

IN THE HIGH COURT OF SINDH AT KARACHI

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

SCRA No. 1339 of 2015

Collector Model Customs Collectorate
Versus
M/s. Venus Pakistan (Pvt.) Ltd. & another

Along with

SCRA No.31 to 38 of 2012 & 192 of 2019	Venus Pakistan (Pvt.) Ltd.	Addl. Collector of Customs & another
SCRA No.329 of 2013	Addl. Director DGI & I-FBR	Al-Haj Enterprises (Pvt.) Ltd.
SCRA No.44 to 67 and 268 to 283 of 2014	Collector Model Customs Collectorate	Al-Haj Enterprises & another
SCRA No.1340 to 1349 of 2015	Collector Model Customs Collectorate	Venus Pakistan (Pvt.) Ltd. & another
SCRA No.793 to 801 of 2017	Collector of Customs MCC Preventive	LaGuardia Logistics (Pvt.) Ltd.

Date of Hearing: 29.09.2021 and 26.02.2024

In SCRA No.31 to 38 of 2012 and 192 of 2019: Applicants through Mr. Muhammad Arif Advocate.
Respondents through Mr. M. Khalil Dogar Advocate.

In SCRA No.329 of 2013: Applicants through Mr. M. Khalil Dogar Advocate.
Respondents through Mr. Umer Akhund Advocate

In SCRA No. 44 to 67 and 268 to 283 of 2014: Applicants through Mr. M. Khalil Dogar Advocate.
Respondents through Mr. Darvesh K. Mandhan Adv.

In SCRA No. 1339 to 1349 of 2015: Applicants through Mr. Shahid Ali Qureshi Advocate.
Respondents through Mr. Muhammad Arif Advocate.

In SCRA No. 793 to 801 of 2017: Applicants through Mr. M. Khalil Dogar Advocate.
Respondents through Mr. Muhammad Mustafa Mamdani holds brief for Mr. Zain A. Jatoi Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- While hearing this bunch of References¹ two questions of law were framed on 29.09.2021 and the same are reproduced for convenience as under:-

¹ List attached separately.

1. Whether in the pertinent facts and circumstances duties and taxes could be levied in respect of loss of consignment, due to transit evaporation, beyond one percent?
2. Whether in the pertinent facts and circumstances duties and taxes could be levied in respect of consignments allegedly lost on account of terrorism?

2. In one set of References, the Collector of Customs has challenged the facilitation of non-payment of duties and taxes on short delivery/lost quantity up to one percent as admissible under CGO 12 of 2002 dated 15.06.2002 as amended vide CGO 06/2010 dated 20.08.2010, which exemption shall, per impugned order, remain available notwithstanding the loss beyond one percent whereas the duties and taxes upon loss of consignment over and above one percent was held to be recoverable.

3. In the other set of bunch, which was filed by carriers/agents of importer, they have questioned the duties and taxes made applicable on the loss due to the act of terrorism while cargo in transit to Afghanistan.

4. These references are coming up since 2012 and the last that form part of this bunch was of 2019. The order in appeal in these References are not passed by the Tribunal at one point in time as presided over by different presiding officers and thus have varied in some form, however we have dealt with these References cumulatively on the understanding that only two questions are required to be answered which may set the controversy, as involved in these references, at rest, notwithstanding the different views taken either in the Order-in-Original/Order-in-Appeal or the order passed by the Tribunal. We would confine ourselves to answer the above questions which may dispose of these references accordingly.

5. We have heard learned counsel and perused material available on record with reference to the above two questions.

6. SRO 450(I)/2001 dated 18.06.2001 facilitated POL products to Afghanistan while in transit. Chapter XXII of the Customs Rules 2001, as notified by the above SRO precisely facilitated such transportation. Such chapter provides a comprehensive mechanism for the shifting/ transportation of the petroleum products through carrier/agents as licensed by the customs authorities. The carriers/agents were under the obligation to deposit a security in the shape of bank guarantee, defence/saving certificates with the licensing authority. Such goods were not liable to customs duties and taxes subject to its successful transportation to its ultimate destination and subject to the conditions mentioned. The carriers/agents were in fact logistic companies registered as bonded carrier for the transportation of petroleum products to ISAF/NATO Forces which were at one point in time operating in Afghanistan, as claimed.

