IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

2nd Appeal No. S – 11 of 2010

M/s Seven Star Enterprises v. Exxon Chemicals (Pakistan) Limited & others

Date of hearing: **18-04-2022** & **25-04-2022**

Date of announcement: **03-06-2022**

Mr. Manoj Kumar Tejwani, Advocate for the Appellant.
None for Respondent No.1 despite being served.

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J U D G M E N T

***Muhammad Junaid Ghaffar, J.* –** This Appeal was being regularly fixed along with 2nd Appeal No. D-10 of 2010 and other connected matter(s) and was reserved on 25-04-2022 along with those Appeals; however, while dictating the judgment, it has transpired that not only Respondent No.1 is not a party in other set of Appeals, but so also the impugned judgment of the Trial Court as well as of the Appellate Court are different, and therefore, this Appeal is being decided separately and independently through this judgment.

2. Through this 2nd Appeal, the Appellant has impugned judgment dated 31-08-2010 passed by 3rd Additional District Judge, Sukkur in First Appeal No.66 of 2002, whereby while dismissing the Appeal, the judgment dated 30-11-2001 passed by IInd Senior Civil Judge, Sukkur in F.C. Suit No.98 of 1986 (***Old No.60 of 1984***) has been maintained, through which the Suit of the Appellant was dismissed.

3. Heard learned Counsel for the Appellant and perused the record; whereas, nobody has effected appearance on behalf of Respondent No.1.

4. It appears that the Appellant filed a Suit for recovery of Rs.15,00,000/- and sought the following prayers:

> *i) That the defendant No.1 to pay Rs.15,00,000/- with interest at the rate of Rs.14% per annum from the date the amount is found due.*
>
> *ii) In the alternative, the defendant No.2 to pay the above amount of Rs.15,00,000/- with interest at the rate of Rs.14% per annum from the date of each contract.*

iii) That the cost of the suit be borne by the defendants.

iv) Any other relief which this court deems fit and proper.

5. The learned Trial Court settled the following issues:

1. Whether the plaintiffs were entitled to recover export tax on fertilizer from the defendant No.1, if so, whether the same has been evaded by the defendant No.1? If so to what extent?

2. Whether the defendant No.2 is liable to pay any amount to the plaintiffs?

3. Whether the suit is time barred?

4. Whether the suit is not maintainable at law?

5. What should the decree be?

6. The learned Trial Court came to the conclusion that the Appellant had failed to make out any case, hence, the Suit was dismissed; whereas, in First Appeal again the Appellant has been unsuccessful; hence, this Appeal.

7. It appears that the precise case of the Appellant was premised on some contract awarded by District Council Sukkur for collection of export tax for different period starting from 01-06-1980 and ending on 15-10-1983, and the case of the Appellant was to the effect that though export tax was paid by Respondent No.1 on export of urea dispatched through private trucks; however, the same was avoided and remained unpaid in respect of export of urea through Railway wagons and trucks of National Logistics Cell.

8. On the other hand, case of Respondent No.1 was that after making certain payments, the validity of such levy was challenged by them by way of a Constitutional Petition before the High Court at Principal Seat and an interim order was passed against deposit of certain security; whereas, subsequently, a learned Division Bench at the Principal Seat in the case of *Kotri Association of Trade and Industry v. Government of Sind and another* reported as **1982 CLC 1252** had declared such levy as ultra vires to the Sindh Local Government Ordinance, 1979, and thereafter, the Petition was withdrawn by them.

