

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT
ISLAMABAD

CASE NO. : W.P. NO.888-2013

M/s Kingcrete Builders

Vs.

Central Board of Revenue etc.

Petitioner by : Syed Riaz Hussain, Advocate
Respondents by : Raja Muhammad Iqbal, Advocate
Date of hearing : 19.01.2016

NOOR-UL-HAQ N. QURESHI J. Through present writ
petition, the petitioner has prayed as under: -

"It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to declare Clause 2 of SRO No.1090(1)/2006, whereby the benefit of the subject SRO has been denied to the petitioner as illegal, void, discriminatory, arbitrary and contrary to the Constitution and rights of the petitioner thus of no legal effect"

2. Brief facts leading to the disposal of this writ petition are that the petitioner, a Partnership Firm, executed a contract with National Highway Authority for the construction of rigid pavement on specific sections of Lahore-Islamabad Motorway. In pursuance whereof, the petitioner imported 13-Concrete Transit Mixers (CTMs) from Japan and provisionally got released the same from the Customs Department on payment of 5% Customs Duty subject to final decision of the CBR.

The final decision was taken by the Ministry of Finance and Revenue (Revenue Division) vide SRO No.1090(1)/2006 dated 1st November, 2006. In pursuant thereto, vide letter dated 20.03.2007 issued by respondent No.2, the petitioner was directed to pay customs duty and taxes to the tune of Rs.88,55,262/- @ remaining 60% and in view of joint undertaking of petitioner and respondent No.4 to the effect that the petitioner will pay amount of taxes within 3-days from the date of demand, if respondent No.1 denies the exemption in excess of 5% Customs Duty. In this regard, the petitioner filed representation before respondent No.1, which was refused.

3. It is pertinent to mention here that earlier, the petitioner had filed W.P. No.1765-2007 before this Court, which was dismissed vide order dated 21.06.2012. Thereafter, ICA No.375-W-2012 was filed, which also met with the same fate vide order dated 16.07.2012. Then the petitioner approached Hon'ble Supreme Court of Pakistan vide CP No.1587-2012, which was dismissed as not pressed vide order dated 09.01.2013, as the petitioner intended to avail an alternate remedy and to

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challenge SRO No.1090(1)/2006 dated 01.11.2006,
hence this writ petition.

4. Learned counsel for the petitioner, while referring Clause 2 of SRO No.1090(1)/2006 dated 01.11.2006, has argued that denial to the petitioner from the benefit of charging 5% Customs Duty and to allow others to take advantage thereof is arbitrary, illegal, fanciful, discriminatory and against the fundamental rights of the petitioner as guaranteed by the Constitution of the Islamic Republic of Pakistan; that it is trite law that in the absence of reasonable classification, all people placed in similar situation, shall be treated equally, whereas no reasonable justification has been given for denying the benefit of subject SRO to the petitioner, while ; that even otherwise, it has been numerously held by the superior courts that a law conferring a benefit should be given the widest possible interpretation then a law imposing a liability; that it was held in a reported case PLD 1999 Karachi 238 that a notification impairing an existing or vested right or imposing a new liability or obligation cannot operate retrospectively in the absence of legal sanction, but a notification which confers benefit, can operate retrospectively; that

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respondents vide letter dated 22.09.2006, allowed provisional release of 13-Concrete Transit Mixers on payment of 5% Customs Duty upon strict terms and conditions, which were also imposed for application of SRO No.1090(1)/2006 dated 01.11.2006 and Dump Trucks were granted special exemption from levy of Customs Duty on the same terms and conditions, but the benefit thereof was maliciously and illegally denied in the case of present petitioner, that the act of respondents charging 65% Customs Duty on the import of above Mixers is against settled principles of law and justice, as valuable rights of the petitioner are stake; that if the impugned portion of above SRO is not declared ultra vires, discriminatory and illegal, the petitioner will suffer legally and financially. He has contended that the question of retrospective application of SRO No.1090(1)/2006 dated 01.11.2006 in the case of present petitioner does not apply.

