ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. No. D-6932 of 2022

Date	Order with signature of Judge

Priority.

1. For hearing of CMA No. 29245/2022.
2. For hearing of main case.

10.11.2026.

Mr. Ali Almani, Advocate for Petitioner.
Ms. Mehreen Ibrahim, Deputy Attorney General.
Mr. Munawar Ali Memon, Advocate for Respondent No. 4.
Mr. Aamir Ali, Advocate for the Department.

The Petitioner had apparently filed an application on 26.12.2020 before the Respondent No. 4, for approval as a Greenfield Industry under Section 2(27A) of the Income Tax Ordinance, 2001 (the "**Ordinance**") and Rule 220C of the Income Tax Rules 2002, seeking the benefit conferred in terms of Section 53 of the Ordinance, which provides that the income or persons specified in the Second Schedule shall be exempt from income tax, with Serial 1260 inserted in Part I of the Second Schedule through the Finance Supplementary (Second Amendment) Act, 2019 dated 09.03.2019 reading as follows:

> "Profits and gains of a company from a green field industrial undertaking for a period of five years incorporated on or after the first day of July, 2019 provided that the green field industrial undertaking is not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery or plant from an undertaking established in Pakistan before the commencement of the new business."

As per the scheme of the Ordinance, a greenfield industrial undertaking is one that meets the criteria set out in Section 2(27A) thereof, which stipulates that:

> "greenfield industrial undertaking' means-
>
> (a) a new industrial undertaking which is
>
> (i) setup on land which has not previously been utilized for any commercial, industrial or manufacturing activity and is free from constraints imposed by any prior work,
>
> (ii) built without demolishing, revamping, renovating, upgrading, remodeling or modifying any existing structure, facility or plant;
>
> (iii) not formed by the splitting up or reconstitution of an undertaking already in existence or by transfer of machinery, plant or building from an undertaking established in Pakistan prior to commencement of the new business and is not part of an expansion project;
>
> (iv) using any process or technology that has not earlier been used in Pakistan and is so approved by the Engineering Development Board; and
>
> (b) is approved by the Commissioner on an application made in the prescribed form and manner, accompanied by the prescribed documents and, such other documents as may be required by the Commissioner:
>
> Provided that this definition shall be applicable from the 1ª July, 2019 and onwards."
>
> [Underlining added]

As it transpires, the Petitioner's Application was rejected by the Respondent No.4 on 02.09.2022, on the basis of the certification and opinion issued on 23.08.2022 by the Engineering Development Board ("**EDB**"), concluding that, the Petitioner was using technology already available in Pakistan rather than introducing a new technology. It is that determination of the EDB which has been impugned through this Petition.

Proceeding with his submission learned counsel for the Petitioner argued that the impugned Order was non-speaking, in as much as it did not disclose any evidence, reasoning or other basis for the conclusion drawn by the EDB that the technology employed by the Petitioner was already in used in the country, and submitted that the EDB had failed to consider the detailed information presented by the Petitioner to establish that its technology was different from that otherwise in use. He submitted that administrative authorities conferred with power to pass an order must record reasons for the same and in the event of their failing to do so, the order/action was liable to be struck down. He placed reliance in that regard on the judgments rendered in the cases reported as Airport Support Services vs. Airport Manager, Quaid-e-Azam International Airport 1998 SCMR 2268, Lakson Tobacco Company Limited vs. Central Board of Revenue 2009 CLD 1098, Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan 2015 SCMR 630, Indus Motor Company Limited vs. Federation of Pakistan 2020 PTD 297, Syed Azhar Ali vs. D.G Excise and Taxation 2002 PTD 700, High Flying Solar Development vs. National Electric Power Regulatory Authority 2016 CLC 1805, Pakistan Tobacco Company vs. Federation of Pakistan 2022 PTD 1574 and Wazir Ali Industries vs. Federation of Pakistan 2023 PTD 576. Under the circumstances, he submitted that the impugned Order ought to be set aside, with the matter being remanded for redetermination, with the fate of the guarantees submitted by the Petitioner for purpose of securing release of its consignments during pendency of its Application for classification as a Greenfield Industrial undertaking, as specified in paragraph 23 of the Petition, left subject thereto.

Conversely, learned counsel for the Department contended with reference to the comments submitted by the Respondents Nos. 1 and 2 that the role assigned to the EDB was merely technical and

advisory in nature, inasmuch as on receipt of a reference from the Commissioner Inland Revenue, the EDB was required only to examine and certify a specific technical question, namely, whether the process technology proposed to be introduced by an applicant industrial undertaking constitutes technology "not already used in Pakistan" for the purposes of determining whether the undertaking qualifies as a "Greenfield Industrial Undertaking" within the meaning of Section 2(12A) of the Sales Tax Act, 1990 and Section 2(27) of the Ordinance. He submitted that the Petitioner was required to establish, through cogent and satisfactory material, that the process/technology proposed to be employed by it fulfilled the statutory requirements for qualification as a "Greenfield Industrial Undertaking", particularly the requirement that the relevant process or technology had not previously been used in Pakistan and that the same satisfied the applicable requirements for approval/certification by the EDB. He submitted that the mere submission of technical reports, presentations, certificates or assertions by the Petitioner did not, of itself, confer any vested, right upon the Petitioner to obtain or claim Greenfield status, which was to be determined by the competent authority upon an objective examination and assessment of the material available on record in light of the applicable statutory and regulatory requirements. He contended that upon consideration of the Petitioner's application/reference and the material placed on record, the EDB had duly examined the technology/ process in question and, upon such examination, reached the conclusion that the same was already available and/or being used in Pakistan. He submitted that the impugned Order satisfied such purpose and pointed out that the Petitioner had otherwise assailed the rejection of its application by the respondent No.4 through an appeal, which remained pending.

Having heard learned counsel, we have perused the impugned Order, which reads as follows:

No. EDB-Tariff/GreenfieldInd/2021
Government of Pakistan
Engineering Development Board
EDB Complex, Constitution Avenue, F-5/1, Islamabad
Tel: 051-9205595-98, Fax: 051-9206161, Web:
www.engineeringpakistan.com
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August 23, 2022

INCOME TAX APPLICATION FOR SEEKING OF GREENFIELD INDUSTRIAL UNDERTAKING - ENGRO PEROXIDE (PVT) LTD, NTN: 5590500

CERTIFICATION AND OPINION OF ENGINEERING DEVELOPMENT BOARD IN TERMS OF RULE 220D(2) AND 220(3) INCOME TAX RULES, 2002

I am directed to refer to the Commissioner Inland Revenue letter No. CIR/Enf-1/2020-21/1875 dated 20-01-2021 on the subject matter.

02. Engineering Development Board has analyzed the request and found that technology being introduced by M/s Engro Peroxide (Pvt) Ltd is the same as already available in the country. It is certified that recommendation/ decision is made to the best of our knowledge and available information/resources.

Best Regards,

(Aslam Shah)
Deputy Manager (Policy)

As is evident on a reading of the impugned Order, the same is bereft of any discussion regarding the material considered in arriving at the determination made or evaluation carried out and merely proceeds to state a finding without any substantiation of the reason. As such, in our view the same does not satisfy the requisites of a speaking order, as there is no hint of what material was considered, how it was examined, and what application of mind ensued so as to arrive at the conclusion that was reached.

That being so, the Petition stand allowed, with the impugned Order being set aside and the matter being remanded to the EDB for due redetermination through a speaking Order, pending which the bank guarantees identified in paragraph 23 of the Petition ought not to be encashed.

JUDGE

JUDGE

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