9. The learned Trial Court came to the following conclusion:

> **"***I have heard learned counsel for the parties and perused the record carefully. I have considered the evidence adduced by the parties. Perusal it shows that Plaintiffs witness Arjandas has deposed that fertilizer is used in the crop and he has admitted the suggestions put forth*

by learned counsel on behalf of the defendant No.1 which are reproduced as under for convenience:-

1. *"It is correct that on 23rd June 1980 District Council have imposed export tax on the fertilizer".*

2. *"It is correct that second notification was issued on 15-07-1981 by which fertilizer was exempted by the Government from export tax".*

Perusal of documentary evidence i.e. Notification dated 23-06-1980 exh. 126 reveals that export tax has been imposed by Chairman District Council Sukkur. Perusal of notification dated 20-07-1981 exh. 192 reveals that Sindh Government has exempted the fertilizer insecticides, pesticides meant for use in agricultural shall stand exempted from the payment of export tax with immediate effect being exported outside the province for use of consumption within Pakistan. Not only this but notification exh. 192 and 193 have not been issued for particular company but these notifications are applicable for all the concern. So also certificate produced at exh. 199 issued and signed by the then executive officer of District Council is blank in the sense that truck number is to be mentioned as well as date is not mentioned in the certificate. Government of Sindh has not taken any decision on their presentation at exh. 200 and 202. Perusal of production sheet also reveals that fertilizer has been exported by the defendant No.1 within territory of Pakistan. So also plaintiff has not specifically deposed that how much fertilizer have been exported by the defendant No.1 through Pakistan Railway and through NLC Trollers though PW Arjandas himself deposed during his examination-in-chief that defendant was paying him export tax up to period of 02-05-1982.

In view of the above position and discussion I am of the considered view that defendant No.1 has paid export tax to the plaintiffs up to 02-05-1982 and Sindh Government has exempted the companies from payment of export tax on the pesticides insecticides and fertilizer vide notification dated 20-07-1981, therefore, plaintiff were not entitled to recover the export tax on fertilizer from the defendant No.1 as the same has not been evaded by the defendant No.1, therefore issue No.1 is answered in the negative. Learned counsel for either party did not press objections raised on production of documents in evidence, hence same are answered accordingly.

ISSUE NO. 2.

To prove this issue plaintiffs witness Arjandas has not deposed any single word that defendant No.2 is liable to pay export tax to the plaintiffs as same has not been got recovered during contract period. On the contrary he has deposed that according to rules and terms of the contract it is responsibility of the contractors to get recovered the tax or to compensate for the losses for non-payment of the contract during the contract period. As well as it has come on record that Government of Sindh has exempted the companies from payment of export tax on fertilizer, pesticides and insecticides through notification dated 20-07-1981 and plaintiffs witness Arjandas has himself admitted that defendant No.1 has paid export tax to the plaintiffs up to 02-05-1982, therefore, neither defendant No.1 nor defendant No.2 are liable to pay export tax to the plaintiffs, hence issue No.2 is answered in the negative.

ISSUE NO. 3.

Burden of proving this issue lies upon the shoulder of defendant No.1 as he has taken such plea that the suit is time barred. To prove this issue DW Ahmed Bilal has not deposed any single word on this issue. So

also during the course of arguments learned advocate for the defendant No.1 did not press this issue hence issue No.3 is answered as not pressed.

ISSUE NO. 4.

Burden of proving this issue lies upon the shoulder of defendants but during course of arguments learned advocate for the defendant No.1 did not press this issue hence issue No.4 is answered as not pressed.

ISSUE NO. 5.

*In view of the above discussion, position, circumstances and evidence brought on record and discussed in detail above, suit of the plaintiffs is dismissed with no order as to costs.***"**

Whereas, the Appellate Court, while dismissing the Appeal, arrived at the following conclusion:

"*ISSUE NO.1*

On deliberation the Court finds that on notification by Government of Sindh being No.SO-III/7-5/76 dated 1.6.1980 the District Council, Sukkur had vide its notification dated 23.6.1980 (Ex.126) imposed the export tax on 33 items including fertilizer and awarded the contract to the appellants to collect the same. The Respondent No.1 had challenged even the vires of said notifications. The Court finds that the Court would be tress passing in the domain of public and government functionaries in case it takes up to see the justification of such taxation. It is for the government to see from where to raise the resources and generate money to run the government affairs. The subject tax however, was justified and legal till notification dated 15.7.1981 (Ex.192) of the Sindh Government which exempted the fertilizer insecticides, pesticides meant for agricultural use in Pakistan from the payment of export tax with immediate effect. On the same date another notification of Sindh exempted all goods being exported outside the province, for use and consumption in Pakistan from liability of export tax. The Court further finds that both notifications (Ex.192 and Ex.193) were not issued to give concession to any particular company but was a general concession as policy applicable through out the province. Learned trial Court in a well reasoned Judgment had discussed every material point including the evidence adduced and documents produced by the parties. After the referred notification dated 15.7.1981 giving exemption to fertilizers from subject export tax. Further, the exemption by referred notifications of Government of Sindh, could not be said to be invalid because of Sindh Council Validation of Taxes Ordinance, 1982. As the same only validates the collection of lawful taxes and the same could not be stretched to allow the collection of taxes on items on which Sindh Government had given exemption as a policy. The appellant thus should have stopped collecting the said tax from respondent No.1 from 15.7.81 but they instead kept on collecting the same illegally upto 3.5.1982. After said notifications by Sindh Government dated 15.7.81 the appellant could have had a claim against Sindh Government or District Council, Sukkur for receiving period of his contract i.e. from 15th July to 16.10.81, but admittedly the appellant kept collecting the same upto 3.5.1982. As far as subsequent contract for two years are concerned the appellant knew well that there was such exemption and if it still bid for the same and got included the said exempted items in the list by (Officials of) District Council Sukkur. It was some transaction which obviously was in connivance and could have no lien on public revenue of District Council. At best the appellant could have

challenged the said notification at appropriate forums, if they could not get any relief on representations. Foregoing in view and finding no error of law or facts in the impugned judgment the issue is answered in negative.

ISSUE NO.2.

*In view of the discussion made herein above at issue No.1 and the finding there to the appeal having no merits is hereby dismissed.***"**

10. From perusal of the aforesaid finding, it appears that besides legal defects in the very authority and collection of the tax by the Appellant, even on facts and the evidence, the Appellant had failed to establish its case; rather conceded to the fact and there was an exemption in field in respect of the export tax pertaining to urea. In that case, in this 2nd Appeal no case for indulgence is made out, on perusal of the evidence of the Appellant alone.

11. To this an alternative argument has been made that pursuant to The Sindh Councils (Validation of Tax) Ordinance, 1982, the effect of judgment passed in the case of ***Kotri Association (Supra)*** has been nullified; hence is of no help to the case of Respondent No.1. However, on legal plane, this controversy has even otherwise been decided by this bench vide judgment dated 30.5.2022 passed in 2nd Appeal No.10 of 2010 and other connected matters filed by the same Appellant in the following terms.

12. From perusal of the first Notification dated 03.06.1980, issued under powers conferred by sub-section (1) of Section 106 of the Ordinance, 1979 reflects that the Government of Sindh had delegated its powers under various sections of the said Ordinance mentioned in column-1 of the table to all the Councils in the manner and extent indicated in column-2 thereof. This was so done so as to do away with prior sanction in respect of levy of any tax, as contemplated under Section 60(1)[1] of the Ordinance. While issuing said Notification, again in column-2, there were certain restrictions and a rider by a proviso that though all powers to sanction levy of tax are delegated to respective councils, but such delegation does not involve reduction in the existing rates, the abolition of an existing tax and prior approval of Government would be necessary where imposition of tax has bearing on export of agricultural inputs. It appears that various industries including ***Kotri Association*** had impugned such delegation of powers as per Notification dated 03.06.1980 before a learned Division Bench of this Court on the ground that no such delegation can be made by the Government as this would amount to abdicating the statutory powers conferred upon the Government to levy taxes and after a detailed discussion, the learned Division Bench of this Court finally concluded as under:

"20. We may record here our decision on the three major questions of law raised in these Constitutional petitions:-

(a) The Government under section 106 of the 1979 Ordinance could not delegate its power of sanction

