

ISLAMABAD HIGH COURT, ISLAMABAD

NO. _____ IHC/Judge, Deptt.

(REVISED FORM OF BLUE SLIP)

Case No. WP 2859 - 2014

M/s Eman Enterprises

Titled

Vs

Federation of Pakistan etc

- (a) Judgment approved for reporting ☒ Yes ☐ No
- (b) Judgment any comment upon the Conduct of the Judicial Officer for Quality of the impugned judgment is Desired to be made. ☒ Yes ☐ No

(In case the answer is the affirmative Separate confidential note may be Sent to the Registrar drawing his Attention to the particular aspect).

J. B. R. H.
Initial of the Judge.

NOTE

1. If the slip is used, the Reader must attach on top of first page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for Reporting of any comment is to be made about the Judicial Officer/ quality of judgment.
3. This slip is only to be used when some action is to be taken.

FORM NO.HCJD/C
JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.2859/2014
M/s Eman Enterprises
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2860/2014
M/s Al-Imdad General Trading Company
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2953/2014
M/s Home Style Corporation
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.2954/2014
M/s Bed & Blanket Pvt. Ltd.
Vs.
Federation of Pakistan etc.

CASE NO. : W.P. NO.3086/2014
M/s Trade Channels
Vs.
Federation of Pakistan etc.

CASE NO. : CRL. ORG. NO.395/2014
M/s Eman Enterprises
Vs.
Muhammad Saleem, Collector of Customs, Karachi etc.

Date of hearing : 13.10.2014
Petitioner; by : Mr. Naveed Zafar Khan, Advocate
Mr. Tanveer Azam Cheema, Advocate
Respondent; by : Mr. Zahid Idrees Mufti, Advocate
Raja Muhammad Iqbal, Advocate
Mr. Jahangir Khan Jadeon, Standing Counsel.

NOOR-UL-HAQ N. QURESHI J. All the above

captioned petitions are being disposed of vide this consolidated judgment,
as common questions of law and facts are involved therein.

2. In all these writ petitions, the petitioners have prayed as under:-

"The instant petition may very kindly be allowed and SRO No.420(I)/2014 dated 04.06.2014 may very kindly be declared as unconstitutional being ultra vires of the fundamental rights of the petitioners/registered persons.

It is further prayed that in the meanwhile, the respondents may be directed to allow the petitioners' goods to be cleared against reduce rate of sales tax @ 5% till the final disposal of the case or till 30.06.2014"

3. Through Criminal Original filed in W.P. No.2859/2014, the petitioner seeks prosecution of respondents for violating the interim order dated 12.06.2014 passed in CM No.01/2014.

4. Facts in brief are that petitioners are registered with Federal Board of Revenue as 'Exporters & Importers' and are the registered persons/tax payers. The petitioners are involved in the import/export of various articles falling under SRO No.1125(I)/2011 dated 31.12.2011 and were subjected to reduced sales tax rate of 5%. Later on, SRO No.420(I)/2014 dated 04.06.2014 was issued, whereby SRO No.1125(I)/2011 dated 31.12.2011 was amended in the term that sales tax was increased from 5% to 17% on the import of finished goods covered under SRO No.1125(I)/2011 dated 31.12.2011, which has been challenged through above titled writ petition.

5. Moreover, as per facts contained in contempt petition, despite suspension of impugned SRO No.420(I)/2014 dated 04.06.2014, the petitioner had to pay tax at import stage @ 17% instead of 5% amounting to Rs.8,677,268/- in shape of pay orders instead of post dated cheques as ordered by this Court.

6. Learned counsel for the petitioners has contended that in the budget speech dated 03.06.2014 delivered by the Finance Minister, SRO No.1125(I)/2011 dated 31.12.2011 was intended to be revisited and it was proposed to amend the said SRO to provide for charging of sales tax at the

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standard rate of 17% instead of 5% on the import of finished articles of leather and textile as budgetary measures for the Financial Year 2014-15. It is contended that this proposal was to be implemented w.e.f. 01-07.2014 in view of dictum laid down by the Hon'ble Supreme Court of Pakistan cited as 2013 SCMR 1337, wherein the August Supreme Court of Pakistan has totally discouraged collection of sales tax before passing of Finance Bill from the Parliament, but SRO No.420(I)/2014 dated 04.06.2014 was issued amending SRO No.1125(I)/2011 dated 31.12.2011 to give effect to the above proposal which resulted in increase of sales tax from 5% to 17% on the import of finished goods. Consequently, the petitioners were asked to deposit 17% sales tax before passing of Finance Bill. It is contended that in the absence of approval of budget by Parliament for the next Financial Year i.e. 2014-15, such amendment made through the impugned SRO amounting to imposition of tax at higher rate is illegal, unlawful and outside the purview of delegated legislation and as such, the amendment is liable to be struck down. In furtherance of his arguments, learned counsel for the petitioners has contended that recent amendment made through impugned SRO is against the law and fundamental rights as guaranteed by the Constitution of Islamic Republic of Pakistan.

