

IN THE HIGH COURT OF SINDH AT KARACHI

Suit Nos.83 & 84 2015

Date of hearing. 21.1.2015 & 23.1.2015

Plaintiff No.1. Nawab Brothers Steel Mill (Pvt) Limited

Plaintiff No.2. Ittehad Steel Industries
Mr. Haider Waheed, Advocate.

Defendant No.1 : Federation of Pakistan

Defendant No.2 : Federal Board of Revenue

Defendant No.3 : Model Customs Collectorate.
Mr.Kashif Nazeer, advocate for
Defendants No.2 & 3.
Mr. Iqbal Khurram, advocate.

JUDGEMENT

NAZAR AKBAR, J. By this common judgment, I propose to dispose of two suits bearing Suit Nos.83 and 84 of 2015 in the following circumstances.

2. These suits were filed on **19.01.2015** alongwith an application under Order XXXIX Rule 1 & 2 CPC for interim order to restrain the Defendants from applying/deducting regulatory duty in terms of SRO 18(I)/2015, dated **14.1.2015** issued under of Section 18(3) of the Customs Act, 1969 on the consignment procured from foreign supplier under contracts dated 30.10.2014 and 05.01.2015 and even letter(s) of credits were opened on 04.11.2014 and 07.01.2015

respectively. The notices were issued to the Defendants for **21.01.2015** and no interim orders were passed. The Defendants have appeared and filed counter affidavit to the application under Order XXXIX Rule 1 & 2 CPC.

3. Mr. Kashif Nazeer, learned counsel for Defendants has very strongly contended that in view of the Supreme Court judgments whereby issues raised by the plaintiff already stand decided, the plaintiffs are not entitled to any interim order. He claimed that no "cause of action" has accrued to the Plaintiff and there is no allegation of malafide against the Defendants in imposing a regulatory duty. The counsel for the Plaintiff contended that since heavy taxes have been imposed, therefore, denial of injunctive orders would cause an irreparable loss to his client and therefore, he is ready to argue this application without even going through the counter affidavit. In view of serious contest and preparedness of counsel from either side, this case was ordered to be taken up in chamber at 1:00 p.m almost after my regular court work. Both the learned counsel at 01:00 p.m offered that instead of deciding the application for interim orders, the suit may be finally disposed of as the controversy involved is only legal and not factual. They have jointly proposed the following issue for the purpose of disposal of this suit on merit:

"Whether customs notification SRO 18(I)/2015 dated 14.1.2015 imposing regulatory duty is applicable on the consignments of the plaintiff, which were shipped prior to the date of notification and even contract and letter(s)

of credit in respect thereof were opened prior to the said notification?”

4. It is pertinent to mention here that learned counsel for the Defendants in view of the above proposition that suit may be disposed of on merits by deciding the legal issue did not press the question of maintainability of suit.

5. Brief facts of the case are that the Plaintiffs are commercial importers of various items which were initially not included in the list of goods on which regulatory duty was payable. By the impugned notification the Defendants have levied regulatory duty on certain goods which according to the Plaintiff has for the first time been included in the list of goods on which regulatory duty has been imposed in terms of **section 18(3)** of the Customs Act, 1969. This is an admitted position that the shipments claimed to be cleared by the Defendants without subjecting the same to the regulatory duty in terms of the impugned SRO 18(I)/2015) dated 14.1.2015 are in respect of consignments which were shipped prior to 14.1.2015 and therefore, even LETTER(s) OF CREDIT and contract of purchase of such consignment were prior to the date of levy of Regulatory Duty through impugned SRO. Sections 18 and 30 of the Customs Act, 1969, are the relevant provisions, which are reproduced below.

[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.]

(2) No export duty shall be levied on the goods exported from Pakistan.

(3) The Federal Government may, by notification in the official Gazette, levy, subject to such conditions, limitations or restrictions as it may deem fit to impose, a regulatory duty on all or any of the goods imported or exported, as specified in the First Schedule at a rate not exceeding one hundred per cent of the value of such goods as determined under section 25 [or, as the case may be, section 25A].

(4) The regulatory duty levied under sub-section (3) shall –

- (a) be in addition to any duty imposed under sub-section (1) or under any other law for the time being in force; and
- (b) be leviable on and from the day specified in the notification issued under that sub-section, notwithstanding the fact that the issue of the official Gazette in which such notification appears is published at any time after that day.]