7. These carriers on account of violation of the rules and the CGO 12 of 2002 and CGO 6 of 2010 were issued respective show-cause notices, which they responded and the main defence as taken by them is that they were prevented by sufficient cause and that is the act of terrorism, which was the main cause of either not transporting the petroleum products in totality or transporting in short quantity i.e. beyond one percent, to its ultimate destination, as required.

8. The newly inserted provision provides mechanism that the commanding officer of ISAF/NATO Forces shall nominate a single authorized representative to issue import authorization and authorize a customs agent for clearance of Liquid Bulk Cargo. He shall communicate the name, designation and specimen signature of such authorized representative to the Federal Board of Revenue and the Model Customs Collectorate (Preventive), Custom House, Karachi. The appellants in this bunch, other than collector of customs, are duly authorized carrier/

agents of ISAF/NATO Forces. After processing of GD (AT) and loading, measurement/weightment and sealing of cargo, the transportation documents were provided by these appellants and transport permits were issued.

9. CGO (Customs General Order) 12 of 2002 was amended by CGO 6 of 2010 on 20.08.2010 which has brought certain significant changes and for the purposes of the controversy/questions as mentioned above, the relevant changes as brought to this CGO will be discussed as all subject consignments were routed subsequent to such amendment.

10. According to CGO 6 of 2010, after paragraph 25, paragraph 25A was inserted. Paragraph 25A(g)(iii) exempted the carrier to the extent of one percent on the count of evaporation. Said clause (g)(iii) of the newly inserted paragraph 25A provides as under:-

“In case there is any variation of more than one per cent in the quantity declared in the Permit (Transport Permit TP) and the one endorsed or certified by the ISAF/NATO Forces action under appropriate provisions of the Customs Act, 1969 (IV of 1969), the Sales Tax Act, 1990 and other laws applicable shall be initiated against the carrier and other persons found involved.”

11. Specifications of transport units and conveyance were also outlined in Rule 558 of Chapter XXII of Customs Rules 2001 notified as SRO 450(I)/2001 dated 18.06.2001.

12. Clause (f) of the newly added 25A in the CGO provides responsibilities of carriers.

13. Clause (f)(ii) provides that the carrier shall provide a revolving insurance guarantee amounting to Rs.5.0 million favouring Collector of Customs, MCC Preventive, Custom House, Karachi covering all risks. The insurance guarantee shall supposed to be valid for one year and issued by AA rated/FBR approved insurance company.

14. Sub-clause (iv) of Clause (f) provides that the carrier shall be responsible and bound to carry the goods to its final destination in Afghanistan without any delay. It further provides that the carrier shall be bound to deliver the goods at final destination within the prescribed time-limit, using the transport route duly approved by the Collector, Model Customs Collectorate Preventive, Custom House, Karachi and any change in route by the Carrier ought to have been notified by the Collectorate and consent to be obtained in advance. Any delay would have caused revocation of license, as is stipulated in Clause (f)(v).

15. The vehicles were to be fitted with tracker to monitor their *enroute* to Afghanistan and the carriers were under the obligation to provide uninterrupted access of Oil Sections Kemari, Karachi, to the tracking system of their vehicles as is stipulated in clause (f)(v) of Paragraph 25A.

16. Clause (f)(vii) of the aforesaid Paragraph 25A provides that in case of non-delivery of cargo at final destination in Afghanistan to the consignees within stipulated time or misappropriation of the same while *en route* to Afghanistan, the carrier shall be responsible for payment of all leviable duties and taxes on the said goods, besides penal action to be initiated against them under the relevant provisions of Customs Act, 1969 and Sales Tax Act, 1990.

17. Sub-clause (i) of Clause (i) of Paragraph 25A further provides that in case of any tampering or pilferage or theft or damage caused *en route*, the carrier shall inform the Model Customs Collectorate Preventive for necessary orders within three days thereof. The carrier shall be responsible for the duties and taxes and loss or reduction in value as a result of such damage notwithstanding any other action which may be taken under the law and the rules made thereunder.

