

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

**MR. JUSTICE MUHAMMAD JUNAID GHAFFAR MR.
JUSTICE AGHA FAISAL**

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|-----|----------------------|--|-------------|
| 1. | C.P. No. D-4780/2018 | M/s M. Iqbal & Sons & others | Petitioners |
| 2. | C.P. No. D-4951/2018 | M/s. Service Sales Corporation Pvt Ltd & another | Petitioners |
| 3. | C.P. No. D-4779/2018 | M/s. Khan Muhammad enterprises and others | Petitioners |
| 4. | C.P. No. D-4781/2018 | M/s. Hadi International & others | Petitioners |
| 5. | C.P. No. D-4911/2018 | M/s J.M. Trading | Petitioner |
| 6. | C.P.No. D-4539/2018 | M/s. International Trading Company and others | Petitioners |
| 7. | C.P.No.D-5280/2018 | M/s. Service Sales Corporation Pvt Ltd. | Petitioner |
| 8. | C.P.No.D-5281/2018 | M/s. Service Sales Corporation Pvt. Ltd. | Petitioner |
| 9. | C.P.No.D-8511/2018 | M/s. Super House | Petitioner |
| 10. | C.P.No.D-4962/2018 | M/s. Mould Craft Corporation | Petitioner |
| 11. | C.P.No.D-2296/2019 | M/s. S.A. Brothers and another | Petitioners |

Vs.

Federation of Pakistan & othersRespondents

FOR THE PETITIONERS:

Through M/s. Ghulam Hyder Shaikh,
Manzar Hussain, Advocates in
C.P Nos.D-4780, 4779, 4781. 4951,
4539, 8511 of 2018.

Mr. Kashif Nazeer, Advocate in
C.P Nos.D-4951, D-5280,
5281 of 2018.

FOR THE RESPONDENTS

Through M/s. Khalid Mehmood
Rajpar Iqbal M. Khurram, Ghulam
Murtaza Korai (SRB), Dr.
Shahnawaz Memon, Muhammad
Bilal Bhatti, Muhammad Junaid
Khatri, Shafiq Mughal, Asad
Shahwani, Advocates.

FEDERATION:

Through Mr. Kafeel Ahmed Abbasi, DAG.

Date of Hearing:

02.02.2021.

Date of Judgment:

02.02.2021

JUDGMENT

Muhammad Junaid Ghaffar J.- In all these petitions, there is a common controversy involved as to whether the imported goods i.e. Artificial Leather is covered under SRO 1125(I)/2011 dated 31.12.2011 (**SRO 1125**) for exemption and reduction on sales tax under the head of Leather Industries.

2. It has been contended by the learned Counsel¹ for the petitioners that SRO 1125, since its inception, extends benefits to five export oriented industries, which includes Textile, Carpet, Leather, Sports and Surgical Goods and till 2017, the goods in question i.e. shoes etc. of artificial leather were granted exemption and/or reduction in sales tax at the import stage; but pursuant to some Letter dated 16.11.2017, the said exemption/reduction was refused on the ground that Leather Industry does not cover imports of Artificial Leather, which according to the learned Counsel is an incorrect approach and is a deviation from longstanding practice in field since 2011. According to them when this exemption/reduction was denied, petitions were filed and by way of an ad-interim arrangement, goods were released subject to deposit of disputed amount as security and subsequently SRO 777/(I)/2018 dated 21.06.2018 (**SRO 777**) was issued and in Table-II through clarification/amendment and words including "Artificial Leather" was inserted. Per learned Counsel the respondents have misconstrued SRO 1070/(I)/2017 dated 23.10.2017 (**SRO 1070**), whereby, a distinction was introduced in respect of rate of sales tax and the exemption between textile and leather sectors and three other categories of industries specified in SRO 1125, and was not to be understood as an SRO denying exemption on Artificial Leather. He lastly submits that subsequent amendment through SRO 777 is beneficial and has been issued pursuant to representations by the Petitioners during pendency of these proceedings; hence same be applied retrospectively.

¹ Mr. Kashif Nazer.

3. On the other learned Counsel for the respondents has read out the comments and submits that Artificial Leather is not covered under the head of Leather Industry; hence the exemption has been correctly denied during the said period and no case is made out.

4. We have heard all the learned Counsel and perused the record. It appears that through SRO 1125 issued by way of powers conferred by clause (c) of section 4 read with clause (b) of sub-section (2) and sub-section (6) of section 3, clause (b) of sub-section (1) of section 8 and section 71 of the Sales Tax Act, 1990, the Federal Government notified goods as specified in Column-2 of the said SRO, on which exemption and/or reduction of the sales tax was provided. This SRO 1125 has gone into a number of changes from time to time; but for the present purposes the following conditions and subsequent amendments are relevant, which reads as under:-

