

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

C.P. No. D-4353 of 2025

[M/s. Hooraa Pharma (Pvt) Ltd. versus Pakistan & others]

Petitioner : M/s. Hooraa Pharma (Pvt) Ltd.,
through Dr. Muhammad Farogh
Naseem, Advocate alongwith M/s.
Shahrukh Farogh Naseem and
Barrister Sagar Ladhani, Advocates.

Respondents 1-3 : Pakistan through Ministry of
Finance, Secretary Revenue and
Chairman Federal Board of Revenue
through Mr. Muhammad Akbar
Khan, Assistant Attorney General
alongwith Mr. Haris Ansari, Chief
FBR.

Respondents 4-6 : The Collector of Customs (SAPT)
and two others through Mr. Agha
Shahid Majeed Khan, Advocate
alongwith M/s. Muhammad Zakir,
Amir Ali Shaikh, Advocates and Mr.
Nayyar Shafiq, Collector Customs,
Mr. Tariq Aziz and Arsalan,
Assistant Collectors of Customs
Appraisalment (SAPT).

Respondent 7 : M/s. South Asia Pakistan Terminal
through Mr. Rizwan Saeed,
Advocate along with Ms. Saadia
Sheeraz, Collector of Customs,
Airport.

Respondent 8 : Nemo.

Date of hearing : 08-09-2025

Date of decision : 22-09-2025

J U D G M E N T

Adnan Iqbal Chaudhry J. - The Petitioner is an importer and distributor of 'sutures', which is a thread used to stitch a wound or surgical incision and is accompanied by a needle. It is aggrieved of

acts/orders of the Customs and FBR in respect of sutures imported by it. The petition is in the following facts and background.

Background:

2. In 2024, consignments of sutures imported by the Petitioner were classified and cleared under PCT¹ 9938 which describes goods as *“disposables, as are not manufactured locally”* for specified medical/surgical procedures and specified medical equipment/products. Customs duty on goods falling under PCT 9938 was 0% and the goods were also exempt from sales tax by virtue of Entry No. 112 of Table-1 of the Sixth Schedule to the Sales Tax Act, 1990.

3. In December 2024, the DG I&I² placed a hold on some of the Petitioner's consignments, contending that suture was expressly classified under PCT 3006.1090 and not exempt from sales tax; that the Petitioner had interpolated invoices to add the description of 'disposables' to the goods so as to bring them under PCT 9938 and therefore obtained inadmissible exemption from sales tax, hence fiscal fraud. The Petitioner's explanation was that its invoices had been interpolated by a competitor by hacking its Customs ID to falsely implicate the Petitioner, for which it had made complaints to the AFU and the FIA. It was, however, submitted by the Petitioner that regardless of the alleged interpolation, suture was in fact disposable and was rightly cleared under PCT 9938. On that aspect, the Collector of Customs (Airport) supported the Petitioner in its reply to the DG I&I, stating that suture was for single-use and therefore classifiable as disposable. The DG I&I was not convinced. Therefore, the Collector wrote to the FBR to endorse the Collectorate's point of view. The FBR sought a clarification from the DRAP³, which stated that suture was a 'medical device' intended for single-use whereafter it was to be disposed of. By letter dated 03.07.2025 the FBR took the view that since the DRAP had classified

¹ Pakistan Customs Tariff.

² Directorate of Intelligence & Investigation-Customs.

³ Drug Regulatory Authority of Pakistan.

suture as a 'medical device' and not as 'disposable', the allegation of interpolating invoices "*needs to be probed for necessary legal action against the importer and customs agent.*" Aggrieved with FBR's interference in the matter, the Petitioner made a complaint to the Federal Tax Ombudsman. That complaint was dismissed for want of jurisdiction *albeit* a representation is made to the President. Meantime, consignments of the Petitioner placed on hold were released by the Customs upon Court orders when the Petitioner secured the disputed sales tax with the Customs by bank guarantees. Thereafter, notice by the Customs to encash those bank guarantees was also stayed by this Court in C.P. No. D-3915/2025.

Present controversy:

4. Since clearance of sutures as 'disposables' under PCT 9938 had come under issue, the next consignment *i.e.* the present consignment of sutures imported *vide* GD⁴ dated 01.08.2025 was classified by the Petitioner under PCT 3006.1090 which expressly includes suture. Customs duty on goods under PCT 3006.1090 is also 0%. However, as against the levy of sales tax, the Petitioner claimed that the import attracted the reduced rate of 1% under Entry No. 81 of Table-1 of the Eighth Schedule to the Sales Tax Act, applicable to "*Substances registered as drugs under the Drugs Act, 1976*", and whereas section 3(g)(ii) of the Drugs Act defines 'drug' to include suture. However, *vide* assessment order dated 27.08.2025, the Customs did not agree. The assessing officer observed that the clearance certificate issued by the DRAP to the Petitioner for the import had classified suture as a 'medical device' under the Medical Devices Rules, 2017, not as a 'drug' under the Drugs Act, 1976, and therefore the reduced rate of sales tax under Entry No. 81 was not applicable to sutures.

