

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No.D-8164/2019 a/w CPs. Nos.D-8233 to 8247, 8271 to 8284, 8342 to 8345,
8367, 8377, 8382, 8385, 8389, 8390, 8394 to 8397, 8403, 8416, 8417, 8427 to 8434,
8446 to 8453 and 8532 of 2019 and 355 to 359, 478, 659, 660, 661, 665, 696, 758 and
759 of 2020

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

25.02.2020

M/s. Anwar Kashif Mumtaz, Javed Farooqi, Basil Nabi Malik, Nahl Chamdia, Muhammad Fahim Bhayo, Abdul Moiz Jafri, Muhammad Saad, Sufyan Zaman, Ovais Z. Sarki, advocates for petitioners

Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General

M/s. Amir Bakhsh Metlo, Muhammad Aqeel Qureshi, Shahid Ali Qureshi, Aamir Raza, Masooda Siraj, Muhammad Zubair Hashmi, Gul Faraz Khattak, advocate for respondents

Pursuant to Court's notice, Ms. Dil Khurram Shaheen, advocate, has shown appearance, holds brief on behalf of Mr. Kafeel Ahmed Abbasi, advocate, who is reportedly busy before another Bench, files his vakalatnama on behalf of respondent No.3 and requests for time to file comments.

Mr. Anwar Kashif Mumtaz, learned counsel for petitioner in C.P. No.D-8518/2029, under instructions, does not press the said petition, which is accordingly dismissed as not pressed along with listed application.

Mr. Ameer Bux Metlo, learned counsel for respondents, has filed comments on behalf of respondents in C.P. No.D-8394/2019, which are taken on record, copy has been supplied to the learned counsel for petitioners, who request for time to examine the same. Mr. Metlo submits that comments filed in the aforesaid petition may be treated as comments in all connected petitions.

Learned counsel for petitioners are directed to come prepared and proceed with the matters on the next date on the basis of comments filed on behalf of respondents.

To come up on **31.03.2020**. Interim order passed earlier to continue till the next date of hearing.

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No.D-8518 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

25.02.2020

M/s. Anwar Kashif Mumtaz, advocate for petitioner
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General
Ms. Fouzia Murad, advocate, holds brief on behalf of Dr. Shahnawaz
Memon, advocate for respondents

Learned counsel for petitioner, under instructions, does not press the
instant petition, which is accordingly dismissed as not pressed along with listed
application.

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Gulsher/PS

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No.D-7677 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For hearing of Misc. No.33873/2019
 2. For hearing of main case
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25.02.2020

Mr. Awais Z. Sarki, advocate for petitioner
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General
Mr. Saifullah, Additional Advocate General Sindh

Pursuant to Court's notice, Mr. Ghulam Murtaza Korai, advocate, has shown appearance, files vakalatnama and comments on behalf of respondent No.2, which are taken record, copy has been supplied to the learned counsel for petitioner, who requests for time to examine the same.

To come up after four weeks. Interim order passed earlier to continue till the next date of hearing.

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Gulsher/PS

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-8081 of 2019

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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1. For hearing of Misc. No.35628/2019
 2. For hearing of main case
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25.02.2020

Ms. Amna Salman, advocate for petitioner
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General

No one is in attendance on behalf of respondents whereas after notice Mr. Muhammad Khalil Dogar, advocate, shown appearance on behalf of respondents 1 to 5, however, he is not in attendance today as his name could not appear in the cause list today. Assistant Registrar, Writ Branch, is directed to look into the matter, whereas Roster Branch is directed to mention the name of Mr. Muhammad Khalil Dogar, advocate for respondents 1 to 5 in the cause list on the next date.

Learned Assistant Attorney General requests for time to seeks instructions and to file comments.

Let the notice be repeated against Respondent No.6, to be served through first three modes, for a date after four weeks. Interim order passed earlier to continue till the next date of hearing.

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Gulsher/PS

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.Ps. Nos.D-7535, 7612, 6081, 6914, 6915,
7611, 3536, 7537, 6082, 6083, 6084 and 6085 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

25.02.2020

Mr. Muhammad Faheem Bahyo, advocate for petitioners
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General
Mr. Muhammad Aqeel Qureshi, advocate for respondents
Mr. Ahmed Ali Ghumro, advocate respondents/HESCO

Learned counsel for petitioners at the very outset submits that the controversy agitated through instant petitions has already been decided by the Divisional Bench of this Court in the case of M/s. Al-Zarina glass Industries v. Federation of Pakistan and others, reported as 2018 PTD 1600, relating to supply of bangles, whereas, by following the ratio of aforesaid judgment this Court has further passed order dated 21.12.2018 in C.P. No.D-6665/2018 in the case of M/s. Bin Qasim Flour Mills vs. Federation of Pakistan and others in respect of supply of flour by Floor Mills and submits that instant petitions may also be disposed of in the similar terms. In support of his contention, learned counsel for petitioners has placed copy of aforesaid order dated 21.12.2018 passed in the aforesaid petition.

While confronted with herein above factual and legal position, learned counsel for respondents as well as Assistant Attorney General could not controvert the same.

