

HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

WRIT PETITION NO. 2333/2012

PAKISTAN OILFIELDS LIMITED

through its General Manager

VERSUS

FEDERATION OF PAKISTAN

through Secretary Revenue, Revenue Division & 3 others

Petitioner by : **Barrister Umair Majeed Malik Advocate.**
Respondents by : **Mr. Mujeeb-Ur-Rehman Warraich and**
Mr. Saeed Ahmed Zaidi Advocates
Malik Zahoor Awan, Standing Counsel.
Date of Hearing : **27-11-2015**

ATHAR MINALLAH, J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*) and is aggrieved on account of the refusal on the part of the respondents to extend the benefit under S.R.O. 761(I)/2012 dated 21-Jun-2012 (*hereinafter referred to as the 'Notification'*).

2. The facts, in brief, are that the petitioner is a public limited company, *inter alia*, engaged in the business of petroleum exploration and production in Pakistan. The respondent No.3 issued a show cause notice dated 14-10-2002, alleging that the petitioner had evaded payment of 3% consolidated fee on annual deferred basis amounting to Rs.4,799,166/- pursuant to clause 3 of SRO 400(I)/97 dated 31-05-1997. The show cause notice was adjudicated vide Order-in-Original No.5-8 of 2004 (*hereinafter*

referred to as the 'Order-in-Original'). The petitioner, as well as the department, assailed the Order-in-Original before the learned Appellate Tribunal. The learned Tribunal disposed of the appeal vide consolidated judgment dated 10-10-2008, and the petitioner was held liable to pay consolidated fee @ 3% of all items imported either directly by the petitioner, or imported by the service company for use as part of the services rendered to the petitioner after the first commercial discovery in the concession area. The petitioner filed two Customs References i.e. Reference No. 12 & 13 of 2008 before this Court under section 196 of the Customs Act 1969 (*hereafter referred to as the 'Act of 1969'*). The Customs References are pending before this Court. While the said two References were pending, the respondent No.4, vide notice dated 19-04-2012, initiated recovery proceedings in respect of the customs duty. Another notice dated 22-05-2012 was also issued, and in addition to the principal amount the petitioner was also directed to deposit the additional duty and surcharge amount of Rs.36,777,117/- which was due. The notices were issued under sections 83A and 202A of the Act of 1969. On 24-05-2012 the petitioner paid the principal amount of Rs.4,799,166/- and on the same date an additional amount of Rs.2,400,000/- was also deposited. The petitioner assailed the recovery notices by invoking the jurisdiction of this Court under Article 199 of the Constitution through Writ Petition No.1743/2012. An injunctive order was also passed by this Court on 11-06-2012. The said petition was dismissed as having become infructuous vide this Court's order dated 06-11-2015, on the ground that the instant petition was pending. After this Court had passed order dated 11-06-2012 in Writ Petition No.1743 of 2012, the Notification was issued

on 21-06-2012. The petitioner, vide letter dated 21-06-2012, requested the respondent No.3 to extend the benefit of the Notification on the ground that the principal amount which had been adjudged pursuant to show cause notice dated 14-10-2002 had been deposited on 24-05-2012. However, the respondents refused to extend the benefit on the ground that the petitioner had deposited the principal amount before the Notification was issued. The refusal on the part of the respondents to extend the benefit under the Notification was not an appealable action or order under the provisions of the Act of 1969, nor was any other adequate remedy available to the petitioner against the said refusal, hence the instant petition was filed seeking the following prayer.-

" It is, therefore, prayed in the interest of justice that this Honourable Court may be pleased to:-

- (i) Declare that the Respondent No.3 and 4 have acted unlawfully and without jurisdiction and the petitioner is legally entitled to the benefit of amnesty scheme under SRO 761(I)/2012, dated 21.06.2012.*
- (ii) Direct the Respondents to treat the petitioner's payment of outstanding customs-duty under SRO 761(I)/2012, dated 21.06.2012 and accord equal treatment/benefit of the said SRO to the petitioner like all other persons;*
- (iii) Direct the Respondents not to discriminate against the petitioner;*
- (iv) Grant such other relief as may be deemed necessary in the circumstances of the case.*
- (v) Grant costs. "*

