

THE HIGH COURT OF SINDH KARACHI

**Present:**  
Mr. Justice Adnan Iqbal Chaudhry  
Mr. Justice Muhammad Jaffer Raza

C.P. No. D – 4095 of 2024  
[M/s. GMA Trading vs. FOP & others]

Petitioner : M/s. GMA Trading through Mr. Kamran Iqbal Bhutta, Advocate.

Respondent 1 : Federation of Pakistan through Secretary, Ministry of Finance, through Ms. Mehreen Ibrahim, DAG.

Respondents 2-4 : Director (FEAD), State Bank of Pakistan and two others through M/s. Alam Zeb and Faraz Khan Jadoon, Law Officers alongwith Mr. Babar Jadoon, Deputy Director, SBP.

Respondents 5-6 : Nemo.

Date of hearing : 18-11-2025

Date of decision : 18-11-2025

**ORDER**

**Adnan Iqbal Chaudhry J.** - Against judgment of the Adjudicating Officer delivered under the Foreign Exchange Regulation Act, 1947 [FERA], the Petitioner preferred an appeal to the Foreign Exchange Regulation Appellate Board under section 23C of the FERA. That appeal was not admitted for non-compliance of sub-section (4) of section 23C of the FERA, which required a deposit of security as a condition to the appeal. The Petitioner, therefore, filed this petition to challenge the *vires* of sub-section (4) of section 23C of the FERA with a prayer to direct the Appellate Board to admit the Petitioner's appeal without demanding security. However, while this petition was pending two events occurred. On 25.09.2024, the Appellate Board dismissed the Petitioner's appeal for non-compliance of sub-section (4) of section 23C of the FERA. Subsequently, the Honorable Supreme Court of Pakistan, by judgment dated 20.3.2025 in *Senior Joint Director, Foreign Exchange Operations Division, SBP v. Federation of Pakistan* (PLD 2025 SC 440), declared sub-section (4) of section 23C of the FERA as unconstitutional. The Petitioner then made an application to the Appellate

Board to recall the dismissal of its appeal. However, the Appellate Board dismissed that application on 30.07.2025 taking the view that it did not have power to review its order. In these changed circumstances, the Petitioner was allowed to amend the petition.

Petitioner's counsel submits that since sub-section (4) of section 23C of the FERA has been struck-down by the Supreme Court, the order of the Appellate Board dismissing the Petitioner's appeal on the basis of said provision, is liable to be set-aside. He relies on orders passed by another Division Bench of this Court to revive appeals similarly dismissed by the Appellate Board. Learned counsel for the SBP opposes the petition. He submits that judgment of the Supreme Court declaring sub-section (4) of section 23C of the FERA as unconstitutional, operates prospectively, and will not apply to orders already passed by the Appellate Board. However, this petition, filed to challenge the non-admission of the Petitioner's appeal by the Appellate Board pursuant to sub-section (4) of section 23C of the FERA, was pending when the Appellate Board dismissed the Petitioner's appeal and when the Supreme Court declared said provision unconstitutional. In other words, the matter was *sub-judice* and had not attained finality when judgment of the Supreme Court was announced. In such circumstances, no question arises with regards to retrospectivity of the Supreme Court's judgment.

Sub-section (4) of section 23C of the FERA having been declared unconstitutional by the Supreme Court, the impugned orders dated 25.09.2024 and 30.07.2025 passed by the Appellate Board pursuant to that provision, cannot sustain and are hereby set-aside. Consequently, the Petitioner's appeal shall be deemed to be pending before the Appellate Board. Petition is allowed in said terms.

JUDGE

JUDGE

SHABAN\*