

**IN THE HIGH COURT OF SINDH AT KARACHI**

**C. P. NO. D-4116 of 2014**

**Present:-**

**Mr. Justice Sajjad Ali Shah.**

**Mr. Justice Muhammad Junaid Ghaffar.**

**Sindh Institute of Urology**

**And Transplantation ----- Petitioner**

**Versus**

**Federation of Pakistan & others ----- Respondents**

**Date of hearing: 09.09.2015**

**Date of judgment: 06.10.2015**

**Petitioner: Through Mr. Ijaz Ahmed Advocate.**

**Respondent No. 3 & 4 Through Ms. Afsheen Aman Advocate.**

**Respondent No. 5 Mr. Aminuddin Advocate holding brief for Mr. Muhammad Khalil Dogar Advocate**

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** Through instant petition the petitioner seeks declaration from this Court that specialized porcelain tiles imported by the petitioner are entitled for zero rating of Customs duty under Chapter / Entry 9914 of the Customs Tariff and from Sales Tax under Serial No. 52 of the 6<sup>th</sup> Schedule to the Sales Tax Act, 1990.

2. Brief, the facts are that the petitioner is established under the Sindh Institute of Urology and Transplantation Act, 1991 and is being operated in the public sector on a non-profit basis. The petitioner is running a 750 bed Hospital to offer treatment for urological, nephrological, gastroenterological and liver diseases. It is also the largest centre of kidney transplantation in the public sector and last year, over one million patients had benefitted from various facilities, free of cost. It has been further stated that the petitioner is in the process of building an Oncology Centre for facilitating the treatment of various cancers, including bladder cancer, kidney cancer, prostate cancer, adrenal cancer,

testicular cancer and post-transplant malignancies. In order to construct such cancer treatment facility, the petitioner has to import various equipments and accordingly for its Transplant / operation theater, it has imported specialized type of porcelain tiles, which are bacteria free. The Customs Tariff under Entry 9914 provides for a special exemption to Charitable / Non-profit making hospitals of 50 beds or more at 0% (zero) rate of duty on import of equipment, apparatus, reagents, disposables and spares. The petitioner has claimed such exemption on the import of Tiles, whereas, the respondent department has denied exemption on the ground that these tiles do not fall or classify for exemption / zero rating under Heading 9914 and are to be assessed at the statutory rate of duty. On 18.8.2014 an interim order was passed, whereby, the goods in question were released subject to furnishing of Banking Guarantee of the disputed amount before the Nazir of this Court.

3. Learned Counsel for the petitioner has contended that Entry No. 9914 uses widest terms and provides for exemption on all sorts of equipment, apparatus, reagents, disposables and spares and therefore, the bacteria free porcelain tiles imported by the petitioner, squarely falls within the definition of equipment and therefore, the petitioner is entitled for zero rating of duty under Entry 9914 and for exemption from Sales Tax under Serial No. 52 of the 6<sup>th</sup> Schedule to the Sales Tax Act, 1990, respectively. Learned Counsel has submitted that in terms of the requirements of exemption, the petitioner is ready and willing to provide an undertaking in writing to the Collector of Customs, to the effect that such equipment etc. will not be sold, utilized or disposed of otherwise than for the purpose for which the same have been imported and binds itself to pay the leviable duty and sales tax in the event of breach of such undertaking. Learned Counsel has further contended that the goods in question are vital for the provision of medical services and are not ordinary tiles as contended on behalf of the respondents. In support of his contention learned Counsel has relied upon the case of *D.G. Khan Cement Company Ltd. Vs. Deputy Collector of Appraisement* (2003 PTD 936) and *Collector of Appraisement Karachi Vs. Foji Fertilizer Company Limited and others* (PLD 2005 SC 577).

