

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.D-2165 of 2021
(Sajid Plastic Factory Vs. Federation of Pakistan and two others)

Present:

Mr. Justice Irfan Saadat Khan

Mr. Justice Mahmood A. Khan

Date of hearing : 03.06.2022.

For the petitioner : Mr. Aqeel Ahmed Khan, Advocate.

For the respondent No.1 : Mr. Kafeel Ahmed Abbasi, Deputy Attorney General for Pakistan (DAG).

For the respondent No.2 : Mr. Khalid Rajpar, Advocate.

For the respondent No.3. : Mrs. Aneela Jamil, Advocate.

JUDGMENT

IRFAN SAADAT KHAN, J. This instant petition has been filed on the ground that despite the clearance given by the respondent No.2 with regard to the consignment imported by the petitioner, the respondent No.3 is not releasing the goods of the petitioner, which is causing prejudice to them.

2. Briefly stated, the facts of the case are that the petitioner imported “Recovered Poly Vinyl Chloride”, classifiable under HS Code 3904.1090, and proper duty thereof was duly paid by them. As per the petitioner the consignment was importable, subject to the conditions as mentioned under SRO 902(1)/2020 dated 25.09.2020. Previously also the petitioner imported similar consignment and were issued a Show Cause Notice (SCN) on the allegation of mis-declaration of the goods. Thereafter Order-in-Original (ONO) No.463440, dated 04.01.2016 was passed. The said ONO was then challenged by the petitioner before the Customs Appellate Tribunal (CAT),

in Customs Appeal No.K-36/2016. The CAT then, vide order dated 15.04.2017, accepted the contention raised by the petitioner and directed the department to release the goods and also directed the customs authorities to issue delay and detention certificate in favour of the petitioner.

3. Being aggrieved with the order passed by the CAT Special Customs Reference Application (**SCRA**) bearing No.409 of 2017 was filed by the custom department. However since the goods of the petitioner were not released by the department, a petition bearing C.P. No.D-499 of 2020 was then filed by the petitioner for release of its goods. In the meantime the SCRA filed by the department was dismissed by this Court vide order dated 10.02.2021 and thereafter the goods imported by the petitioner were finally released. The petitioner has now imported two more consignments of similar nature and this time also the department has given similar treatment to the goods of the petitioner, as given earlier, hence the present petition.

4. Mr. Aqeel Ahmed Khan Advocate has appeared on behalf of the petitioner and stated that in spite of the previous orders in favour of the petitioner of the CAT and that of the High Court the department is bent upon not to give similar treatment to the current consignments, as ordered to be given to the previous consignments. He stated that not only physical examination but lab test also of the current imported goods were made by the department but nothing illegal has been found. He further stated that the respondent No.2 has cleared the goods of the petitioner but the respondent No.3, for the reasons best known to him, is not passing appropriate orders for the release of the goods; hence, the respondent No.3 may be given directions so that the goods of the petitioner may be released in accordance with law.

5. M/s. Khalid Rajpar and Kafeel Ahmed Abbasi (DAG) have appeared on behalf of the respondents No.1 and 2 respectively. Mr. Rajpar has stated that the respondent No.2 has cleared the goods of the petitioner and now the matter is between the petitioner and the respondent No.3. Mr. Kafeel has adopted the arguments of Mr. Rajpar.

6. Mrs. Aneel Jamil Advocate has appeared on behalf of the respondent No.3 and stated that the petitioner was required under the law to get its goods tested from the lab designated by the customs authorities and to pay the cost thereof and since the same was not done, therefore, the goods of the petitioner were not released. She, however, stated that if the petitioner pays the requisite fee and gets the lab test of the imported goods conducted from the designated lab and if the report comes in favour of the petitioner the goods will be released in accordance with law.

7. Mr. Aqeel, on the other hand, invited our attention to page No.133 of the file to show that the impugned goods have already been tested from the designated lab of the customs authorities hence the stance taken by the learned counsel for the respondent No.3 is misplaced as all the legal and codal formalities required for the release of the consignments have already been fulfilled and the goods have been impounded /not released by the respondent No.3 due to mala fide and nefarious reasons. He, therefore, prayed that the goods of the petitioner may be released.

8. We have heard all the learned counsel at considerable length and have also perused the record.

9. Perusal of the record reveals that previously also a consignment of similar nature was imported by the petitioner but the department did not accept the declaration as well as the PCT Heading declared by the petitioner. The department has not accepted the HST Code 3904.1090 as declared by the petitioner rather have considered the same as plastic scrape

assessable under HST Code 3915.3000 as done in respect of the previous consignment. It may however be noted that first round of litigation ended in releasing of the goods as per the goods declaration and the HST Code mentioned by the petitioner, as per the directions of the High Court. Perusal of the record further reveals that the present consignments are similar consignments as imported previously by the petitioner and therefore giving similar treatment, which was not approved by the CAT as well as this Court, appears to be an uncalled for exercise on the part of the department. In our view when a consignment of similar nature has been imported, duly classifiable under a particular head and the same was also found to be in accordance with the declaration there remains no justification available with the department to give similar previous unapproved treatment to the newly imported consignments if these are found to be of the similar nature and no change in their classification etc. was detected.

10. In our view the department is bound to accept the same classification, HST Code, rate, duty and the taxes as applied to the previous consignment, if the facts and circumstances of the present consignments are found to be of the similar nature. No doubt in order to ascertain the goods lab test is a prerequisite condition but in the instant case it could be seen from the lab test done by the department itself that the drawn sample of the goods imported and sent to the lab was found to be synthetic polymer polyvinyl chloride, as declared by the petitioner. Hence, in our view, the insistence of the department to again send the samples to another laboratory appears to be misconceived and uncalled for, as the department's own lab has affirmed and confirmed, from the drawn sample of the consignment imported by the petitioner that these were in accordance with the declaration as made by the petitioner.

11. Thus, in our view, no adverse view could now be drawn by the department in the instant matter and they are bound to release the goods in accordance with the law forthwith. The instant petition, therefore, stands allowed, along with the listed /pending application, in the above terms.

Above are the reasons of our short order dated 03.06.2022.

Judge

Judge

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-2165 of 2021

Order with Signature of Judge(s)

1. For hearing of CMA No.9289/21 (Stay)
2. For hearing of main case.

03.06.2022.

Mr. Aqeel Ahmed Khan, Advocate for the petitioner.

Mr. Kafeel Ahmed Abbasi, Deputy Attorney General for Pakistan
(**DAG**) for the respondent No.1.

Mr. Khalid Rajpar, Advocate for the respondent No.2.

Mrs. Aneela Jamil, Advocate for the respondent No.3

For the reasons to be recorded later on, the instant petitioner stands
allowed.

Judge

Judge