[1] 60(1) Subject to sub-section (2) a council may with the previous sanction of Government levy, in presecribed manner, all or any of the taxes, rates, tolls and fees mentioned in Schedule V; Provided that where a tax, rate or toll which is levied as a cess, tax, or surcharge by Government such tax, rate, or toll shall not be more than that levied by Government.

conferred by section 60(1) of the said Ordinance to the councils, impugned Notification dated 3-6-1980 to that extent is invalid and as a consequence all notifications issue by the councils, pursuant to the powers given by the impugned Notification, are also invalid;

(b) The Sind Councils (Imposition of Taxes) Rules, 1979 are mandatory in nature and a violation or non-compliance of these Rules renders the levy of tax invalid;

(c) Export Tax or Rawangi Mahsool is not violative of Article 151 of the 1973 Constitution.

21. There being no valid sanction as required by section 60(1) of the 1979 Ordinance and for non-compliance of rules 4 and 5 of the Sind Councils (Imposition of Taxes) Rules, 1979, we declare the taxes imposed by the councils and impugned in the following constitutional petitions to be without lawful authority and of no legal effect:-

Constitutional Petitions Nos. 125/81, 1091/80, 44/81, 1196/80, 422/81, 467/81, 470/81, 490/81, 593/81, 603/81, 646/81, 663/81, 745/81, 1011/81., 1051/81, 1137/81, 1156/81, 453/81, 279/82 and 319/82.

The taxes imposed by the councils and impugned in the following constitutional petitions are declared to be without lawful authority and of no legal effect as there was no valid sanction as required by section 60(1) of the 1979 Ordinance :-

Constitutional Petitions Nos. 1637/80, 144/81, 145/81, 146/81, 147/81, 148/81., 149/81, 150/81, 151/81, 152181, 153/81, 165/81, 594/81,641/81, 647/81, 692/81, 921/81, 1136/81, 48/82, 272/82, 286/82, 287/:82 and 318182.

In these petitions, according to our view, there has been no violation of the Sind Councils (Imposition of Taxes) Rules, 1979.

22. There are two other petitions namely Petitions Nos. 1271/80 and 1716/80, where the facts and points of law involved are different. Petition No. 1271/80 impugns the Notification No. II-DLG/79 dated 15-7-1979 of the Commissioner, Hyderabad, published about 10 months later in the Sind Government Gazette Part I-A of 10.5.1980 sanctioning the revision of the previous Octroi Schedule of the Town Committee, Matli, District Badin. It is an admitted position that the revised schedule could not have come into effect before its publication in the Gazette. Now a look at the impugned notification of Commissioner, Hyderabad Division shows that it was issued in exercise of powers vested in him under section 71 of the Sind 71 of Government Ordinance, 1972 read with rule 7 of the West Pakistan Local Councils (Imposition of Taxes) Rules, 1961 and powers delegated by the Government to the Commissioners through Government's notification dated 5-1-1977. Although the impugned Notification shows that it was made on 15-7-1979, it remained an incomplete document as it was not published in the Sind Gazette. On 25-7-1979, the 1979 Ordinance was enacted and under this Ordinance, the Commissioners no longer remained the sanctioning authorities. Under section 60(1) of the 1979 Ordinance, the Government has to accord sanction and we were not shown any notification delegating the powers to the Commissioners. As the Notification dated 15-7-1979 of Commissioner, Hyderabad Division had not come into effect before the enactment of the 1979 Ordinance, it became ineffective on 25-7-1979 and did not stand revived by section 120 of the 1979 Ordinance. Further the said Notification makes a reference to the exercise of powers under section 71 of the 1972 Ordinance. This 1972 Ordinance stood repealed by the 1979 Ordinance and after 25-7-1979 powers could not be exercised under the repealed 1972

Ordinance. As a result we declare the impugned Notification dated 15-7-1980 as published in the Sind Gazette of 10-5-1980 to be without lawful authority and of no legal effect and taxes cannot be recovered under the said Notification.

