

IN THE HIGH COURT OF SINDH, KARACHI

Constitution Petition No.D-4002 of 2019 along with
Constitution Petition Nos.D-6074 of 2021 & 774 & 2385 of 2022

Date

Order with signature of Judge

Present: *Mr. Justice Muhammad Junaid Ghaffar*
Mr. Justice Mohammad Abdur Rahman

PETITIONER
(in all Petitions) : Surfactant Chemicals Company (Pvt) Ltd.
Through Mr. Asad Manzoor Halepota,
Advocate.

RESPONDENT NO.3 in
CP No.D-4002/2019 : Directorate of Input Output Coefficient
Organization (South)
Through Dr. Shah Nawaz, Advocate

RESPONDENT NO.3 in
C.P. No.D-774/2022 : Model Customs Collectorate Appraisalment
Karachi (West)
Through Mr. Khalid Rajpar, Advocate.

RESPONDENT NO.4 in
C.P. No.D-774/2022 : Model Customs Collectorate Appraisalment
Karachi (East)
Through Ms. Masooda Siraj, Advocate.

FEDERATION OF
PAKISTAN : Through Mr. Kashif Nazeer, Assistant
Attorney General.

Date of Hearing : 12.09.2024

Date of Judgment : 12.09.2024

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through these Petitions the
Petitioner has sought the following relief: -

- I. *Declare that the Petitioner is entitled to the exemption from Customs Duty in excess of zero percent (0%) in terms of SRO No. 565(1)/2006, dated 05.06.2006 [as amended vide SRO No. 474(I)/2016, dated 27.06.2016], on the import of items under HS Codes 3402.1300 and 3402.1190, and direct the Respondents to treat the Petitioner as so entitled in all material aspects;*
- II. *Restrain Respondents No. 1 to 3 from applying, levying, collecting or recovering Customs Duty in excess of zero percent (0%) on items imported by the Petitioner under HS Codes 3402.1300 and 3402.1190, and further restrain the*

Respondents from taking any coercive or adverse action in this regard;

- III. *Direct the Respondents No. 1 to 3, along with their concerned functionaries, to forthwith refund all amounts of Customs Duty collected from the Petitioner since 27.10.2016 on its imports of items under HS Codes 3402.1190 and 3402.1300;*
- IV. *As ad-interim/interim relief, direct Respondents No. 1 to 3 to release the Subject Consignment (Bill of Lading No. VASJEAKHI006914, dated 09.09.2021) and all future consignments of the Petitioner imported under HS Codes 3402.1300 and 3402.1190 without applying Customs Duty in excess of zero percent (0%) during the pendency of this Petition; and*
- V. *Any other relief deemed just and proper by this Honourable Court in favour of the Petitioner; and*
- VI. *Award costs to the Petitioner against the Respondents.*

2. Learned counsel appearing on behalf of the Petitioner has contended that Petitioner is entitled to an exemption from the levy of customs duty in terms of SRO 565(I)/2006 dated 05.06.2006 (“**565**”) duly amended vide SRO 474(I)/2016 dated 27.06.2016 (“**474**”), as the goods imported by the Petitioner are fully covered by the exemption as per Column No.3 of the Table at Serial No.3 of the amending SRO. Per learned counsel, the objections raised by the Respondents department that the Petitioner is not registered / recognized by the Ministry of National Food Security and Research is irrelevant inasmuch as the Petitioner is not required to get such registration or approval, as the Petitioner by itself is not a manufacturer of any Agricultural Pesticides, instead it imports, formulates and manufactures agricultural surfactants/surface active agents namely stabilisers, emulsifiers and solvents which are used in manufacturing pesticides. According to him the material imported by the Petitioner is mentioned in the said SRO at Serial No.75 and 77 of the Table; hence the impugned action of the Respondents is illegal and without lawful authority. Lastly, he has placed reliance on an order dated 12.12.2019 passed by this Court in C.P. No.D-8496 of 2017

[Re: Surfactant Chemicals Company (Pvt.) Ltd. V. Federation of Pakistan and others], which has been maintained by the Hon'ble Supreme Court of Pakistan vide order dated 25.06.2021 in Civil Petitions No.95-K & 145-K of 2020 [*Federal Board of Revenue v Surfactant Chemicals Company (Pvt.) Limited*], as according to him, in the said judgment a benefit to the same product was granted by the Court to the Petitioner without registration as being now demanded by the department.

3. On the other hand, learned counsel appearing on behalf of the Respondents have disputed the claim of Petitioner on the ground that the requisite condition against Serial No.3 of the Table in Column No.(2), whereby, recognition and approval by the Ministry of Natural Food Security and Research is required, has not been fulfilled; hence the Petitioner does not qualify for any such exemption.

