

IN THE HIGH COURT OF SINDH, KARACHI
Constitution Petition No.D-4323 of 2022

Date

Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

Petitioner : **M.A Flour Mills (Pvt) Limited**
Through Mr. Abdul Rahim Lakhani,
Advocate.

Respondent No.1 : **Federation of Pakistan**
Through Mr. Kashif Nazeer,
Asst. Attorney General

Respondents No.3&4 : **Chief Collector of Customs and**
Collector of Customs, MCC
Appraisalment (East) Karachi
Through Mr. Muhammad Khalil Dogar,
Advocate.

Date of hearing : **07.08.2024.**

Date of Judgment : **07.08.2024.**

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Petition the
Petitioner has sought following relief: -

- I. *Declare the enhancement of sales tax rate from 10% to 17% on import of plant and machinery prescribed at Sr. No. 6 of the Eighth Schedule to the Sales Tax Act, 1990 through Finance (Supplementary) Act, 2022 is not attributed to the petitioner in view of the facts of the case.*
- II. *Direct the respondent to release the consignment of the petitioner regarding the above-said plant and machinery at the applicable rates of the sales tax as envisaged under the Eighth Schedule to the Sales Tax Act, 1990 on certain conditions mentioned therein prior to the promulgation of the Finance (Supplementary) Act, 2022 as it stood earlier.*
- III. *In alternate, respondents may kindly be directed to release the above consignment of the petitioner subject to payment of 10% of the sales tax and a differential of 7% out of 17% may kindly be secured either by the respondents or Nazir of this Honorable Court in the shape of post-dated cheques or otherwise as this Honorable Court deems fit and reasonable in accordance with the law.*
- IV. *Permanently restrain the Respondents, their officers, agents, and any person authorized by them from enforcing any recovery of tax/monies and taking any adverse and coercive action against the Petitioner, pursuant to the above consignment of the petitioner.*
- V. *Grant any other relief that this Honorable Court may deem just and appropriate in the facts and circumstances of this case.*

2. Notice was ordered and it appears that on 30.08.2022 an ad-interim order has been passed for release of the goods in question provisionally. Today, at the very outset, we have confronted petitioner's counsel as to the relief sought as above inasmuch as Section 6 of the Sales Tax Act, 1990 is very clear in respect of the time and manner of payment of the said tax and learned counsel has not been able to satisfactorily respond, except placing reliance on judgments reported as ***Molasses Trading & Export (Pvt.) Limited***¹ and ***Fecto Belarus Tractors Limited***².

3. We have heard the petitioner's counsel and perused the record. Precise case of the petitioner appears to be that when the Letter of Credit was established in respect of the goods in question, 10% sales tax was leviable, whereas, when the goods arrived and a Goods Declaration was filed, the said rate was enhanced from 10% to 17% through Finance (Supplementary) Act, 2022 and, therefore, according to the petitioner's counsel, the petitioner is liable to pay 10% sales tax instead of 17% as claimed by the respondents. However, the claim of the petitioner does not merit any consideration in view of the fact that the law is very clear on the subject. It would be advantageous to refer to Section 6 of the Act in question, which governs time and manner of payment of the sales tax: -

“6. Time and manner of payment. - (1) The tax in respect of goods imported into Pakistan shall be charged and paid in the same manner and at the same time as if it were a duty of customs payable under the Customs Act, 1969 [and the provisions of the said Act [including section 31A thereof], shall, so far as they relate to collection, payment and enforcement [including recovery] of tax under this Act on such goods where no specific provision exists in this Act, apply,].

(1A) Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic

¹ Molasses Trading & Export (Pvt.) Limited v. Federation of Pakistan and others [1993 SCMR 1905]

² Fecto Belarus Tractors Limited v. Pakistan through Ministry of Finance Economic Affairs [2001 PTD 1829].

Reforms Act, 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or court whether passed, before or after the promulgation of the Finance Act, 1998 (III of 1998), the provisions of section 31-A of the Customs Act, 1969 (IV of 1969), referred to in sub-section (1) shall be incorporated in and shall be deemed to have always been so incorporated in this Act and no person shall be entitled to any exemption from or adjustment of or refund of tax on account of the absence of such a provision in this Act, or in consequence of any decision or judgment of any forum, authority or court passed on that ground or on the basis of the doctrine of promissory estoppel or on account of any promise or commitment made or understanding given whether in writing or otherwise, by any government department or authority.]

(2)

[(3)

[4. ***]

[(5).....

4. From perusal of the above provisions of Section 6 (1) & (1A), it clearly reflects that notwithstanding the opening of Letter of Credit, the rate of sales tax would be the one, which is applicable at the time of filing of a Goods Declaration as provided under Section 30 of the Customs Act, 1969 read with Sections 3 and 6 of the Sales Tax Act, 1990. Section 6(1) was incorporated in the year 2002 to undo the effect of judgment of the Hon'ble Supreme Court of Pakistan in the case of ***Al-Samrez Enterprises***³ whereby, it was held by the Supreme Court that If a binding contract was concluded between the Importer and the Exporter or steps were taken by creating a vested right to the then existing notification granting exemption, the same could not be taken away and destroyed in modification of the earlier one. However, the effect of this judgment was undone by insertion of Section 31A of the Customs Act, 1969, and a subsequent challenge to its vires has remained unsuccessful in the case of ***Molasses Trading*** (Supra).

³ Al-Samrez Enterprises v. Federation of Pakistan [1986 SCMR 1917],

5. In view of hereinabove facts and circumstances of the case, no case for indulgence is made out, therefore, the Petition is hereby dismissed with further observation that the amount secured, if any, pursuant to the ad-interim order passed by this Court dated 30.08.2022 is to be paid / credited to the account of the concerned Collectorate.

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Farhan