[30. Date of determination of rate of import duty.—The rate of duty applicable to any imported goods shall be the rate of duty in force;

(a) in the case of goods cleared for home consumption under section 79, on the date on which a [goods declaration] is manifested under that section; and

(b)in the case of goods cleared from a warehouse under section 104, on the date on which a [goods declaration] for clearance of such goods is manifested under that section:

6. Mr. Haider Waheed, learned counsel for the Plaintiff has vehemently argued that since the regulatory duty has been imposed for the first time on the goods procured by the Plaintiffs when his client has already paid the amount on opening of LETTER(S) OF CREDIT by the foreign supplier, therefore, such exercise of power under Section 18(3) whereby regulatory duty has been imposed has adversely affected his business. He has gone to the extent that such levy of regulatory duty is so harsh that most of the manufactures have shut down their factories. However, at the same time he has contended that he has no cavil with the imposition of regulatory duty by the Central Government by invoking **Section 18(3)** of the Customs Act, 1969, but his only grievance is that the “date of determination of regulatory duty should be synchronized with the date of opening of LETTER OF CREDIT and / or the date of entering into a contract of sale between the importer and the foreign suppliers. In support of his contention he has relied on only two judgments of division benches of this court reported in **PTCL 2011 CL. 747** (M/s.Amtex Limited ..Vs.. Customs Excise and Sales Tax Appellate Tribunal and 4 others) and **2011 PTD 2760** (Saifuddin ..Vs.. Federation of Pakistan through Secretary Revenue Division, Ministry of Finance, Islamabad and 2

others). In rebuttal, Mr. Kashif Nazeer, learned counsel for the Defendant has relied on the case law reported in **PLD 1993 SC 176** (Government of Pakistan and others versus Muhammad Ashraf and others) and **2007 PTD 1005** (Molasses Trading and Export Co. (Pvt.) Limited and others ..Vs.. Government of Pakistan and others). After going through the counter affidavit and arguments of learned counsel for the Defendant, Mr. Haider Waheed counsel for the Plaintiff, in his written synopsis of arguments has also relied on **PTCL 1993 CL. 519** (also reported in **PLD 1993 SC 132**) (Government of Pakistan Vs. M/s. Pesticide Air Services Ltd, and others), and contended that the reliance placed by the Defendant counsel on **PLD 1993 SC 176** by implications stand overruled by the judgment of five member bench reported in **PLD 1993 SC 132**. This contention of the learned counsel would be examined in later part of the judgment. However has not offered any comment on the case law reported in **2007 PTD 1005**.

7. I have thoroughly examined the case law in the light of the facts of this case and the applicability of the regulatory duty on the consignment of the Plaintiffs with reference to the dates of contract entered into by the Plaintiff with their foreign suppliers and the date of opening of their Letter(s) of Credits vis-à-vis the date of impugned notification and **Section 30** of the Customs Act, 1969. However, before discussing the case law relied upon by the parties, I would

refer to the following passage from two judgments of the Honourable Supreme Court in **PLD 1991 1991 SC 884** (Qaiser Brother (Pvt.) Limited versus Government of Pakistan and others) and **1999 SCMR 412** (Collector of Customs versus Ravi Spinning Limited). In these two judgments the Honourable Supreme Court of Pakistan has very elaborately discussed the constitutionality and legality of levy of Regulatory Duty under **section 18(3)** of the Customs Act, 1969 and its collection by the Customs authority under **section 30** *ibid.* The dictum laid down in these judgments is that the authority of Central Government to levy regulatory duty and its collection is absolute, unfettered and free from any objections from the importers in the name of adverse effect on their business by whatever name and under any circumstance. The relevant authoritative observations from the judgment reported in **PLD 1991 SC 884** are at pages 892 and 893, which are as under:-

“.....It may be pointed out that when the Government issues an import licence for the import of certain goods, it does not make any representation that it would not levy any new customs duty or would not 'increase its rate. In fact there is no nexus between issuance of an import licence and law of a new customs duty or increase in its rate. Section 30 of the Act provides the mechanism for determining the value of the imported goods and the rate of customs duty. It is not the case of the petitioners that the respondents are not determining the amount of the customs duty in terms of the above section. **We may also observe that levy of new customs duty or increase in its rate is a normal incident of a business transaction.** The additional burden is passed

on in terms of section 64-A of the Sales of Goods Act, 1930, which reads as follows:-

“64-A. In contracts A sale amount of increased or duty to be added or-deducted.--In the event of any duty of customs or excise or tax on any goods being imposed, increased, decreased or remitted after the making of any contract for the sale of such goods without stipulation as to the payment of duty or tax where duty or tax was not chargeable at the time of the making of the contract, for the sale of such goods duty, paid or tax paid where duty or tax was chargeable at that time,--

