemption from such levy in respect of certain class of goods and it is the case of the petitioners that the said exemption can be independently claimed as there is no bar for claiming exemption under two different Notifications/SROs simultaneously. Before proceeding further, it would be advantageous to refer to the relevant provisions of Sections 18(1) and (1A) of the Act as well as the two SRO's in question, which reads as under: -

"18. Goods dutiable.- (1) *Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on,-*

(a) *goods imported into Pakistan;*

(b) *goods brought from any foreign country to any customs station, and without payment of duty there, transshipped or transported for, or thence carried to, and imported at any other customs station; and*

(c) *goods brought in bond from one customs station to another.*

[(1A) Notwithstanding anything contained in sub-section (1), customs duties shall be levied at such rates on import of goods or class of goods as are prescribed in the Fifth Schedule, subject to such conditions, limitations and restrictions as prescribed therein.]

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Government of Pakistan
Ministry of Finance & Revenue
Recovery Division

Islamabad, the 31st December, 2007

NOTIFICATION
(CUSTOMS)

S.R.O. 1261(I)/2007:- *In exercise of the powers conferred by section 19 of the Customs Act, 1969 (IV of 1969), read with section 18C thereof, the Federal Government is pleased to exempt with effect from 1st January 2008, the import into Pakistan from Malaysia of-*

- a) *the goods specified in column (3) of the Table-I below, falling under the Headings and sub-headings of the First Schedule to the said Act as specified in column (2) of the said table, **from so much of the customs duty as on the 1st July, 2006, specified***

in First Schedule to the said Act, is in excess of the rates specified in columns (4), (5), (6) (7), (8), (9) and (10) of the table with effect from the corresponding dates as specified in columns (4), (5), (6) (7), (8), (9) and (10) thereof; and

- b) the goods specified in column (3) of the Table-II below, falling under the Heading and sub-heading of the First Schedule to the said Act as specified column (2) of the said Table from so much of customs duty as on the 1st January 2008 is in excess of the rates specified in columns (4) (5) (6) (7) (8) (9) and (10) thereof.

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Government of Pakistan
Ministry of Finance & Revenue
Recovery Division

Islamabad, the 30th June, 2022

**NOTIFICATION
(CUSTOMS)**

S.R.O. 967(I)/2022:- In exercise of the powers conferred by sub-section (5) Section 18 of the Customs Act, 1969 (IV of 1969), and in supersession of its Notification No. SRO 845(I)/2021, dated the 30th June 2021, the Federal Government is pleased to **levy additional customs duty on import of goods specified in the First Schedule to the said Act, at the rate of-**

- (i) -----
- (ii) -----
- (iii) -----
- (iv) -----

2.

3. The Additional Customs duty shall not be levied on the following, namely:-

- (i) -----
- (ii) -----
- (iii) -----
- (iv) -----
- (v) -----
- (vi) **import under Fifth Schedule to the Customs Act 1969 (IV of 1969) excluding;**

- (1) Serial numbers 30, 33 and 35 of table of Part-I,
- (2) Serial numbers 102, 110, 111, 113, 114, 116 (except xvi), 117, 118 and 147 of Table of Part III; and
- (3) Serial numbers 29 to 34, 42 and 43 of Table-A, Sr. No. 1, 4 to 9, 14 to 46, 49 to 52, 116 to 120, 161, 162, 170, 171, 186 to 188 and 190 to 194 of Table-B of Part VII;”

5. From perusal of the aforesaid charging provision of Section 18(1) of the Act, it clearly reflects that the customs duty shall be levied at such rates as are prescribed in the *First Schedule* to the Act. Similarly, Section 18(1A) *ibid* provides that

notwithstanding anything contained in subsection (1) of Section 18, the customs duties shall be levied at such rates on import of goods or class of goods as are prescribed in the *Fifth Schedule* to the Act. When both these provisions are read in juxtaposition, it clearly reflects that the rate of duties have been separately provided for the class of goods by way of the *First Schedule* and the *Fifth Schedule* to the Act. The *Fifth Schedule* is in respect of reduced rates of custom duties as against the statutory rates provided in the *First Schedule* *ibid*. In fact, Section 18(1A) starts with the words “notwithstanding”, which means that if any category of goods falls in the *Fifth Schedule*, then the rate of customs duty as provided in the *Fifth Schedule* would apply. It is not in dispute that the Petitioners do not want the assessment or payment of customs duty as per the *Fifth Schedule*. On the contrary, they have claimed the benefit of SRO 1261 for exemption from the levy of customs duties as are leviable pursuant to Section 18(1) i.e. the *First Schedule* to the Act. It is not a matter of dispute that SRO 1261 only exempts customs duty leviable pursuant to the *First Schedule*.

6. On the other hand, SRO 967(I) provides for levy of additional customs duty on goods as are classified in the Customs Tariff i.e. the *First Schedule* to the Act, along with certain category of goods, which are exempt from such levy. At Serial No.3(vi) it has been provided that additional customs duty shall not be levied on the import of goods under the *Fifth Schedule* to the Act. This means that if a person is claiming exemption from the levy of additional customs duty under this Notification, then such goods must be the goods on which the customs duty has been charged or levied under the *Fifth Schedule* to the Act. When confronted, petitioners’ counsel admitted that the petitioners are not claiming the assessment or paying customs duty as is specified under the *Fifth Schedule*, but under the *First Schedule* as they are claiming the exemption from such duties under SRO 1261. The simple

reason for this appears to be that the rate of duty on the goods in question as provided under the Fifth Schedule is 5%, whereas, though in the First Schedule it is 11%, but is exempt under SRO 1261. The said SRO exempts customs duties leviable in terms of the First Schedule to the Act and not the Fifth Schedule, *ibid*. Since the additional customs duty has been levied pursuant to SRO 967 on all goods, except as provided therein only, the Petitioner cannot claim the benefit of Serial No.3(vi) thereof, as the same is only available to goods which have been charged or are subjected to customs duty under the Fifth Schedule of the Act. The argument that the petitioners claim for exemption under two different SROs has been denied in violation of FBR's letter dated 5.6.2012 is misconceived, since for the present purposes, the petitioners do not appear to be entitled for any exemption pursuant to Serial No.3(vi) of SRO 967. Therefore, simply put it is not a case of denying a claim of exemption under two SRO's simultaneously.

7. In view of hereinabove facts and circumstances of the case, no case for indulgence is made out and all petitions are devoid of any merits; hence, by means of a short order dated 27.08.2024 they were dismissed, and these are the reasons thereof.

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Farhan/PS