

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 1638 OF 2014

(On appeal against the judgment dated
10.06.2014 passed by the Peshawar High Court,
Peshawar in ST.R No. 105/2010)

Pakistan State Oil Company Ltd.(PSO), through its Deputy General
Manager, Legal Affairs, PSO House, Khyaban-e-Iqbal, Clifton,
Karachi.

... Petitioner

VERSUS

Appellant Tribunal Inland Revenue, Peshawar Bench, Peshawar,
through its members and others.

...Respondents

For the Petitioner: Mr. Samad Mehmood, ASC
Syed Rifaqat Hussain Shah, AOR

For the FBR: Dr. Farhat Zafar, ASC
Mr. Khiyal Muhammad, Deputy Director
(Customs)

For the NAB: Mr. Nasir Mehmood Mughal, Senior
Special Prosecution
Mr. Mumtaz Shoukat, A.D. FPSC

Date of Hearing: 10.02.2017

JUDGMENT

FAISAL ARAB, J.-The subject matter of the present
proceedings is eighteen consignments of petroleum comprising of
596,000 Liters of PMG-8 that were meant for export to
Afghanistan. Upon scrutiny of the records of PSO as well as of
Customs Station, Torkham at Pak-Afghan border, the Director
General, Intelligence & Investigation (Customs, Sales Tax and
Central Excise), Islamabad, sometime in 2004 detected that these

consignments that were loaded from the oil depot of Pakistan State Oil Company Limited (PSO) located in Karachi on twenty-one tankers between February to September, 2003, were never exported to Afghanistan but were clandestinely supplied in the local market. This fraud caused a loss of Rs.9.5 million to the government exchequer in the shape of the Central Exercise Duty, Sales Tax and Petroleum Development levy. These levies are not chargeable when the petroleum product is exported but chargeable only when they are meant for domestic consumption.

2. The conclusion with regard to evasion of levies was based on following disclosures:-

- (i) On thirteen ARs (Application for removal of Goods) stamps and signatures of the customs officials were affixed showing exports to Afghanistan from Customs Station, Torkham whereas the export register showed that the shipping bill numbers quoted on the said ARs pertain to some other consignments.
- (ii) The date of dispatch of the disputed consignments for Afghanistan from the warehouse of PSO reflected that the consignments were exported even before their dispatch date. For example, the consignment covered under AR 1245 dated 27.02.2003 was shown to have been exported via Customs Station Torkham on 25.02.2003 i.e. two days earlier.
- (iii) The consignments pertaining to four ARs meant for export to Afghanistan did not bear the certificate of exportation nor stamps and signatures of the customs officials.
- (iv) Shipping bills under which the said consignments were said to be exported to Afghanistan though requisitioned telephonically from Mr. A.H. Siddiqui, General Manager, New Business/Afghan Export, PSO House, Clifton, Karachi but the same were not provided on the pretext that the same were not available.

3. The evasion of levies in the garb of export led to issuance of Show Cause Notice dated 07.12.2004 to the appellant and others on charges that were punishable under Sections 156(I), (9.i) (14), (77), (84) and (90) of the Custom Act, 1969 and Section 33 of the Sales Tax Act, 1990 read with the relevant provisions of the Central Excise Act, 1944, Petroleum Products (Development levy) Ordinance, 1961, the Imports and Exports (Control) Act, 1950 and Afghan Export Policy declared under SRO No.1379-I/2002 dated 07.03.2002.

4. Threatened by the action stated in the Show Cause notice, the functionaries of PSO put forward an institutional defence that it was the mischief on the part of the owners of the tankers, to whom the petroleum was entrusted for transportation to Afghanistan, who indulged in the fraudulent act. The functionaries of PSO then scrambled to ensure that the evaded duties and charges are deposited in the treasury. The entire amount of evaded taxes and levies were promptly deposited into the government treasury said to have been recovered from the owners of the tankers. Upon such deposit, the functionaries of PSO sought withdrawal of the proceedings pending before the Additional Collector (Adjudication), Peshawar. However, the Additional Collector (Adjudication), Peshawar vide order dated 17.03.2005 imposed on PSO a penalty, five times of the evaded amount of Central Excise duty under Section 9(b) of the Central Excise Act, 1944, additional tax at the rate of one percent and penalty at the rate of 3% of the sales tax under Sections 33(2)(cc) &

34 respectively of the Sales Tax Act, 1990. Being aggrieved by the decision of the Additional Collector, the petitioner challenged the order dated 17.03.2005 in appeal before the Appellate Tribunal Inland Revenue, Peshawar. The same was dismissed vide order dated 04.05.2010. The petitioner then filed Sales Tax Reference No. 105/2010 before the Peshawar High Court, Peshawar, which also met the same fate. Hence this petition.

5. In our view, the prompt deposit of the evaded levies after its disclosure is nothing but an attempt to prevent the responsible officers of Customs as well as of PSO, who might have acted as facilitators in the commission of the crime, from being subjected to criminal and disciplinary action. Not only this, the evaded levies may have been promptly returned with the intention to stall further investigation that might have led to involvement of other persons as well as disclosure of similar other acts of evasion. When crime of such a nature is detected then upon being established in appropriate proceedings not only it leads to recovery of the evaded taxes and levies but the perpetrators are to be visited with imprisonment, penalties and fines. Over and above this, it also triggers in-house disciplinary action against the concerned government or semi government functionaries, the facilitation of whom may have been instrumental in the commission of the crime.

6. In view of the material that had come on the record with regard to evaded taxes and levies in the manner discussed above, we find no justification to interfere with the impugned judgment. While holding that no case is made out for our

interference in the conclusion as to imposition of fines and penalties, we feel that the burden of penalties and fine, which in view of the outcome of this decision would initially fall on PSO, should ultimately be borne by such functionaries of the Customs and PSO who are found to be instrumental in facilitating the evasion of levies. In order to take appropriate action against the persons responsible for letting the evasion take place, let the matter be inquired into by NAB so that the perpetrators of crime against whom criminal action was not initiated personally face the consequences under the provisions of the National Accountability Ordinance, 1999. We also direct the Chairman, PSO and Chairman, Federal Board of Revenue to order initiation of disciplinary proceedings against their respective officers who may have been instrumental in any manner in the evasion of levies that are subject matter of these proceedings.

7. This petition is dismissed in the above terms and leave is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
10th of February, 2017
Approved For Reporting
Khuram