23. Petition No. D-1714/80 challenges the imposition of Octroi tax by Union Council Bau Khan Pathan, Taluka Hala, District Hyderabad, through Notification of this Council No. UC-BK/24(1)/80 published in Sind Government Gazette Part 1-A of 29-7-1982. By 29-7-1980, the 1979 Ordinance had already been enacted and the Sind Councils (Imposition of Taxes) Rules, 1979 made. It is an admitted position that the procedure prescribed and steps required to be taken by the 1979 Rules have not been followed/taken. In our view as this Octroi tax was sought to be levied after the making of the 1979 Rules, compliance thereof was mandatory. Impugned notification dated 29-7-1980 of Union Council Bau Khan is accordingly declared to be without lawful authority and of no legal effect and taxes cannot be recovered under this notification.

24. The parties to these petitions will bear their own costs. Interim relief had been granted to the petitioners in most of these petitions on their furnishing bank guarantees on depositing amounts with the Nazir of this Court. To enable the respondents to seek relief from the Supreme Court of Pakistan, in case they choose to do so, it is ordered that the Bank guarantees furnished by the petitioners shall remain in force for a period of six weeks from the date of this judgment whereafter the same shall stand discharged and cancelled. Similarly where amounts have been deposited, the same can be withdrawn by the concerned petitioners after expiry of six weeks from today. This restraint is being imposed to avoid complications in case stay of this judgment is granted by the Supreme Court of Pakistan.

Order accordingly"

13. It appears that to undo the effect of the aforesaid Judgment, the Government of Sindh introduced The Sindh Councils (Validation of Tax) Ordinance, 1982 and in section 2 it was provided that notwithstanding anything contained in the Sindh Local Government Ordinance, 1979 and the Sindh Councils (Imposition of Taxes) Rules, 1979 or any judgment, order or decree of any Cur, any tax, rate, toll or fees levied, charged, collected or realized by a Council on or after 03.06.1980 shall be deemed to have been validly levied, charged or collected or realized, as the case may be and where any such tax, rate, toll or fees has not been paid or realized before the coming into force of this Ordinance the same shall be recoverable in accordance with the Ordinance and the rules. Learned counsel for Seven Star Enterprises has vehemently contended that any reliance on the Judgment of the learned Division Bench in the case of ***Kotri Association (supra)*** would be of no use as subsequently the Ordinance had in fact, undone the ratio of the said Judgment and its applicability. However, this contention of the Counsel for Seven Star Enterprises does not appeal to this Court and appears to be devoid of merits on two counts. The question that whether Ordinance, 1982 has in fact validly undone the effect the Judgment in the case of ***Kotri Association (supra)*** or not would be dealt with subsequently in this judgment, however, for the present purposes, even if it is so, it appears that what had escaped the attention of the two Courts below as well as learned Counsel for Seven Star Enterprises, is the fact that even while delegating the powers in terms of Section 106 of the Ordinance, in respect of the powers to sanction levy of taxes under Section 60(1) of the Ordinance, the Government of Sindh had not authorized or delegated such powers to the Zila Council in respect of imposition of taxes on export of *agricultural inputs*. Admittedly, the product in question is an agricultural input, and therefore for the present purposes even if the Ordinance of 1982 is valid and effective, the ratio of the Judgment in the case of ***Kotri Association (supra)*** would remain effective and in field, at least to the extent of agricultural products including Urea, which is the subject matter of these proceedings. Therefore, not only the entire amount of export tax being claimed by Seven Star Enterprises, as averred in their two Suits, could not be awarded; but in fact export tax so collected in respect of export of urea through private trucks would be liable to be termed as unlawful and invalid.

14. Without prejudice and notwithstanding the above observations, it is also a matter of fact that the Zila Council after levying the taxes pursuant to the delegated authority, by way of Notification, as above had also in terms of Rule 23 of the District Council Export Tax Rules, 1976 issued two separate Notifications granting exemption to fertilizer, insecticides and pesticides from payment of export tax; whereas, by way of another Notification under the same Rules, the Government of Sindh further exempted from liability to export tax the goods being exported outside the Province for use / consumption within the Pakistan. This was so done from 15.07.1981; therefore, on this account as well, claim of Seven Star Enterprises could not have been decreed and the trial court has seriously erred in law to allow such claim.