S.R.O.1125(I)2011. In exercise of the powers conferred by clause (c) of section 4 read with clause (b) of sub-section (2) and sub-section (6) of section 3, clause (b) of supersession of its Notification No. S.R.O. 1058(I)2011, dated the 23rd November, 2011, the Federal Government is pleased to notify the goods specified in column (2) of the Table below under the PCT heading numbers mentioned in column (3) of the said Table, including the goods or class of goods mentioned in the conditions stated in this notification, to be the goods on which sales tax shall, subject to the said conditions be charged at zero-rate or, as the case may be, at the rate of five percent, wherever applicable to the extent and in the manner as specified in the aforesaid conditions, namely:-

Conditions

- (i) The benefit of this notification shall be available to every such person doing business in textile (including jute), carpets, leather, sports and surgical goods sectors, who is registered as :-
 - (a) manufacturer;
 - (b) importer;
 - (c) exporter; and
 - (d) wholesaler;
- (ii) -----
- (iii) -----
- (iv) -----
- (v) The import of finished goods ready for use by the general public, shall be charged to tax at the rate of five percent and value addition tax at the rate of one percent;”

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**“GOVERNMENT OF PAKISTAN
FEDERAL BOARD OF REVENUE
(REVENUE DIVISION)**

“Islamabad, the 23rd October, 2017

**NOTIFICATION
(SALES TAX)**

S.R.O. 1070(I)/2017.— In exercise of the powers conferred by sub-section (I), clause (b) of sub-section (2) and sub-section (6) of section 3 and clauses (c) and (d) of section 4 read with clause (b) of sub-section (I) of section 8 and section 71 of the Sales Tax Act, 1990, the Board with the approval of the Federal Minister in charge is pleased to direct that the following further amendments shall be made in its Notification No. S.R.O. 1125(I)/2011, dated the 31st December, 2011, namely:-

In the said Notification, in Table-II,--

- (a) against serial number 4 in column (I), for entries thereto in columns (2), (3) and (4), the following shall be substituted, namely:-

| | | | |
|-----|---|--------------------|-------------------------------|
| “4. | (i) Imported finished goods of textile and leather sectors ready to use by the general public | Respective heading | 6% plus 2% value addition tax |
| | (ii) Supply thereof | Respective heading | 6%”, and |

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**“GOVERNMENT OF PAKISTAN
FEDERAL BOARD OF REVENUE
(REVENUE DIVISION)**

Islamabad, the 21st June, 2018

**NOTIFICATION
(SALES TAX)**

S.R.O. 777(I)/2018.—In exercise of the powers conferred by sub-section (I), sub-section (IA), clause (b) of sub-section (2) and sub-section (6) of section 3 and clauses (c) and (d) of section 4 read with clause (b) of sub-section (I) of section 8 and section 71 of the Sales Tax Act, 1990, the Board with the approval of the Federal Minister in charge is pleased to direct that the following further amendments shall be made in its Notification No. S.R.O. 1125(I)/2011, dated the 31st December, 2011, namely:-

In the aforesaid Notification,-

- (A) in Table-II, in column (I),
- (i) against S. No. 1, in column (2),

- (a) against sub-serial (vii), in column (4), for the expression “6”, the figure “9” shall be substituted; and
- (b) against sub-serial (vii), in column (4), for the expression “6%”, the expression “9%” shall be substituted;
- (ii) against S. No. 3, in column (4), for the expression “6%”, the expression “9%” shall be substituted;
- (iii) against S. No. 4, in column (2),-
 - (a) in the heading, after the word “sectors”, the expression”, **including artificial leather**” shall be inserted;
 - (b) against serial No. (i), in column (4), for the expression “6%”, the expression “9%”, shall be substituted, and
 - (c) against serial (ii), in column (4), for the expression “6%”, the expression “9%”, shall be substituted;
- (iv) against S. No. 4, in column (2), after sub-serial (ii), the following proviso shall be added, namely: -“

5. Perusal of the aforesaid relevant provisions under discussion reflects that after issuance of SRO 1070, whereby, there were certain changes in Table-II to the SRO at Serial No.4 and the rates of sales tax and value addition conditions were rationalized in respect of textile and leather sectors, the Respondents / Department denied the exemption to the petitioners and other importers on pretext that by virtue of this amending notification, some clarification has been issued by FBR in respect of goods of Artificial Leather. The precise case of the department was premised on the fact that *Artificial Leather* is not covered under the heading of *Leather* as provided in SRO 1125; however, admittedly this was done for the first time in 2017 and perhaps after issuance of SRO 1070 and when specifically confronted as to why this objection was raised so belatedly in 2017, whereas, the SRO was initially issued in 2011 and to this there was no justifiable response from the Respondents Counsel which could satisfy as to the change in the interpretation of the SRO by the respondent department. When the original conditions to the SRO are read with the subsequent amendments through SRO 1070, we do not see any material change as to the issue in hand and are unable to understand this change and shift in

respect of interpretation of the word “Leather Industry” now being relied upon by the respondents. It was the same since inception and until 2017, when through SRO 1070, only some rationalization of rates and value addition of sales tax at import and manufacturing stage against Textile and Leather Industry was made; and such rationalization was not made in respect of three other categories of the Industries i.e. Carpets, Sports and Surgical Goods. We do not see any other change in the original SRO through promulgation of SRO 1070. In the petitions reference has also been made by the petitioners to some letter dated 16.11.2017 addressed by one of the Collector of Customs to FBR, which reads as under:-

“GOVERNMENT OF PAKISTAN
MODEL CUSTOMS COLLECTORATE
FORT MUHAMMAD BIND QASIM
KARACHI

No. Troup-IV-652-2017/PQ

Dated 16.11.2017

Mr. Muhammad Ali Khan,
Secretary (ST & FE-Budget),
Federal Board of Revenue,
Islamabad.

