

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. NO. D-3028 of 2014

Present:-

Mr. Justice Sajjad Ali Shah.

Mr. Justice Muhammad Junaid Ghaffar.

Digicom Trading (Pvt.) Ltd. ----- Petitioner

Versus

Federation of Pakistan & another ----- Respondents

Date of hearing: 07.09.2015.

Date of judgment: 29.09.2015

Petitioner: Through Mr. Khalid Javed Khan Advocate.

Respondent No. 1 Through Mr. Asim Mansoor Khan DAG.

Respondent No. 2 Through Mr. Jawaid Farooqui Advocate.

J U D G M E N T

Muhammad Junaid Ghaffar, J. Through instant petition the petitioner has impugned Show Cause Notice dated 28.5.2014 issued by respondent No. 2 under Section 11(2) & (3) of the Sales Tax Act, 1990 (“Act”) as being without any lawful authority and jurisdiction.

2. Briefly the facts as stated in the Memo of Petition are that the petitioner is engaged in the Import of Cellular Mobile Phones under the brand name of “Q Mobile” and is paying Sales Tax at the import stage presently in terms of SRO 460(I)/2013 dated 30.5.2013 which had superseded an earlier SRO 280(I)/2013 dated 4.4.2013 which in turn had also superseded SRO 540(I)/2008 dated 11.6.2008. It is the case of the petitioner that they have paid Sales Tax in terms of SRO 460(I)/2013 as specified in Column 2 of the Table to the SRO, which is their final liability on the import and supply of such goods. Through impugned Show Cause Notice the respondent No. 2 has demanded a further tax of 1% (enhanced to 2% vide Finance Act 2015) in terms of Section 3(1)(A) of the Act, in addition to the Sales Tax already paid by the petitioner. Being aggrieved with such Show

Cause Notice instant petition has been filed, and on 4.6.2014 an interim order was passed to the effect that respondent No. 2 shall not finalize the proceedings.

3. Mr. Khalid Javed Khan learned Counsel for the Petitioner submits that SRO 460(I)/2013 has been issued in terms of subsection 2(b) and sub-section (6) of Section 3, read with Section 8(1)(b) and further read with Section 13(2)(a) and Section 71 of the Act, whereby, the Federal Government has directed that Sales Tax shall be charged on import and supply of the goods specified in Column 1 of the Table to the SRO at the rate specified in Column 2 & 3 thereof. Per learned Counsel the petitioner has discharged its liability by paying Sales Tax at the rate specified in Column 2 of the Table to the SRO which is applicable at the import stage, whereas, the Sales Tax on the supply stage is to be collected and paid by the Cellular Company on every new sale or activation of SIM card. Learned Counsel has further contended that in view of SRO 460(I)/2013 the petitioner has discharged the final liability of Sales Tax and is not required to pay any further tax at the time of supply in terms of Section 3(1)(A) of the Act, as demanded through the impugned Show Cause Notice. Learned Counsel has further contended that the exemption granted in terms of Section 13 (2)(a) of the Act, has an overriding effect, both in respect of levy of Sales Tax under section 3(1) and 3(1)(A), hence no further or additional tax is payable after having paid Sales Tax in terms of SRO 460(I)/2013.

4. Conversely Mr. Jawaid Farooqui learned Counsel for respondent No. 2 has contended that the provisions of Section 3(1)(A) of the Act are independent in nature, whereas, SRO 460(I)/2013 has prescribed the mode and manner for payment of Sales Tax at import stage which is to be levied in terms of Section 3(1) of the Act, and has got nothing to do with the levy of Additional Tax in terms of Section 3(1)(A) of the Act. Per learned Counsel since the petitioner is supplying goods to Un-registered persons, hence liable to pay 1% additional Sales Tax under section 3(1)(A) of the Act.

5. We have heard both the learned Counsel and perused the record. It appears that the Federal Government has issued SRO 460(I)/2013 dated 30.5.2013 in terms of subsection 2(b) and sub-section (6) of Section 3 read with Section 8(1)(b) further read with Section 13(2)(a) and Section 71 of the Act, 1990 and has fixed the rate of Sales Tax

to be paid on the import and supply of goods specified in the Column 1 & 2 of the Table to the SRO. It is the case of the petitioner that once they have paid Sales Tax at the import stage on the basis of the aforesaid SRO, no further or additional tax is payable by them in terms of Section 3(1)(A) of the Act, on supply of such goods to unregistered persons. It would be advantageous to refer to the relevant Sections of the Act, under which SRO 460(I)/2013 has been issued:-

“Section 3

- 2(b) the Federal Government may, subject to such conditions and restrictions as it may impose, by notification in the official Gazette, declare that in respect of any goods or class of goods of goods imported into or produced [* * *] or any taxable supplies made by a registered person or a class of registered persons, the tax shall be charged, collected and paid in such manner and at such higher or lower rate or rates as may be specified in the said notification.]
- (6) The Federal Government or the [Board] may, in lieu of the tax under sub-section (1), by notification in the official Gazette, levy and collect such amount of tax as it may deem fit on any supplies or class of supplies or on any goods or class of goods and may also specify the mode, manner or time of payment of such amount of tax.

