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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Sajjad Ali Shah
Mr. Justice Munib Akhtar
Mr. Justice Muhammad Ali Mazhar

C.P. No.116-K to 122-K & 151-K of 2021

(Against the Judgment dated 10.11.2020
passed by the High Court of Sindh at Karachi
in C.P. No. D-3617, D-3555, D-3598, D-3618,
D-3621, D-3666, D-3682 & D-4872 of 2013)

Commissioner Inland Revenue

.... Petitioner(s)

Versus

Reckit Benchiser Pakistan Ltd & another (CP 116-K/21)
M/s. Mondelez Pakistan Ltd (CP 117-K/21)
M/s. Shell Pakistan Ltd (CP 118-K/21)
M/s. Pakistan State Oil Company Ltd (CP 119-K/21)
M/s. Pakistan Suzuki Motor Company Ltd (CP 120-K/21)
M/s. Oil Industries Pakistan Pvt Ltd (CP 121-K/21)
M/s. International Steel Ltd (CP 122-K/21)
M/s. Chevron Pakistan Ltd (CP 151-K/21)

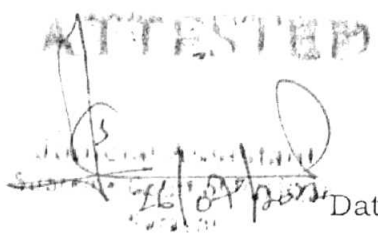
... Respondent(s)

For the Petitioners:

Dr. Shah Nawaz, ASC.
Mr. Mazhar Ali B. Chohan, AOR
(in all petitions)

For the Respondents:

Barrister M. Abdur Rehman, ASC.
(in CP 117-K/21)
Mr. Hussain Ali Almani, ASC
(in CP 118-K/21)
Mr. Muhammad Nadeem Qureshi, ASC
(in CP 119-K/21)
Mr. Anwar Kashif Mumtaz, ASC.
(in CP 122-K/21)

 Date of Hearing:

15.07.2022.

ORDER

Munib Akhtar, J.- At the conclusion of the hearing, a short order was made converting these leave petitions into appeals, and allowing them. The following are our reasons for having done so.

2. The petitioner-department challenged a common judgment of the learned High Court dated 10.11.2020 whereby a number of writ petitions, filed by the respondents in 2013, were allowed. The litigation arose in the following circumstances. The Finance Bill, 2013 proposed to increase the rate of sales tax, levied under the Sales Tax Act, 1990 ("1990 Act") from



16% to 17%. The Bill was introduced on 13.06.2013 and there was inserted in it a declaration under s. 3 of the Provisional Collection of Taxes Act, 1931 ("1931 Act") which had the effect of making the increase effective immediately. This declaration was noticed by the Court, and it, and the vires of various sections of the 1931 Act, were immediately up in terms of certain petitions already pending (since 2005) under Article 184(3) of the Constitution. On 21.06.2013 the petitions were allowed by means of a short order which comprised of a number of paras. It was, inter alia, declared that the aforesaid declaration made under the 1931 Act was unlawful (para (i)) and s. 4 thereof was held to be unconstitutional (para (iii)). It was declared that during the passage of the Bill sales tax could not be charged at the rate of 17% (para (v)). There then followed para (vi), on which great emphasis was laid by learned counsel for the petitioner:

"The excess amount equal to 1% (17%-16%) of the Sales Tax recovered on the petroleum products/CNG or any other taxable supplies w.e.f. 13-6-2013 onward, thus is refundable to consumers and concerned authorities accordingly are directed to deposit it with the Registrar of this Court subject to passing of the Finance Bill (Money Bill) 2013-14 by or under the authority of the Majlis-e-Shoora;

If the Sales Tax is imposed by the Majlis-e-Shoora to be recovered with retrospective effect, same shall be paid to the Government, otherwise appropriate orders will be passed for its disbursement,"

The judgment of the Court is reported as *Engineer Iqbal Zafar Jhagra and another v Federation of Pakistan and others* 2013 SCMR 1337.