15. Coming to the argument that the Ordinance of 1982 had nullified the effect of judgment delivered in the case of ***Kotri Association (Supra)***, it may be observed that it is not so simple as contended. Though it is a well settled principle that effect of a judgment rendered by a competent Court of law declaring any provision of law as ultra vires or declaring levy of a tax as illegal can be undone; however, it is also well settled that it can only be done if the grounds of illegality or invalidity are capable of being removed and are in fact removed. This Court in several cases has recognized the right of the legislature to re-enact a law on the same subject, which on account of legal infirmities in its enactment process had been declared invalid by a Court of law, by removing the causes that led to its invalidity. The legislature is also competent to make the re-enacted law applicable retrospectively in order to bind even the past transactions that had been declared invalid[2]. But at the same time it is also well settled that when a legislature intend to validate a tax declared by a Court to be illegally collected under an invalid law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to take place effectively and it will not be sufficient merely to pronounce in the statute by means of a non-obstinate clause that the decision of the Court shall not bind the authority, because that will amount to reversing a judicial decision rendered in exercise of the judicial power, which is not within the domain of the Legislature. It is therefore necessary that the conditions on which the decision of the Court intended to be avoided is based, must be altered so fundamentally, that the decision would not any longer be applicable to the altered circumstances. The seminal judgment in this regard is of *Molasses Trading*[3] wherein the issue was that to undo the effect of judgment rendered in the case of *Al-Samrez Enterprises*[4] by the Hon'ble Supreme Court, section 31A in the Customs Act, 1969 was introduced and an attempt was made to give the amendment a retrospective effect. However, in *Molasses Trading*[5] it was held that despite such an attempt the insertion of section 31A did not have an effect on the past and closed transactions. The pertinent observation is as under:

> "Before considering this question it would be appropriate to make certain general observations with regard to the power of validation possessed by the legislature in the domain of taxing statute. It has been held that when a legislature intend to validate a tax declared by a Court to be illegally collected under an invalid law, the cause for ineffectiveness or invalidity must be removed before the validation can be said to take place effectively. It will not be sufficient merely to pronounce in the statute by means of a non-obstinate clause that the decision of the Court shall not bind the authority, because that will amount to reversing a judicial decision rendered in exercise of the judicial power, which is not within the domain of the Legislature. It is therefore necessary that the conditions on which the decision of the Court intended to be avoided is based, must be altered so fundamentally, that the decision would not any longer be applicable to the altered circumstances. One of the accepted modes of achieving this object by the Legislature is to re-enact retrospectively a valid and legal taxing provision, and adopting the fiction to make the tax already collected to stand under the re-enacted law. The Legislature can even give its own meaning and interpretation of the law under which the tax was collected and by `legislative fiat' make the new meaning biding upon Court. It is in one of these ways that the Legislature can neutralize the

[2] PLD 2020 SC 641 Khurshid Soap & Chemical Industries Ltd v Fed of Pakistan
[3] (1993 SCMR 1905) Molasses Trading & Exp Limited v Fed of Pakistan
[4] (1986 SCMR 1917) Al Samrez Enterprises v Fed of Pakistan
[5] By majority of 3:2

> earlier decision of the Court. The Legislature has within the bound of the Constitutional Limitation the power to make such a law and give it retrospective effect so as to bind even past transaction. In ultimate analysis therefore a primary test of validating piece of legislation is whether the new provision removes the defect, which the Court had found in the existing law, and whether adequate provisions in the validating law for a valid imposition of tax were made."

