

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

**C. P. No.D-462 of 2013**

Present : Aqeel Ahmed Abbasi, and  
Mrs.Ashraf Jahan, JJ. \_

Date of hearing : 10.10.2018

Petitioner : M/s.Rasul Floor Mills (Pvt) Limited  
through Mr.Darvesh K. Madhan,  
Advocate.

Respondents : The Federation of Pakistan through  
Mr.Mir Hussain Abbasi, Asst. Attorney  
General.

The Collector of Customs, MCC, Port  
Muhammad Bin Qasim and others  
through Mr.Kashif Nazeer, Advocate.

**JUDGMENT**

**Mrs.Ashraf Jahan, J:-** Through instant petition, Petitioner  
has prayed as under:-

- a) Declare that the machinery/equipment viz. “*Grain Storage Silos along with complete Aeration, Sweep Auguring with Temperature detection system complete with all equipment and attachments*” is entitled for exemption from customs duty and sales tax in terms of SRO 575(I)/2006 dated 05.6.2006 vide Serial No.2 of the said Notification;
- b) Declare that the Petitioner is entitled to the benefit of amending Notification dated 23.10.2012 on its imports covered by the instant petition;
- c) Declare that the Notification dated 23.10.2012 being declaratory/clarificatory in nature can be given retrospective effect and consequently entitles the Petitioner to claim benefit of SRO 575(I)/2006 dated 05.6.2006 on the imports covered by the instant petition;

- d) Direct the Respondents No.2 and 3 to discharge the Bank Guarantee No.IGT078600219412 dated 02.8.2012 (Annexure P/5) in favour of the Petitioner;
- e) Restrain the Respondent No.4 from acting on the advice/ instruction from Respondent No.3 for the encashment of the Bank Guarantee No.IGT078600219412 dated 02.8.2012 (Annexure P/5)
- f) And pending this petition permanently restrain the Respondents jointly and severally or through their officers from seeking encashment of the Bank Guarantee No.IGT078600219412 dated 02.8.2012 (Annexure P/5) or from taking any adverse or coercive action including blocking or suspension of User ID, against the Petitioner and/or its officers and employees in any manner whatsoever;
- g) Grant such further reliefs which this Hon'ble Court may deem just and proper in the circumstances of the case;
- h) Grant cost of the petition.

2. The facts leading to the instant petition are that, the Petitioner is a Private Limited Company, running a Floor Mill in the name of M/s.Rasul Floor Mills (Pvt) Limited. To enhance the capacity of its mill the Petitioner had imported a consignment of "Grain Storage Silos along with complete Aeration, Sweep Auguring with Temperature detection system complete with all equipment and attachments" against Letter of Credit No.ILC 07860014261 dated 22.6.2012 from USA and filed goods declaration on 27.7.2012 to claim exemption from Customs Duty and Sales Tax in terms of serial No.2 of SRO 575(I)/2006 dated 05.6.2006 but the Respondent No.2 refused to grant exemption from Customs Duty and Sales Tax in terms of SRO referred to above and processed the goods declaration on statutory rates, duties and taxes. The Petitioner then approached FBR through its Member vide representation dated 17.7.2012 and

presented its case that the required machinery is mandatory requirement for a floor mill for storage of grains like wheat, maize and rice, etc. and without its installation almost 15% of the wheat product is wasted due to improper storage facilities. It was further requested that as the subject consignment was lying at the Port incurring demurrage charges, as such, same be released against Bank Guarantee till any final decision is made in the matter. The Respondent No.1, vide its letter dated 23.7.2013, directed the Respondent No.2 to provisionally release the subject consignment for a period of 45 days against Bank Guarantee equivalent to the duty and taxes leviable thereon. The Petitioner, accordingly, furnished Bank Guarantee on 02.8.2012 for an amount of Rs.4,741,537/= only, which was valid till 31.1.2013.

3. It is further the case of Petitioner that after hectic efforts of the Petitioner and its Association the Respondent No.1, through Ministry of Finance, Revenue and Economic Affairs, issued a Notification vide SRO \_\_\_(I)/2012 dated 23.10.2012, whereby a clarificatory amendment was issued in SRO 575(I)/2006 dated 05.6.2006, which reads as under:-

“Against S. No.2, in column No.(2), after the word “facilities” the words “including silos” shall be added”.

4. But strangely Respondents No.2 and 3, instead of giving benefit of the said amendment to the Petitioner, suddenly without any notice to the Petitioner issued letter dated 31.1.2013 to the Respondent No.4 whereby encashment of Bank Guarantee dated 02.8.2012 was sought on the basis of letter dated 24.1.2013 issued by Respondent No.1. It is the case of Petitioner that the letter dated 24.1.2013 is not applicable to the case of Petitioner as it is in relation to SRO 727(I)/2011 dated 01.8.2011, whereas the case of Petitioner

is based on clarificatory amendment dated 23.10.2012. The Petitioner hence prayed that it may be given exemption in terms of Notification dated 23.10.2012.

5. The Respondent No.2 filed comments wherein they admitted the case of Petitioner to the extent of issuance of Notification dated 23.10.2012, but at the same time took the plea that the Respondent No.3 has rightly wrote letter dated 31.1.2013 for encashment of Bank Guarantee, submitted by the Petitioner, for the reason that at the time of release of consignment along with Bank Guarantee an undertaking was submitted by the Petitioner that he shall abide by the decision made by the FBR and as in letter dated 24.1.2013 FBR has clarified that Silos classifiable under Section PCT 94.06 have never been treated as machinery and equipment, therefore, the Notification SRO Nil of 2012 dated 23.10.2012 is not applicable to the case of Petitioner. It is further the case of Respondent that Notification dated 23.10.2012 has no retrospective effect, therefore, cannot be made applicable to the case of Petitioner, hence the petition is liable to be dismissed.