Accordingly, by respectfully following the decision of the Divisional Bench of this Court in the aforesaid case as reflected in paragraphs 10 to 12 of the aforesaid reported judgment, instant petitions stand disposed of along with pending applications, in the following terms, however, with minor amendment in paragraph 12 of the said judgment in fourth line by replacing 'item 29 C of the Sixth Schedule' with "Item No.19 of the Sixth Schedule":

10. A Division Bench of this Court in the case of Digicom (Pvt.) Ltd. (supra), while examining the provisions of section 13(1) of the Sales Tax Act, 1990 and S.R.O. 460(I)/2013 dated 03.5.2013, has been pleased to hold as under:--

7. On a minute examination of the provisions of Section 13(1) of the Act, it appears that it provides, notwithstanding the provisions of section 3, for exemption from the levy of sales tax on the supply or import of goods specified in the Sixth Schedule, subject to such conditions as the case may be, whereas, sub-section (2)(a) provides, that notwithstanding the provisions of subsection (1), the Federal Government may by Notification in the official gazette exempt any

taxable supplies made or import or supply of any goods or class of goods, from the whole or any part of the tax chargeable under this Act, subject to conditions and limitations specified therein. On perusal of S.R.O. 460(I)/ 2013 it reflects that it has been specifically issued in terms of subsection (2)(a) of section 13 in addition to other relevant provisions of the Act, and, therefore, we are of the view that through S.R.O. 460(I)/2013 the Federal Government has fixed the rate of Sales Tax as mentioned in Column 2 of the Table of the SRO at different rates and such fixation of Sales Tax appears to be the final liability of Sales Tax at import and supply stage. The words used in section 13(2)(a) of the Act are very specific and provides for exemption any taxable import or supply of any goods from the whole or any part of the Sales Tax chargeable under the Act and not merely under Section 3(1) of the Act as contended by the learned Counsel for respondent No.2. This would mean that the provision of section 13 of the Act has an overriding effect on the chargeability of Sales Tax in terms of section 3(1) as well as 3(1)(a) of the Act. Once the mechanism has been prescribed by the Federal Government by issuance of a Notification in terms of various provisions of the Act, including section 13(2)(a) of the ibid, the question of payment of any additional tax in terms of section 3(1)(a) of the Act, for supply of goods to unregistered person(s) does not arise. The provision of section 3(1)(a) could only be invoked in respect of goods which are being charged Sales Tax under section 3(1) of the Sales Tax Act, 1990 at the rate specified therein at ad-valorem basis which is presently @ 17%. Once the mode and manner and the rate of Sales Tax has been altered, modified or fixed by the Federal Government either through subsection (2)(b) and (6) of Section 3, read with section 13, no further tax can be demanded once the liability of Sales Tax is discharged on the basis of a special procedure as contemplated under S.R.O. 460(I)/2013."

11. Similarly, a learned Single Judge of the Lahore High Court, in Writ Petition No. W.P. 27097/2013 (*Zia Brothers v. Federation of Pakistan etc.*) while examining the provisions of sections 3(1) and 3(1)(a) read with section 13 of the Sales Tax Act, 1990 as well as the provisions of S.R.O. 648(I)/2013 dated 09.07.2013, has been pleased to hold that section 3(1A) of the Sales Tax Act, 1990 has no applicability to the case of petitioners who enjoy exemption under the Act and are not making any taxable supplies in terms of section 2(41) of the Sales Tax Act, 1990.

12. In view of hereinabove facts and circumstances of the case, and by respectfully following the ratio of the aforesaid decisions, we are of the opinion that the provisions of S.R.O. 509(I)/2013 dated 12.6.2013 are not applicable to the petitioners who enjoy exemption in terms of section 13 read with item 19 of the Sixth Schedule (PCT Heading 1101:0010) to the Sales Tax Act, 1990 from payment of sales tax as the petitioners are not making any taxable supplies in terms of section 2(41) of the Sales Tax Act, 1990."

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. P. No.D-8518 of 2019

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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1. For hearing of Misc. No.22779/2019
 2. For hearing of main case
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25.02.2020

Raja Babar Hameed, advocate for petitioner
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General
Mr. Aamir Raza, advocate for respondents

Learned counsel for petitioner submits that the petitioner will be satisfied and will not press the instant petition, provided the respondents may be directed to allow the petitioner to obtain fresh inspection certificate from the company of exporting country, which shall be taken into consideration by the respondents in accordance with law and till then the respondents may not take any coercive action against the petitioner.

Learned counsel for respondents as well as learned Assistant Attorney General do not oppose the disposal of instant petition in the aforesaid terms.

Accordingly, instant petition stands disposed of along with pending application in the above terms, however, it is expected that upon production of inspection certificate from the company of exporting country by the petitioner, the case of the petitioner may be processed and finalized within four weeks in accordance with law.

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Gulsher/PS

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. Ps. No.D-5159 and 3843 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

25.02.2020

Mr. Ayaz Shoukat, advocate for petitioner in CP D-5159/2019
Mr. Kashif Hanif, advocate for petitioner in CP D-3843 of 2019
Mr. Saifullah, Additional Advocate General Sindh a/w Syed Muhammad
Abuzer Abbas, Inspector of Stamps, East Circle, Karachi and Furqan
Khanani, Inspector of Stamps, Korangi Circle, Karachi

Comments have been filed on behalf of respondents in C.P. No.D-3843 of 2019, which are taken on record. Learned Additional Advocate General Sindh undertakes to supply the copy of comments to the learned counsel for petitioner during the course of the day.

By consent, adjourned to **16.03.2020**. Interim order passed earlier to continue till the next date.

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Gulsher/PS

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C. Ps. Nos.D-2081 of 2019 & SCRA No.87 of 2019

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

25.02.2020

Mr. Madan Lal, advocate for petitioner
Mr. Muhammad Aminullah Siddiqui, Assistant Attorney General
Mr. Muhammad Bilal Bhatti, advocate for respondents

Learned counsel for petitioner files a statement along with annexures and submits that inspite of judgment dated 23.10.2018 passed by Customs Appellate Tribunal in favour of petitioner and order dated 29.03.2019 passed by this Court in the instant petition, the respondents have put the consignment of the petitioner to auction in violation of law and the directions of this Court.

Let the concerned official of customs shall be in attendance on the next date along with relevant record relating to the auction proceedings.

To come up on **10.03.2020**.

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