4. Conversely, Counsel for respondent department has contended that though the petitioner is a well-recognized institute providing various facilities, however, the goods in question do not fall within the definition

of equipment and apparatus under Entry No. 9914 therefore, not entitled for zero rating of duty and exemption from Sales Tax. Counsel further contended that the goods in question i.e. tiles are porcelain tiles which is a construction material having a specific use in flooring and tiling of walls, hence do not qualify for any exemption.

5. We have heard both the learned Counsel and perused the record. By consent instant petition is being finally disposed of at Katcha Peshi stage. Insofar as the status of petitioner is concerned, the respondents do not deny that it is a well-established public sector hospital, offering various treatments in the field of Kidney and Liver, free of cost. It has also not been denied that the petitioner is running a hospital of more than 50 beds, whereas, the petitioner has also been issued an exemption certificate from withholding of Advance Income Tax under Section 159(1)(a) of the Income Tax Ordinance, 2001 as an approved non-profit organization under Section 236(c) of the Ordinance, 2001. The imports made by Charitable Non Profit making institutions operating Hospitals of 50 beds or more are subjected to Zero rating of Customs duty and Sales Tax under Entry No. 9914 of the Customs Tariff of Chapter 99 and under Entry No. 52 of the Sixth Schedule to the Sales Tax Act, 1990 which reads as under:-

<b>Customs Tariff Entry</b>		
PCT CODE	Description	CD (0%)
9914	Equipment, apparatus, reagents, disposables and spares, imported by:- (i) charitable nonprofit making institutions operating hospitals of fifty beds or more; and	0
(1)	(ii) hospitals run by the Federal Government or a Provincial Government:- Subject to the following conditions:- (a) the importing institution or hospital furnishes an undertaking in writing to the respective Collector of reagents, disposables and spares will not be sold, utilized or disposed of otherwise than for the purpose for which the same have been imported and binds itself to pay the leviable duty and sales tax in the event of breach of the undertaking. (b) the importing institution operating a hospital of fifty beds or more shall furnish a proof thereof to the satisfaction of the respective Collector of Customs.	
<b>6<sup>th</sup> Schedule Entry</b>		
52	Goods imported by or donated to hospitals run by the Federal Government or a Provincial Government; and non-profit making educational and research institutions subject to the similar restrictions, limitations, conditions and procedures as are envisaged for the purpose of applying zero rate of customs duty on such goods under the Customs Act, 1969 (IV of 1969).	99.13,99.14 and 99.15

6. Perusal of the above referred entry, reflects that equipment, apparatus, reagents, disposables and spares imported for Charitable Non-profit institution, operating hospital of fifty beds or more as well as hospitals run by a Federal Government or a Provincial Government are chargeable to Customs duty at the rate of (zero) 0%. Similarly Entry No. 52 as referred to hereinabove, provides that goods imported by or donated to hospitals run by the Federal Government or a Provincial Government; and Non-profit making educational and research institutions, subject to the similar restrictions, limitations, conditions and procedures as are envisaged for the purpose of applying zero rate of customs duty on such goods under the Customs Act, 1969 are also exempt from the levy of Sales Tax. The case of the petitioner appears to be that the goods in question i.e. bacteria free porcelain tiles, falls within the definition of equipment and therefore, entitled for zero rating of Customs duty under Entry No. 9914. Such contention is based on the premise that the word “*equipment*” includes all sorts of materials and inputs etc required by the Hospital for its own use and consumption and is not limited to medical and or other Hospital equipment. Since the entry itself does not define as to what falls within the meaning of equipment, therefore, we need to rely upon the dictionary meaning of the word “**equipment**”. The Oxford Dictionary defines it as *the necessary item for a particular purpose* (<http://www.oxforddictionaries.com/definition/english/equipment>). Similarly, Collins American English Dictionary (<http://www.collinsdictionary.com/dictionary/american/equipment>) defines it as “*the things that are used for a particular purpose or whatever a person, group or thing is equipped with, or the special things needed for some purposes*”. The Merriam Webster Dictionary (<http://www.merriam-webster.com/dictionary/equipment>) defines it as “*the set of articles or physical resources serving to equip a person or thing as (1) the implements used in an operation or activity (2) all the fixed assets other than land and buildings of a business enterprise*”. In the Words and Phrases Permanent Edition Volume 14A, wherein all judicial constructions and definitions of words and phrases by the State and Federal Courts from the earliest times have been indexed, has discussed several judicial decisions wherein the word equipment has been interpreted. In the case of *Department of Treasury, Gross Income Tax Division, V. Ranger-Cook, Inc.*, 49 N.E.2d 548, 550, 114 Ind.App.107, “Equipment” has been defined as *whatever is needed in equipping; the articles comprised in an outfit; equipage*. Similarly in the case of *Daly Bros. Shoe Co. v. H. Jacob & Sons*,

