IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO.2755 OF 2006
(Against the judgment dated 4.5.2006 of the High Court of Sindh at Karachi passed in Const.P.D-304/2006)

Agro Tractors (Private) Limited

...Appellant(s)

VERSUS

Fecto Belarus Tractors Limited, Karachi etc.

...Respondent(s)

For the appellant(s): Mr. Mehmood A. Sheikh, Sr. ASC

For respondent No.1: Nemo

For respondents 2 to 4: Mr. Tariq Mehmood Khokhar, Addl.A.G.P.
Mr. M. S. Khattak, AOR

For respondents 5 to 8: Ex-parte

For respondent No.9: Mr. M. Habib Qureshi, ASC
Raja Abdul Ghafoor, AOR
Mr. Fazal Samad, Secy. Legal, FBR

Date of hearing: 25.9.2018

ORDER

MIAN SAQIB NISAR, CJ.- The controversy involved in the instant case is that the Economic Coordination Committee *(ECC)* *vide* decision dated 1.7.2005, set up a committee *"to work out the modalities and review the plan of import of 10,000 tractors at zero tariff...import of tractors shall be allowed only to those companies who have their tractor manufacturing units in Pakistan or are in the process of installing these."* This decision was communicated to various ministries/divisions *vide* letter dated 4.7.2005. However, on the same date, i.e. 4.7.2005, ECC modified its decision dated 1.7.2005 to the effect, *inter alia*, that *"import of tractors shall be allowed only to those companies who want to install their tractor manufacturing facility in Pakistan."* Pursuant thereto a corrigendum dated 12.7.2005 was issued by the Cabinet Secretariat. The Ministry of

Industries, Production and Special Initiatives invited proposals, to be reached within 10 days, for the import of tractors, which date was then extended up to 18.8.2005. Subsequently, three companies, including the appellant, were shortlisted and a summary was submitted to the then Prime Minister *(PM)* for approval, which was ultimately approved. In the meantime, respondent No.1 *(the respondent)* made a representation to the PM which was rejected by the committee for the reason that the said scheme was for new entrants only, while the respondent was an existing unit. Finally, a quota of 2500 tractors was allocated to the appellant as well as other companies. The respondent challenged the said allocation through a writ petition on the ground that it *(the respondent)* was denied the quota being an existing unit but at the same time quota was awarded to other existing units. It was further alleged that implementation of the scheme was non-transparent and arbitrary. It was further alleged that CBR allowed the appellant to import 2500 tractors without any customs duty in Completely Knocked Down *(CKD)* condition, which is illegal being contrary to the decision of ECC. The learned High Court, after hearing the parties and considering the material available on the record in detail, *vide* the impugned judgment quashed all the proceedings initiated with the advertisement as they suffered from arbitrariness, excessive jurisdiction, favoritism, lack of transparency, smacked of subjectivity and are not in accordance with the decision of ECC. Hence, this appeal with the leave of the Court *vide* order dated 20.12.2006.

2. In the above backdrop, it is to be noted that the Federation also challenged the impugned judgment through a separate petition *(Civil Petition No.469/2006)*, which was disposed of *(vide same order dated 20.12.2006 whereby leave was granted in the instant appeal)* in view of the statement made before the Court, mentioned in the said order, to the effect that *"the petitioner on instructions from Joint Secretary, Ministry of Industries would like to withdraw the above mentioned petitions*

without prejudice to petitioners status/policy and in view of the change in the tariff policy of the Government and withdrawal of petitioners by the beneficiary importers." Nonetheless, in the instant case, the appellant submitted a written statement asserting therein that *"in view of the dismissal of the petitions filed by the Federation of Pakistan as not pressed, scheme in question having already expired by afflux of time i.e. 30th September, 2006, interaction of new "Zero Rated Import of Tractors Scheme" for the year 2006-2007, the petitioner does not press this petition to the extent of challenge to the validity of the scheme having been set aside as being non-transparent, and claims release of 156 tractors on the principle of promissory estoppel without payment of Custom duty and other charges"* and also prayed for the release of the bank guarantee as it did not want to avail the scheme in question which otherwise had been declared illegal and without lawful authority. In view of the written statement and the submissions made by the learned counsel for the appellant, leave to appeal was granted to consider whether on the basis of promissory estoppel, the appellant is entitled to exemption from duty. Thus, the controversy in the instant appeal, as is apparent from the leave granting order, has narrowed down only to the entitlement or otherwise of the appellant for the release of the tractors already imported by it on the principle of promissory estoppel.