5. In the aforesaid circumstances, the Petitioner prays for writs *inter alia* to declare that FBR's letter dated 03.07.2025 observing that suture was a 'medical device' and not a 'disposable', is without

⁴ Goods Declaration.

jurisdiction and liable to be set-aside; to declare that sutures imported by the Petitioner as per GD dated 01.08.2025 are 'disposables' and qualify to be cleared under PCT 9938; or, in the alternative, declare that sutures imported as per GD dated 01.08.2025 attract the reduced rate of sales tax under Entry No.81 of Table-1 of the Eighth Schedule to the Sales Tax Act, and that the Customs be directed to clear the goods accordingly.

Submissions by counsel:

6. Before filing the petition, the Petitioner did not avail the remedy of appeal against the Customs assessment order dated 27.08.2025 which had denied the reduced rate of sales tax under Entry No.81. Learned counsel for the Petitioner had then submitted that until FBR's letter dated 03.07.2025 was in field, observing that suture was a 'medical device' and not 'disposable', the remedy of appeal before the Collector of Customs (Appeals) was illusory. He further submitted that there was no need of exhausting remedies under the Customs Act when a Division Bench of this Court had already held in *Popular International (Pvt.) Ltd. v. Pakistan* (2024 PTD 1121) that as long as suture is defined as a 'drug' under the Drugs Act 1976, the benefit of Entry No.81 of Table-1 of the Eighth Schedule to the Sales Tax Act could not be denied to such imports. Nevertheless, without prejudice to its stance, the Petitioner did file an appeal against the assessment order dated 27.08.2025 before the Collector of Customs (Appeals), which is pending.

7. For the Respondents, it was submitted that FBR's letter dated 03.07.2025 was in respect of previous consignments imported by the Petitioner in 2024 under PCT 9938 and has nothing to do with the present consignment classified by the Petitioner itself under PCT 3006.1090 *vide* GD dated 01.08.2025; that to allow the reduced rate of sales tax under Entry No.81, the Customs could only go by the certificate issued by the DRAP with regards to the imported goods; that such certificate had categorized suture as a 'medical device' under the Medical Devices Rules, 2017 and not a 'drug' under the

Drugs Act, 1976; therefore the requirement of Entry No. 81 was not fulfilled.

Opinion of the Court:

8. Customs duty, both on goods classified as ‘disposables’ under PCT 9938 and on goods otherwise classified under PCT 3006.1090, is presently 0%. Therefore, for the purposes of customs duty at least, it does not matter whether sutures can be described as ‘disposables’ or not. As we understand, the Petitioner nonetheless seeks such determination to see if it can claim an exemption from sales tax entirely under Entry No. 112 of Table-1 of the Sixth Schedule to the Sales Tax Act which seems to apply to ‘disposables’ imported under PCT 9938. However, in given circumstances we are not inclined to embark on such a determination when sutures in the subject GD dated 01.08.2025 were not classified by the Petitioner itself under PCT 9938 but under PCT 3006.1090, and upon which an assessment order under section 80 of the Customs Act has already been passed. Admittedly, the applicability of PCT 9938 to sutures is subject matter of other proceedings pending, including C.P. No. D-3915/2025, and therefore any observation by us here may unnecessarily interfere with those proceedings. Even if the Petitioner was constrained by previous events to classify the present import under PCT 3006.1090 instead of PCT 9938 as submitted by the Petitioner’s counsel, we are of the view that it had nonetheless elected to do so.

9. The question that remains is whether the Customs assessment order dated 27.08.2025 warrants interference in constitutional jurisdiction notwithstanding the appeal under the Customs Act. We are inclined to examine such order since the Petitioner’s counsel made a point that given FBR’s observations in the impugned letter dated 03.07.2025 it is difficult for the Customs hierarchy to take a different view; so also, to examine whether the impugned assessment order goes against the High Court’s decision in *Popular International (Pvt.) Ltd. v. Pakistan* (2024 PTD 1121).

10. To recap, the impugned assessment order denies the Petitioner the reduced rate of sales tax provided by Entry No. 81 of Table-1 of the Eighth Schedule to the Sales Tax Act because said Entry applies to “*Substances registered as drugs under the Drugs Act, 1976*”, whereas the certificate issued by the DRAP to the Petitioner categorizes the sutures imported by it as a ‘medical device’ under the Medical Devices Rules, 2017 framed under the DRAP Act, 2012⁵.

