

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.55114 of 2017

Vortex International Vs Federation of Pakistan, etc

J U D G M E N T

Date of Hearing	25.09.2017.
Petitioner By:	Mian Abdul Bari Rashid, Advocate.
Respondents By:	Mr. Muhammad Anwar Khan, Advocate.

Ayesha A. Malik J: Through this petition, the Petitioner seeks a declaration that SRO 563(I)/2017 dated 01.07.2017 (“**Impugned SRO**”) whereby the SRO 499(I)/2009 dated 30.06.2009 was amended cannot be made applicable on the goods of the Petitioner, which were imported prior to the issuance of Impugned SRO.

2. The relevant facts of the case are that the Petitioner imported goods of old and used auto parts from Japan for which invoice packing list was prepared on 30.05.2017. The goods were shipped for Pakistan vide bill of lading dated 23.05.2017 and reached Karachi Seaport on 29.06.2017 in terms of the Import General Manifest (“**IGM**”). The goods were then transshipped to Lahore Dry Port, Thokar Niaz Baig Lahore on 01.07.2017. The Petitioner requested for examination of the goods, which was done on 05.07.2017 and subsequently the Goods Declaration (“**GD**”) was filed on 08.07.2017 for clearance of the goods. The Petitioner was informed that the entire consignment cannot be released in terms of SRO 499(I)/2009 dated 30.06.2009 on account of amendment made in the Impugned SRO. Hence this Petition.

3. The grievance of the Petitioner is that Impugned SRO is not applicable to the Petitioner as the goods were imported into Pakistan prior to 01.07.2017. Learned counsel argued that the import of goods will be taken from the time when the goods enter the territorial waters of Pakistan.

Learned counsel further argued that the IGM clearly shows that the goods were imported into Pakistan on 29.06.2017 whereas the Impugned SRO was issued on 01.07.2017. Learned counsel argued that the GD is made for the purposes of determining the amount of duty payable under the Customs Act, 1969 (“Act”) and the rate at which the duty is payable. Therefore, the Impugned SRO cannot be made applicable on the goods imported by the Petitioner.

4. Report and parawise comments have been filed by the Respondents. It is their case that the relevant date for determining the applicability of the Impugned SRO is the date when the GD was filed being 08.07.2017. Learned counsel explained that used goods were imported by the Petitioner. After confiscation of the goods under Section 181 of the Act it was found that eight used front/half cut show fitted with engines, dash boards and other accessories could not be redeemed on payment of redemption fine in lieu of confiscation under Section 181 of the Act on account of their exclusion from clause (e) of Serial No.2 of the table in SRO 499(I)/2009 dated 13.06.2009, which was amended by the Impugned SRO on 01.07.2017. Learned counsel further argued that since the Federal Government has prohibited the import of chassis of used automotive vehicles cut into minimum of two pieces, eight goods of the Petitioner cannot be released.

5. Heard and record perused.

6. The basic issue before the Court is whether the goods of the Petitioner being eight used front/half cut show fitted with engines, dash boards and other accessories can be released under SRO 499(I)/2009 dated 13.06.2009. Or whether the Impugned SRO is applicable on the stated goods imported by the Petitioner. The record shows that the Petitioner imported old and used auto parts having a total US\$ 3,904.00. The goods were imported from Yokohama Japan to Karachi through one container by sea. The goods arrived at Seaport Karachi on 29.06.2017 as per the IGM, which is evident from GD filed by the Petitioner. It is noted that the date of IGM is not disputed by the Respondents. As per the Act an IGM is issued to the carrier when the ship is anchored at an allocated port. The IGM provides details of the goods aboard the vessel containing information relevant for the custom