6. We have heard learned Counsel appearing for the Petitioner as well as Mr.Kashif Nazeer, learned Counsel for the Respondents.

7. It is contended by learned Counsel for the Petitioner that the Respondents No.1 and 2 have acted unlawfully as the amendment made vide Notification dated 23.10.2012 is clarificatory in nature and also applies to all pending matters and has to be given retrospective effect. Furthermore, the impugned action of seeking encashment of Bank Guarantee has been taken without any notice or opportunity to the Petitioner to explain or justify its case, therefore, same is liable to be declared as violative of Article 10A of the Constitution of Islamic

Republic of Pakistan. Per learned Counsel, the case of Petitioner was alive till the issuance of Amending Notification dated 23.10.2012 and was pending before the Respondent No.1 at that point of time, therefore, it is to be applied to the case of Petitioner. It is the Petitioner who had been agitating the matter during all these times and after his hectic efforts such notification was issued, therefore, it is applicable to the case of Petitioner. Moreover, as the subject goods are fully covered for exemption from Customs duties, therefore, petition is to be allowed to meet the ends of justice.

8. On the other hand, it is contended by learned Counsel for the Respondent No.2 that no doubt that Notification dated 23.10.2012 has been issued, but the Respondent No.3 has rightly wrote letter dated 31.1.2013 for encashment of Bank Guarantee furnished by the Petitioner for the reason that at the time of release of consignment along with Bank Guarantee he has submitted undertaking to abide by the decision of FBR, which the FBR has clarified vide letter dated 24.1.2013, that Silos classifiable under PCT 94.06 have never been treated as machinery and equipment as the terms of "machinery" and "equipment" apply to the items listed at Chapters 84 and 85 of PCT. Furthermore, in the original SRO bearing No.575(I)/2006 dated 05.6.2006, word "Silos" was not included, therefore, the Petitioner was fully aware of the fact that benefit of above SRO can never be extended to him. Now the Petitioner want to take advantage of subsequent changes made in the SRO, which cannot be given retrospectively. Therefore, the Petitioner cannot absolve themselves from making payment of duties otherwise leviable.

9. We have considered the arguments advanced before us and have thoroughly perused the record.

10. The case of Petitioner mainly revolves on the plea that grain storage Silos along with complete Aeration System were imported by them from USA and they claimed exemption from customs duty and sales tax in terms of serial No.2 of SRO 575(I)/2006 dated 05.6.2006, but surprisingly the Customs Department refused to grant exemption from customs duty in terms of SRO, referred to above, and processed their goods declaration on statutory rates, duties and taxes. Thereafter, Petitioner approached FBR and pleaded their case that, being a Floor Mill, required machinery (Silos) is a mandatory requirement for a floor mill for purpose of storing grains and without its installation almost 15% of the wheat product is wasted due to improper storage facilities. It was also argued that due to efforts of Petitioner and its Association, FBR has issued Notification vide SRO \_\_\_(I)/2012 dated 23.10.2012 whereby a clarificatory amendment was issued in respect of earlier SRO 575(I)/2006 dated 05.6.2006, and against serial No.2 in Column (2), after the word “facilities” the words “including Silos” were added. It was also pointed out by the learned Counsel for the Petitioner that the Respondent No.2 i.e. Customs Department are relying upon the letter dated 24.1.2013 issued by the FBR in respect of SRO 727(I)/2011 dated 01.8.2011, which is not applicable to the case of Petitioner.

11. In the instant case, though the FBR was also made party, but nobody has turned up on their behalf to contest or deny the case of present Petitioner. The Respondents No.2 and 3, who are the Customs Department, have contested this matter only on the basis of letter issued by the FBR dated 24.1.2013, in relation to SRO 727(I)/2011 dated 01.8.2011. Whereas, in the present case relevant SRO is 575(I)/2006 dated 05.6.2006. Therefore, apparently it is clear that letter dated 24.1.2013 is in respect of other SRO bearing

No.727(I)/2011 and not in respect of SRO 575(I)/2006 dated 05.6.2006, which pertains to the subject petition. When the learned Counsel for the Respondent No.2 was confronted with such position, he could not controvert the above factual position nor could satisfy this Court as to how the imported consignment of the Petitioner i.e. Grain Storage Silos along with attached equipment, is not entitled to exemption in terms of serial No.2 of SRO 575(I)2006 dated 05.6.2006. Moreover, it is also an admitted position that when SRO \_\_\_(I)/2012 dated 23.10.2012 was issued, whereby, the words “including Silos” were added in Column No.2 after the word “facilities” in the relevant head, the case of Petitioner was pending before the concerned Authorities, therefore, it being a clarificatory and beneficial Notification would otherwise apply to the pending case of Petitioner. Reliance in this regard is placed in the cases of Army Welfare Sugar Mills Limited v. Federation of Pakistan and others (1992 SCMR 1652), Elahi Cotton Mills Limited v. Federation of Pakistan and others (PLD 1997 SC 582) and M/s.Polyron Limited v. Government of Pakistan and others (PLD 1999 Karachi 238). In view of hereinabove factual and legal position as emerged in the instant case, we are of the considered view that the case of the Petitioner is covered by the said SROs, hence entitled to exemption.

12. Accordingly, instant petition was allowed vide short order dated 10.10.2018 and these are the reasons for such short order.

JUDGE

JUDGE

Karachi :

Dated: \_\_\_\_\_

Shakeel, PS