

2024 P T D 196

[Balochistan High Court]

Before Muhammad Kamran Khan Mulakhail and Sardar Ahmed Haleemi, JJ

Messrs SARA ENTERPRISES GOVERNMENT CONTRACTORS through Proprietor

Versus

SECRETARY FINANCE, GOVERNMENT OF BALOCHISTAN, QUETTA and 2 others

C. P. No. 2026 of 2022, decided on 31st May, 2023.

(a) Balochistan Revenue Authority Act (VII of 2015)---

---S. 4(2)(a) & Preamble---Prospective/Retrospective application of a new law---Scope--- Payment of works, done in the year 1998, by the petitioner (government contractor) was finally decreed in the year 2019, however, the decretal amount was released after deducting 15% tax under the provisions of Balochistan Revenue Authority Act, 2015---Petitioner invoked constitutional jurisdiction of the High Court against the said tax deduction--- Validity---Balochistan Revenue Authority Act, 2015 ('the Act, 2015') came into force on 1st July 2015 whereas the matter-in-question was related to the works having already been done in the year 1998---According to the canons of constructions, every statute, including amendatory statute, is, prima facie, prospective, unless it is given retrospective effect either expressly or by necessary implication---Statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the Statute is to affect vested rights, past and closed transactions or facts or events that had already occurred--Said principles are attracted to fiscal Statutes which have to be construed strictly, for they tend to impose liability and are, therefore, burdensome (as opposed to beneficial legislation)-The Act, 2015 had no retrospective effect whereas the dispute, in the present case, related to the fiscal year 1998---High Court set aside impugned order of deduction of 15% tax from the bill of the petitioner, declaring the same void ab initio for having been passed in the year 2019; and directed the Official respondents to refund the deducted amount to the petitioner--- Constitutional petition was allowed, in circumstances.

Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar and others v. Abdul Manan 2021 SCMR 1871; Sardar Sher Bahadar Khan v. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others PLD 2018 SC 97 and Mst. Sarwar Jan and others v. Mukhtar Ahmed and others PLD 2012 SC 217 ref.

(b) Maxim---

---'Nova constitutio futuris formam imponere debet, non praeteritis, principle of---Meaning-

--Said maxim means 'a new law ought to regulate what is to follow, not the past'.

(c) Interpretation of statutes---

---Fiscal statute---Charging section of a fiscal part of a Statute, is the key and pivotal provision which imposes a fiscal liability upon a taxpayer/person, thus it should be strictly construed and applied---If a person does not clearly fall within the four corners of the charging section of such a Statute he cannot be saddled with a tax liability.

Atif Faizan Usto for Petitioner.

Tahir Iqbal Khattak, Addl: A.G. for Official Respondent.

Jam Saka Dashti for Respondent No.3.

Date of hearing: 10th May, 2023.

ORDER

MUHAMMAD KAMRAN KHAN MULAKHAIL, J.---Through the instant Constitutional Petition the petitioner has sought the following relief:

"It is therefore humbly prayed that this Hon'ble court may kindly be pleased to:

- a. Declare the deduction of BSTS amounting to Rs.2,568,300/- on the payment made to the petitioner as illegal, void and without lawful authority.
- b. Having declare (sic) the same as illegal and void the respondent No.3 may be directed to refund/return back the deducted amount of Rs.2,568,300/- to the petitioner along with interest.
- c. Grant any other relief which this Hon'ble Court deems, fit, just and proper considering on the facts and circumstances of the case, in the interest of justice.
- d. Grant the cost of litigation in favour of the petitioner."

2. Facts relevant for disposal of the instant petition are that the petitioner is a Government Contractor and is being engaged in construction works with the name and style of Messrs Sara Enterprises Government Contractors; that on 16th January 1998, the petitioner was awarded work order for construction of 'Khari Penrennial Irrigation Scheme in Jhal Magsi' by the Project Director Balochistan Community Irrigation and Agriculture Project against the estimated cost of Rs.2,74,29,201/- through an agreement dated 12th January 1998 which was completed by the petitioner's company, however, the respondents failed to make the payment within stipulated period; that the petitioner filed application under Section 20 of the Arbitration Act, 1940 in the year 2003 and the matter was referred to the arbitrator which was finalized with consent of parties vide award dated 20th December 2012 and the same was made Rule of the Court vide judgment and decree dated 06th March, 2018 passed by Senior Civil Judge-I, Quetta and the parties were directed to abide by the terms and conditions of award; that in pursuance of said judgment and decree when an

amount of Rs.1,71,22,000/- was released in favour of the petitioner, the Executive Engineer Khirther Canal Division Usta Muhammad deducted 15% Balochistan Revenue Authority (BRA) tax amounting to Rs.25,68,300/- vide impugned order dated 01st October, 2019; feeling aggrieved of said order of the Executive Engineer the petitioner approached the Chairman, Balochistan Revenue Authority, Quetta but all in vain. Hence, the instant constitutional petition.