3. Since the Finance Bill was still winding its way through the National Assembly on 21.06.2013, a provision was inserted therein giving retrospective effect, to 13.06.2013, to the increase in sales tax to 17%. This became part of the ensuing Act when the legislation came into force after receiving the President's assent. The retrospective effect was given by s. 5(15) of the said Act. Other than the provisions given retrospective effect, the Finance Act applied from 01.07.2013 onwards (see s. 1(3) thereof).

4. It appears that some months thereafter, the Federal Government issued a notification, SRO 946(I)/2013 dated 25.10.2013 ("SRO 946"), under the 1990 Act. This provided as follows:

"In exercise of the powers conferred by clause (b) of sub-section (2) of section 3 of the Sales Tax Act, 1990, the Federal Government is pleased to direct that sales tax shall be charged and collected on import and local supply of goods at the rate of sixteen per cent, for the period from 21st June, 2013 to 29th June, 2013, which otherwise were chargeable to sales tax at the rate of seventeen per cent.

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Judicial Assistant
Supreme Court of Pakistan
Karachi

Provided that the aforesaid reduction of rate of sales tax from seventeen per cent to sixteen per cent for the said period shall not be applicable in cases where the incidence of tax has been passed on in terms of section 3B of the said Act."

5. It was in this backdrop that the present respondents filed their petitions in 2013. Their primary grievance was that SRO 946 ought to be given retrospective effect to 13.06.2013. This plea was accepted by the learned High Court in the impugned judgment, in the following terms (internal citations omitted; emphasis in original):

"8. Perusal of the aforesaid Notification reflects that the Federal Government is pleased to direct that sales tax shall be charged and collected on import and local supply of goods *at the rate of sixteen per cent*, for the period from 21st June, 2013 to 29th June, 2013, which otherwise were chargeable to sales tax *at the rate of seventeen per cent* provided that the aforesaid reduction of rate of sales tax from *seventeen per cent to sixteen per cent* for the said period shall not be applicable in cases where the incidence of tax has been passed on in terms of section 3B of the said Act. This Notification clearly reflects that having realized their mistake, the Federal Government has cured this defect through Notification in question. Only dispute now remains is with respect to the period mentioned in the Notification. The period taken by the Federal Government is 21.06.2013 i.e. the date of announcement of judgment by the Hon'ble Supreme Court, whereas, in our considered view it ought to have been from 13.06.2013 i.e. the date on which the rate was increased through Finance Bill alongwith a declaration under 1931 Act.

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9. In arriving at the above conclusion we are fortified with the judgment of a Division Bench of this Court in respect of regulatory duty, whereby, an attempt of the Federation of Pakistan to undo or nullify the effect of an earlier judgment of another Division Bench declaring the provisions of s.18(3) of the Customs Act as amended vide Finance Act, 2017 and issuance of SRO 1035(I)/2017 as ultra vires, has been disapproved by holding that in the absence of any constitutional amendment, the effect of the earlier judgment cannot be validated through subsequent amendment in law, while giving it retrospective effect in respect of past and closed transaction, therefore, no Regulatory Duty can be charged, collected or recovered for the period starting from the date of commencement of Finance Act, 2017 till the date of commencement of Finance Act, 2018. In ultimate analysis therefore the primary test of validating piece of legislation is whether the new provision removes the defect which the Court had found in the existing law and whether adequate provisions in the validating law for a valid imposition of tax were made."

