

THE HIGH COURT OF SINDH, KARACHI

Before:

Mr. Justice Adnan Iqbal Chaudhry.

- Suit No. 2042 of 2016 : Umair Spinning Mills (Pvt) Ltd., and seven (07) others versus Federation of Pakistan and others.
- Suit No. 1831 of 2016 : Younus Textile Mills Limited versus Federation of Pakistan and others.
- Suit No. 1981 of 2016 : Lucky Textile Mills Limited versus Federation of Pakistan and others.
- Suit No. 2260 of 2016 : Kassim Textiles and five (05) others versus Federation of Pakistan and others.
- Suit No. 2381 of 2016 : Gul Ahmed Textile Mills Limited and four (04) others versus Federation of Pakistan and others.
- Suit No. 524 of 2018 : Shahbaz Garments Private Limited versus Federation of Pakistan and others.
- For the Plaintiffs : Mr. Sunder Lal Lohana, Advocate, holds brief for Mr. Ameen Mohammad Bandukda, Advocate, in Suits No.2042, 2260, 2381 all of 2016.
- Ms. Mariam Riaz, Advocate, in Suit No.1831 of 2016.
- Mr. Ghulam Muhammad, Advocate, in Suits No.1981 of 2016 and Suit No.524 of 2018.
- For the Defendants : Mr. Khairullah Jakhro, Advocate for Defendant No.2 in Suit No.1831 of 2016.
- Mr. Qaim Ali Memon, Advocate for Defendant No.2 in Suit No.1981 of 2016.
- Mr. Ayaz Sarwar Jamali, Advocate for the FBR - Defendant No.2, in Suit No.524 of 2018.
- Ms. Alizeh Bashir, Assistant Attorney General for Pakistan.

Date of hearing : 05-03-2024

Date of decision : 05-03-2024

JUDGMENT

Adnan Iqbal Chaudhry J. - The prayer in all these suits are identical as follows:

- (i) *Declare that the proviso to condition (x) in SRO 491(1)/2016 is unlawful, unconstitutional and void ab initio in so far as it relates to the disallowance of Input Tax on Packaging Material.*
- (ii) *Declare that the denial to allow adjustment of input tax under the Impugned Notification on packaging material is ultra vires the provisions of the Sales Tax Act 1990 as well as against the fundamental rights as enshrined under the Constitution of Islamic Republic of Pakistan.*
- (iii) *Declare that the powers conferred upon the Federal Government to disallow input tax adjustments through Section 8(b) are only available to be used harmoniously with the provisions of Section 7 and in view of the overall themes of Section 8 and 8B.*
- (iv) *Restrain the Respondents from preventing the Plaintiffs' submission of their monthly sales tax returns filed under the Act 1990 electronically and/or manually in which input adjustment is claimed by them for Packaging Material as stated in the proviso to Condition (x) of SRO 491(1)/2016 and/or from taking any coercive action against the Plaintiff.*
- (v) *Grant such other relief(s) to which the Plaintiffs may be entitled or which may be warranted in the facts and circumstances of this case.*
- (vi) *Grant costs.*

2. The central issue in all of these suits is whether the proviso to condition (x) of SRO 491(1)/2016 is *ultra vires* the Constitution of Pakistan and/or the Sales Tax Act, 1990. As pointed out by all counsel present, a number of constitution petitions with identical prayers and seeking a writ to the same effect were dismissed by a learned Division Bench of this Court in *M/s. Liberty Mills Limited v. Federation of Pakistan* [2021 PTD 347], whereby the *vires* of the proviso to condition (x) of SRO 491(1)/2016 was upheld. Subsequently, that judgment has also been upheld by the Supreme Court in the case of *Rajby Industries Karachi v. Federation of Pakistan* [2023 SCMR 1407]. Consequently, all

learned counsel present submit that the suits be disposed of in the same terms.

3. In view of the foregoing and for reasons mentioned in the aforesaid judgment of the Division Bench of this Court and upheld by the Supreme Court, the aforesaid issue is answered in the negative, and these suits are dismissed.

Office shall place a copy of this judgment in all suits.

JUDGE

*SHABAN**