3. The learned counsel for the petitioner has contended that; the Notification is beneficial in nature and is, therefore, to be interpreted liberally; liability against the petitioner had not attained finality and, therefore, denying the benefit was not in accordance with law; the petitioner is legally entitled to the benefits as envisaged in the Notification; the denial is illegal, unjust and discriminatory; the refusal on the part of the respondents to extend the benefit under the Notification is in violation of Article 4 and 25 of the Constitution; the petitioner had paid the amount before the cut off date, and this is acknowledged by the respondents; the refusal to extend the benefit under the Notification violates the principles of legitimate expectation and promissory estoppel; the learned counsel has placed reliance on the cases of '*Messrs Army Welfare Sugar Mills Ltd. and others vs. Federation of Pakistan and others*' [1992 SCMR 1652], '*Anoud Power Generation Limited vs. Federation of Pakistan and others*' [PLD 2001 SC 340], '*Collector of Sales Tax and Central Excise, Lahore vs. Messrs Fauji Sugar Mills, Sheikhpura*' [2007 PTD 2598], '*C.I.T. Central Zone, Lahore vs. National Security Insurance Co. Ltd. Lahore*' [2001 PTD 814], '*Messrs Kamalia Sugar Mills Ltd., Kamalia vs. Superintendent, Intelligence and Investigation (Customs and Central Excise), Regional office Lahore and another*' [2002 PTD 632], '*Messrs UDL Industries Ltd., Karachi vs. Collector of Customs (Appraisalment), Karachi and 4 other*' [2005 PTD 940].

4. The learned counsel on behalf of the respondents has argued that the Notification was applicable only to such persons who had paid the principal amount after the issuance of the Notification i.e. 21-06-

2012; the petitioner had deposited the principal amount on 24-05-2012 i.e. before the issuance of the Notification; the petitioner is not entitled to the benefit under the Notification; the Notification cannot be given retrospective effect;.

5. The learned counsels have been heard and the record perused with their able assistance.

6. It is not denied that the principal amount adjudged pursuant to the show cause notice dated 14-10-2002 was deposited by the petitioner on 24-05-2012. The Notification was issued on 21-06-2012 i.e. three weeks after the date on which the principal amount had been paid by the petitioner. The comments filed by the respondents unambiguously admit that the principal amount pursuant to the show cause notice dated 14-10-2002 had been paid by the petitioner on 24-05-2012. The question, therefore, before this Court is, whether in the facts and circumstances of the instant petition, the petitioner is entitled to the benefit under the Notification?

7. The Notification, dated 21-06-2012, was issued by the Federal Government in exercise of powers conferred under section 19 of the Act of 1969. The Notification extended the benefit of remitting the whole amount of penalties, fine and surcharge under section 202A payable by a person against whom an amount of customs-duty was outstanding on account of any audit observation, audit report, demand notice or any other adjudication order, or who had failed to pay any

amount of customs-duty, or had claimed inadmissible refund or drawback of customs-duty due to any reason. The said remission was subject to the condition that the outstanding principal amount of customs-duty is paid by 30th June, 2012. Paragraph 2 of the Notification declared that the Notification shall not entitle any person to claim or take refund or any amount of penalty or fine or surcharge already paid or recovered from a person entitled to the benefit under paragraph 1. Moreover, paragraph 3 further provided that in case where refund becomes due to any person in consequence of a decision or judgment at a later stage, after the issuance of the Notification, the customs-duty deposited by that person under the Notification shall be refunded.

8. It is obvious from a plain reading of the Notification that the classes of persons described therein and declared to be entitled to the benefit there under were required to pay the outstanding principal amount of customs-duty by the cut-off date i.e. 30-06-2012. Furthermore, paragraph 3 of the Notification, when read with paragraph 1 thereof, envisages that the benefit could have been claimed even by persons who had assailed the adjudication orders before the appellate forums and the appeals or references were pending. No condition was imposed for withdrawing the pending appeals or References so as to be entitled to claim the benefit. Pursuant to paragraph 3, any decision or judgment in favour of the tax payer at a later stage entitled the latter to a refund of the principle amount paid under the Notification. Thus the Notification specified the persons entitled to claim the benefit, the conditions for being entitled and the nature of the benefit. Two conditions were imposed for

being entitled to the benefit i.e. firstly, payment of the principal amount before 30-06-2012 and secondly, that if any amount of penalty or fine or surcharge had already been paid or recovered before the issuance of the Notification, no claim for refund thereof could be made. Any person who would pay the principle amount before the cut off date was entitled to remission of the whole amount of penalties, fine and surcharge. The Notification, undoubtedly, was beneficial in nature.