*Inc., D.C.Pa., 49 F. Supp. 1187, 121* “Equipment” means *the physical facilities available for production, including machines and tools*. Whereas in the case of *Burke v. Oates, 169 S.W.2d 608, 609, 293 Ky.563*, it has been held that *the legislature’s intent in using the word “equipment” was to be gathered from the face of the statute, and resort to settled rules of construction was proper*. In the case of *Edkins v. Board of Education of City of New York, 41 N.E.2nd 75, 76, 287 N.Y. 505*) it has been observed that *Under statute imposing the duty on board of education to purchase such “equipment” as may be necessary for proper and efficient management of educational activities under board’s management and control, the quoted word includes not only books and pencils but protective clothing for child students similar to that necessarily furnished by employers to men performing the same machine shop operating in industry*. In *Stroud’s Judicial Dictionary (words and phrases) Fourth Edition Volume 2*, it has been stated that *“equipment” of, e.g. a hospital, includes, “anything and everything which is required to convert an empty building, or part of an empty building, into a hospital, or part of a hospital, with all modern appliances” (per Kekewich J., Re Unite, 75 L.J. Ch. 163,).* In the *Corpus Juris Secundum*, a complete reassessment of the entire American Law as developed by all reported cases, defines equipment as *meaning the act of equipping or fitting, or the state, of being equipped, as for a voyage or an expedition*. It also means *the act or process of equipping with all needful supplies for any special service*. It has been further elaborated that *although in its plain, ordinary, and usual application the word may embrace all the appliances and furnishings necessary for, or usual in, the operation of an establishment or institution, it may nevertheless be restricted in its application, by the use of other words in the enactment or instrument in which it occurs*. It has been further stated that *the term ‘equipment’ is broad, and may include articles which are attached to a building as an integral part thereof, as well as articles not belonging to that category. Articles designed especially for a particular apartment house, as distinguished from furniture also usable elsewhere*.

7. A learned Single Judge of the Lahore High Court in the case of ***Muhammad Fayyaz V. Central Excise Authorities (1989 CLC 1642)***, while interpreting the word equipment has held as follows:

13. The word “equipment” is also used in a number of senses. First, as material or articles used in equipping something. Next, the physical facilities available for production, such as machines. It is also used in other senses, but they need not be discussed here. According to *Websters International Dictionary (Unabridged), Second Edition*, the word “equipment” means “material articles

used in equipment, as for an expedition; the articles comprised in an outfit as furnishings or apparatus; equipage; as laboratory equipment's. In Industry the physical facilities available for production, including the buildings, machines, tools, etc. "According to Sorter's Oxford English Dictionary, this word means "Anything used in equipping, furniture, outfit, war like apparatus; necessaries for travelling, etc. "According to Funk and Wagnalls Encyclopedic Dictionary, this word is defined as "Materials with which a person or organization is provided for some special purpose or service. The rolling stock and apparatus for operating a rail, road or other transportation system." According to Black's Law Dictionary, it means "Furnishings, or outfit for the required purposes. *In a legacy to be applied towards rebuilding and equipment of a hospital, it was held "equipment" meant everything required to convert an empty building into a hospital. An exceedingly elastic term, the meaning of which depends upon context.*" (emphasis supplied)

