LAHORE HIGH COURT

Writ Petition No. 21513 of 2009, heard on 30th May, 2013, Date of hearing: 30th May, 2013

Before Umar Ata Bandial, C J

Mian Abdul Ghaffar for Petitioner. Irtaza, Ali Naqvi for Respondents

Messrs ALPHA CHEMICALS (PVT) LTD. through Manager
vs
FEDERATION OF PAKISTAN and others

ORDER

UMAR ATABANDIAL, C.J.---The petitioner imported platinum sponge/powder vide G.D, No. 27109 dated 12-12-2008, G.D. No. 52557 dated 1645-2009 and G.D. No.411 dated 3-7-2009. On the said G.Ds, the petitioner claimed exemption from payment of the statutory rate of customs duty at 5% advalorem on the basis of S.R.O 567(I)/2006 ("SRO") dated 5-6-2006. There are three Tables in the said notification classifying imported items and their respective rates of exemption. Table-I of the notification mentions "platinum" at item No.26-E of S.R.0 and allows total exemption from customs duty on its import. The petitioner's goods were released provisionally under section 81(1) of the Customs Act, 1969 ("Act") vide order dated 16-12-2008. A clarification from FBR was sought which by letter dated 11-9-2009 left the matter of exemption to the decision by the Collectorate on the basis that the petitioner belongs to the pharmaceutical industry. Accordingly, the final assessment order dated 15-9-2009 passed under section 81(2) of the Act denies the said exemption to the petitioner."

2. Learned counsel for the petitioner submits that no appeal/remedy under the Act is available against an order passed under section 81(2) thereof. Such an order is the final determination of assessment of duty with respect to' goods that have been provisionally released under section 81(1) of the Act. It is distinct from a final assessment order passed under section 79 or 80 of the Act against which an appeal/ remedy is available,

3. Learned counsel for the respondent has not been able to show any statutory remedy in respect of an order under Section 81(2) of the Act, As such in the absence of a statutory remedy, the present resort to constitutional jurisdiction of this Court is justifiable.

4. On merits, it is observed that the final assessment order dated 15-9-2009 that is based upon the opinion of the FBR dated 11-9-2009 is insistent that since the petitioner is at pharmaceutical company, therefore, it is entitled only to those exemptions from customs duty on imported goods as are listed in Table-III of S.R.O. As such the petitioner is not entitled to the general exemption on imported 'platinum contained in Table-I of the S.R.O.

5. The S.R.O. has been perused carefully. Whereas specific exemptions to 'the pharmaceutical industry are provided in Table-III thereof, nevertheless, there is no restriction on the claim of exemption by an importer under Table-I of the S.R.O. It so happens that platinum is not an exempted item under Table-III of the S.R.O. whilst it is exempted item under Table-I thereof. Therefore, although there is no special exemption for the pharmaceutical industry in respect of imported platinum, there is a general exemption regarding the said item for all importers under Table-I of the said notification.

6. The language of the S.R.O. does not place any restriction upon the persons entitled to exemption under Table-I thereof. Therefore, even though the petitioner belongs to the pharmaceutical industry, there is nothing to deprive it of the benefit of exemption under Table-I of the S.R.O. Consequently, the impugned order dated l59-2009 is based on a misreading of the S.R.O. and un-necessarily deprives the petitioner of a righnexemption available to all imports under Table-I of the same.

7. This petition is allowed in the foregoing terms.

.-
.-.-.