It was further held that vested rights cannot be taken away save by express words or necessary intendment in the statute; that Legislature, which is competent to make a law, has full plenary powers within its sphere of operation to legislate retrospectively or retroactively; that vested right can be taken away by a retrospective/retroactive legislation and such legislation cannot be struck down on that ground; that Statute cannot be read in such a way as to change accrued rights, the title to which consists in transactions past and closed or any facts or events that have already occurred; that when a statute contemplates that a state of affairs should be deemed to have existed, it clearly proceeds on the assumption that in fact it did not exist at the relevant time but by a legal fiction Court has to assume as if it did exist; that when a statute enacts that something shall be deemed to have been done which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to. It is a well-settled principle of interpretation that there is a strong presumption against the retrospectivity of a legislation which touches or destroys the vested rights of the parties. No doubt the Legislature is competent to give retrospective effect to an Act and can also take away the vested rights of the parties, but to provide for such consequences, the Legislature must use words which are clear, unambiguous and are not capable of any other interpretation or such interpretation follows as a necessary implication from the words used in the enactment. Therefore, while construing a legislation which has been given retrospective effect and interferes with the vested rights of the parties, the words used therein must be construed strictly and no case should be allowed to fall within the letter and spirit of Act which is not covered by the plain language of the legislation[6]. In this matter, the amending Ordinance, 1982, does not in any manner fulfill the requisite conditions as laid down by the Superior Courts for undoing the effect of a judgment pronounced by a Court of law, by declaring the impugned legislation as ultra vires. At the most, it could be said that the amending Ordinance, 1982, protected the levy of export tax which had already been recovered, which in fact is the first part of the said Ordinance, ibid,; however, as to its second part, whereby, it has been said that any such tax, rate, toll or fees has not been paid or realized before coming into force of this Ordinance, the same shall be recoverable in accordance with the Ordinance and the rules, is concerned, the same is affecting the vested rights accrued to the tax-payer; hence, to that effect, the amending Ordinance, in view of the above discussion and law settled by the Hon'ble Supreme Court, is of no help to the case of Seven Star Enterprises. Again notwithstanding this, at the most it provided recovery of the export tax not levied in terms of the Ordinance and Rules, and it is not the case of Seven Star Enterprises, that any such steps were undertaken by them, rather a direct Suit for recovery was filed, which otherwise could not hold any ground.

16. There is also another aspect of the matter which has not been touched upon by both the Courts below. Seven Star Enterprises, was a contractor to collect the export tax, and has got nothing to do with the levy, its exemption, and any illegality while levying the tax. It had a contract for collection for a certain amount and for fixed period. Surprisingly, though the Government as well as Zila Council was joined as Defendants; however, the case against them was dropped and not pressed upon as to the claim(s) in hand. This perhaps was not a correct approach on their part as any shortfall in collection due to any illegality in the levy of tax or grant of any exemption was to looked into pursuant to the contract between them. The right to sue, if any, for Seven Star Enterprises, was against them pursuant to the contract, if permitted, and not against others in the manner they have pleaded in their suit. Nonetheless, since even otherwise, as discussed

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[6] Muhammad Hussain v Muhammad (2000 SCMR 367)

hereinabove, they had no better case on merits and the law, therefore, no further deliberation is needed on this issue.

17. As a result of the above discussions insofar as the two 2nd Appeals filed by Seven Star Enterprises are concerned, it appears that the learned Appellate Court was fully justified in allowing the said two Appeals filed by National Fertilizer Marketing against the Judgment and Decree in favour of Seven Star Enterprises; however, for the reasons so assigned in this Judgment and not entirely on the basis of reasoning recorded by the Appellate Court; hence, the two 2nd Appeals filed by Seven Star Enterprises bearing Appeal Nos.10 and 12 of 2010 are hereby **dismissed.**

12. In view of the above position legal position already settled by this Bench, and in addition to the fact that the two courts below have recorded concurrent findings on facts against the Applicant, even otherwise, no case for indulgence is made out; hence, this Appeal being misconceived is hereby **dismissed**.

Dated: 03.06.2022

J U D G E

Abdul Basit