

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-1882 of 2022 along with
C.P. Nos.D-2227 and 2228 of 2020

Date Order with signature of Judge

PRIORITY CASE:

1. For hearing of CMA No.8669/2022.
2. For hearing of main case.

Dated: 24th September 2024

Mr. Emad-ul-Hasan, Advocate for Petitioners in C.P. Nos.D-1882/2022 & 2227/2020.

Mr. Asif Ali Khawaja, Advocate for Petitioner in C.P. No.D-2228/2020.

Mr. Muhabbat Hussain Awan, Advocate for Respondent No.5 in all petitions.

Mr. Rana Sakhawat Ali, Advocate for Respondent No.3 in C.P. No.D-1882/2022.

Mr. Ameer Bux Matlo, Advocate for Respondent No.3 in C.P. Nos.D-2227 & 2228/2020.

Mr. Azad, Advocate holds brief for Mr. Muhammad Bilal Bhatti, Advocate for Respondent No.4 in C.P. No.D-2228/2020.

Mr. Kashif Nazeer, Assistant Attorney General.

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On the last date of hearing, after hearing learned Counsel for the parties following order was passed: -

“Learned Counsel for the Petitioners are directed to come prepared and satisfy as to the prayer sought in these petitions inasmuch as after passing of ad-interim orders, the Respondents, at best, are required to pass an assessment order under Section 80 of the Customs Act, 1969 as apparently vires of law are not under challenge as only it is an interpretation, which has been sought directly from this Court.

To come up on 24.09.2024. Office to place copy of this order in the connected matters as above.”

Today, counsel appearing on behalf of the Petitioners have argued that since interpretation of omission of an Entry in the Sales Tax Act, 1990 is involved, the matters be decided on its own merits and no useful purpose would be served by remanding the matter to the Department for passing any assessment orders.

We have heard learned counsel for the parties and perused the record. Insofar as the argument of the Petitioners’

Counsel as above is concerned, we are least impressed with the same inasmuch admittedly it is not a case of any jurisdictional defect or the competency of the concerned officer to pass an order. In fact, these petitions have been filed without annexing Goods Declarations, Bills of Lading or invoices, except Letter of Credit. We are afraid such conduct on the part of the Petitioners is least appreciable as before obtaining any order for provisional release of a consignment, the Petitioner was required to file its GD along with the opinion of the department whereby the relief or exemption claimed was denied. We are at a loss to understand as to how an Ex-parte mandatory ad-interim order was obtained on the very first date from the Court without any such objection of the department. Such conduct on the part of the Petitioner amounts to misleading the Court.

If according to the Petitioner, they are not liable to pay any sales tax pursuant to certain amendments, then it will only be a legal question that whether the said amendment is applicable in the facts and circumstance or not. Therefore, if at all, a legal question is raised, it is not mandatory upon the Court to entertain a Constitutional petition in all run of the mill cases; rather, the discretion vested in the Court has to be exercised with restraint and not as a matter of routine. As noted, the Petitioners only seek a declaration as to their entitlement without any challenge to vires of the amendment, therefore, in our considered view, the Petitioner can always raise these legal objections before the concerned officer at the time passing of the assessment order and if at all an adverse order is passed, the Petitioner has remedy of further Appeal under Section 193 or 194A (as the case may be) of the Customs Act, 1969, and thereafter by way of a Reference Application before this Court under Section 196 *ibid*. The question of law now being agitated as to any retrospective application of the amendment in question could have been answered by this Court in its appropriate jurisdiction. We do not see any reason to prematurely interfere in this matter, just because a Constitutional Petition has been filed with some legal interpretation and the entire controversy be finally adjudicated in

Constitutional jurisdiction. We may further add that in the case of ***Digicom***¹ the Supreme Court has deprecated the practice of pre-empting the action intended to be taken by the department by short-circuiting the system, which is squarely applicable in the facts and circumstances of this case.

Since the consignment imported by the Petitioners have already been released by way of ad-interim order(s) and until an assessment order is passed by the concerned department, either accepting or rejecting the contention of the Petitioners, this Court is unable to give its final opinion as to the correct interpretation of the amendment(s) / omission of the claimed exemption, therefore, we do not see any justification to further proceed with these Petitions on merits.

In view of hereinabove facts and circumstances of the case, these Petitions are dismissed, whereas, Respondents are directed to pass appropriate assessment order(s) in respect of the consignments released pursuant to the orders of this Court under Section 80 of the Customs Act, 1969 in accordance with law, after affording an opportunity of hearing to the Petitioners and shall also consider their contention so raised through these Petitions. If the Petitioners are further aggrieved, they seek further remedy in accordance with law.

JUDGE

JUDGE

Farhan/PS

¹ 15.09.2022 passed by the Supreme Court in the case of (Deputy Commissioner Inland Revenue v. Digicom Trading (Pvt.) Ltd. and another),