

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-454 of 2022

[SAMI Pharmaceuticals Private Limitedv..... Federation of
Pakistan & others]

(And connected matters, particularized in the Schedule¹ hereto.)

Present

Mr. Justice Muhammad Junaid Ghaffar.
Mr. Justice Zulfiqar Ahmad Khan

Dates of Hearing : 05.12.2023

Petitioners through : Mr. Abdul Sattar Pirzada, Advocate
Mr. Mamoon N. Chaudhry, Advocate
Mr. Inziam Sharif, Advocate
Mr. Zulfiqar Ali, Advocate.

Respondents : M/s. Muhammad Khalil Dogar, Mirza
Nadeem Taqi, Faheem Raza Khuro,
Javed Hussain for Masooda Siraj,
Ghulam Mujtaba Sahito, Azad
Hussain for Khalid Mehmood Rajpar,
Alqmah Bin Mehmood, Muhammad
Usman Ahmed, Advocates.

Mr. Qazi Ayazuddin Qureshi,
Assistant Attorney General.

Mr. Amir Latif, Deputy Director
(Legal), DRAP.

ORDER

Zulfiqar Ahmad Khan, J:-These petitions assail a letter dated 25.11.2021 (“Impugned letter”) issued by respondent No.6, whereby, the plea of the petitioner for the issuance of NOC for import of *inter alia* Cooling Towers was denied by the respondent No.6.

2. The anxiety of the petitioners as set-forth in the memo of petition is that the petitioner being a pharmaceutical manufacturer acquired a plot bearing No. F-124, SITE, Karachi so as to expand its manufacturing capacity and through letter dated 20.02.2017, the

¹ The Schedule hereto shall be read as an integral constituent hereof.

respondent No.3 through communication addressed to the area Federal Inspector of Drugs was instructed to inspect the subject site of the petitioner, where the said Inspector through its report dated 22.03.2017 recommended the said plot to be made part of the establishment of pharmaceutical unit of the Petitioner. Petitioner counsel asserted that as the time went by, the respondent No.3 issued approval letter and layout plan to the petitioner for the subject site. The petitioner having incurred excessive investments on the subject plot of land for the establishment of pharmaceutical unit imported plant and machinery including Cooling Towers for the plant being erected at the subject plot whereupon the Petitioner sent letters requesting issuance of NOC but the respondent No.6 through the impugned letter declined to issue such an NOC on the ground that the Petitioner was not licensed to manufacture drugs on the subject plot, hence the Petitioner is before this Court having no other alternate and efficacious remedy.

3. Mr. Abdul Sattar Pirzada advocating case of the petitioners argued that the Petitioner operates several pharmaceutical manufacturing units and to expand its manufacturing capacity, acquired the subject plot for the establishment of extended pharmaceutical manufacturing unit. He next contended that the area Federal Inspector of Drugs through his report dated 22.03.2017 recommended the subject site for the establishment of pharmaceutical manufacturing unit. Mr. Pirzada stated that having obtained the necessary approvals as well as having incurred huge investments on the subject site, the Petitioner imported plant as well as machinery including Cooling towers, and as per policy, the

Petitioner is only liable to pay 5% of Customs duties on the said import according to the Fifth Schedule of Customs Act, 1969 subject to NOC, but the request of the petitioner for the issuance of NOC was declined by the respondent No.6 through the impugned letter which act of the respondent No.6 is not only illegal but also discriminatory as the respondent No.6 has granted such NOCs to various other pharmaceutical manufacturers in the similar circumstances. He lastly contended that on account of non-issuance of NOC by the respondent No.6 the Custom officials have imposed excess Customs duty on the import of Petitioner's plant and machinery, whereas according to Fifth Schedule of Customs Act, 1969 the subject consignment has to be assessed for customs duty at the rate of 5%, therefore, the necessary directions be issued to the respondents/DRAP to issue appropriate NOC after setting aside the impugned letter and that the petition be allowed.

4. Representative of the DRAP stated that the petitioner is erecting pharmaceutical unit on the subject plot which was not licensed by DRAP, therefore, the plant and machinery imported by the petitioner cannot be termed as "for its own use" at Sr. 38 of the table, Part-I of the Fifth Schedule of Customs Act, 1969. He added that neither the petitioner is registered for the subject plot as a pharmaceutical manufacturer, nor it is licensed for the subject plot, therefore, NOC was rightly denied. During course of his arguments, he referred to Section 5 of the Drugs Act, 1976 and articulated that according to the said provision of law, Central Licensing Board was set up to grant licenses to the pharmaceutical manufacturers, he though admitted that the request of the petitioner for the issuance of

NOC was declined by such forum. While concluding his submissions, he submitted that the petition is meritless and liable to be dismissed.

5. Learned counsel for the Custom department contended that the petitioner has to produce an NOC to avail benefit granted per Sr. No.38 of the table, Part-I, 5th Schedule of Customs Act, 1969.

6. Learned AAG adopted the arguments of counsel for the respondents and submitted that if the Petitioners are eager to obtain the benefit, they have to produce an NOC to the Customs department.