(a) if such imposition or increase so takes effect that the duty or tax or increased duty or tax as the case may be, or, any part thereof, is paid, the seller may add so much to the contract price as will be equivalent to the amount paid in respect of such duty or tax or increase of duty or tax and he shall be entitled to be paid and to sue for and recover such addition, and

(b) if such decrease or remission so takes effect that the decreased duty or tax only or no duty or tax, as the case may be, is paid, the buyer may deduct so much from the contract price as will be equivalent to the decrease of duty or tax or remitted duty or tax, and he shall not be liable to pay, or be sued for or in respect of, such deduction.”

It may further be observed that levy of Regulatory duty not only regulates the price structure of the item concerned, but- it also generates additional fund for the public purpose. To put constraint upon the exercise of the power contained in subsection (2) of section 18 of the Act of the nature sought to be pressed into service by the petitioner will not be in the interest of the public. This Court already in the case of Messers Sh. Abdur Rahim, Allah Ditta v. Federation of Pakistan and others (supra) has examined the vires of the Regulatory duty and has held that "what is prohibited by the Legislature is the delegation of its function to make the law but not the authority exercised under and in pursuance of the law itself to another agency." It was also held that levy of the Regulatory duty in terms of subsection (2) of section 18 of the Act was intra vires. **It may be observed that the Legislature has provided the framework for the levy of the Regulatory duty, the extent, the period for**

which it can be levied and the authority which can levy. The levy of the Regulatory duty in question is within the above framework and, therefore, no exception can be taken to it, the impugned judgment of the High Court seems to be in consonance with law. *(Bold font is for emphasis).*

And the relevant observations of the Honourable Supreme Court from judgment reported in **1999 SCMR 412**, at Pages 465-466, are reproduced below:

“The learned counsel for the respondents/private parties further argued that in view of the provisions of Economic Reforms Act, 1992 (Act XII of 1992), **the fiscal incentives granted to them in the shape of exemptions from payment of customs duty could not be taken away by asking them to pay the customs duty in the shape of regulatory duty**. Act XII of 1992 was promulgated on 28-7-1992 and section 3 thereof which gave overriding effect to the provisions of the Act, over all other laws reads as follows:-----

"3. Act to override other laws.---The provisions of this Act shall have effect notwithstanding anything contained in the Foreign Exchange Regulation Act, 1947 (VII of 1947), the **Customs Act, 1969** (IV of 1969), the Income Tax Ordinance, 1979 (XXXI of 1979), or any other law for the time being in force."

Section 6 of Act XII of 1992 provided protection for fiscal incentives for setting up industries, in these terms:-----

"6. Protection of fiscal incentive for setting up of industries.---The fiscal incentives for investment provided by the Government through the statutory orders listed in the Schedule or otherwise notified shall continue in force for the term specified therein and shall not be altered to the disadvantage of the investors."

Section 6, *ibid*, is to be read with Schedule to Act XII of 1992 which mentions Notification No.S.R.O. 1284(1)/90, dated 13-12-1990 issued under section 19 of the Act. It is true that Act XII of 1992 was given overriding effect over all other existing laws including Customs Act and section 6 *ibid*, provided that fiscal incentives given to the investors by way of Notification No.S.R.O. 1284(1)/90, dated 13-12-1990 could not be

withdrawn or altered to the disadvantage of the investors during the period specified therein. **However, this provision did not curtail or take away the power of Federal Government vested under section 18(2) of the Act. The fact that the Government could not withdraw the concession allowed by it under the abovementioned S.R.O., dated 13-12-1990 during the period specified in the notification, did not mean that the Government was precluded from exercising the power under other laws which allowed discretion to the Government to impose additional duties of customs.** In our view, the provision of section 6 of Act XII of 1992 places. no embargo on the exercise of delegated powers by the Government under section 18(2) of the Act, **We, accordingly, hold that in respect of the goods which were exempted from payment of customs duty specified in the 1st Schedule to the Act, either wholly or partially, under all S.R.Os. mentioned above, except S.R.O. No.108(I)/95, dated 12-2-1995, the imposition of regulatory duty by the Government under section 18(2) of the Act was effective and the same could be recovered from the importers at the time of filing of the bill of entry for consumption or on the date of ex-bonding of the goods from the bonded warehouse, if the notification imposing regulatory duty had come into effect on the date of presentation of the bill of entry or ex-bonding of the consignment from the bonded warehouses. . (Bold font is for emphasis)."**

