

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-278 of 2013

Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Ashraf Jahan

Petitioner: Liaquat National Hospital Association,
through Mr. Ijaz Ahmed, advocate.

Respondent: Federation of Pakistan,
through Mr. Mir Hussain Abbasi,
Assistant Attorney General.

Respondents No.3-5: through Mr. Kashif Nazir, advocate.

Date of Hearing: 17.08.2018.

Date of Order: 17.08.2018.

ORDER

Through instant petition, petitioner has sought following relief:

- (i) *Declare that all equipment, apparatus, reagents, disposals and spares including the generator and spare parts imported by the Petitioner are covered under PCT Heading 9914 and entry 52 in the sixth schedule of the Sales Tax Ordinance and the Petitioner is entitled to seek release of equipment, apparatus, reagents, disposals and spares including the generator and spare parts at zero rate of duties and taxes.*
- (ii) *Declare the letters dated October 12, 2012 and December 14, 2012 to be illegal and of no legal effect.*
- (iii) *Restrain the respondents from encashment of Post Dated Cheques submitted by the petitioner.*
- (iv) *Restrain the Respondents from taking any coercive action.*
- (v) *Any other relief which this Hon'ble Court deems appropriate in the circumstances of case may also kindly be granted to the Petitioner.*
- (vi) *Cost of the petition may also be granted."*

2. Notice of the petition was issued to the respondents, pursuant to which comments have been filed wherein claim of the petitioner has

been disputed, however, during the course of hearing instant petition on 17.5.2018, the following order was passed:

“Learned Counsel for the Petitioner, after arguing the matter at some length, submits that the dispute agitated through instant petition has already been decided by Division Bench of this Court in C.P. No. D-4116/2014 in the case of *Sindh Institute of Urology and Transplantation v. Federation of Pakistan and others*, vide judgment dated 06.09.2015 as well as a decision of Islamabad High Court in Writ Petition No. 629/2013 in the case of *Mayo Hospital Lahore v. Federation of Pakistan and others*, vide judgment dated 22.3.2013, wherein, according to learned Counsel for the Petitioner, the tiles, imported to be affixed in the operation theater of the hospital as well as the generator imported for the use at hospital, have been granted the benefit HST Code 9914 while, given a liberal interpretation to the term “equipment”, submits that the instant petition can also be disposed in similar terms, copy of aforesaid decisions have been placed on record and supplied to learned Counsel for the Respondent, who requests for a short adjournment to examine the same. At his request, adjourned to 25.5.2018. Interim order passed earlier to continue till next date.”

3. Today, learned counsel for the respondent, while confronted with hereinabove position, and also with the decision of a Divisional Bench of this Court in the case of *Sindh Institute of Urology and Transplantation v. Federation of Pakistan and others (2017 PTD 603)* as well as the decision of Islamabad High Court in *Writ Petition No.629/2013 (Mayo Hospital Lahore v. Federation of Pakistan, etc.)*, whereby, according to learned counsel for the petitioner, similar controversy has already been decided in favour of the petitioner, learned counsel for respondent could not controvert the aforesaid factual and legal position, however, submits that as per his information against the Order of the Divisional Bench of this Court as referred to hereinabove, respondents department has filed a Civil Petition for Leave to Appeal, however, pleads no instructions as to

whether leave has been granted, and the judgment of this Court has been suspended or not by the Hon'ble Supreme Court. Learned counsel for the respondents however, submits that the interpretation of the term "equipment" as given under HST Code 9914 and Entry 52 in the Sixth Schedule of the Sales Tax Act, 1990, has been given a liberal interpretation in the above cited judgments, the ratio of which is attracted to the facts of instant case.

4. From perusal of the judgments in the case of *Sindh Institute of Urology (supra)*, while interpreting the terms "equipment" the learned Divisional Bench of this Court has been pleased to hold that the tiles imported by the hospital to be affixed in the operation theater, are covered under the definition of the term "equipment" therefore, entitled to the benefit of HST Code 9914. Relevant finding is reproduced hereunder:-

"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 customs 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 sensu used in performing medical functions, diagnostic equipments, and medical equipments or for that matter any other specialized equipments, that would not be appropriate. There is no prefix attached to the word "equipment" in this entry such as testing equipments, diagnostic equipments, medical equipments or for that matter any other specialized equipments. It, therefore, follows that here; 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 to Zero (0%) rating of Customs duty, whereas, entry 52 of the 6th 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 procedures 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 6th Schedule to the Sales Tax Act, 1990.”

5. In the instant case, admittedly, the Generators and spare parts, which are subject matter of instant petition, have been imported for installation in the Hospital, and to be utilized for providing medical services to the patients, which includes the surgeries to be performed in operation theater(s) and also intensive medical care to the serious patients admitted in ICU’s and HDU’s, whereas, it has to be ensured electricity supply remain undisrupted throughout. In other words, the

only purpose of importing the Generator and its parts is to ensure the smooth and uninterrupted medical services to the patients. It has already been observed in the aforesaid judgment by a Divisional Bench of this Court that restrictive meaning cannot be given to the term “equipment” in terms of PCT Heading 9914 and entry 52 in the sixth schedule of the Sales Tax Act, 1990, therefore, while, adopting liberal interpretation, even the **tiles** imported by the hospital to be affixed in the operation theater, have been declared to be covered within the definition of term “equipment” and have been granted exemption from payment of customs duty and sales tax. We are of the opinion that the case of the petitioner is on much better footing, as the **generator** and its **spare parts** imported by the petitioner Hospital, which claims to be a charitable, non-profit making institution, are being utilized for the purposes of providing health services to the patients, without disruption of electricity supply. It constitutes an integral part of running a hospital, and to provide health services, including surgery and intensive Care to the patients, which requires uninterrupted electricity supply in the operation theatre, ICU/HDU and also to other areas of the hospital for patient related services round the clock.

6. Keeping in view hereinabove facts and circumstances of the instant case, and no objection by the learned counsel for the respondent regarding applicability of the ratio of the aforesaid judgment in the case of *Sindh Institute of Urology and Transplantation v. Federation of Pakistan and other (2017 PTD*

603) passed by a Divisional Bench of this Court, as well as decision of the Islamabad High Court in *Writ Petition No.629/2013 (M/s Mayo Hospital Lahore v. Federation of Pakistan, etc.)*, instant petition is allowed. Accordingly, it is hereby declared that the **generator** and **spare parts** (subject matter of instant petition) which have been imported by the petitioner, are covered under HST Code 9914 and Entry 52 in the Sixth Schedule of the Sales Tax Act, 1990, hence entitled to the benefit of exemption from payment of customs duty and sales tax accordingly.

Petition stands allowed in the aforesaid terms along with listed applications.

JUDGE

JUDGE