18. At the very outset, the two clauses i.e. Clause (f) and clause (i) have separately described the respective sub-clauses (vii) and (ix). It cannot be read in conjunction as clause (f) describes the responsibilities of the carriers whereas clause (i) of paragraph 25A of CGO provides another event and that is the event of tampering, pilferage, theft or damage caused while the goods were being transferred and that such events ought to be informed to the Model Customs Collectorate Preventive. This information and event disclosed above does not absolve the carrier from the responsibilities of duties and taxes and in addition, to the loss or reduction in value of such goods as a result of such damage, notwithstanding any other action likely to be taken under the rules. These incidents/events, as highlighted in clause (i), are in fact to secure and safeguard not only the customs authorities from any claim of the importer but the importer through carrier was also responsible for the payment of duties and taxes.

19. It is the carrier's case that the word "damage" has not been defined anywhere in the Customs Act, 1969 and/or Customs Rules, 2001 whereas the ordinary meaning of "damage" is a "loss or injury". The counsel is not agreeable to the application of such definition as according to him it is to be read in conjunction to the understanding of willful behavior as referred in the preceding paragraphs describing events, in particular expression of tampering, pilferage and theft which denotes willful behavior to which we disagree, as discussed above, in the preceding paras. The word 'damage' is a separate event in terms of above rule. Entire frame of CGO gives a meaningful understanding that the word 'damage' is of no benefit to the carrier as attempted to demonstrate.

20. Although the act of terrorism is nowhere remotely defined in this newly added paragraph 25A in the CGO, yet the damage identified

separately does not exclude or absolve the carrier from the payment of duties and taxes and/or loss or reduction in the value as a result of such damage.

21. Without prejudice to above i.e. damage caused by any event including terrorism, the Tribunal is the last fact finding forum and up until such stage we have not been able to come across a single incident where act of terrorism has been established. We are therefore not in agreement with such understanding of law, as provided by the carriers, that the act of terrorism, which has caused damage to the consignments on its way to Afghanistan, would absolve them from responsibilities and they would not be held liable to pay duties and taxes.

22. Connected to the aforesaid issue is an issue of statutory exemption to the extent of one percent because of evaporation of petroleum product having volatility behaviour. This concession was provided under clause (g)(iii) of newly inserted paragraph 25A and cannot be avoided on the count that since the goods (entire quantity), which were likely to be delivered, were lost either in totality or substantially, therefore, exemption of even one percent would not apply. These are not convincing argument in the light of statutory exemption available under the aforesaid clause. Law gives an unbridled relaxation and events like loss of consignment or damage caused to it (which is being subjected to duties and taxes) does not take away the statutory right of exemptions. This apparently is a natural mechanism which the law has considered on account of substance being volatile. Such application of interpretation would not be conducive to maintain the spirit of clause (g)(iii), which has its own wisdom which provides a concession to the carrier being a volatile element/substance; this concession was granted as a policy matter. The intent of the agents/carriers transporting such goods however was not established

that it was not evaporation rather ill will of the carriers who took advantage of such concession and have gained commercially on that count. In the absence of such understanding we would not count it against the carriers who would still be entitled to such (1) one percent concession, though still saddled with responsibilities of duties and taxes over one percent.

23. In the case of Al-Haj Enterprises² Supreme Court has held that consequence of short supply beyond one percent is not provided in Rule 564(4) of the Customs Rules, 2001 and hence the petition challenging the duties and taxes beyond one percent was dismissed.

24. In view of the above both the questions, as framed by this Court referred above, are answered accordingly, resultantly we are of the view that none of the clauses of newly inserted paragraph 25A absolve the importer/carrier from payment of duties and taxes beyond one percent whereas concession of one percent would remain intact. Special Customs Reference Applications and the petitions stand disposed of in these terms.

25. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the respective Customs Appellate Tribunals at Karachi, as required by section 196(5) of Customs Act, 1969.

Dated:

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² 2017 SCMR 1598 (Al-Haj Enterprises (Pvt.) Ltd. v. Collector of Customs)