8. Now, I would like to deal with the case law relied upon by the parties on the touchstone of the Supreme Court authoritative findings reproduced above on the subject of discussion in the case in hand. Mr. Haider Waheed, learned counsel for the Plaintiff has relied on the case of M/s. Amtex Limited (PTCL 2011 CL 747) and repeatedly relied on para-14 of the said judgment. In the case of M/s.Amtex Limited the petitioner has claimed benefit of **SRO 554(I)/98** dated **12.6.1998** and the said notification has protected the import of such machinery for which LETTERS OF CREDIT were opened upto **12.6.2004** and import was made upto

30.6.2005 and the petitioner in the cited case has placed order for manufacture and import of the gas generator on **24.6.2003** and his LETTER OF CREDIT was opened on **15.7.2003** and the goods had reached at the port on **24.12.2003** and therefore, in the said case the cutout date for disallowing exemption on import of gas generator included the date of opening of the LETTERS OF CREDIT. The customs authorities by **C.G.O.10** dated **07.10.2003** included the gas generators in the list of local manufacturers and demanded regulatory duty without realizing that the benefit of SRO 554(I)/1998 was available till **30.06.2005**. The petitioner has already completed the exercise within the timeframe given in the aforesaid SRO. In the case in hand the regulatory duty has been imposed under section 18(3) of the Customs Act, 1969 and not by implication through any Customs General Order and the date of determination of rate of import duty under **Section 30** ibid in the impugned notification is not subjected to any other SRO or any extraneous circumstances of the importer. The Plaintiff's case is not on the same footing on which the petitioner, in the case of M/s. Amtex Limited had approached this Court after exhausting the remedy available to the importer under the Customs Act, 1969. The goods imported by the plaintiff herein were not mentioned in any earlier SRO for claiming any other "date for determination of rate of import (regulatory) duty" otherwise than provided in the statute itself i.e. under **Section 30** of the Custom Act,

1969. The plaintiff, in the given facts of the case, cannot have the benefit of any observation in the citation. The other case relied upon by the Plaintiff (**2011 PTD 2760**) is also distinguishable from the facts of the case of the Plaintiff. In this case the issue was altogether different. It relates to the imposition of regulatory duty on **exports** whereas the case in hand is about imposition of duty on **imports**. The manner and method of date of determination of rate of duty on the goods imported into Pakistan are subject to **Section 79** and **104** of the Customs Act, 1969 and date of determination of rate of duty on the goods **exported** is subject to the provisions of **Section 131** of the Customs Act, 1969, therefore the imposition and collection of regulatory duty on **“import”** and **“export”** is different and distinct and no analogy can be drawn for interpreting the provision of one section of the statute with the other section in the same statute by referring to the case law dealing with one particular levy. Lest such an exercise may land us in conflict with the cardinal principle of interpretation of fiscal statutes that it should be applied strictly.

9. Mr. Haider Waheed after going through the case reported in **PLD 1993 SC 176** has attempted to argue that the said judgment has been overruled by a subsequent judgment of five members bench of the Honourable Supreme Court in the case of Government of Pakistan versus M/s. Pesticides Air Services Limited (**PLD 1993 SC 132**). I have

examined both the judgments and I was unable to find any reference to judgment reported at page 176 of the same PLD 1993 in the judgment of at page 132 which was obviously subsequent in time. When confronted with this situation learned counsel for the plaintiff conceded that it has not been overruled in so many words, however, he insisted that judgment of five members bench of Hon'ble Supreme Court reported in **PLD 1993 SC 132** has also examined the same SRO and come to a different conclusion, therefore, this Court should follow the judgment of the five members bench on the ground that it is later in time and also on the ground that out of five members four learned Judges were same. Unfortunately, learned counsel has not been able to say anything further. Regarding the timeframe of the two judgments, the judgment reported in **PLD 1993 SC 176** was delivered on **07th October 1991** and the judgment reported in **PLD 1993 SC 132** was delivered on **09th October 1991**, and arguments were heard on **29.08.2011** and **23.09.1991** respectively. In this judgment the Hon'ble Supreme Court as observed by My lord Mr. Sabihuddin Ahmed (the then Chief Justice of Sindh High Court) in the judgment reported in **2007 PTD 1005**, has accepted the contention of the customs authority that once legislature has inserted Section 31-A in the Customs Act, the impact of the judgment of the Supreme Court reported as **1986 SCMR 1917** (AL-SAMREZ ENTERPRISE versus FEDERATION OF PAKISTAN) has been nullified. The

