

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P. No. D-8807 of 2018

M/s. Imran Industry

Vs.

Federation of Pakistan & others

*Present: Muhammad Shafi Siddiqui, J  
Mehmood A. Khan, J*

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Date: Order with signature of Judge

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1. For hearing of MA No.5466/19
2. For hearing of MA No.38724/18
3. For hearing of main case

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05.7.2019

Mr. Waseem Sheikh for petitioner

Dr. Shahnawaz Memon along with Maqsood Jehangir  
Commissioner Inland Revenue (Zone-VI) Corporate  
Original Tax Office

Mr. Bilal A. Khilji for respondent

Mr. Ghulam Murtaz for respondent No.4

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**Muhammad Shafi Siddiqui, J:** Petitioner claims to be a textile manufacturing unit and is registered as such since July 2, 2018 in pursuance of Section 2(29C) of the Income Tax Ordinance, 2001. The petitioner textile unit claims to have obtained registration certificate as a manufacturer. It claimed to have imported various consignments of raw material and sought exemption for certain duties and taxes as being a manufacturing unit. The grievance of the petitioner, as raised in the petition, was that respondent No.7 has altered the sales tax profile of the petitioner dated 14.12.2018 from “manufacturing unit” to that of “commercial importer” and hence the petitioner was prevented from seeking exemption as being a manufacturing unit and hence instant petition has been filed.

Notices were issued to which the reply and counter-affidavit were filed. The Bench was informed of the fact that an Order-in-Original No.1

of 2019 on the subject issue was passed after issuance of show-cause notice and a number of consignments were subject matter of the proceedings and the petitioner was made responsible for payment of sales tax in the sum of Rs.51,583,322/- inclusive of value added tax under section 11(3) along with default surcharge under section 34 and penalty equal to 100% amount of the tax involved under section 33(13) of Sales Tax Act, 1990.

This petition pertains to an individual consignment, which is claimed to have been detained on the aforesaid information and fact that petitioner in fact was not a manufacturing unit and is not even in existence. Petitioner filed this petition on 19.12.2018 and claimed that since the goods were assessed in terms of declaration submitted, the same were out of charge therefore respondents had no authority to detain the consignment or to reassess it claiming additional duties and sales taxes.

We have heard the learned Counsel, the Commissioner Inland Revenue Zone-VI who is present in Court and perused the material available on record.

It apparently appears to be a case of evasion of taxes and duties, claimed to have been committed by the petitioner. Although separate proceedings were initiated in respect of earlier consignments imported by the petitioner and the proceedings separate and distinct yet it was concluded that the petitioner was/is not a manufacturing unit and has dishonestly, fraudulently and without lawful reasons committed tax fraud and avoided payment of sales tax. It is claimed by the petitioner that an appeal is pending adjudication with regard to those consignments whereas in this petition the petitioner only seeks clearance of the consignments on payment of lawful duties and taxes as exempted. When inquired as to whether he would like to proceed with instant petition on merit and would withdraw his appeal, learned

counsel for the petitioner submitted that he would continue to press his appeal, as being on merits, and only seek clearance of his consignments on payment of duties and taxes, as ordered earlier, in the instant petition.

On 24.01.2019 this Court passed an order directing the officers of the Inland Revenue to visit the premises of the petitioner for verification whereas the consignment was ordered to be processed in accordance with law subject to securing the disputed amount in shape of pay order/bank guaranty. The physical verification of M/s Imran Industry/ petitioner was then conducted and it was revealed that there was no manufacturing unit in existence and even the place/premises from where petitioner claimed to have been running the manufacturing units was not even in existence. Two physical verification reports dated 20.02.2019 and 28.02.2019 were placed on record along with Order-in-Original dated 20.03.2019.

It is claim of the petitioner that since the Order-in-Original was passed much after the declaration submitted and the duties were assessed, therefore, this would not cause any prejudice/harm to the petitioner. We are not inclined to be convinced with this submission since the changes were brought in section 80 of the Customs Act, 1969 through Finance Act, 2005 as to re-assessment. Previously there was no provision and/or any proviso/subsection to section 80 for re-assessment of the goods declared, whereas consequent upon the aforesaid amendment the re-assessment could be undertaken at any time before release of the consignment. Thus, the contention that it was out of charge has no force.

It may be pertinent to note that we are not inclined to go further deep in the matter on merit since an appeal has already been filed and the remedy available under the law has been exhausted by the petitioner, as consented by learned counsel for the petitioner, as any finding may cause prejudice to either parties. Thus, since the petitioner

only sought clearance of his consignments, therefore, it can only be possible if the entire duty inclusive of sales tax, income tax, custom duties etc., as claimed, are paid which shall be subject to the outcome of the appeal.

In view of the above facts and circumstances, it cannot be said that the process was “out of charge” as even the order dated 24.1.2019 provides that the Inland Revenue Officer shall visit the premises for verification of the factory premises on the basis of which such certificate was issued whereby he sought exemption from duties and taxes. In our humble view the judgment of Muhammad Ali v. Federation of Pakistan reported in 2013 PTD 678 relied upon by the petitioner’s Counsel is not applicable to the facts and circumstances of this case.

The existence of the petitioner as a bonafide manufacturer having certificate of exemption loses its strength hence subject consignment could only be released subject to securing the financial interest of the respondents that includes entire duties and taxes without any exemption. In case the petitioner succeeds in establishing his case as a lawful registered firm having all the benefits claimed in relaxation of the duties and taxes, such amount be returned by the respondent in pursuance of the orders of the Appellate Authority.

The petition stands disposed of in the above terms along with pending applications.

Judge

Judge