3. Heard. It was submitted by the learned counsel for the appellant that the appellant is entitled to get the tractors, already imported, released without any duty on the principle of promissory estoppel, because 156 tractors were imported by it *(the appellant)* under the validly issued scheme dated 1.7.2005 as amended, especially when afterwards, by means of notification dated 5.6.2006, the Government had allowed import of tractors at zero rated duty and that permission was for every citizen. Besides, the appellant is also entitled to the release of tractors on zero duty for the reason that the Federal Government has already withdrawn the petition filed against the impugned judgment.

4. In this regard it is to be noted that the learned High Court *vide* impugned judgment quashed the whole proceedings for the grant of permission, etc., for the import of tractors at zero rated duty. The Federal Government, though initially challenged the same before this Court through a civil petition but after having realized that there were illegalities/*mala fides* in the process of grant of permission to import the tractors, withdrew the petition filed by it, meaning thereby that the Federal Government accepted the impugned judgment to the that extent. Thus, the fact of withdrawal of the petition by the Federal Government does not provide any support to the case of the appellants.

5. Adverting to the main contention of the learned counsel for the appellant that the appellant is entitled to release of the tractors, which have already been imported at zero rated duty on the principle of promissory estoppel, it is to be noted that there is no cavil to the proposition that when in exercise of administrative power conferred under a statute, a concession is granted as regards customs duty and other Government dues for a fixed period and afterwards it was sought to be withdrawn in exercise of a similar power, the said concession or benefit could not be withdrawn by virtue of Section 21 of the General Clauses Act, 1897, unless the statute itself had conferred such a power on the executive authority, otherwise, the same shall be protected under the principle of promissory estoppel. Reliance may be placed on the judgments of this Court reported as **Collector of Central Excise and Land Customs and 3 others Vs. Azizuddin Industries Ltd., Chittagong (PLD 1970 SC 439)**, **Al-Samrez Enterprise Vs. The Federation of Pakistan (1986 SCMR 1917)** and **M/s Friendship Textile Mills and others Vs. Government of Balochistan and others (2004 SCMR 346)**. However, in order to bring the case within the four corners of the principle of promissory estoppel, it is mandatory upon the person claiming the benefit under it, to show that the offer was validly made by the

competent authority and thereafter permission/approval was granted/made in a rightful, judicious and transparent manner, without there being any hint of *mala fide*, arbitrariness, excessive jurisdiction, favoritism or non-transparency therein. In the instant case, after thorough examination of the record the learned High Court held that the procedure of the grant of permission to import tractors at zero rated duty suffered from arbitrariness, excessive jurisdiction, favoritism, lack of transparency, subjectivity and was also not in accordance with the decision of ECC; therefore, the principles of promissory estoppel were not attracted in the facts and circumstances of the instant case.

7. As regards the submission of the learned counsel for the appellant that when afterwards, through notification dated 5.6.2006, the Government had allowed everyone to import tractors at zero rated duty, the tractors already imported by the appellant should have also been released on zero rated duty, suffice it to say that admittedly the said notification was applicable prospectively and therefore, the appellant could not benefit from the same by extending the operation thereof *(notification)* to past transactions, i.e. the tractors which were imported under the scheme issued on 1.7.2005. Thus, the said argument is repelled as being misconceived.

8. The foregoing are the reasons of our short order of even date whereby the instant appeal was dismissed.

CHIEF JUSTICE

JUDGE

Islamabad, the
25th of September, 2018
Not Approved For Reporting JUDGE
Waqas Naseer/*