

IN THE HIGH COURT OF SINDH AT KARACHI

**Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal**

C.P. Nos. D-1781 of 2015

Along with CP Nos.D-3915, 3916, 3917, 3940, 3941, 3942, 3943, 3971,
3974, 3975, 4045, 4067, 4109, 4166, 4397, 4704 and 5124 of 2014 and
CP No.D-3847 of 2021

M/s Tandlianwala Sugar Mills (2), Shahmurad Sugar Mills, Habib Sugar Mills, Al-Abbas Sugar Mills, Unicol Limited, Humza Sugar Mills, Premier Industrial Chemical MFG Co., Matol (Pvt.) Ltd., Dewan Sugar Mills, Shakarganj Sugar Mills (2), Abdullah Sugar Mills, Noor Sugar Mills, Crystalline Chemical Industries, United Ethanol Industries, Colony Sugar Mills, Chashma Sugar Mills and Premier Sugar Mills

Versus

Province of Sindh & another

Date of Hearing: 10.04.2023

Petitioners: Through Mr. Muhammad Farogh Naseem and Mr. Muhammad Altaf Advocate.

Respondents: Through Mr. Kafeel Ahmed Abbasi, Addl. Advocate General Sindh.

J U D G M E N T

Muhammad Shafi Siddiqui, J. - Petitioners in this bunch of petitions have impugned a notification issued by the Secretary Excise, Taxation & Narcotics, Government of Sindh, Karachi, dated 08.07.2014 whereby purportedly in exercise of powers conferred under section 19A read with Section 35A of the Sindh Abkari Act, 1878 (Act 1878), Director General of Excise, Taxation and Narcotics was pleased to direct, with effect from 01.07.2014, to levy and recover fee for storage of “rectified spirit” in private bonded warehouses situated at designated area and licensed under section 15 of Act 1878 at a rate of Rs.0.50 per litter. Since same notification is impugned in all these petitions we propose to dispose them of through this common judgment.

2. Brief facts are that the petitioners are engaged in business of manufacturing and sale of sugar molasses and allied byproducts. They have their respective private contracts with the private bonded warehouses for the storage of one of the byproduct i.e. rectified spirit or primary alcohol. For such business activities the licenses have been issued by the competent authorities of the Excise, Taxation & Narcotics Sindh Karachi. Such storage charges were being paid to the private bonded warehouses.

3. Petitioners claim is that the impugned notification is without jurisdiction, unconstitutional and unlawful. It is argued that no such fee for the storage of rectified spirit could be levied within the frame of Section 19A and 35A of Act 1878 as the purpose of 19A of the ibid Act is only to carry forward the object of Section 19 of the ibid Act. It is beyond comprehension that such storage fee could be levied by the Director General of Excise, Taxation & Narcotics within the frame of ibid Act and in particular Section 19A and 35A.

4. Mr. Kafeel Ahmed Abbasi, learned Addl. Advocate General appearing for respondents, in response to the arguments of petitioners' counsel has relied upon the terms and conditions of the license, which regulates sale of rectified spirit. He further submitted that upon issuance of a permission by the Director General Excise, Taxation & Narcotics Sindh, which sets mechanism of issuance of challan for payment of storage fee, which could be summarized, per Mr. Kafeel Ahmed Abbasi, a rules that could be required in this regard for recovery of storage fee.

5. Learned Addl. Advocate General has further relied upon Para 7 of the license condition, which sets the obligation of the licensee to pay such fee as may from time to time be prescribed by Director General under Act 1878.

6. We have heard the learned counsel for petitioners and learned Addl. A.G. appearing on behalf of respondents and perused material available on record.

7. It is important to notice that the impugned notification issued on 08.07.2014 was premised on the powers conferred by Section 19A read with Section 35A of Act 1878. It is the Secretary of the Excise, Taxation and Narcotics, Government of Sindh, issuing notification that his Director General was pleased to order to recover, with effect from 01.07.2014, the fee for the storage of rectified spirit in the private bonded warehouses (*who were licensed to conduct such business under section 15 of the ibid Act*) at the rate of Rs.0.50 per litter. This argument would require us to look into the frame of Section 19 first and then 19A of Act 1878.

