

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.43578 of 2024

M/s K&N’s Foods (Pvt.) Ltd.

Versus

Federation of Pakistan, etc.

J U D G M E N T

Date of Hearing	30.09.2024
For the petitioner in this petition	Mr. Muhammad Ajmal Khan, Advocate
For the petitioner in W.P.No.49585 of 2024	Barrister Hamza Shehram Sarwar, Asad Zaman Tarar and Kamal Ali Khan, Advocates
For the Federation of Pakistan	M/s Muhammad Hamza Sheikh and Muhammad Mansoor Ali Sial, Assistant Attorneys General
For respondents-FBR	Mr. Muhammad Bilal Munir, Advocate

Raheel Kamran J:- In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan (‘Constitution’) as well as the connected petition i.e. W.P.No.49585 of 2024, the petitioners (K&N’s Foods (Pvt.) Ltd and Fauji Foods Limited) have assailed notices dated 02.07.2024 and orders dated 09.07.2024 issued by the Commissioner Inland Revenue, Zone-II, Lahore whereby exemption certificates for the period from 01.07.2024 to 31.12.2024 issued in their favour were revoked.

2. The facts of the case, briefly, are that on 30.06.2024, K&N's Foods (Pvt.) Ltd. (petitioner in this petition) was issued the exemption certificate for the period between 01.07.2024 to 31.12.2024 under section 153(4) of the Ordinance for the supply of goods without payment of tax under section 153(1)(a) of the Ordinance, which was proposed to be revoked vide impugned notice on the pretext of amendment substituting sub-section (4) of section 153 of the Ordinance through Finance Act, 2024 dated 30.06.2024 w.e.f. 01.07.2024 allowing deduction of tax at reduced rates. Likewise, exemption certificate for the period from 01.07.2024 to 31.12.2024 was issued to Fauji Foods Ltd. (petitioner in connected W.P.No.49585 of 2024) on 28.06.2024, which was proposed to be revoked through impugned notice dated 02.07.2024. Consequently, vide impugned orders dated 09.07.2024, the exemption certificates issued in favour of the petitioners-companies were revoked, however, exemption certificates of reduced rate of 1% were ordered to be issued for the same period on filing of fresh application by the taxpayer.

3. Learned counsel for the petitioners contends that the impugned notices and the impugned orders have been issued without lawful authority and the same are of no legal effect inasmuch as the amendment introduced in section 153(4) of the Ordinance through the Finance Act, 2024 has no retrospective effect or application to adversely affect the exemption certificates dated 30.06.2024 and 28.06.2024 issued in favour of the petitioners. They explain that the amendment in sub-section (4) of section 153 of the Ordinance was applicable with effect from 01.07.2024 and the same could not lawfully disturb exemption certificates issued to the petitioners prior to the said date. He further contends that the petitioners-companies cannot be asked to pay more tax which is not due as they had already discharged their entire tax liability by paying the tax in advance from 01.07.2024 to 31.12.2024. According to them, section 153(4) of the

Ordinance is confiscatory, expropriatory and violative of Articles 10A, 18, 23, 24 & 77 of the Constitution, therefore, impugned notices as well as the impugned orders are liable to be set aside.

4. Conversely, learned Law Officers and learned counsel appearing on behalf of the respondents-FBR contend that the certificates of exemption have been issued for the tax year 2025 commencing from 01.07.2024, therefore, the amended section 153(4) of the Ordinance was squarely applicable in the instant case. They maintain that issuance of exemption certificates on 28.06.2024 or 30.06.2024 is in disregard of the law applicable with effect from 01.07.2024, therefore, of no legal effect and the impugned orders have been passed lawfully. They emphasize that plea of violation of the constitutional provisions is utterly misconceived for it does not explain how the constitutional guarantees have been violated through the amended section 153(4). It is finally contended that the impugned orders have been passed to issue fresh certificates in accordance with law applicable for the relevant period and the same are unexceptionable, therefore, these petitions merit dismissal.

5. Heard.

6. Record reflects that the petitioners-companies in both the petitions submitted applications for issuance of exemption certificates against income tax deduction under section 153(1) of the Ordinance for the period between 01.07.2024 to 31.12.2024. The advance tax liabilities assessed by the department were discharged by adjusting through available funds and exemption certificates were issued on 30.06.2024 and 28.06.2024 respectively for the period between 01.07.2024 to 31.12.2024. Subsequently, after introduction of the amendment in sub-section (4) of section 153 of the Ordinance through Finance Act, 2024, the respondents-department issued notices on 02.07.2024 requiring the petitioners-companies to explain why the

exemption certificates issued to them be not revoked and reduced rate certificates for the same period might not be issued. Thereafter, vide orders dated 09.07.2024, exemption certificates issued in favour of the petitioners were revoked, entitling them for issuance of exemption certificates of reduced rate of 1% for the same period once fresh application is filed by the taxpayer.

