

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:

**MR. JUSTICE MUHAMMAD JUNAID GHAFAR
MR. JUSTICE AGHA FAISAL**

C.P No.D-410/2020

Sanofi-Aventis Pakistan LimitedPetitioner
V/s
Pakistan & others.....Respondents

C.P No.D-7919/2019

Roche Pakistan Limited.....Petitioner
V/s
Pakistan & others.....Respondents

C.P No.D-539/2020

Bayer Pakistan (Private) LimitedPetitioner
V/s
Federation of Pakistan and others.....Respondents

C.P No.D-540/2020

M/s. Hakimsons Impex (Private) Limited.....Petitioner
V/s
Federation of Pakistan and othersRespondents

Petitioners in C.P Nos.
D-410/2020 & D-7919/2019.

Through Mr. Hyder Ali Khan, and Mr. Sami-ur-
Rehman, Advocates.

Petitioners in C.P Nos.
D-539 & 540 of 2020.

Through Mr. Mamoon N. Chaudhry, Advocate.

Respondents in all Petitions:

Mr. Khalid Rajpar, Advocate,
Ms. Masooda Siraj, Advocate,
Mr. Kashif Nazeer, Advocate,
Mr. Syed Mohsin Imam, Advocate,
Mr. Kafeel Ahmed Abbasi, DAG.
Syed Hakim Masood, FID, DRAP, Karachi.

Date of Hearing:

02.02.2021.

Date of Judgment:

02.02.2021.

JUDGMENT

Muhammad Junaid Ghaffar J.- Through these Petitions, a common grievance has been brought before the Court and in CP No.D-410/2020, the Petitioner has sought the following relief(s):-

- A. Declare that the letter dated 23.09.2019 (ANNEX B) has been issued without lawful authority and is of no legal effect;
- B. Declare that the actions of the Respondent Nos. 2 and 5 to deny the application of Section 148 of the Ordinance to Companies/Firms which are product registration holder under the Drugs Act, 1976/DRAP Act, 2012 are without lawful authority and of no legal effect;
- C. Direct the Respondent Nos. 2 and 3 to certify the Petitioner's imports of finished pharmaceutical products that are not manufactured otherwise in Pakistan;
- D. Pending disposal of this petition, prohibit the Respondents, their officers or any other person acting on their behalf from charging, collecting, demanding or withholding 5.5% advance tax as a pre-condition for release of goods imported or to be imported by the Petitioner;
- E. Grant any other relief, which this Honourable Court may deem just and proper.

2. Mr Hyder Ali Khan, Learned Counsel for the Petitioners submits that the impugned Letter dated 23.09.2019, issued by Drug Regulatory Authority of Pakistan ("**DRAP**"), is not in consonance with law, inasmuch as an attempt has been made by DRAP to interpret a provision (s.80) of Income Tax Ordinance, 2001, ("**Ordinance**") for which DRAP has no lawful authority and jurisdiction, whereas, Rule-13 of the Drugs (Import & Export) Rules 1976 ("**Rules**") is not applicable in the facts and circumstances of these matters.

3. Learned DAG submits that apparently some wrong provision has been invoked by the DRAP, whereas, on the last date of hearing time was sought on the ground that perhaps the matter would be resolved; but today, again similar request has been made. Insofar as Respondent No.6 is concerned, on our directions additional comments were filed as recorded in our order dated 15.12.2020 and according to Respondent No.6 Section 80 of the Income Tax

Ordinance, 2001 provides for definition of "Person" which includes an individual, a Company or a Government entity; however, the reduced rate of advance tax is only applicable when it is certified by DRAP.

4. We have heard all learned Counsel and perused the record. The impugned Letter issued by the DRAP reads as under:-

F.4-23/2019-I&E (QA<)
Government of Pakistan
(Drug Regulatory Authority of Pakistan)
T.F. Complex, 7th Mauve Area G-9/4, Islamabad

"SAY NO TO CORUPTION"

Islamabad the 23rd September, 2019

Ayesha T Haq, Executive Director, Pharma Bureau	M. Asim Jamil Secretary General, PCDA
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Subject: CLARIFICATION REGARDING ACT NO.V OF 2019 DATED 30TH JUNE, 2019.

2. Reference to your request regarding Sr. No. 5 of the table given in "Division VIII: Tax on Capital Gains on disposal of Immovable property" reproduced as follows:

S. No. (1)	Persons (2)	Rate (3)
5.	Persons importing finished pharmaceutical products that are not manufactured otherwise in Pakistan, as certified by the Drug Regulatory Authority of Pakistan	4%

3. It is clarified that the said provision is relevant to the Persons importing finished pharmaceutical products for personal use under Rule 13 of The Drugs (Import & Export) Rules 1976. This provision could not be applied for the Companies/Firms which are Product Registration holders under the Drugs Act 1976 / DRAP Act 2012.

Sd/-(23.9.19)
(Abdul Sattar Sohrani)
Deputy Director (QC-1),
DRAP, Islamabad.

5. It appears that the Petitioners import finished pharmaceutical products, which at the relevant time required Certification from DRAP for claiming a reduced rate of deduction of Income Tax under Section 148 of the Ordinance, to be collected by the Customs Authorities. The same is provided in Para 4 of Part-II of the First Schedule to the Ordinance (wrongly mentioned as Division-VIII) in the impugned

letter, and when DRAP was approached for such certification, the impugned letter was issued on the ground that the said provision is only relevant for persons importing finished pharmaceutical products under Rule 13 of the Rules. Firstly, we may observe that it was never a business of DRAP to interpret the word *person* appearing in the Ordinance; nor, the certification was for such purposes. Rather, it is only for and to the extent of, that it was a finished pharmaceutical product not being manufactured locally. Whether the Importer was a *person* within the meaning of the Ordinance or not was not required to be determined by DRAP nor it falls in their domain. We have not assisted in any manner, as to how DRAP came to this conclusion and interpreted a provision of the Ordinance, for which apparently they have no authority. Insofar as Rule 13 (*ibid*) is concerned, same has no relevance as it is in respect of and applies to, persons importing drugs for personal use in small quantities and not as commercial imports. Section 80 of the Ordinance very clearly defines a person, which includes an Individual as well as a Company, and therefore, impugned Letter of DRAP is not in consonance with the relevant provisions of the Ordinance; nor DRAP has any lawful authority to interpret the same. Accordingly, the impugned letter dated 23.9.2019 stands set aside to that extent; however, certification that it is a finished pharmaceutical product not being manufactured locally would still be required to be obtained from DRAP. All listed Petitions along with pending applications are allowed in the above terms. Office is directed to place of this order in all filed.

Judge

Judge

Ayaz p.s.