7. On the other hand, it has been argued by the learned counsel for respondents that earlier, SRO No.1125(I)/2011 dated 31.12.2011 was issued in order to encourage the five major export oriented sectors namely textile, leather, carpets, surgical and sports goods. It is contended that impugned SRO No.420(I)/2014 dated 04.06.2014 has been issued withdrawing the concessionary rate of sales tax for which, no amendment through Finance Act is involved. Such amendments in notifications can be made at any time during the financial year, which are not dependent on passing the

Finance Bill by the Parliament. Moreover, through impugned SRO, exemption regarding levy of reduced rate of tax has been withdrawn which is an inherent power of the Federal Government under the provisions of Sales Tax Act, 1990, which is not dependent upon approval of the Parliament. It is argued that withdrawal of concessionary rate of sales tax on any item which is generally applicable to all importers and suppliers of such item does not violate any fundamental rights of the petitioners. As far as reported judgment relied upon by the learned counsel for the petitioners is concerned, it has been argued by the learned counsel for the respondents that same is not applicable to the present case, because it has been held by the Hon'ble Supreme Court of Pakistan that no tax could be levied or Government could not enhance the rate of tax without approval of the Parliament, but in the instant case, the Government did not enhance sales tax, rather concessionary rate of sales tax was withdrawn. In support of his contention, he has relied upon PLD 1965 (W.P.) Peshawar 249, wherein, it was held that withdrawal of exemption does not amount to fresh imposition or levy of duty within the meaning of Article 48 of the Constitution of Pakistan (1962).

8. In Criminal Original No.395/2014, learned counsel for the petitioners has mainly alleged that despite suspension of impugned SRO No.420(I)/2014 dated 04.06.2014 vide order dated 12.06.2014 passed in CM No.01-2014 in W.P. No.2859-2014, the petitioner was forced to pay an amount of Rs.8,677,268/- in shape of pay orders instead of post dated cheques. It has been contended that GDs were filed as protest, as the Customs Department did not accept the above order passed by this Court.

9. I have heard the arguments and perused record as well as authorities referred by both the sides.

10. From the record, it is evident that in the budget speech delivered by the Finance Minister dated 03.06.2014, SRO No.1125(I)/2011 dated 31.12.2011 was intended to be revisited and it was proposed to amend the said SRO to provide for charging of sales tax at the standard rate of 17% instead of 5% on import of finished articles of leather and textile as budgetary measures for the Financial Year 2014-15. Moreover, this proposal was to be implemented w.e.f. 01-07.2014. The relevant part of budget speech regarding amendment in SRO No.1125(I)/2011 dated 31.12.2011 is reproduced hereunder:-

"SRO No.1125(I)/2011 is being revisited and it is proposed to amend the said SRO to provide for charging of sales tax at the standard rate of 17% on the import of finished articles of leather and textile.

Enforced through amendment in the Notification, effective from 01.07.2014"

So, the contention of learned counsel for the petitioner that impugned SRO No.420(I)/2014 dated 04.06.2014 should have taken effect from 01.07.2014 and not from the date of its issuance i.e. 04.06.2014, as amendment in SRO No.1125(I)/2011 dated 31.12.2011 was proposed in the budget speech for the Financial Year 2014-15, carries weight.

11. Moreover, in the preface of Finance Act, 2014, it has clearly been mentioned as under:-

"An act to give effect to the financial proposals of the Federal Government for the year beginning on the first day of July, 2014, and to amend and enact certain laws".

12. The above contention is further strengthened in view of dictum laid down by the Hon'ble Supreme Court of Pakistan cited as 2013 SCMR 1337, wherein the August Supreme Court of Pakistan has totally discouraged collection of sales tax before passing of Finance Bill from the Parliament.

13. In view of above, I do not agree with the contention of the learned counsel for the respondents that through impugned SRO, exemption regarding levy of reduced rate of sales tax has been withdrawn which is an inherent power of the Federal Government under the provisions of Sales Tax Act, 1990, which is not dependent upon approval of the Parliament for the reason that if amendment was not intended to be made through the budgetary measures for the Financial Year 2014-15, then there had been no bar upon the Department to withdraw exemption regarding levy of reduced rate of tax, but here, it is not the case.

14. In view of above legal position as well as narrated reasons, I have reached to the conclusion that collection of sales tax @ 17% i.e. standard rate of sales tax through impugned SRO w.e.f. 04.06.2014 is not justified. Therefore, collection of tax from 5% to 17% w.e.f. 04.06.2014 to 30.06.2014 is declared null and void, as it should have been made from the beginning of Financial Year 2014-15 i.e. 01.07.2014.

15. All the writ petitions titled above are hereby allowed to the extent and in the manner as indicated above, whereas Criminal Original No.395/2014 stands disposed of in view thereof.

16. Raja Muhammad Iqbal, Advocate, learned counsel for respondent No.1 in Crl. Org. No.395/2014 has entered appearance when this order was being dictated and exhibited his ignorance regarding fixation of this matter. However, he submitted reply on behalf of respondent No.1, which is taken on record, wherein the above allegation has been denied.

17. The documents attached with the reply of respondents show that GD was filed, but it does not transpire any such allegation leveled or recorded thereon which could prove that payment of tax was made under

W.P. No.2859/2014 etc.

coercion. The petitioners also relied upon a letter dated 18.06.2014 communicated to the Collector (Customs), Karachi, but again, no endorsement of its receipt or mode of service has been mentioned thereupon nor other documentary evidence has been produced in support thereof for effecting service of the said order to the Collector (Customs) i.e. respondent No.1, therefore, prima facie no act has been done by the proposed contemnors which constitutes contempt of court, therefore, above titled Criminal Original stands disposed of.

18. As this Court has passed this judgment whereby final fate of writ petitions as well as above titled Criminal Original has been decided therefore the petitioner is at liberty to approach the Customs Authorities for refund of said amount deposited earlier under protest as mentioned in Criminal Original.

(NOOR-UL-HAQ N. QURESHI)
JUDGE

Announced in Open Court on 29/10/14.

JUDGE

Approved for Reporting

JUDGE

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