8. The fact that specialized tiles are manufactured and are a requirement of Hospitals cannot be disputed. There is no denying the fact that absolute hygiene for these facilities is of utmost importance and the antibacterial properties of these specialized tiles means that the germs, bacteria and fungi are decomposed, and the risk of infection is reduced which results in perfect cleanliness and fresh air. There are other beneficial reasons for using such tiles in Hospitals and specially in Transplant / Operation Theaters, as it also eliminates odour, improves the room climate, requires minimum care, reduces usage of harsh chemicals, is free of irritating substances and is environmentally friendly. The purpose and intent of Entry 9914 is to provide and to facilitate the Hospitals to import and buy equipment as well as apparatus, reagents, disposables and spares without payment of any Custom duty and Sales Tax. The word equipment has not been defined in the First Schedule to the Customs Act i.e. Custom Tariff, therefore, in the given circumstances if a restrictive meaning is assigned to the word equipment by confining it only to equipment *stricto senso* used in performing medical functions, that would not be appropriate. There is no prefix attached to the word **"equipment"** in this entry such as testing equipments, diagnostic equipments, and medical equipments or for that matter any other specialized equipments. It therefore, follows that here; use of the word **"equipment"** is in a broader sense as against the restrictive meaning being assigned on behalf of the respondents. It has not been disputed before us that the petitioner is running a specialized hospital being known and famous in Kidney and Liver Transplant, and other facilities on a Non-profit basis, therefore, we are of the view that if we are to accept the contention of the respondents by assigning a restrictive meaning to the word equipment, that would amount to burden the petitioner financially, which in fact is being run on donations by the public, whereas, it would also defeat the intention of the legislature which has granted exemption / zero rating to all sorts of equipment, without any

curb or restriction. Therefore, we need to interpret this Entry, keeping in view the peculiar facts and circumstances of this case and the intent of the legislature as well. What may be regarded as “equipment” by the petitioner may not be acceptable as such to the respondents, as the exemption Entry does not define the word “equipment”. Since it relates to the imports made by a Hospital, therefore, the requirement of the Hospital has to be looked into before grant or refusal of exemption, that as to whether the goods can be termed as “equipment” or not. Therefore, for such reasoning we are inclined to observe that the specialized tiles imported by the petitioner in the instant matter, would be covered under the definition of equipment under Entry No. 9914 of the Customs Tariff being entitled for Zero (0%) rating of Customs duty, whereas, entry 52 of the 6<sup>th</sup> Schedule to the Sales Tax Act, 1990 does not even restrict the exemption to any equipment. It in fact allows exemption to all sorts of goods imported by the Hospitals and the only restriction is, that it is subject to similar restrictions, limitations, conditions and procedure as are envisaged for the purpose of applying Zero rating of Customs duty on such goods under the Customs Act, i.e. furnishing of an undertaking to the satisfaction of the Collector of Customs concerned, which the petitioner has already undertaken to fulfill. Therefore, the petitioner’s goods i.e. tiles in question would also be entitled for exemption of Sales Tax against Entry No. 52 of the 6<sup>th</sup> Schedule to the Sales Tax Act, 1990.

9. In view of hereinabove facts and circumstances of the instant case we are of the view that the petitioner is entitled for zero rating of Customs Duty on the import of specialized porcelain Tiles being “equipment” under Entry 9914 of the Customs Tariff and for exemption of Sales Tax under Serial No. 52 of the 6<sup>th</sup> Schedule to the Sales Tax Act 1990, respectively. Accordingly instant petition is allowed and the Nazir of this Court is directed to discharge the Bank Guarantee / security furnished by the petitioner pursuant to interim order dated 18.8.2014 passed by this Court. Petition stands allowed as above.

Dated 06.10.2015

JUDGE

JUDGE