7. Heard the arguments and perused the material n record. To us the bone of contention between the parties is the levy of Customs duty as well as interpretation of the Section 18 (1)(a) of the Customs Act, 1969 read with Serial No. 38 of Part I of the Fifth Schedule of the Act, 1969 to the effect that whether the petitioner has a fit case under these provisions of law or not. For the ease of convenience, relevant provision of law is reproduced as under:-

“18. Goods dutiable.- (1) Except as hereinafter provided, customs duties shall be levied at such rates as are prescribed in the First Schedule or under any other law for the time being in force on,-

- (a) goods imported into Pakistan;
- (b)-----.
- (c) -----.”

8. Through the Finance Act, 2021, an amendment was made in Part-I of the Fifth Schedule to the Customs Act, 1969 in respect of the import of plant, machinery, equipment and apparatus including capital goods for various industries/sectors and a provision was inserted in Part-I. It is thus considered expedient to reproduce the

said provision alongwith relevant Table whereby 5% customs duty is to be levied on the import of plant and machinery by the registered pharmaceutical manufacturers for their own use, and the same are reproduced hereunder:-

“Provided further that condition of local manufacturing shall not be applicable against serial 38 of the Table, on import of plant, machinery and equipment if imported by registered pharmaceutical manufacturers for their own use subject to NOC from Ministry of Health”

[underlining is ours]

Table of Part-I, Fifth Schedule, Customs Act, 1969 (relevant serial is 38).

S. No.	Description	PCT Code	Customs Duty (%)	Conditions
(1)	(2)	(3)	(4)	(5)
38	Plant, machinery and equipment	Respective headings	5%	If imported by registered pharmaceutical manufacturers for their own use subject to NOC from Ministry of Health

9. A perusal of above amendments makes it clear that the requirement of local manufacturing is not be applicable against Serial No. 38 of the Table, on the import of plant, machinery and equipment if such imports are made by registered pharmaceutical manufacturers for their own use, subject to NOC from Ministry of Health. In aforesaid eventualities, per Section 18(1)(a) of the Customs Act, 1969 read with serial No. 38 of Part I of the Fifth Schedule of the Act, 1969 the petitioner being a registered pharmaceutical manufacturer is only liable to pay 5% Customs duty on the imported goods. Learned counsel for the petitioner during course

of arguments drew court's attention to pages 303 to 309 (of C.P. No.D-454 of 2022) that is a copy of the manufacturing license issued to the Petitioner to manufacture pharmaceutical product at its units. It is considered expedient to illustrate here that the petitioner has manufacturing units at Plots No. F-95 and F-140 A, Hub River Road, SITE Karachi which fact is not denied, however, in order to expend its manufacture capacity, the petitioner acquired Plot No.F/124 in the same precinct of SITE, Karachi for the establishment of pharmaceutical manufacturing unit and after due compliance, the area Federal Inspector of Drugs inspected the site and reported the following fact through his letter dated 22.03.2017 (available at page 315):

“ Recommendations: This 5.23 Acre plot No. F/124, S.I.T.E. Karachi is an open plot and boundary wall has been erected, no any construction was under way. Keeping in view its location and industrial area not surrounded by any hazardous smoke producing or other incompatible factory and with required size, the plot under reference is recommended for establishment of Pharmaceutical unit.....”
[underlining is ours)

10. It gleans from appraisal of the foregoing that the Drug Inspector having inspected the site, recommended the subject site for the establishment of pharmaceutical unit as the site was not surrounded by any hazardous or smoke producing factories. It is also an admitted position that the petitioner is a registered pharmaceutical company having several other units duly licensed for the same purposes in the same precinct, therefore, declining to issue NOC by the respondent No.6 for the release of the plant and machinery including Cooling Towers imported by the petitioner appears to be unjustified, particularly when entire installation will be carried out under strict examination of DRAP itself, which can easily

register that fact as to whether the equipment are being installed at the site or not.

11. Within the precincts of powers, the Federal Government had introduced amendments as discussed above whereby 5% Customs duty is leviable on the items imported by the petitioner for its own use being a registered pharmaceutical manufacturer. It is an established position of law that anything which is tried to be inferred extraneously or beyond the scope or tenor of the statute, is not permissible under any rule of interpretation. According to well-settled canons and rules of interpretation laid down by the superior Courts time and again, the indispensable and imperative sense of the duty of the Court in interpreting a law is to find out and discover the intention of the legislature, and then endeavor to interpret the statute in order to promote or advance the object and purpose of the enactment. The amendment so introduced on record as well as reproduced above unequivocally makes the Petitioner eligible to only pay 5% customs duty on the goods/machinery so imported by it for its own use being a registered pharmaceutical manufacturer. It is also established position that statutes require purposive interpretation which complements their effect to the purpose by following conscientious and exact meaning and amendments always issued in the aid of substantive principles of law set out in the parent legislation, and to give effect to administrative directions and instructions for the implementation of the law. If the words used are capable of one construction only, then it would not be open to the Courts and/or respondents to adopt any other hypothetical construction on the ground that such hypothetical construction is

more consistent with the alleged object and policy of the Act. The duty of the Court in such circumstances is to implement those provisions with no restriction. The legal maxim, “*absoluta sententia expositore non indigent*” also reminds us that, when the language is not only plain, the task of interpretation can hardly be said to have arisen. It is not allowable to interpret what has no need of interpretation. Whereas another maxim “*generalia verba sunt generalita intelligenda*” expresses that general words are to be understood generally and what is generally spoken shall be generally understood unless it be qualified by some special subsequent words or unless there is in the statute itself some ground for restricting their meaning by reasonable construction, not by arbitrary addition or retrenchment².