3. Learned counsel for the petitioner inter alia contended that the work order was issued in year 1998 and after having work order the petitioner's company completed the said project but the payments were not made within the stipulated period and, when in the year 2019 after obtaining decree from the Civil Court, the amount was released in favour of the petitioner after deducting 15% BRA from the bills of the petitioner's company under the provisions of Balochistan Revenue Authority Act, 2015 (BRA, Act 2015) retrospectively; Learned counsel states that the BRA Act was assented on 3rd July, 2015 which is prospective in nature and cannot be applied retrospectively to transactions that are past and closed, therefore, the same may be declared illegal. He, therefore, urged for setting aside the impugned order, while placing reliance on the following citations:

2023 SCMR 261

Messrs Pakistan Telecommunication Company Ltd v. Collector of Custom, Karachi.

2019 SCMR 1111

Messrs Super Engineering and another v. Commissioner Inland Revenue, Karachi.

2019 PTD 381

Commissioner Inland Revenue v. Muhammad Aslam.

2021 PTD 484

Fatima Fertilizer Company Limited through duly authorized Officer v. Commissioner-II Sindh Revenue Board.

2017 PTD (Trib.) 113

Messrs Kamal Limited, Khurrianwala, Faisalabad v. C.O.R.(A), Faisalabad and others.

Learned counsel for the respondent No.3 filed parawise comments wherein besides raising certain legal objections the stance of the petitioner was repudiated on merits as well by contending that the petitioner's case does not fall within the jurisdiction of this Court rather he should have approached the Balochistan Sales Tax Tribunal for redressal of his grievance.

When the learned Additional Advocate General was confronted with the contentions so raised by the learned counsel for the petitioner, he stated that though the amount was deducted by the Irrigation Department, but the same was transferred in the BRA account through automation, for which a remedy of appeal is provided before Balochistan Revenue Tribunal. He therefore, urged for dismissal of the petition.

Be that as it may, but perusal of the Balochistan Revenue Authority Act, 2015 reveals

that the same has been enacted through Notification No.PAG/Legis:V(17)/2015 dated 03rd July, 2015 the extent and commencement whereof reads as under;

"(3) It shall come into force on and from 1st day of July, 2015."

4. According to the canons of construction, every statute including amendatory statutes is *prima facie* prospective, based on the principle of *nova constitutio futuris formam imponere debet, non praeteritis* (which means 'a new law ought to regulate what is to follow, not the past' as per Osborn: Concise Law Dictionary); unless it is given retrospective effect either expressly or by necessary implication. In other words, a statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the statute is to affect vested rights, past and closed transactions or facts or events that have already occurred. This principle(s) is attracted to fiscal statutes which have to be construed strictly, for they tend to impose liability and are therefore burdensome (as opposed to beneficial legislation). In the case of 'Government of Khyber Pakhtunkhwa through Secretary Public Health Engineering, Peshawar and others v. Abdul Manan¹', it was held "When the law itself provides a date of its application, the learned High Court cannot, on any ground, amend the said date and extend the application of the 2005 Act to the extent that those who are not covered under it, again its benefit.

In case of 'Sardar Sher Bahadar Khan v. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others²', it was held "It is well settled that a statute or any amendment thereto ordinarily operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given to it. Reference in this behalf may be made to the case reported as Gul Hasan & Co. and 5 others v. Allied Bank of Pakistan (1996 SCMR 237), Pakistan Steel Mills Corporation v. Muhammad Azam Katper and others (2002 SCMR 1023), Zakaria H.A. Sattar Bilwani and another v. Inspecting Additional Commissioner of Wealth Tax, Range-II, Karachi (2003 SCMR 271), Zila Council, Sialkot through Administrator v. Abdul Ghani Proprietor Iqbal Brothers, Sialkot and others (PLD 2004 SC 425) and Muhammad Tariq Badr and another v. National Bank of Pakistan and others (2013 SCMR 314).

In case of 'Mst. Sarwar Jan and others v. Mukhtar Ahmed and others³', wherein it was held "In order to examine if as per its own force section 4 *ibid* has a retrospective effect, it is settled rule that any statute or a provision thereof forming part of substantive law, which creates or extinguish or affect the rights of the persons/citizen shall ordinarily have a prospective effect, except where by the clear command of the law, it is made applicable retrospectively.

5. Needless to mention here that according to the settled rules of interpretation of a fiscal part of a statute, the charging section is the key and pivotal provision which imposes a fiscal liability upon a taxpayer/person, thus it should be strictly construed and applied. If a person does not clearly fall within the four corners of the charging section of such a statute he cannot be saddled with a tax liability. Thus, mere enactment of the BRA Act, 2015 is to reform and modernize, the system of taxation, to provide assistance to taxpayers, to promote compliance with fiscal laws, to establish a progressive and professionally efficient tax management organization, and to provide for ancillary matters, which came into force on and

from 1st day of July, 2015, therefore, we come to the conclusion that the Act ibid has no retrospective effective when the dispute merely relates to the fiscal year 1998.

In view of above, we are inclined to accept this petition and deduction of 15% BRA of Rs.25,68,300/- from the bills of M/s Sara Enterprises Government Contractor vide impugned order dated vide impugned order dated 01st October, 2019 is hereby declared ab initio void. The official respondents are directed to refund the deducted amount of Rs.25,68,300/- to the petitioner within one month of receipt of this order.

Petition stands accepted in the above terms.

MQ/119/Bal.

Petition allowe