

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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