

IN THE HIGH COURT OF SINDH, KARACHI

C.P.NO.D-1457/2011

Pakistan State Oil Ltd. vs. Pakistan & others

Present: Mr. Justice Faisal Arab, C.J.
Mr. Justice Zafar Ahmed Rajput

Date of short order : **28.05.2015**

Date of reasons : **31.10.2015**

Dr. Muhammad Farogh Nasim, Advocate for the Petitioner.
Mr. Salman Talibuddin, Additional Attorney General.
Mr. Muhammad Siddiq Mirza, Advocate.

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JUDGMENT

FAISAL ARAB, CJ:- The petitioner, which is owned and controlled by the Government of Pakistan, is engaged in the business of importing and marketing petroleum products. Respondent No.5 i.e. Byco Petroleum Pakistan Ltd. is one of the suppliers of petroleum products to the petitioner. On 29.12.2010, the petitioner received a show cause notice from the Sales Tax Authorities wherein it was claimed that the petitioner made purchases of various products from respondent No.5 between December 2009 to April, 2010 on credit but the bills were not settled within 180 days of the raising of the invoices, therefore, the petitioner has become disentitled to seek adjustment of input tax credit on account of the bar contained in Section 73(2) of the Sales Tax Act, 1990. Departmental proceedings were initiated but the petitioner opted to file the present petition on the ground that the delay in settling the invoices within statutory 180 days was on account of the then prevailing financial crisis in the oil

industry. It was submitted that the petitioner's customers such as WAPDA, HUBCO, KAPCO and PIA did not make payment to the petitioner for the petroleum products that were sold to them with the result that the petitioner was genuinely handicapped in settling the bills of respondent No.5 within the period prescribed in Section 73(2). It was also argued that in any case the entire component of leviable tax has been paid into the treasury, hence no loss was occasioned to the exchequer and denying adjustment of input tax credit would amount to double taxation.

2. This Court has interfered in this case under Article 199 of the Constitution only for the reason that the petitioner itself is a company that is owned, managed and controlled by the Federal Government and the tax that is subject matter of this case is also a federal tax. Therefore, this is a dispute between two entities of the Federal Government. It is well known fact that the petitioner was at the receiving end of the circular debt crisis at the relevant time as billions of rupees of the petitioner were stuck up with various Government departments. The petitioner, therefore, was financially handicapped to settle its bills with the respondent No.5 within the statutory period of 180 days. It was only on account of delay in settling the accounts with respondent No.5 that the provisions of Section 73(2) of the Sales Tax Act, 1990 were invoked against the petitioner. Section 73(1) and (2) reads as follows:-

“73. (1) *Notwithstanding anything contained in this Act or any other law for the time being in force, payment of the amount for a transaction exceeding value of fifty thousand rupees, excluding payment against a utility bill, shall be made by a crossed cheque drawn on a bank or by crossed bank draft or crossed pay order or any other crossed banking instrument*

showing transfer of the amount of the sales tax invoice in favour of the supplier from the business bank account of the buyer:

Provided that online transfer of payment from the business account of buyer to the business account of supplier as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective buyer and the supplier.

(2) The buyer shall not be entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under this Act if payment for the amount is made otherwise than in the manner prescribed in sub-section (1), provided that payment in case of a transaction on credit is so transferred within one hundred and eighty days of issuance of the tax invoice.”

3. We are of the view that in cases where both the parties belong to the federation, the dispute between them should be settled through negotiations without taking recourse to Court proceedings. This option, however, was not exercised. We, therefore, deemed it appropriate to entertain this petition under Article 199 of the Constitution. We are of the considered view that let the department first examine whether respondent No.5, which is a private company, has deposited the sales tax with the exchequer on the sales it made to the petitioner that are subject matter of these proceedings. If that is so then the petitioner would be disentitled to claim adjustment of input tax for the period in question. This is so for the reason that delay that occurred in settling the account with respondent No.5 for the disputed period was mainly on account of the fault of the federation itself by not settling the circular debt crisis. Let the department first verify that the entire tax relating to the disputed period stands recovered by the exchequer and if no amount is recoverable then the department cannot invoke provisions of Section 73(2) as it was the Federal Government which failed to make

payment at the relevant time to the petitioner for the petroleum products which its various departments purchased thereby creating a huge circular debt causing delay for the petitioner to settle its bills with respondent No.5.

4. Vide short order dated 28.05.2015 this petition was allowed and these are the reasons for the same.

CHIEF JUSTICE

JUDGE

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