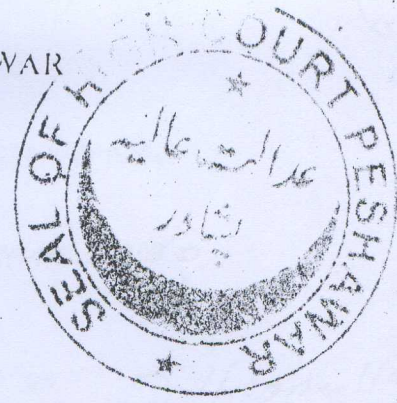


IN THE PESHAWAR HIGH COURT PESHAWAR



Writ Petition No. 2064/2010

Allied Bank Limited

A Banking Company registered and incorporated under the Companies Ordinance, 1984; having its registered Head Office at 8 Egerton Road, Lahore; and branches all over the country, including the one at GT Road, Peshawar (reckoned as GT Road, Branch Peshawar); through Manager of GT Road Branch.

.....PETITIONER

VERSUS

1. Federation of Pakistan
Through Collectorate of Customs
Customs House, Jamrud Road, Peshawar
2. The Collector Customs
Customs House,
Jamrud Road, Peshawar
3. Deputy Collector Customs
Bank Guarantee Cell
Customs House, Jamrud Road Peshawar
4. The Superintendent Customs
Customs House,
Jamrud Road, Peshawar
5. M/S Jauhar Plast Polymer Pvt. Limited
Through its Chief Executive
Gadoon Amazai, Swabi

.....RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

ATTESTED
EXAMINER
Peshawar High Court

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

Writ Petition No. 2064 of 2010

JUDGMENT

Date of hearing..... 22-9-2010

Appellant/Petitioner (s) (A.B.L) M. Q. Jawad / Sonali
Qureshi Advocate

Respondent (s) (Federation of Pak. i) M. Barrister
S. Muddasar Amir, Advocate

EJAZ AFZAL KHAN, C. J.- Petitioner through the instant writ petition has asked for the issuance of an appropriate writ declaring that the petitioner bank is not bound to make payment to respondents Nos.1 and 4 under the Bank guarantees after the expiration of the time stipulated therein and that the recovery proceedings initiated by them being illegal, mala-fide, without jurisdiction are of no effect.

2. Learned counsel appearing on behalf of the petitioner contended that though the agreement cannot curtail any period prescribed by law for doing a thing but it can have the effect of extinguishing a right if not enforced within the time stipulated therein. The learned counsel to support his contention by distinguishing the judgment of this Court placed reliance on the

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cases of Nathu Mal-Ram Das-Vs- B.D. Ram Sarup & Co. and others (AIR 1932 Lahore 169 and National Insurance Co. Ltd-v-Sujir Ganesh Nayak & Co. and another (AIR 1997 Supreme Court 2049).

3. As against that, the learned counsel appearing on behalf of the respondents submitted that this case being covered on all fours by the judgment rendered in the case of Messrs Universal Insurance Co. Ltd.-Vs- Collector, Customs, Central Excise & Sales Tax, Peshawar and 5 others (2005 PTD Peshawar 2335) merits alike treatment and that there is nothing in the case in hand as could distinguish it from the one cited above.

4. We have gone through the record carefully and considered the submissions of the learned counsel for the parties.

5. The facts leading to the institution of this case are that pursuant to an order dated 26.12.1992 of this Court a stay order was issued on furnishing bank guarantees in respect of the amount to be recovered from respondent No.5. It

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2005 PTD Peshawar 2335

was, however, stipulated in the agreement that bank guarantee can be enforced at any time after the release of goods at the expiry of the validity period of stay order in terms of Article 199 (4) (A) of the Constitution of Islamic Republic of Pakistan, 1973 or the decision of the Court whichever is earlier. It was also agreed upon that the petitioner would be liable to pay the amount of guarantee unconditionally within 7 days of a demand in writing and that the guarantee is valid up to a date mentioned therein. Now the question emerging for determination of this Court is whether the bank guarantee which primarily involves duties and taxes can be en-cashed after the period stipulated therein. Our answer to the question would be a simple yes on the strength of the judgment rendered in the case of Messrs Universal Insurance Co. Ltd.-Vs- Collector, Customs, Central Excise & Sales Tax, Peshawar and 5 others (2005 PTD Peshawar 2335). The relevant paragraph merits reference which reads as under:-

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"8. Before we discuss the argument addressed on the strength of the

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judgment rendered in the cases of Quetta Textile Mills Ltd. V. Federation of Pakistan and 2 others (1999 CLC 755) and Emirate Bank International v. Messrs United Group of Companies (1998 CLC 743), it will not be out of place to know as to what an insurance guarantee is and how and when can it be enforced. It, as a matter of fact, is a contract of guarantee in terms of section 126 of the Contract Act and as such is subject to all the incidents a contract can possibly be under the Act. As it is not open to the parties to any agreement, to contract themselves out of a provision of law under section 28 of the Act so would it be for the parties to a guarantee. As any such clause in a contract would be void so would it be in a guarantee. When an insurance guarantee is a contract to all intents and purposes, the stipulation in the guarantees that the petitioner shall be discharged of all the liabilities created there-under if not en-cashed or enforced within one week after their expiry would be void within the terms of section 28 of the Contract Act in as much as it restricts or rules out the application of section 202 of

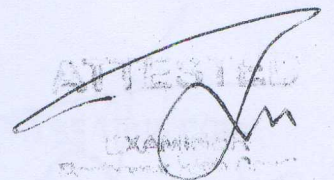
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the Customs Act, 1969. The more so when it is also stipulated in the guarantees that their amount shall be recoverable as arrears of land revenue. Therefore, neither the argument nor the judgments cited in its support will have any relevance. Though section 28 itself of the Contract Act is quite clear on the proposition, all the same, the cases of Nathus Mal-Ram Das v. D.B. Ram Sarub and Co. and others (AIR 1932 Lahore 169) and Islamic Republic of Pakistan through Defence Secretary, Government of Pakistan, Karachi v. Nazar Din Khattak and Sons (PLD 1969 Peshawar 313) may will be referred as precedents in this behalf."

6. A look at the paragraph quoted above would show that the case before us is not distinguishable from the one cited above on any account, therefore, the argument that an agreement extinguishing a right, if not enforced, within the time stipulated therefor, cannot be hit by section 28 of the Contract Act, despite being ingenious and artful, has not moved us to the least, when what is sought to be extinguished, is not a right of an

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relinquished. It, indeed, is a right of the State to recover taxes and duties for which no period of limitation has been prescribed by any law for the time being in force. It is also not a right of a nature, which can be waived, forgone or relinquished with the consent, connivance, complicity or omission of an Officer representing the Department. Such duties and taxes remain recoverable as arrears of land revenue, so long as, the person on the other end or his legal representative owns or possesses anything to discharge such liability. The cases of Nathu Mal-Ram Das-Vs- B.D. Ram Sarup & Co. and others and National Insurance Co. Ltd-v-Sujir Ganesh Nayak & Co. and another (Supra) referred to by the learned counsel for the petitioner being distinguishable, have no perceptible relevance to the case in hand.

7. For the reasons discussed above, this writ petition being without substance is dismissed.

Office
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Dated: 22.9.2010

Sd/- Ejaz Afzal Khan
Sd/- Saeed Shaukat Hayat

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Mudal Khasat
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