4. Heard all the learned counsel for the parties and perused the record. The Petitioner claims to have imported certain material (as no Goods Declaration has been annexed, whereas the Invoice and Bill of lading are also silent as to the actual description of goods in question) claiming classification under HS Code 3402.1190 & 3402.1300 of the Pakistan Customs Tariff. It is the case of the Petitioner that since these two HS codes are available in the Table to the SRO at Serial No.3 thereof, the Petitioner qualifies for such exemption or zero rating of duties. It appears that in terms of Section 19 of the Customs Act, 1969, SRO 565 has been issued which provides various exemptions on the import of goods subject to fulfilment of certain conditions as stipulated therein. The said SRO was amended through SRO 474 on 24.6.2016, whereby exemption was extended to various other imported goods. Before proceeding further, it would be advantageous to refer to the relevant Serial No.3 of the Table of SRO 474 which reads as under:

1.	2.	3.	4.	5.	6.
3.	Manufacture or formulation of Agricultural pesticides by manufacturers or formulators duly recognized and approved by the Ministry of National Food Security and Research	Raw Materials			Nil
		(i) Oils and other products of distillation of high temperature, coal-tar and similar products in which the weight of the aromatic constituents exceeds that of non-aromatic constituents.	2707.5000 2707.9100 2707.9990 2710.9900	5%	
		(ii) Following active ingredients for pesticides registered by the Department of Plant Protection under the Agricultural Pesticides Ordinance, 1971(II of 1971), stabilizers, emulsifiers and solvents:-			
		(1)		0%	
		(2)			
		(3)			
		(75) Other surface active agents	3402.1190		
		(76)			
		(77) Non ionic surface active agents	3402.1300		

5. From perusal of the aforesaid exemption against Serial No.3 as above, it reflects that in Column No.(2) there is a condition before any person could qualify for claiming such exemption which provides that it is only available for manufacture or formulation of Agricultural pesticides by manufacturers or formulators duly **recognized** and **approved** by the Ministry of National Food Security and Research. Column No.(3) lists various products which are entitled for levy of 0% or 5% customs duty and as claimed at Serial No.75 & 77, the product so imported by the

Petitioner is also mentioned. However, the exemption on the product is only available to a person or an importer, who is otherwise eligible in terms of Column No.(2) of the Table to the exemption SRO. It does not apply to all importers who otherwise do not satisfy the requirement as mentioned in Column No.(2) as above. It is not in dispute that presently the Petitioner is neither **recognized** nor **approved** by the Ministry of National Food Security and Research either as a manufacturer or formulator of Agricultural pesticides.

6. When confronted, learned counsel for the petitioner has argued that the Petitioner is not required to provide such approval from the concerned Ministry and in support thereof, reliance has been placed on an order dated 12.12.2019 passed by this Court in C.P. No.D-8496/2017. However, perusal of the said order, it appears that the same was in respect of Clause 133 of the 6th Schedule to the Sales Tax Act, 1990, which reads as under: -

133. Pesticides and their active ingredients registered by the Department of Plant Protection under the Agricultural Pesticides Ordinance, 1971 (II of 1971), stabilizers, emulsifiers and solvents,	
...	
Other surface active agents	3402.1190
...	
Non-ionic surface active agents	3402.1300

7. From perusal of the aforesaid Entry, it clearly reflects that it is not *pari materia* with the entry at Serial No.3 of the Table to the SRO in question inasmuch as under Clause 133, *ibid*, there was no restriction that manufacturer or formulator be **approved** or **recognized** by the Ministry of National Food Security and Research; rather it was the product i.e. pesticides and active ingredients, which were required to be registered by the Department of Plant Protection under the Agricultural Pesticides

Ordinance, 1971, including stabilizers, emulsifiers and solvents, namely, other surface active agents and non-ionic surface active agents. It was in that context, that the matter was decided in favour of the Petitioner by holding that *“nowhere in the aforesaid Clause there is any restriction to the effect that exemption from payment of sales tax will be available to the manufacturers of pesticides only”*. We are unable to agree with the contention of the Petitioner’s Counsel that the aforesaid judgment squarely applies to the present facts and circumstances of this case. Since the provisions under consideration before the learned Division Bench in the above case were materially different as against the present case, therefore, the said judgment is of no help to the Petitioner’s case.

8. It may also be of relevance to observe that it is the Petitioner who is claiming certain exemption and the principle relating to proper interpretation and application of exemption clauses in fiscal legislation are well settled that the onus lies upon the taxpayer to show that his case comes within the exemption; and if two reasonable interpretations are possible, the one against the taxpayer will be adopted¹.

9. In view of hereinabove facts and circumstances of the case, since the Petitioner has failed to fulfil the condition as provided in Column No.(2) against Serial No.3 of the SRO in question, including production of *recognition* and *approval* from the Ministry of National Food Security and Research; hence no case for indulgence is made out and, therefore, by means of a short order in the earlier part of the day, all these Petitions were dismissed and these are the reasons thereof.

J U D G E

¹ Oxford University Press v Commissioner of Income Tax (2019 SCMR 235);
Pakistan Match Industries (Pvt) Limited v Assistant Collector Sales Tax (2019 SCMR 906)
Commissioner Inland Revenue v Kassim Textile Mills (Pvt) Limited (2013 PTD 1420)

J U D G E

Farhan/PS