

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.D-7163 of 2019

Date

Order with signature of Judge

Before:-

Mr. Justice Muhammad Ali Mazhar

Mr. Justice Yousuf Ali Sayeed

Gulf Sugar Mills Limited & anotherPetitioners

V/s

The Province of Sindh & others.....Respondents

04-02-2020

Mr.Abuzar Salman Khan Niazi, Advocate for the Petitioners.

Mr.Jawad Dero, Additional Advocate General

Mr.Abdul Aziz Channa, Director General, Mr.Abdul Samad Shaikh, Focal Person for Legal Matters, Agriculture Department and Mr.Abdul Qayoom, Deputy Director (Technical), Cane Commissioner Office are present.

Syed Naveed Saghar, Law Officer, Sindh Bank Limited, Khawaja Shahzad, Branch Manager, Sindh Bank Limited I.I. Chundrigar Road, Branch are present.

Mr.Ishtiaq, Group Officer, Sindh Rural Department is present.

Muhammad Ali Mazhar, J: The Petitioner is engaged in the production and manufacture of sugar at Khambhra, Taluka Ubauro District Ghotki, Sindh, and has brought this Petition on the ground of non-payment by the Respondent No.3 (i.e. Agriculture, Supply and Price Department, Province of Sindh) of (i) a sum of Rs.111,574,250/- on account of the Freight Subsidy payable on export of sugar to the Petitioner as per the decision of Economic Coordination Committee of the Federal Cabinet dated 14.9.2017, as reflected in the Office Memorandum dated 3.10.2017 and Office Memorandum dated 7.12.2017 issued by Respondent No.2 (i.e. Ministry of Commerce and Textile) and endorsed in Notification No. 8(291) SO(Ext;)/2017 dated 02.01.2018 issued by Respondent No.3, and (ii) a sum of Rs.186,000,000/- on account of the Additional Freight Subsidy payable on such export in terms of the aforementioned Notification, with it being prayed that directions be issued to the Respondent No.3 for release of such amounts accordingly.

2. Today, the learned Additional Advocate General has submitted the written reply on behalf of the Respondent No.3, whose officers are also present in Court. The learned Additional Advocate General has invited attention to paragraph 5 of the reply, which reads as under:-

“The contents of para-5 are replied:-

(a) That Pakistan Sugar Mills Association (PSMA) requested for grant of subsidy on export of surplus sugar stock of crop 2016-17 at the rate of Rs.20/KG. Federal Government, however, allowed cash freight support at the rate of Rs.10.7/Kg on export of sugar with equal (50:50) share of Federal and Provincial Governments. Accordingly, during 2017-18, Government of Sindh released an amount of Rs.1.00 billion for payment of 50% share of Sindh Government @ Rs.5.35/Kg to State Bank of Pakistan, for further disbursement to the claimants which has been disbursed during the year 2017-18 as per details provided by State Bank of Pakistan (Annex-I). In the year 2018-19, the State Bank has paid 50% share from the Federal Government to the claimants including petitioner. The remaining 50% claim of the petitioner Mills amounting to Rs.108,966,036 is, however, payable by the Government of Sindh (Annex-II).

(b) Pakistan Sugar Mills Association (Sindh Zone) approached the Government of Sindh to allow additional cash freight support @ Rs.9.30/Kg to correspond with their demand of Rs.20/Kg. Sindh Cabinet in its meeting held on 04-12-2017 approved Additional Cash Freight Support @ Rs.9.3/Kg on export of sugar (in addition to 50% share in the cash freight support @ Rs.10.70/Kg has been allowed by the Government of Sindh vide Notification No.8(291)SO(Ext)/2017/2100 dated 02-01-2018. Accordingly, Sindh Bank furnished a claim of Rs.1,624,031,100/- including the claim of the petitioner amounting to Rs.186,000,000/- on 07-09-2018 (Annex-III). Consequently, Finance Department, Government of Sindh released Rs.1,624,031,100 and same was sent to Sindh Bank for further disbursement to the claimants including the petitioner on 15-10-2018 (Annex-IV). However, Sindh Bank not entertained the petitioner for the reasons best known to the Bank.

