

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Suit No. 230 of 2017

Date	Order with signature of Judge
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Present

Mr. Justice Muhammad Ali Mazhar.

Hazara Efficient Gas.....Plaintiff

Versus

Pakistan, through Secretary Revenue
& Ex Officio Chairman, Federal Board of Revenue,
& othersDefendants

Date of hearing 19.04.2017

Mr. Hussain Ali Almani advocate for the plaintiff.

Dr. Shahnawaz advocate for the defendant No. 2 and 3.

Ms. Fauzia Rasheed advocate holding brief for Mr. Suhail
Muzaffar advocate for defendant No.4.

Muhammad Ali Mazhar, J: Learned counsel for the plaintiff pointed out that against the order of refusal to allow reduced rate of withholding on import for quota allocation, the plaintiff has filed a review application to the Chief Commissioner, Large Tax Payer Unit, Karachi. In the impugned order, the Commissioner Inland Revenue, Zone-IV rejected the application after re-examination and observed that the clause 72B does not apply as the plaintiff is not industrial undertaking under Section 2 (29 (c) of the Income Tax Ordinance, 2001. It was further observed that plaintiff is not manufacturer as defined in Section 153(7). The copy of order

passed by Commissioner Inland Revenue, Zone-IV is available at page 171 of the court file. The Review application before the Chief Commissioner was filed on 24.01.2017 which is still pending without any progress. Learned counsel also pointed out order dated 08.03.2017 passed in the case of plaintiff by the Commissioner Inland Revenue (Appeals-I), Karachi for the tax year 2016 and he specifically pointed out the last paragraph in which the reference of the learned Division Bench of the Appellate Tribunal Inland Revenue, Lahore in ITA No. 1130/LB/2016 dated 13.06.2016 was given in which the learned Tribunal in the identical case of M/s. Pyramid Gas (Pvt.) Ltd declared the applicant industrial undertaking in the similar facts and circumstances of the case and finally it was ordered that the status of industrial undertaking be accepted by the department seeking guidelines from the judgment of ATIR, Lahore.

2. Since review application is already pending let it be decided by the defendant No.2 in accordance with law. Learned counsel submits till the review application is decided some interim arrangement may be made in the order for release of consignment of the plaintiff. Earlier this court passed the order that the consignment be released on furnishing bank guarantee to the satisfaction of this court. Dr. Shahnawaz, learned counsel for the defendant No. 2 and 3 submits that the bank guarantee for release of consignment may be ordered to be furnished with the concerned Collectorate of Custom Department. By consent, this suit is

disposed of along with pending applications in the following terms:-

- (i). The defendant No.2 shall decide the review application within one (01) month after providing ample opportunity of hearing to the plaintiff till such time the review application is decided the consignment, if any, may be released by furnishing bank guarantee to the satisfaction of concerned Collectorate of Custom Department equivalent to the amount of advance tax.
- (ii). The interim arrangement of release of consignment in this order shall cease to have the effect immediately on decision on the review application and in case of any adverse order is passed against the plaintiff, five (05) working days' time will be available to the plaintiff to seek appropriate remedy in accordance with law and till such the bank guarantee will not be encashed by the department.

JUDGE