Section 8

- (1)(b) any other goods [or services] which the Federal Government may, by a notification in the official Gazette, specify [***].

Section 13

- (2)(a) the Federal Government may, by notification in the official Gazette, exempt any taxable supplies made [***] or [import or supply of] any goods or class of goods, from the whole or any part of the tax chargeable under this Act, subject to the conditions and limitations specified therein, and

Section 71

Special procedure.—[(1)] Notwithstanding anything contained in this Act, the Federal Government may, by notification in the official Gazette, prescribe special procedure for scope and payment of tax, registration, book keeping any invoicing requirements and returns, etc in respect of such supplies as may be specified therein.]

[2***]

- (3) Notwithstanding anything contained in this Act or any other law for the time being in force or any decision of any court the trade enrolment Certificate schemes immediately in force before the commencement of the Finance Act, 1999, shall be deemed to be validly made under this Act.]”

6. From perusal of the aforesaid provisions of Section 2(b) of Section 3 it appears, that the Federal Government may, subject to such conditions and restrictions, by

notification in the official Gazette, declare that in respect of any goods or class of goods imported into or produced or any taxable supplies made by a registered person or a class of registered persons, the tax shall be charged, collected and paid in such manner and at such higher or lower rate or rates as may be specified. Similar powers have been conferred on the Federal Government or the Board in terms of sub-section (6) of Section 3 of the Act. Section 8(1)(b) provides that a registered person shall not be entitled to reclaim or deduct input tax paid on any other goods or services which the Federal Government in the official gazette may specify. Whereas Section 13 (2)(a) provides that the Federal Government may, by notification in the official Gazette, exempt any taxable supplies made or import or supply of any goods or class of goods, from the whole or any part of the tax chargeable under this Act, subject to the conditions and limitations specified therein. (Emphasis supplied).

7. On a minute examination of the provisions of Section 13(1) of the Act, it appears that it provides, notwithstanding the provisions of Section 3, for exemption from the levy of Sales Tax on the supply or import of goods specified in the Sixth Schedule, subject to such conditions as the case may be, whereas, Sub-section 2(a) provides, that notwithstanding the provisions of sub-section(1), the Federal Government may by Notification in the official gazette exempt any taxable supplies made or import or supply of any goods or class of goods, from the whole or any part of the tax chargeable under this Act, subject to conditions and limitations specified therein. On perusal of SRO 460(I)/2013 it reflects that it has been specifically issued in terms of sub-section 2(a) of Section 13 in addition to other relevant provisions of the Act, and therefore, we are of the view that through SRO 460(I)/2013 the Federal Government has fixed the rate of Sales Tax as mentioned in Column 2 of the Table to the SRO at different rates and such fixation of Sales Tax appears to be the final liability of Sales Tax at import and supply stage. The words used in Section 13 2(a) of the Act are very specific and provides for exempting any taxable import or supply of any goods from the whole or any part of the Sales Tax chargeable under the Act and not merely under Section 3(1) of the Act as contended by the learned Counsel for respondent No.2. This would mean that the provision of Section

13 of the Act has an overriding effect on the chargeability of Sales Tax in terms of Section 3(1) as well as 3(1)(A) of the Act. Once the mechanism has been prescribed by the Federal Government by issuance of a Notification in terms of various provisions of the Act, including Section 13(2)(a) of the Act *ibid*, the question of payment of any additional tax in terms of Section 3(1)(A) of the Act, for supply of goods to unregistered person(s) does not arise. The provision of Section 3(1)(A) could only be invoked in respect of goods which are being charged Sales Tax under Section 3(1) of the Sales Tax Act, 1990 at the rate specified therein at *at-volerum* basis which is presently @ 17%. Once the mode and manner and the rate of Sales Tax has been altered, modified or fixed by the Federal Government either through subsections 2(b) & 6 of Section 3, read with Section 8(1)(b) of the Sales Tax Act, 1990, as well as under Section 13, no further tax can be demanded once the liability of Sales Tax is discharged on the basis of a special procedure as contemplated under SRO 460(I)/2013.

8. In view of herein above facts and circumstances of the instant case, we are of the view that the petitioner has discharged its liability of Sales Tax at the import stage by complying with the provisions of SRO 460(I)/2013 which has been issued by the Federal Government in terms of Special Provision for collection of Sales Tax in a manner and mode and at the rate, other than provided under Section 3(1) of the Act, including the provision of Section 13 of the Sales Tax Act 1990, which has an overriding effect *viz .a. viz.* chargeability of the tax, is not required to pay any additional tax in terms of Section 3(1)(A) of the Act. Accordingly, we hold that the impugned Show Cause Notice issued in terms of Section 11(2) & (3) of the Act for payment of additional tax has been issued without any lawful authority and jurisdiction and is hereby quashed. Petition stands allowed in the aforesaid terms.

JUDGE

JUDGE