The Sindh Bank had again submitted claim of Rs.281,966,700 which included the claim of the petitioner amounting to Rs.186,000,000/- vide letter dated 11-10-2019 (Annex-V).

Consequently, this department has floated a summary for Chief Minister Sindh for placement of matter before the Sub-Committee on Financial Matters and allow/direct Finance Department to release the amount of claims to the tune of Rs.3,675,673,291/- which includes the claim of the petitioner amounting to Rs.108,966,036 as 50% share of Sindh Government in the Cash Freight Support of Rs.10.7/Kg and Rs.186,000,000/- in the Additional Cash Freight Support @ 9.3/Kg.

It is respectfully submitted that the petitioner's claim will be cleared upon release of funds from Finance Department.”

3. Referring to the reply that had earlier been submitted by the Respondent No. 5 (i.e. the State Bank of Pakistan) the learned Additional Advocate General pointed out that in so far as the 50% share of the Federal Government in respect of the Freight Subsidy was concerned, in Paragraph 6 thereof it had been stated as follows:-

“6. In response of Para 13 it is submitted that according to Ministry of Commerce and Textile (MOCT) office memorandum No.F.No.7(2)/2012-Exp.III dated October 3, 2017, a cash freight support of Rs. 10.70/kg will be given to the sugar millers on export of sugar subject to the condition that the said amount of freight support will be given on a sliding scale between the international price of US\$376/MT (as on 08.09.2017) and \$499/MT (the international sugar price which equals with the cost of production as calculated by the Ministry of Industries and Production) i.e. once the price reaches at the level of \$499/MT in international market. The State Bank of Pakistan (SBP) would affect the stoppage of freight support. Further, it is submitted that eligible claim amount of Petitioner as per SBP-Banking Services Corporation (BSC) record and in pursuance of MOCT office memorandum No.F.No.7(2)/2012-Exp.III dated October 3, 2017 was Rs.217,932,072/- against his export of 20,855 MT of sugar, out of which Answering Respondent has disbursed an amount of Rs.108,966,036/- being 50% federal share. Whereas remaining 50% being provincial share is still outstanding and will be paid upon availability of budget.”

4. As such, the learned Additional Advocate General contended that the entitlement of the Petitioner in respect of the Freight Subsidy was Rs.108,966,036/-, commensurate to the share of the Federal Government as per the report of the Respondent No.5, instead of Rs.111,574,250/-, as claimed by the Petitioner.

5. Conversely, learned counsel for the Petitioners contended that that figure mentioned in the comments of the Respondent No.5 was based on some miscalculation, and the total amount that had been paid by the Federal Government on account of Freight Subsidy was Rs.111,574,250/-. He maintained that the liability of the Respondent No.3 was the same. He sought that appropriate directions may be issued for payment of the admitted liability on account of the Freight Subsidy and Additional Freight Subsidy, and that the Petitioner No.1 would again submit the entire documentary record in support of its claim for the purpose of reconciliation to the Respondent No.5 as regards the balance amount.

6. The learned Additional Advocate General, with the assistance of the officers present in Court, reiterated that a summary had been floated to the Chief Minister, Sindh, for placing the matter before the Sub-Committee on Financial Matters, so that directions could be issued for release of the claims amounting to Rs.3,675,673,291/-, which included the claim of the Petitioner No.1 amounting to Rs.108,966,036/- as 50% share of Sindh Government in the Freight Subsidy and Rs.186,000,000/- in respect of the Additional Freight Subsidy.

7. Accordingly, after hearing learned counsel for the Petitioners as well as the learned Additional Advocate General and the officers present in Court, the Petition is disposed of on the following terms:-

- (1) The admitted liability of the Petitioner No.1 shall be paid by the Government of Sindh within 45 working days.
- (2) So far as the payment of the aforementioned differential amount claimed in respect of the Freight Subsidy is concerned, the Petitioner No.1 shall submit all relevant documents to the Respondents Nos. 3 and 5 for the purpose of verification and if such amount or part thereof, as claimed by the Petitioner No.1, is verified and found payable then differential shall be paid by the Government of Sindh to the Petitioner No.1 within one month from the date of verification.

Judge

Judge

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