9. The august Supreme Court in the case of '*Messrs Army Welfare Sugar Mills Ltd. and others vs. Federation of Pakistan and others*' [1992 SCMR 1652] has elucidated the principles relating to an instrument conferring benefit as follows.-

" It seems to be well-settled proposition of law that a notification which purports to impair an existing or vested right or imposes a new liability or obligation, cannot operate retrospectively in the absence of legal sanction, but, the converse i.e. a notification which confers benefit cannot operate retrospectively, does not seems to be correct proposition of law. "

" The High Court has wrongly placed reliance on the general proposition that a notification cannot operate retrospectively without realising that there is a marked distinction between a notification which purports to impair existing/vested rights or imposes new liabilities or obligations retrospectively and a notification which purports to confer benefits retrospectively. "

It is, therefore, obvious that a notification which confers a benefit can, therefore, operate retrospectively, while it is otherwise when

a notification impairs an existing/vested right or imposes liability or obligations.

10. The above principles were reaffirmed in the case of '*Anoud Power Generation Limited vs. Federation of Pakistan and others*' [PLD 2001 SC 340] and the relevant portion is reproduced as follows.-

" At this juncture another important aspect of the retrospectivity of notification may also be noted that if the notification has been used for the benefit of the subject then it can be made operative retrospectively but if its operation is to the disadvantage of a party who is the subject of the notification then it would operate prospectively. "

11. The above principles enunciated regarding giving retrospective effect to a beneficial notification have been consistently followed, and reference in this regard may be made to the cases of '*Collector of Sales Tax and Central Excise, Lahore vs. Messrs Fauji Sugar Mills, Sheikhpura*' [2007 PTD 2598], '*C.I.T. Central Zone, Lahore vs. National Security Insurance Co. Ltd. Lahore*' [2001 PTD 814], '*Messrs Kamalia Sugar Mills Ltd., Kamalia vs. Superintendent, Intelligence and Investigation (Customs and Central Excise), Regional office Lahore and another*' [2002 PTD 632], '*Messrs UDL Industries Ltd., Karachi vs. Collector of Customs (Appraisalment), Karachi and 4 other*' [2005 PTD 940].

12. It is also settled law that a beneficial legislation or subordinate legislation has to be interpreted liberally in favour of the subject.

13. The Notification extended benefit to such tax payers against whom there was an outstanding amount of customs duty, inter alia, on account of an audit observation, audit report, demand notice or any adjudication order, and the said outstanding amount was paid by 30-06-2012. The language of the Notification does not manifestly or otherwise bar such a person who has paid the principal amount before the date of issuance. Any doubt must also be resolved in favour of the subject. The outstanding principle amount ought to have been paid before 30-06-2012 so as to be entitled to the remissions as described in the Notification. Admittedly the Notification is of a beneficial nature. The petitioner had paid the principal amount on 24-05-2012, i.e. 27 days before the date on which the Notification was issued. Firstly, if it had been the intention of the Federal Government that persons who had paid the principal amount before the issuance of the Notification would not be entitled to claim the benefit, then the same would have been expressly mentioned therein, and secondly, as it is in the nature of conferring a benefit, therefore, it would operate retrospectively.

14. The petitioner had, admittedly, paid the principal amount adjudged pursuant to the show cause notice dated 14-10-2002 and was, therefore, entitled to the benefit of remissions as described under the Notification, and the refusal on the part of the respondents to extend the

same was arbitrary and illegal. The petition is, therefore, accordingly allowed. However, it is clarified that the benefit of the Notification is only to the extent of the principal amount paid by the petitioner, before the cut off date i.e. 30-06-2012.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 28-12-2015.

JUDGE

Approved for reporting.