8. Section 19 emphasizes that an “excise duty” or “countervailing duty”¹ may be imposed either generally or for any other specified local area or any excisable article. At the very outset it does not talk about any fee as a quid pro quo to legitimize the claim whatsoever². Section 19 is absolutely silent as far levy of storage fee is concerned.

9. With this understanding of law we now peruse 19A. It only relates to the duties referred in the foregoing section i.e. Section 19 which could be comprehended by the rules to be framed to regulate the time, place and manner of the payment which may be levied in one or more ways as described therein. The provision of Section 19A of Act 1878 thus would rule out its applicability directly and the provision of Section 19A could never be read in isolation to Section 19 and once it is read with Section 19 the subject levy (storage fee) becomes erroneous. Section 19A of ibid Act regulates the manner of payment of the identified duty which is imposed under section 19 of the Act. The impugned levy is not

¹ A duty imposed to offset subsidies by foreign governments.

² PLD 2011 SC 44 (Pakcom Limited v. Federation of Pakistan & others)

the duty. Section 19A does not permit the imposition of storage fee in respect of goods stored in a private bonded warehouse and the remote possibility of quid pro quo also erodes.

10. Section 35 of the *ibid* Act could empower Director General to make rules in terms of mandate within the statute. The rules thus could never be framed to pierce the contour of the statute itself. The contention of learned Addl. Advocate General that the letter of 18.07.2014 that was filed along with comment should be read as rule is also beyond comprehension.

11. The summary of the Chief Minister on the subject under discussion, filed by respondents along with statement dated 15.09.2015, in its Para 6 is also immaterial. Firstly it only proposes to levy storage fee whereas Para 11 of the summary itself suggests that it proposes to accord scheme of the aforementioned fiscal proposals so that the same may be incorporated in the summary before provincial cabinet and to draft Finance Bill 2014, except the proposals which are to be implemented through notifications. There is no such Finance Bill of 2014, which could have added to the frame of Section 19, to enable the authority concerned to levy such fee and consequently there is no gazette notification provided by learned Addl. Advocate General in this regard.

12. Perusal of Section 35A(d), which is closest to the submission of Mr. Abbasi would reveal that the said provision authorizes the prescription of the scale of fee or the manner of fixing the fee payable. Precisely it authorizes the prescription of the scale or rate of fee or the other manner on which it is to be paid. It does not provide for charge, levy or imposition of fee.

13. Without prejudice to above, unless a parent statute provides such levy, the rules by way of subordinate legislation cannot be legitimized³. The concept of subordinate legislation by way of rules is to toe the object of the main statute and not to collide with scheme of law⁴. The subordinate rules, even if conceived to be available, could only function in conformity with the main statute in order to give effect to the statutory provisions, which is not the case in hand⁵.

14. Respondents perhaps appear to have misinterpreted the provisions i.e. charging provision section 19 and the collection mechanism as explained in section 19A of Act 1878. Since the collection mechanism in terms of the purported notification and the summary is beyond comprehension of main statute then such would yield in favour of principal law⁶.

15. Upshot of the above discussion is that the impugned notification dated 08.07.2014, followed by gazette dated 17.07.2014, is without jurisdiction and hence had no legal effect. Accordingly, petitions are allowed as prayed.

16. Above are reasons of our short order dated 10.04.2023.

Dated:

J U D G E

J U D G E

³ 2017 SCMR 884 (Collector of Customs v. Haji Mehmood Essa) and PLD 2016 SC 808 (Mustafa Impex v. Government of Pakistan)

⁴ 2015 SCMR 630 (Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan)

⁵ 1982 SCMR 522 (Hirjina Salt Chemicals v. Union Council Gharo), 2021 PTD 731 (Sami Pharmaceutical (Pvt.) Ltd. v. Province of Sindh & others)

⁶ 2019 PTD 484 (Pakistan Television v. CIT), 2017 SCMR 1136 (Pakistan Television v. Commissioner Inland Revenue) and 2021 PTD 460 (Indus Motor Company Ltd. v. Federation of Pakistan)