7. Prior to substitution through Finance Act, 2024, sub-section (4) of section 153 of the Ordinance was as under: -

“(4) The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such inquiry as the Commissioner thinks fit, may allow in cases where tax deductible under sub-section (1) is [not minimum], by an order in writing , any person to make the payment,--

- (a) without deduction of tax; or*
- (b) deduction of tax at a reduced rate*

Provided that the Commissioner shall issue certificate for payment under clause (a) of sub-section (1) without deduction of tax within fifteen days of filing of application to a [company] if advance tax liability has been discharged:

Provided further that the Commissioner shall be deemed to have issued the exemption certificate upon the expiry of fifteen days to the aforesaid company and the certificate shall be automatically processed and issued by Iris:

Provided also that the Commissioner may modify or cancel the certificate issued automatically by Iris on the basis of reasons to be recorded in writing after providing an opportunity of being heard.”

The amended sub-section (4) reads as follows: -

“(4) The Commissioner may, on application made by the recipient of a payment referred to in sub-section (1) and after making such inquiry as the Commissioner thinks fit, may allow in cases where tax deductible under sub-section (1) is not minimum, by an order in writing , any person to make the payment after deduction of tax at reduced rate but such reduction shall not exceed eighty percent of the rate specified in the said Division:

Provided that the Commissioner shall issue reduced rate certificate within fifteen days of filing of application to a company if advance tax liability has been discharged:

Provided further that the Commissioner shall be deemed to have issued the reduced rate certificate upon the expiry of fifteen

days to the aforesaid company and the certificate shall be automatically processed and issued by Iris:

Provided also that the Commissioner may modify or cancel the certificate issued automatically by Iris on the basis of reasons to be recorded in writing after providing an opportunity of being heard.”

The aforementioned amendment was introduced through the Finance Act, 2024 published in the Gazette of Pakistan on 30.06.2024 which was to come into force from 01.07.2024. However, exemption certificates for the period between 01.07.2024 to 31.12.2024 were issued in favour of the petitioners on 30.06.2024 and 28.06.2024 respectively. However, the petitioners-companies had already acquired vested rights to exemption before the amendment introduced through the Finance Act, 2024.

8. No doubt there is no restriction on the legislative powers to enact civil laws with retrospective effect. A legislature that is competent to make a law on a particular subject also has the power to legislate such a law with retrospective effect and can, by legislative authorization, even take away vested rights. Hence, when a legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to that law. Similarly, when a legislature enacts a law with retrospective effect, the person affected cannot plead the imposition of a previously non-existent civil obligation as a ground for declaring the law invalid. However, every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect. By now it is well settled that the Courts must lean against giving a statute retrospective effect that affects vested rights and/or past and closed transactions by adhering to two rules: first, if two interpretations are reasonably possible, the one that saves vested rights and/or past and closed transactions should be adopted; and second, no

statute should be construed to have retrospective effect to a greater extent than its language necessarily requires. Reliance in this regard is placed on the cases of Molasses Trading vs. Federation of Pakistan (1993 SCMR 1905) and Muhammad Hussain and others vs. Muhammad and others (2000 SCMR 367).

9. The Finance Act, 2024 through which the amendment in question is introduced has been made effective from 01.07.2024. There is no provision of the Finance Act, 2024 that expressly or by necessary implication gives any retrospective effect or application to the amended section 153(4) of the Ordinance. Therefore, the aforementioned amendment cannot be construed to affect the exemption certificates issued in favour of the petitioners on 30.06.2024 and 28.06.2024 respectively in accordance with the law existing at the relevant time. The amendment introduced through the Finance Act, 2024 is applicable on all exemption certificates issued after its effective date i.e. 01.07.2024.

10. For the foregoing reasons, both the petitions are allowed to the extent that the impugned notices as well as the impugned orders are hereby set aside. The petitioners are held entitled to avail the benefit of exemption pursuant to the exemption certificates issued in their favour on 30.06.2024 and 28.06.2024 respectively. There shall be no order as to costs.

(RAHEEL KAMRAN)
JUDGE

APPROVED FOR REPORTING

JUDGE