

ORDER SHEET

**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Suit No.1979 of 2016**

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DATE ORDER WITH SIGNATURE OF JUDGE

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**Plaintiffs:** **Indus Lyallpur Ltd. & another**  
**Through Mr. Ameen M. Bandukda,**  
**Advocate.**

**Defendant No.1:** **Federation of Pakistan Through**  
**Mr. Umar Zad Gul Kakar, DAG.**

**Defendant Nso.2 & 4: Through Ms. Masooda Siraj, Advocate.**

For hearing of CMA No.12791/2016  
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**Date of Hearing:** **25.10.2018**

**Date of Order:** **30.11.2018**

**ORDER**

**Muhammad Junaid Ghaffar J.** This is a Suit for Declaration  
& Permanent Injunction and the Plaintiff has sought the following  
relief(s):-

- I. Declare that S.R.O 1125(I)/2011 dated 31<sup>st</sup> December, 2011 (as amended from time to time) applies to registered manufacturers of textile sector including the Plaintiffs engaged in process of spinning of raw cotton/ginned cotton into yarn.
- II. Declare that the Defendant's refusal to extend the benefit of S.R.O. 1125(I)/2011 dated 31<sup>st</sup> December, 2011 (as amended from time to time) to spinners on import of raw cotton / ginned cotton is arbitrary, unlawful, unreasonable and in violation of the provisions of the Sales Tax Act, 1990.
- III. Direct the Defendants and all persons, entities and authorities acting under the Defendants to allow the Plaintiffs import of raw cotton (as well as any other goods mentioned in S.R.O. 1125(I)/2011) at zero per cent sales tax in accordance with S.R.O. 1125(I)/2011 dated 31<sup>st</sup> December, 2011 as amended from time to time.
- IV. Prohibit and restrain the Defendant and all person, entities and authorities acting under the Defendants from withholding the

benefit of S.R.O. 1125(I)/2011 dated 31<sup>st</sup> December, 2011 (as amended from time to time) from the Plaintiffs on import of raw cotton / ginned cotton at zero percent sales tax in any manner whatsoever.

- V. Grant such further relief as this Hon'ble Court may deem appropriate.

2. Learned Counsel for the plaintiff has contended that Plaintiff is entitled for zero rating of Sales Tax in terms of SRO 1125(I)/2011 dated 31.12.2011 as amended from time to time, whereas, the controversy as raised in this case already stands decided by judgment dated 15.9.2016 of this Court in the case of Umar Spinning Mills Limited v Federation of Pakistan & Others in Suit No.1763 of 2016, which was though impugned successfully in High Court Appeal; however, the order passed in High Court Appeal stands set-aside by the Hon'ble Supreme Court in the case reported as **Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444)**. Therefore, this Suit may be decreed in the same terms.

3. On the other hand, learned Counsel for the Department has contended that the judgment and decree in the case of Umar Spinning Mills Limited has been set aside by a learned Division Bench of this Court in the case reported as **The Collector, Model Customs Collectorate and 2 others V. Messrs Naveena Industries Ltd. and others (2017 P T D 2123)**, whereas, the judgment of the Hon'ble Supreme Court in the case of **Searle IV Solution (Pvt.) Ltd (supra)** is only to the extent of maintainability of the Suit and merits have not been decided, therefore, department has preferred a review petition before Hon'ble Supreme Court, hence, plaintiff is not entitled for any relief.

4. I have heard both the learned Counsel and perused the record. It appears that the judgment and decree of this Court in the case of *Umar Spinning Mills Limited* was though assailed by the department through various Appeals including High Court Appeal No.321 of 2016 and others before a Division Bench of this Court and on perusal of the judgment in the case ***The Collector, Model Customs Collectorate and 2 others v. Messrs Naveena Industries Ltd. and others*** passed by a learned Division Bench of this Court, it appears that the only ground which was urged and argued on behalf of the department was only to the effect that a Suit before this Court was not maintainable in terms of Section 217 of the Customs Act, 1969. Neither any ground on merits was raised, nor the Court had decided the same, and it was only the maintainability of the Suit which was taken into consideration and the Appellate Court came to the conclusion that Suit is not maintainable and consequently the judgment passed in the case of *Umar Spinning Mills Limited* was set aside. The aggrieved parties approached the Hon'ble Supreme Court and impugned the said judgment which has now been decided by the Hon'ble Supreme Court in the case of ***Searle IV Solution (Pvt.) Ltd and others Supra*** and the Hon'ble Supreme Court while allowing the Appeals filed by Importers / Plaintiffs has been pleased to hold that a Suit is competent and maintainable before this Court which is a High Court and not a Civil Court. The said finding is however, subject to certain limitations, which presently are not relevant in this matter.

5. It is a matter of record that department did not prefer any appeal before the Hon'ble Supreme Court and was never aggrieved by the order of the Appellate Court which had only decided the maintainability of Suit, perhaps at the request of the department,

but in any case merits were never touched upon or decided by the Appellate Court. Before this Court, though an effort was made to argue that merits were agitated, but the Appellate Court failed to appreciate the same; however, on perusal of the judgment of the Appellate Court, this contention seems to be devoid of any merits and is not supported from the record. And if that is the case, then the department ought to have appealed the said order on this ground as well, or in alternative, should have sought review of the order of the Appellate Court. But this is not their case. In fact, according to learned Counsel, the department has sought review of the judgment of the Hon'ble Supreme Court, which is pending. Hence, the stance now taken regarding merits of the case is not open to any appraisal before this Court, which has already delivered its judgment and decree, which for all legal purposes, presently, is in field after the judgment of the Hon'ble Supreme Court in the case of **Searle IV Solution (Pvt.) Ltd and others supra**. Nonetheless, an attempt was also made that since department has preferred a review petition before the Hon'ble Supreme Court, this Court must restrain from passing any judgment or decree. However, nothing has been placed on record, either the review application and its contents, nor the order, if any. It may be appreciated that mere filing of a review petition before the Hon'ble Supreme Court, does not create any right in favor of the department, nor it restrains this Court from following its own earlier orders. Therefore, this line of argument is of no help to the case of the department as after passing of the judgment by the Supreme Court in the case of **Searle IV Solution (Pvt.) Ltd and others V. Federation of Pakistan and others (2018 S C M R 1444)** (supra) the order of the Appellate Court is set aside and is

no more in field and consequently, the judgment passed in the case of *Umar Spinning Mills Limited* stands alive and has to be followed by this Court. I see no justifiable reason not to follow the said judgment in similar terms.

6. In view of hereinabove facts and circumstances of the case following issue is settled in terms of Order 14 Rule 2 as a legal issue.

- 1) Whether the Plaintiff being spinner is entitled to claim benefit of SRO 1125(I)/2011 dated 31.12.2011, as amended by two subsequent SRO's (i) 154(I)/2013 dated 28.2.2013 and (ii) 491(I)/2016 dated 30.06.2016 while importing raw material for its spinning stage?

7. And the same is answered in the affirmative by holding that plaintiffs is entitled for exemption and benefit of SRO 1125(I)/2011 dated 31.12.2011, as amended by two subsequent SRO's (i) 154(I)/2013 dated 28.2.2013 and (ii) 491(I)/2016 dated 30.06.2016 while importing raw material for its spinning stage and as a consequence thereof, if any consignment(s) have been released by the department against securities, they stand discharged and shall be released forthwith. The Suit stands decreed as above. Let a decree be prepared accordingly.

**Dated: 30.11.2018**

Judge