

# IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Sajjad Ali Shah, Chief Justice*  
*Mr. Justice Zulfiqar Ahmad Khan*

Date of Hearings : 8<sup>th</sup> February 2017

## **CONST. PETITION No. D-6067 OF 2016**

Thal Limited and another ..... Petitioners  
Versus  
Federation of Pakistan and others ..... Respondents

## **CONST. PETITION No. D-6615 OF 2016**

White Pearl Jute Mills Limited ..... Petitioners  
Versus  
Federation of Pakistan and others ..... Respondents

## **CONST. PETITION No. D-6068 OF 2016**

Sargodha Jute Mills Limited ..... Petitioners  
Versus  
Federation of Pakistan and others ..... Respondents

## **CONST. PETITION No. D-6069 OF 2016**

Madina Jute Limited and another ..... Petitioners  
Versus  
Federation of Pakistan and others ..... Respondents

Mr. Ali Almani Advocate alongwith Mr. Samiullah Khan for the Petitioners  
in C.P. No. D-6067, 6089 & 6969/2016

Mr. Muhammad Rehan-Attorney of Petitioner in C.P. D-6615/2016 in  
person

Mrs. Fozia Rasheed Advocate holding brief for Mr. Sohail Muzaffar  
Advocate for the Respondent No.3

Mr. Kafeel Ahmed Abbasi Advocate for Respondent No.6

Mr. Ghulam Shabbir Baloch, Standing Counsel

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

**ZULFIQAR AHMAD KHAN, J** : These petitions arise in identical  
circumstances where the Respondents (mainly Customs Authorities) have denied  
concession granted to the Petitioners through SRO 558(I)/2004 read with SOR

585(I)/2012 in terms of which per Petitioners' counsel contention Raw Jute imported by the Petitioners from Bangladesh are declared zero "0%" custom duties.

Petitioners who are Members of Pakistan Jute Mills Association (PJMA) have been importing Raw Jute from Bangladesh over the years giving by way of historical imposition of the custom duties. Learned Counsel submitted that between the year 2001-2002 the goods were imported under PCT heading 5303.1000 and custom duty at the rate of 10% were charged thereof, however, between the years 2002 to 2005 the said PCT headings were sub-divided into 5303.1010, 5303.1020 and 5303.1090 and customs duty was charged at a rate of 5% thereof. However, pursuant SRO 558(I)/2004 Custom Authorities granted exemption on goods imported from Bangladesh under the relevant PCT headings and goods three headings were still charged at the rate of 5% effective from 2007 till 2014, government on its own motion granted exemption to goods imported under the above referred three categories which situation was changed between the year 2014-15 when 1% customs duty was levied while under SRO 558(I)/2004 at Serial 976 "Jute and other textile bast fibres, raw or retted" falling in the category of PCT heading 5303.1000 was declared duty free, however, the Customs Authorities charged these goods at the rate of 1% (which is increased in the year 2015 to 2%) and the importers paid the said duty under protest, however, remain in communication with the relevant authorities as to clarification that goods imported from Bangladesh under SRO 558 under PCT heading 5303.1010 etc., were exempted 100% duty concession, clarification in this regard was issued by the Ministry of Commerce on 02.02.2015. Notwithstanding, therewith a clarification from the Board of Revenue vide Letter dated 27.10.2001 was already on file which placing relief of SRO 374(I)/2000 declared goods falling under PCT heading 5303.1000 cover sub-heading 5303.1010.

Taking up to the root of the problem, the learned counsel drew our attention to Pakistan Customs Tariff Volume-I, 18<sup>th</sup> Edition for the year 2002-2003 where certain amendments were made under Chapter 53 where the main PCT heading 53.03 included "Jute and other textile bast fibres (excluding flax,

true hemp and ramle), raw or processed but not spun; low and wastes of these fibres (including yarn waste and garneted stock)” and while giving the description as “Jute and other bast fibres ....”, failed to mention the appropriate PCT heading of 5303.1000, however, sub headings 5303.1010 for Jute, cutting, 5303.1020 for Jute, waste and 5303.1090 for other products, were included as sub headings. Since the heading “Jute and other textile bast fibres.....” were not given any specific heading, this cause confusion in interpreting the same description where same description given under SRO 558(i)/2004 and SRO 585(i)/2012 where the same description was accorded PCT heading 5303.1000 in terms of which goods imported from SAARC countries and LDCs were given complete customs duties exemption. This anomaly similarly caused the Respondent to impose applicable customs duties against which the instant petitions have been filed.

Learned Counsel for the Petitioners further drew our attention to the Comments dated 17.01.2017 filed by the Respondent No.5-Customs Authorities where the Respondents have admitted under paragraph-1 as well as on the ground-A of the petition that the Petitioners’ goods (Jute) are covered for exemption/concession of custom duties under Section 18 (1)(a) of the Customs Act, if importing from LDCs or SAARC countries.

Faced this straightforward case of some printing errors in terms of which PCT heading of 5303.1000 was not mentioned at the appropriate place in the Pakistan Customs Tariff of the year 2002-2003, the learned counsel appearing for the Respondent for the Custom Authorities contended that government has absolute power under Section 18 to withdraw any concession or to change the rate of customs duty charged which obviously is neither impugned in the instant petitions or is not in question before us. Court may had abandonedly clear to the counsel that the Customs Authorities can under Section 18 impose any duties or withdraw any concession, however, as long as any concession are available which in these cases are available in terms of SRO 558(I)/2004 and 585(I)/2012 where Jute and other textile bast fibres raw are retted is charged as 0% custom duty which ends the absence of sub heading 5303.1000 has been clarified by the FBR letter dated 27.10.2001 to file under PCT heading 5303.1000 coupled with effect

under the standardized PCT heading convention a sub heading starting with single dash (-) is always construed to mean the afore-number PCT heading followed by (.1000) which was the case clearly shown under Chapter-53 of the Finance Ordinance, 2001 and when there is no doubt that Bangladesh is a SAARC country as well as an LDC and imports of Jute and other textile bast fibres or raw or retted therefrom enjoy 100% concession from payment of customs duties on the import thereof falling under PCT Code heading 5303.1000, 5303.1010, 5303.1020 and 5303.1090 in accordance with SRO 558(I)/2004 dated 01.07.2004 read with SRO 585(I)/2012 dated 01.06.2012.

In view of the above, the instant petitions are allowed and the Respondents are directed to make appropriate corrections in the above referred SROs to clear the ambiguity created therein through the exclusion of PCT heading 5303.1000 from Customs Tariff.

JUDGE

CHIEF JUSTICE

AMJAD P.S.