difference, if at all we call it difference, in two judgments is that in the judgment later in time (9-10-1991) the Hon'ble Supreme Court has examined only the effect of **Section 31-A** of the Customs Act, 1969 on the judgment in Al-Samrez case and concluded in hardly two pages findings by majority rule as of 4 to 1 that Al-Samrez Enterprises stand effaced. This majority view expressed two days later in the case reported in PLD 1993 SC 132 (9-10-1991) was in fact re-affirmation of their own earlier view reported in PLD 1993 SC 176. However, the issue of the imposition of regulatory duty in terms of **Section 18(2)** of the Customs Act, 1969 by the competent authority and its collection under **Section 30** ibid by the Federal Government was not in issue in the later judgment. Therefore, in my humble view, the findings of Hon'ble Supreme Court is PLD 1993 SC 176 that the authority of Federal Government to levy and collect regulatory duty is not subjected to any contract entered into by and between the importers and the foreign suppliers only because at the relevant time when the importers entered into an agreement there was no such notification in field. Therefore, I am not inclined to hold that **PLD 1993 SC 176** stand over-ruled even by implication. Even otherwise the binding effect of the judgments of Supreme Court under **Article 189** of the Constitution of Pakistan, 1973 cannot be done away with by far-fetched implication. The relevant portion from the judgment (PLD 1993 SC 176) at Page-182, Side Note [D],

squarely covers the case of the respondent is reproduced below:-

However, **as already discussed abstention from subjecting a particular item of goods from regulatory duty at a given time, or for that matter at the commencement of the financial year, does not create any vested right in favour of any party who may have entered into contracts on that basis, because the authority to levy the duty is the sovereign power of the State by the device of delegated legislation for imposing a tax.** So far as the argument on promissory estoppel is concerned, there is no question of a representation on the part of the Government, which is an essential element of the principle of promissory estoppel, when particular item is not subjected to duty at the initial stage. In a recent case reported as -Pakistan v. Salahuddin PLD 1991 SC 546 the operation of the doctrine of promissory estoppel is stated to be subject to several limitations, including the one that it cannot be invoked against the legislature or the laws framed by it because the legislature cannot make a representation. If there was any representation extended by the law, it was that under subsection (2) of section 18 of the Act the Government could impose a duty at any time. Another limitation spelt out by the aforesaid decision was that no agency or authority can be held bound by a promise or representation not lawfully extended or given. **It goes without saying that it is difficult to hold that the mere fact that no duty was imposed when the initial notification was issued imposing duty on other items, it amounted to a valid promise or representation on the part of the Government not to invoke its powers of imposition of the duty, if upon consideration of the relevant and pertinent factors, it became necessary to impose the duty subsequently during the same year.** Therefore, reliance on the doctrine of promissory estoppel and on Pakistan v. Salahuddin (supra) is inapt besides the facts in that case being distinguishable. *(Emphasis is provided)*

The above observations of the Hon'ble Supreme Court, in my humble view, are similar to the earlier findings of Supreme Court in the case of Qaiser Brothers (Pvt.) Ltd (PLD 1991 SC

884) and subsequent finding in the case of Raving Spinning (1999 SCMR 412) quoted in para-5 above.

10. The learned counsel for the Plaintiff has not commented or countered the case law of division bench of this Court reported in **2007 PTD 1005**, authored by Honourable Mr. Justice Sabihuddin Ahmed (the then Chief Justice of Sindh High Court), which according to Mr. Haider Waheed has lost its significance in view of the judgment of five members bench reported in **PLD 1993 SC 132**.

While examining the judgment reported in **2007 PTD 1005**, I have noticed that in fact this judgment is arising out of the same Constitutions Petitions, which were allowed by a common order of this Court dated **06.11.1987** and on appeal by the Federation which were partly allowed by order dated **7.10.1991** reported in **PLD 1993 SC 176** and some of the petitions were remanded to this Court to answer the question of constitutionality of such levy with reference to fundamental rights guaranteed to the importer under Article 18 and 23 of the constitution to clarify this position, it is pertinent to reproduce the following passage from the judgment reported in **PLD 1993 SC 176** whereby the Hon'ble Supreme Court has remanded some of the cases to this Court;-