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On the other hand, learned counsel for the respondents has argued that this Court lacks territorial jurisdiction to entertain this writ petition, as the goods were got cleared from Customs House, Karachi. Moreover, this writ petition cannot be

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entertained, as earlier, same proceedings were decided by this Hon'ble Court.

6. On merits of the case, it has been argued that SRO No.1090(1)/2006 dated 01.11.2006 has no retrospective application, as the same is effective from the date of its issuance vide Section 30 and 30-A of the Customs Act, 1969 and as such, the petitioner has to abide by the undertaking to follow the decision of respondent No.1. The goods of the petitioner were released conditionally against payment of 5% Customs Duty against joint undertaking of the petitioner and respondent No.4 that they shall abide by the decision of the Federal Board of Revenue regarding admissibility of the concessions and the respondent No.1 has finally decided the case thereby the petitioner was required to pay the customs duty @ 60% as per their undertaking and as such, the petitioner was required to pay an amount of Rs.88,55,262/- as differential amount instead of claiming CVT. In support of his contention, learned counsel has

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relied upon 1993 SCMR 1905, PLD 1993 Supreme Court
47, PLD 1997 Supreme Court 334, 1999 SCMR 16, 1999
SCMR 2005 SCMR 37 & 2010 SCMR 115.
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7. I have heard the arguments and perused the record as well as relevant provisions of law.

8. The objection raised by the learned counsel for the respondents that in presence of alternate remedy, this writ petition is not maintainable, cannot be acceded to at this verge, as earlier, when the petitioner had filed W.P. No.1765-2007, this Court had declared that this Court had got the territorial jurisdiction to entertain the claim of petitioner.

9. As regards merits of the case, it is observed that vide impugned SRO No.1090(1)/2006 dated 01.11.2006, 2500 Units of Concrete Transit Mixtures were allowed exemption from levy of Customs Duty on first come first serve basis, subject to fulfillment of laid down terms and conditions. It is also not disputed that the levy of duty on Concrete Mixer Lorries at the rate of 5% was not given any retrospective effect and the same was levied with immediate effect. Admittedly, the petitioner had imported and got released CTMs on 22.09.2006, when the rate of Customs Duty was 65%, while SRO No.1090(1)/2006 stipulating levy of Customs Duty at 5% was issued on 01.11.2006 with no retrospective effect.

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As per Section 31-A of the Customs Act, 1969, date of

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import of goods determines the applicability of customs duty, whereas date on which, a Letter of Credit was established or steps were taken in respect of the import of goods were not relevant for such purpose. Likewise, according to the provisions of Section 19 of the Customs Act, 1969, after expiry of a notification/SRO, the benefits there-under could not be claimed. It is by now well settled by the judicial pronouncements of this Court that where import or export of any commodity enjoys exemption from statutory customs duty, even then, the Federal Government can impose regulatory duty, within the confines described in Section 18(2) of Customs Act through subordinate legislation. Therefore, in my view, no vested right had accrued to the petitioner. The question of its infringement does not arise, as the competent authority has not conferred any benefit retrospectively extendable or application to the case of the petitioner.

10. From the record, it is also evident that the petitioner and respondent No.4 had given joint undertaking to pay the amount of taxes within three

days, in case, FBR denies the exemption in excess of 5% customs duty. In the said undertaking dated 20.03.2007,

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the petitioner had also undertaken to accept the decision of adjudicating authority by paying fine/penalty, which later on came in the shape that there was no retrospective effect of SRO No.1090(1)/2006 dated 01.11.2006. So, it is observed, the petitioner was accommodated in view of such undertaking and when the decision was made on the issue, the petitioner was required to pay Rs.88,55,262/- as differential amount.

11. In view of above legal and factual position, I find no force in present writ petition, which is hereby dismissed with no order as to costs.

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(NOOR-UL-HAQ N. QURESHI)
JUDGE

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