6. Learned counsel for the petitioner submitted that the learned High Court erred materially in coming to the foregoing conclusions. It was submitted that rather than trying to evade the judgment in *Jhagra*, the Government full effect thereto. Reliance was placed in particular on para (vi) of the short order, reproduced above. The retrospective effect given in terms of s. 5(15) was, it was submitted, based on para (vi). It was

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submitted that it was afterwards realized that between the date of the short order (21.06.2013) and the coming into force of the Finance Act, 2013 after receiving the President's assent (30.06.2013) some suppliers may have charged sales tax at the rate of 16%. On account of the retrospective effect, the applicable rate was 17%. It would, in such circumstances, be unfair to expose the said suppliers to any legal action for a short levy of the tax. Therefore SRO 946 was issued, to cover the position of such suppliers, subject to the requirement imposed by the proviso. Insofar as the period from 13.06.2013 to 20.06.2013 was concerned, learned counsel submitted that there the rate applicable was 17% on account of the declaration under the 1931 Act and, notwithstanding the decision in *Jhagra* and on account of the retrospective effect of s. 5(15), that continued to be position. Therefore, the notification did not rightly take this period into account. It was emphasized that all of this was fully justified and covered by para (vi) of the short order. It was also contended that there were no past and closed transactions and hence the impugned judgment ought to be said aside.

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Judicial Assistant
Supreme Court of Sindh
Karachi

Learned counsel for the respondents sought to challenge the retrospective effect given by s. 5(15) to the increase in sales tax. Certain case law, laying down general principles with regard to the retrospective effect of fiscal statutes, was relied upon. Learned counsel also submitted that the learned High Court had correctly concluded that the transactions over the period in question (13.06.2013 to 20.06.2013) were indeed entitled to the benefit of SRO 946 and the High Court had rightly granted relief to the respondents.

8. Having heard learned counsel and considered the provisions and record we were of the view that the petitioner-department ought to succeed. We intend no disrespect in not considering the case law sought to be relied upon by learned counsel for the respondents. However, we are of the view that the position adopted by learned counsel for the department is correct. The entire matter turned on the very specific facts and circumstances of the case before this Court in *Jhagra*, as relevant for present purposes and presented on account of the declaration made under the 1931 Act in relation to the proposed increase in the rate of sales tax. Within this narrow and tightly focused locus, this Court made a detailed short order and was clearly cognizant of the fact that decision was being rendered halfway through the legislative process. Learned counsel for the department was correct in submitting that para (vi) was designed specifically to take into account the effect of any provisions being added to the Bill before it became an Act such that retrospective

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effect was given to the increase in the rate. And that is precisely what happened. Therefore, reliance on general principles, even if the same relate to fiscal statutes, would not be appropriate. The general must give way to the specific, here meaning what was said and intended by the Court in para (vi). That was given effect to in s. 5(15) and the conclusions to the contrary of the learned High Court cannot, with respect, be sustained.

9. Insofar as the point of past and closed transactions is concerned, we are again, with respect, unable to agree with the learned High Court. When tax was levied and collected at the enhanced rate of 17% between the period 13.06.2013 to 20.06.2013 that was by reason of the declaration made under the 1931 Act. That declaration may have been under a cloud inasmuch as this Court was considering its legality, but that could not, over the said period as it actually unfolded, affect its efficacy. Now, the 1931 Act, as its very short title attests, was concerned with the provisional collection of taxes. It is difficult to see how a matter that was provisional in its very nature and essence could result in a past and closed transaction.

10. In conclusion, we are of the view that in the very specific facts and circumstances of the case, and in light of what was expressly said in and contemplated by para (vi) of the short order in *Jhagra*, s. 5(15) was validly enacted and gave effect to what was made permissible thereby. SRO 946 did no more than remove an anomaly that arose between 21.06.2013 to 29.06.2013, i.e., between the announcement of the short order and the retrospective effect achieved by s. 5(15). That anomaly did not exist in relation to the period 13.06.2013 to 20.06.2013. The respondents ought not therefore to have been granted relief in relation thereto and the learned High Court, with respect, erred materially in doing so. The leave petitions were accordingly converted into appeals and allowed.

Sd/- Sajjad Ali Shah, J
Sd/- Munib Akhtar, J
Sd/- Muhammad Ali Mazhar,

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