**LIST OF CASES
IN
SPL. CUS. REF. A. 1339/2015**

**COLLECTOR MODEL CUSTOMS COLLECTORATE
VS
M/S. VENUS PAKISTAN (PVT) LTD. & ANOTHER**

S.NO	CASE NO	CASE TITLE
1	Spl. Cus. Ref. A. 31/2012	Venus Pakistan (Pvt) Ltd VS Additional Collector of Customs Preventive & ors
2	Spl. Cus. Ref. A. 32/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collect or Customs & another
3	Spl. Cus. Ref. A. 33/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs & another
4	Spl. Cus. Ref. A. 34/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs & another
5	Spl. Cus. Ref. A. 35/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs & another
6	Spl. Cus. Ref. A. 36/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs & another
7	Spl. Cus. Ref. A. 37/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs (Pre) & another
8	Spl. Cus. Ref. A. 38/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs (Pre) & another
9	Spl. Cus. Ref. A. 39/2012	Venus Pakistan (Pvt) Ltd VS Addl: Collector of Customs (Pre) & another
10	Spl. Cus. Ref. A. 329/2013	The Addl. Director DGI&I-FBR, Karachi VS M/s. Al-Haj Enterprises (Pvt) Ltd.
11	Spl. Cus. Ref. A. 268/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
12	Spl. Cus. Ref. A. 269/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
13	Spl. Cus. Ref. A. 270/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
14	Spl. Cus. Ref. A. 271/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd.
15	Spl. Cus. Ref. A. 272/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
16	Spl. Cus. Ref. A. 273/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
17	Spl. Cus. Ref. A. 274/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
18	Spl. Cus. Ref. A. 275/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
19	Spl. Cus. Ref. A. 276/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
20	Spl. Cus. Ref. A. 277/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
21	Spl. Cus. Ref. A. 278/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
22	Spl. Cus. Ref. A. 279/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
23	Spl. Cus. Ref.	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another

S.NO	CASE NO	CASE TITLE
	A. 280/2014	
24	Spl. Cus. Ref. A. 281/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
25	Spl. Cus. Ref. A. 282/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
26	Spl. Cus. Ref. A. 283/2014	Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
27	Spl. Cus. Ref. A. 44/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
28	Spl. Cus. Ref. A. 45/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
29	Spl. Cus. Ref. A. 46/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
30	Spl. Cus. Ref. A. 47/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
31	Spl. Cus. Ref. A. 48/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
32	Spl. Cus. Ref. A. 49/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
33	Spl. Cus. Ref. A. 50/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
34	Spl. Cus. Ref. A. 51/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
35	Spl. Cus. Ref. A. 52/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
36	Spl. Cus. Ref. A. 53/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
37	Spl. Cus. Ref. A. 54/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
38	Spl. Cus. Ref. A. 55/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
39	Spl. Cus. Ref. A. 56/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
40	Spl. Cus. Ref. A. 57/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
41	Spl. Cus. Ref. A. 58/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
42	Spl. Cus. Ref. A. 59/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
43	Spl. Cus. Ref. A. 60/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
44	Spl. Cus. Ref. A. 61/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
45	Spl. Cus. Ref. A. 62/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
46	Spl. Cus. Ref. A. 63/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
47	Spl. Cus. Ref. A. 64/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
48	Spl. Cus. Ref. A. 65/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another

S.NO	CASE NO	CASE TITLE
49	Spl. Cus. Ref. A. 66/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
50	Spl. Cus. Ref. A. 67/2014	The Collector Model Customs Collectorate VS M/s. Al-Haj Enterprises (Pvt) Ltd. & another
51	Spl. Cus. Ref. A. 1340/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
52	Spl. Cus. Ref. A. 1341/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
53	Spl. Cus. Ref. A. 1342/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
54	Spl. Cus. Ref. A. 1343/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & anothers
55	Spl. Cus. Ref. A. 1344/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
56	Spl. Cus. Ref. A. 1345/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
57	Spl. Cus. Ref. A. 1346/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
58	Spl. Cus. Ref. A. 1347/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
59	Spl. Cus. Ref. A. 1348/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
60	Spl. Cus. Ref. A. 1349/2015	Collector Model Customs Collectorate VS M/s. Venus Pakistan (Pvt) Ltd. & another
61	Spl. Cus. Ref. A. 793/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
62	Spl. Cus. Ref. A. 794/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
63	Spl. Cus. Ref. A. 795/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
64	Spl. Cus. Ref. A. 796/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
65	Spl. Cus. Ref. A. 797/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
66	Spl. Cus. Ref. A. 798/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
67	Spl. Cus. Ref. A. 799/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
68	Spl. Cus. Ref. A. 800/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
69	Spl. Cus. Ref. A. 801/2017	Collector of Customs MCC Preventive VS M/s. LaGuardia Logistics (Pvt) Ltd.
70	Spl. Cus. Ref. A. 192/2019	M/s. Venus Pakistan (Pvt) Limited VS Collector of Customs & others