12. Reverting to the merits of the case at hand, the Petitioner is claiming concessions provided through the latest amendments as delineated *supra* and it is well established position of law that the burden rests on a person who claims any concession or benefit to substantiate that he is entitled for the same or not. In a taxing statute, there is no leeway or probability of any intendment, manner of interpretation is required by law to be such which undoubtedly or unmistakably coming from sight from the plain language of the statutory amendments with the conditions laid down in it, but with the caution that the benefits arising from a particular amendments in the statute should not be defeated or negated and, in case of any

² N. S. Bindra’s interpretation of Statutes (Tenth Edition), (Page No.609- 610) & (Page No.656-657)

ambiguity or mischief, the taxing statute be construed in favour of the assessee³.

13. To recapitulate, having gone through the language of the taxing statutes, as well as amendments made it would be safe to hold that if the petitioner is entitled for concession in plain terms of statutory amendments, then the respondents cannot deny the benefit of such concession which is intended for its benefit.

14. The Petitioner in para 25 of memo of petition alleged to have been victim of discriminatory treatment. Mr. Pirzada during course of arguments, drew court's attention to page 393 (annexure "N") of the court file which is an NOC granted to some other pharmaceutical manufacturers and argued that approximately eight (08) pharmaceutical manufacturers in the similar circumstances were granted NOC maintaining exemption in Customs duty on import of plant and machinery under Sr. No. 38 of the amended Fifth Schedule of the Customs Act, 1969 but the petitioner was deprived, hence treated discriminately and that the act of non-issuance of NOC to the petitioner by the respondent through impugned letter is clearly, violation of Article 25 of the Constitution, 1973. It is trite law that when a right is safeguarded by a Constitutional guarantee being a "fundamental right", Executive or Legislative must not act violatively and such a right should not be taken away, suspended or abridged. Under Article 25 of the Constitution, reasonable classification is not prohibited but it is required that all persons similarly placed should be treated alike.

³ Per Umar Ata Bandial, Amin-ud-Din Khan and Muhammad Ali Mazhar.JJ in Collector of Customs, Model Customs Collectorate, Peshawar v. Waseefullah & others (2023 SCMR 503).

15. Not only so, in our view, the object of good governance cannot be achieved by exercising discriminatory powers unreasonably or arbitrarily and without application of mind, but such objective can only be achieved by following rules of justness, fairness and openness in consonance with command of constitution enshrined in the Constitution. To us, discrimination is apparent in the case at hand when the petitioner was declined benefit provided in Sr.38 of the Table of Part-I, Fifth Schedule of the Customs Act, 1979 which in an unequivocal terms provides that plant, machinery and equipment imported by a registered pharmaceutical manufacturers for their own use the same machinery is to be assessed under the head of 38 and only 5% Customs duty on such an import is leviable. In the aforesaid eventualities, per Section 18(1)(a) of the Customs Act, 1969 read with serial No. 38 of Part I of the Fifth Schedule of the Act, 1969 the petitioner being a registered pharmaceutical manufacturer is in our view is only required to pay 5% Customs duty on the imported goods.

16. In view of the above rationale and deliberations, the petitions were heard and disposed of at conclusion of the hearing by way of short order dated 05.12.2023 in the following terms:

“Heard learned counsel for the petitioners, Counsel for DRAP as well as learned Assistant Attorney General. For reasons to be recorded later on, all these petitions are allowed. The securities/sureties furnished pursuant to ad-interim orders of this Court from time to time shall stand discharged. Nazir’s office/department/ concerned Collectorate shall act accordingly. Office to place copy of this order in connected petitions.”

17. Above are the reasons of our short order.

Karachi
Dated:

JUDGE

JUDGE

SCHEDULE

Sr. No.	Case No.	Parties
1.	C.P. No.D-454 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
2.	C.P. No.D-1150 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
3.	C.P. No.D-1707 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
4.	C.P. No.D-1826 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
5.	C.P. No.D-1953 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
6.	C.P. No.D-2147 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
7.	C.P. No.D-2642 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
8.	C.P. No.D-7027 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
9.	C.P. No.D-7060 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
10.	C.P. No.D-7391 of 2022	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others
11.	C.P. No.D-5030 of 2023	Sami Pharmaceuticals Pvt Ltd v. Federation of Pakistan & others

Aadil Arab

