

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal**

C.P Nos.D-7215 of 2017

Engro Foods Ltd.....Petitioner
V/s
Pakistan & others.....Respondents

C.P Nos.D-2075 of 2018

Engro Foods Ltd.....Petitioner
V/s
Pakistan & others.....Respondents

C.P Nos.D-2076 of 2018.

Engro Foods Ltd.....Petitioner
V/s
Pakistan & others.....Respondents

C.P Nos.D-2077 of 2018

Engro Foods Ltd.....Petitioner
V/s
Pakistan & others.....Respondents

Petitioners: Through Mr. Ali Almani, Advocate in all four Petitions.
Respondent/Department: Through Mr. Ameer Bakhsh Metlo, Advocate.
Pakistan: Through Mr. Kafeel Ahmed Abbasi, DAG.
Date of Hearing: 18.11.2020.
Date of Judgment: 18.11.2020.

JUDGMENT

Muhammad Junaid Ghaffar J.- In Petitioner through captioned petitions has impugned different Show Cause Notices issued by the Inland Revenue Department under section 11 of the Sales Tax Act, 1990, whereby, it has been alleged that the Petitioners' Products namely "**Tarang**" and "**Dairy Umung**" are not classifiable under exemption or zero rating vide 5th and 6th Schedule to the Sales Tax Act, 1990. It is the view of the respondent department that the goods in question are not classifiable under HS Code 1901.9090.

2. Learned Counsel for the Petitioner submits that identical controversy in respect of same product (of some other manufacturer) was also raised by the department at Lahore and one Petitioner approached the learned Lahore High Court through a writ petition which was allowed vide Judgment dated 29.03.2018 passed in **W.P No.71500 of 2017 (Nestle Pakistan Limited etc. Vs. Federal Board of Revenue through its Chairman etc.)** on the ground that classification of the product on the advice of Deputy Chemical Examiner was incorrect, and it was only the Classification Committee who can give a decision which was binding on the department. According to him such judgment was impugned in Intra Court Appeal No.241185 of 2018 and the Division Bench though agreed with the observation that the Law has given powers to Classification Committee for determination of PCT heading, which cannot be substituted by the report of the Chemical Examiner; however, to the extent of Show Cause Notice, the Petitioner was asked to reply the same and the department was directed to deal the Petitioner in accordance with law. Per learned Counsel, the department was still aggrieved and impugned the said judgment before the Hon'ble Supreme Court in **Civil Petition Nos. 1203-L to 1204-L, 1218-L to 1220-L of 2019 (The Commissioner Inland Revenue Lahore, etc. Vs. Nestle Pakistan Ltd. etc.)** and the Hon'ble Supreme Court vide Order dated 22.08.2019 has upheld the judgment of the Appellate Court with the clarification that for better working of the Customs Department in future, the Competent Authority i.e. the Classification Committee shall proceed in accordance with law to carry out classification of the products. According to him in these Petitions the issue is in respect of two products, and insofar as product namely "**Tarang**" is concerned, despite an existing decision of the classification committee, pursuant to a fresh Reference by the Inland Revenue Department, the earlier Classification dated 05.05.2011 under HS Code 1901.9090 has been once again reaffirmed. According to him, insofar as the other product is concerned i.e. "**Dairy Umung**" if the department is still aggrieved, they may refer the matter to the Classification Committee as directed by the

Hon'ble Supreme Court and withdraw their show cause notices and till then no recovery proceedings be initiated.

3. On the other hand, learned Counsel for the department has made an attempt to oppose such contention; however, on facts he could not do so and has then referred to Schedule 6 of the Sales Tax Act, 1990 and the foot-note, which states that for the purpose of this Schedule, for entries against which classification of headings or sub-headings has been specified, exemption shall be admissible on the basis of description of goods as mentioned in column 2 of the Schedule and Pakistan Customs Tariff classification of headings is provided for ease of reference and commodity classification purposes only; hence, according to him these petitions merit dismissal.

4. We have heard both learned Counsel and perused the record. Insofar as the legal issue with respect to the competence and jurisdiction / authority for determination of classification of a product is concerned, the same now stands resolved and decided by the orders referred to hereinabove, duly affirmed by the Hon'ble Supreme Court in its Order dated 22.08.2019 and it would be advantageous to reproduce the finding of the Hon'ble Supreme Court, which reads as under:-

“We have heard the learned counsel for the parties, and have gone through the record of the case, as well as, the law on the subject. We do not take exception to the reasons of the impugned judgment which, therefore, does not warrant any interference. However, it is clarified for better working of the Customs Department in future, that if the Customs Authorities wish to classify a particular product under the Pakistan Customs Tariff, the Competent Authority i.e. the Classification Committee will proceed in accordance with law to carry out classification of the said product. Disposed of.”

From perusal of the above orders passed by the Hon'ble Supreme Court, it appears that the contention of Inland Revenue department that authority and jurisdiction to determine a classification of a product vests with them is misconceived. A proper Classification Committee has been established by the FBR in terms of SRO 670(I)/2013 dated 8.7.2013, comprising all relevant and expert personnel and is the appropriate and competent forum, whereas, all such classifications disputes are required to be referred to the said Classification Committee, and at least to the extent of all departments of FBR it is binding on them. Moreover, the contention of the learned Counsel for respondent regarding foot note(s) to the 6th Schedule of the Sales Tax Act, 1990, is also not tenable as in foot note (2) it has been provided that for the purposes of determining classification of any goods, the general rules for interpretation of the First Schedule to

the Customs Act, 1969 (IV of 1969) and Explanatory Notes to the Harmonized Commodity Description and Coding System (relevant version) as amended from time to time shall be considered authentic source of interpretation and for this purpose it is the Classification Centre established at the relevant Custom House which is the appropriate and competent authority to decided classification of a product in dispute.

5. In view of hereinabove facts and circumstances of this case and law settled in the above proceedings emanating from the learned Lahore High Court and culminating before the Hon'ble Supreme Court, the Show Cause Notice(s) to the extent of one Product i.e. **Tarang**" for which new Classification Ruling has already been issued reiterating the earlier classification are hereby set-aside / quashed, whereas, proceedings to the extent of Show Cause Notice(s) in respect of other Product i.e. **"Dairy Umung"** are suspended. If needed and so advised, the Inland Revenue Department may refer the matter to the Classification Committee, for a decision afresh; and till such time no coercive action be taken against the petitioner pursuant to the Show Cause Notice(s) in question. If the Classification is decided against the Petitioner then the Petitioner shall have the remedy as may be available in law, whereas, the department can proceed on the basis of show cause notice(s) already issued pursuant to the fresh classification of the second product i.e. **"Dairy Umung"**.

6. All petitions are allowed in the above terms.

JUDGE

JUDGE

Ayaz P.S.