authority such as name of the sender, name of the receiver and the description of the shipped goods. Therefore, once the goods arrive within the territorial waters of Pakistan, they become chargeable to custom duty and thereafter, the importer has to declare the goods for the purposes of levy of custom duty. Section 18 of the Act provides that custom's duty shall be levied at such rate as prescribed in the First Schedule on goods imported into Pakistan. The dispute between the parties is with respect to the application of SRO 499(I)/2009 dated 13.06.2009 in its original form and not through its amended form vide the Impugned SRO. SRO 499(I)/2009 dated 13.06.2009 provides that in terms of Section 181 of the Act, Federal Board of Revenue ("FBR") can require the importer to pay a fine in lieu of confiscated goods named within the SRO. Accordingly in clause 2 (e) of the SRO auto parts imported in used or second hand condition can be released on payment of redemption fine of 20% on custom value. This SRO was amended through Impugned SRO in which the clause 2 (e) was amended such that it excluded front cabin/half cut HTV/LTV/Cars, with or without chassis number such that these parts could not be redeemed on payment of redemption fine. Hence the dispute is about the chargeability of the goods imported. The record shows that the Petitioner on the import of the goods, invoked Section 181 of the Act which prescribes for the option to pay fine in lieu of confiscated goods. The imported goods were redeemed by the Petitioner on payment of redemption fine at the rate of 20% of the customs value along with payment of duty and taxes applicable under the law. A penalty of Rs,10,000/- was also imposed on the Petitioner which was duly paid. The dispute before this Court is limited to the import of eight used parts which were not redeemed on payment of redemption fine in lieu of confiscation, on account of their exclusion from SRO 499(I)/2009 dated 13.06.2009 vide the Impugned SRO.

7. The question before the Court is whether the Impugned SRO is applicable to the goods of the Petitioner? The relevant Section of the Act is Section 18 which provides that customs duty shall be levied at the prescribed rates on goods being imported into Pakistan. In terms of this provision the liability to pay customs duty shall accrue the moment the goods enter into

the territory of Pakistan. This means that the taxable event is the import of the goods which has nothing to do with ascertaining the value of the imported goods under Section 25 of the Act or determination of the rate of import duty under Section 30 of the Act. Admittedly, in this case the goods were imported into Pakistan prior to the issuance of the Impugned SRO on 01.07.2017 which is evident from the date of IGM which is not disputed by the Respondents and shows that the goods of the Petitioner entered into the territorial waters of Pakistan at the allocated port in Karachi on 29.06.2017. As per the record the goods were shipped for Karachi in May 2017 from Japan and the packing list and invoice was issued on 30.05.2017. Therefore, when the goods were shipped for Karachi the applicable SRO was SRO 499(I)/2009 dated 13.06.2009. The goods entered into the territorial waters of Pakistan on 29.06.2017 on which date the import was still permissible as per SRO 499(I)/2009 dated 13.06.2009. For the purposes of determining which SRO is applicable, the relevant date will be the date of import that is the date when the goods enter into the territorial waters of Pakistan and not the date of the Goods Declaration. In *“East and West Steamship Co. v. The Collector of Customs and others”* (PLD 1976 SC 618), the august Supreme Court of Pakistan held that *the word “import” carried the meaning of “bringing in” or “to bear or carry into” and an imported articles was one which was brought or carried into a country form abroad and it did not necessarily entail the entire process of filing bill of entry, discharging the goods from the vessel at a wharf, the assessment of the value of the goods and the duty payable on them. No sooner, therefore, the vessel touches a Pakistan Port, the goods can be stated to have been imported.* Section 43 of the Act provides that the Import Manifest is issued to signify that the vessel has arrived at the designated port which signifies entering into the territory of Pakistan. Furthermore, the Bill of Lading was issued on 23.05.2017 being prior to the issuance of the Impugned SRO. Therefore, the Respondents are bound to treat the goods of the Petitioner under SRO 499(I)/2009 dated 13.06.2009.

8. Under the circumstances, this petition is **allowed** and the Respondents are directed to release the goods of the Petitioner in terms of SRO 499(I)/2009 dated 13.06.2009.

(AYESHA A.MALIK)
JUDGE

Approved for reporting.

JUDGE

Anwaar*