SUBJECT: ADMISSIBILITY OF FINISHED GOODS MADE OF ARTIFICIAL LEATHER
READY TO USE BY THE GENERAL PUBLIC TERMS OF SRO 1125(I)/2011
DATED 31.12.2011 AS AMENDED VIDE SRO 1070(I)2017 DATED
23.10.2017.
Please refer to the subject cited above.

It is informed that importers are claiming concessionary rate of sales tax on import of finished goods made of artificial leather ready to use by the general public in terms of serial No. 4 of SRO 1125(I)/2011 dated 31.12.2011 as amended vide SRO 1070(I)2017 dated 23.10.2017. They contend that traditionally finished goods of leather and artificial leather have been awarded equal treatment for sales tax purposes under the said SRO. Therefore, finished products of artificial leather are also entitled for concessionary rate of sales tax as per recent amendment though artificial leather has not been mentioned specifically there under:

The Collectorate is however of the view that in serial 4 of the said SRO concessionary rule of sales tax is admissible only to finished goods of textile and leather sectors ready for use in the general public and finished goods made of artificial leather are not entitled for the said concession of sales tax.

In view of the above Board is requested to kindly clarify whether the concessionary rate of Sales Tax is admissible to the finished goods made of artificial leather in terms of Serial No. 4 of SRO 1125(I)/2011 as amended vide SRO 1070(I)2017 dated 23.10.2017. An early clarification is requested as the consignments have been allowed release provisionally against submission of pay order for different amount of sales tax to avert demurrage.

Saeed Akram
Collector

6. Perusal of the aforesaid letter reflects that the Collectorate was of the view that pursuant to Serial No.4 of SRO 1125, duly amended through SRO 1070, the concessionary rate of sales tax was admissible only to imported finished goods of all sectors ready for use in the general public, whereas, finished goods made of artificial leather were not entitled for the said concession of sales tax. How this view was arrived at is not at all clear and while confronted, the respondents Counsel had no answer to our question as to how come after issuance of SRO 1070 in 2017, suddenly, the department realized that exemption/reduction of the sales tax was not admissible on the products of Artificial Leather as apparently SRO 1070 does not create any distinction between these two types of leather imports. The respondents have been allowing exemption/reduction under SRO 1125 to the disputed goods since 2011 and as to why the sudden change was brought has not been explained. We do not find any justification of the respondents' stance in this regard. To our understanding the exemption / reduction granted to "*Leather Industry*" would also be available to "*Artificial Leather*" as it is not restricted in SRO 1125 only to "Natural Leather", perhaps as misunderstood by the Respondents. They had no basis or justification to deny such exemption, which admittedly, was never disputed by them since 2011 till 2017 when SRO 1070 was issued.

7. Nonetheless, subsequently during pendency of these proceedings and after issuance of Letter dated 16.11.2017, the Board has issued SRO 777, whereby, against Serial No.4 in Column (2) in the heading after the word Sector's, the exemption including "*Artificial Leather*" has been inserted. In our considered view, even otherwise, since this SRO is clarificatory in nature and has been issued pursuant to representations of the petitioners, whereas, the controversy in this regard was pending before FBR as well as this Court, since 16.11.2017, the petitioners would be entitled to the benefit of this amending SRO 777 by giving it retrospective effect to the cases in hand before us as it is now a settled proposition that a notification which confers a benefit or right to a person can be given retrospective effect, whereas the

notification which disturbs or impairs a vested right of a person or creates a new liability cannot be applied retrospectively in absence of a legal sanction to that effect².

7. In view of hereinabove facts and circumstances of this case on 02.02.2021 all these Petitions were allowed by means of a following short order and above are the reasons thereof: -

“For reasons to be recorded later on, all these petitions are allowed by declaring that the consignments in question imported by the Petitioners are entitled to exemption as claimed in terms of SRO 1125(I)/2011 dated 31.12.2011. The securities furnished by the petitioners with the department shall be discharged accordingly.”

JUDGE

JUDGE

² Asif Trader v Collector of Customs (2014 PTD 1057), Hashwani Hotels Limited v. Government of Pakistan (2007 PTD 1473); Army Welfare Sugar Mills Ltd. v. Federation of Pakistan (1992 SCMR 1652); Anoud Power Generation Limited v. Federation of Pakistan (PLD 2001 SC 340).