11. Section 3(g)(ii) of the Drugs Act, 1976 included certain medical devices such as suture within the definition of ‘drug’. Initially, even the DRAP Act, 2012 had included sutures within the definition of ‘drug’ in Schedule-I to said Act. However, since the DRAP Act had set out to classify medical devices and drugs separately, a separate regulatory framework for medical devices was introduced by the DRAP under the Medical Devices Rules, 2017 notified on 16.01.2018. By SRO 824(I)/2018 dated 26.06.2018, Schedule-I to the DRAP Act was amended to exclude sutures from the definition of ‘drug’. Thereafter, by way of Schedule-E, added to the Medical Devices Rules by SRO 526(I)/2021 dated 30.04.2021, sutures were included by the DRAP in the regime of Medical Devices Rules. Such inclusion was challenged in *Popular International* when the Customs denied an importer of sutures the reduced rate of sales tax in Entry No. 81 by citing the Medical Devices Rules even though suture was registered at the time as a drug under the Drugs Act. The High Court held that so long as suture was included in the definition of ‘drug’ in section 3(g)(ii) of the Drugs Act, the Medical Devices Rules cannot be relied upon by the Customs to deny the benefit of Entry No.81.

12. Learned counsel for the Petitioner is correct that notwithstanding the inclusion of suture as a medical device in the Medical Devices Rules under the DRAP Act, section 3(g)(ii) of the Drugs Act continues to include suture in the definition of ‘drug’, and that, section 32 of the DRAP Act stipulates that its provisions are in addition to and not in derogation of the Drugs Act. However, that is besides the point. The fact of the matter is that the reduced

⁵ Drug Regulatory Authority of Pakistan Act, 2012.

rate of sales tax in Entry No.81 of Table-1 of the Eighth Schedule to the Sales Tax Act is not for all drugs as defined in the Drugs Act, but only for those that are 'registered' as drugs 'under the Drugs Act'.

13. Registration of drugs under the Drugs Act is by a Registration Board constituted by the Federal Government under section 7 thereof. The registration certificate is in a prescribed form, with the name of the importer or the manufacturer's agent, valid for 5 years, and is issued in line with the procedure prescribed in Chapter 3 of the Drugs (Licensing, Registration and Advertising) Rules 1976. On the other hand, the certificate produced by the Petitioner before the Customs for clearing the present consignment is not a certificate of registration of sutures as a drug under the Drugs Act. It is a clearance certificate issued by the Medical Devices Board of the DRAP under the Medical Devices Rules, thus categorizing suture as a medical device. In *Popular Industries*, the facts were the other way *i.e.* the importer had been issued a registration certificate by the Registration Board under section 7 of the Drugs Act categorizing sutures as a drug, and that is why the High Court held that the Medical Devices Rules were no impediment to Entry No.81. To verify this fact, we have also examined the case file of *Popular Industries*. Therefore, the case of *Popular Industries* does not help the Petitioner.

14. DRAP is not a party to the petition and no issue has been taken by the Petitioner with the certificate issued to it by the DRAP whereby suture is categorized as a medical device and not a drug. The petition is also not against the Registration Board constituted under the Drugs Act for any refusal to register suture as a drug under the Drugs Act. Even if the Registration Board no longer registers suture as a drug, that has nothing to do with the Customs. The Customs can only extend the reduced rate of sales tax under Entry No. 81 if the imported item adheres to the condition stipulated therein *i.e.* it is registered as a drug under the Drugs Act. *Ex facie*, an item certified or registered as a medical device under the Medical Devices Rules does not fit that description.

15. Entry No. 81 had been inserted in Table-1 of the Eighth Schedule to the Sales Tax Act much after the Medical Devices Rules, 2017. If the legislature had intended to extend that Entry to medical devices as well, it would have done so expressly. It is then settled law that generally grants or concessions in the nature of exemption from payment of tax are to be given a rigid interpretation against the tax-payer and in favour of the taxing power. Reliance is placed on *Bisvil Spinners Ltd. v. Superintendent Central Excise and Land Customs Circle Sheikhpura* (PLD 1988 SC 370); *Pakistan Machine Tool Factory (Pvt.) Ltd. v. Commissioner of Sales* (2006 SCMR 1577); *Hashwani Hotels Ltd. v. Government of Pakistan* (2007 SCMR 1131); and *Collector of Customs FBR v. Fitter Pakistan (Pvt.) Ltd.* (2020 SCMR 1157).

16. To conclude, the impugned assessment order dated 27.08.2025 is not contrary to the case of *Popular International*. Therefore, FBR's observations in the letter dated 03.07.2025 are inconsequential. That being so, there is no cause to interfere in proceedings taken by the Customs. The petition is dismissed.

JUDGE

JUDGE

Karachi:
Dated: 22-09-2025

*SHUIBAN/SADAM