However, we do not consider it appropriate to go into these questions of fact and record, because in the fitness of things they should first be examined by the High Court. From the judgment it appears that if the High Court had not proceeded on the basis of Al-Samrez Enterprise, it would have

examined the question whether the duty was confiscatory in nature. It was therefore, rightly urged by Messrs Fakhruddin G. Ebrahim and J.H. Rahimatoola that the appeals in which they are appearing as counsel may be remanded to the High Court to decide the question whether the impugned notifications were unconstitutional and in violation of fundamental rights because the effect of the notification was confiscatory in nature and in violation of the fundamental rights to conduct any lawful trade or business as enshrined in Articles 18 and 23 of the Constitution.
(Underlining is provided for emphasis)

It appears that M/s. Fakhruddin G. Ebrahim and J.H. Rahimatoola were appearing before the Hon'ble Supreme Court in CP No.D-415, D-431, D-432, D-439, D-491, D-515, D-542 & D-576 of 1986, which were remanded to this Court and after the remand these petitions were dismissed by my lord Mr. Justice Sabihuddin Ahmed through the judgment reported in **2007 PTD 1005**. To correctly appreciate this factual position para-3 & 4 and side note 'B' of 2007 PTD 1005 is relevant and therefore, reproduced below:-

3. The Federal Government preferred an appeal against the aforesaid judgment, which was partly allowed by judgment dated 7th October, 1991, reported as Government of Pakistan v. Muhammad Ashraf and others PLD 1993 SC 176. Their lordships reiterated the, view taken in several other precedents that section 31-A of the Customs Act had effectively wiped out the principle of law declared in Al-Samrez case (1986 SCMR 1917) and that too with retrospective effect except in respect of past and closed transactions. They further held that the petitioners' plea as to absence of power to levy regulatory duty under section 18(2) was untenable inasmuch as abstention from exercising the delegated legislative power to impose such duty under section 18 at a given time or at the commencement of the financial year did not create any vested right in favour of a party having entered into a contract

prior to levy of duty to claim exemption from such duty.

4. Nevertheless, their lordships were inclined to accept a third plea urged on behalf of the petitioners to the effect that the levy in question was constitutionally invalid insofar that it impaired the petitioners fundamental right to carry on a lawful business guaranteed by Article 18 and to hold and acquire property or not to be deprived of property without compensation under Articles 23 and 24 of the Constitution. It was urged that a tax was expropriatory confiscatory in nature or attempted to destroy the business of person's tax, it was liable to be declared constitutionally invalid. Considering that this aspect of the matter had not been considered by the High Court, their lordships remanded the case to this Court to decide the question whether the impugned notifications imposed confiscatory levies in violation of the fundamental rights guaranteed by Articles 18 and 23 of the Constitution. (Underlining is provided for Emphasis)

and the petitions were dismissed in the following terms;

16. For the foregoing reasons, we are clearly of the opinion that the losses stated to have been sustained are incidents of risk, which every businessman takes and the measure of duty levied could in no sense be treated as confiscatory or expropriatory. All the petitions are, accordingly, dismissed with costs.

In view of the judgment reported in 2007 PTD 1005, the observation of Hon'ble Supreme Court reported in PLD 1993 SC 176 still holds the field and observation of Supreme Court from the said judgment quoted in para-8 above alongwith two other Supreme Court judgments also referred in earlier part of the judgment are binding on this Court.

11. I am not impressed by an attempt of Mr. Haider Waheed to declare that the judgment reported in **PLD 1993 SC 176** as over-ruled in view of subsequent judgment reported in **PLD**

1993 SC 132. The reliance placed by the counsel for the plaintiff on the two judgments of this Court was misplaced for the issue in this case. In any case both the cases are the Division Bench judgments of this Court and his reliance on the judgment reported in **PLD 1993 SC 132** was uncalled for whereas Mr. Kashif Nazeer, learned counsel for the defendant has relied on two judgments, one from Honourable Supreme Court **PLD 1993 SC 176** and other from the Division Bench of this Court reported in **2007 PTD 1005**.

12. The upshot of the above discussion is that the only legal issue in this suit is answered in affirmative, therefore, I held that the SRO 18(I)/2015 dated 14.01.2015 is applicable on the shipments of the plaintiff in terms of **Section 30** of the Customs Act, 1969, irrespective of the fact that the plaintiff had entered into contract for purchase of the consignments with the foreign suppliers and opened letter(s) of credit prior to 14.01.2015. Consequently, both the suits are dismissed, with no orders as to cost. In fact court fee of Rs.15000/- on the plaint for decision on a law point by a single judge sitting on the original side instead of getting the same decided by a division bench through a constitution petition in itself is enough cost.

Karachi
Dated:27th January 2015

JUDGE