

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Shakeel Ahmad

Civil Petitions No. 5029 to 5032 of 2024

[Against the orders/judgments dated 12.09.2024 of the High Court of Sindh, Karachi passed in Const.P.No.D-4002/19, Const.P.No.D-6074/21 and Const. P.Nos.774 and 2385/22]

Surfactant Chemicals Company (Pvt.) Limited, Karachi. ... Petitioner
(in all cases)

Versus

Federation of Pakistan through Secretary M/o Finance, Govt. of Pakistan, Islamabad and others. ... Respondents
(in all cases)

For the Petitioner: Mr. Taimur Aslam Khan, ASC.
(In all cases) Syed Rifaqat Hussain Shah, AOR.

For Respondent (FBR): Dr. Farhat Zafar, ASC.
(In CPs.5029, 5031-5032/24)

For the Respondents: Not represented.
(In CP.5030/24)

Date of Hearing: 18.04.2025.

ORDER

Muhammad Shafi Siddiqui, J. The petitioner sought exemption from customs duty in excess of zero percent (0%) *vide* S.R.O. 565(I)/2006, dated 05.06.2006 (hereinafter referred to as '**SRO 565**') [as amended *vide* S.R.O. 474(I)/2016, dated 24.06.2016] (hereinafter referred to as '**SRO 474**') on the import of items under HS Codes 3402.1300 and 3402.1190.

2. In pursuance of such relief, as declined by the respondents, the petitioner filed constitutional petitions before the High Court of Sindh claiming that the goods imported by the petitioner-company were fully covered by the exemption as per Column (3) of the Table at Serial (3) of the

amending SRO. The respondents objected to such treatment on the count that they were/are neither registered/recognized by the Ministry of National Food Security & Research, Government of Pakistan nor were manufacturer of pesticides. It is however claimed by the petitioner that it is not required to get such registration or approval, as the petitioner by itself is not a manufacturer of any agricultural pesticides. To the contrary, it is claimed that the petitioner imports, formulates and manufactures agricultural surfactants/surface active agents namely stabilizers, emulsifiers and solvents which were used in manufacturing pesticides.

3. We have heard the learned counsel for the petitioner, perused the impugned judgment and the related SROs as well as the earlier decision of the High Court passed in Constitution Petition No.D-8496 of 2017, which was not interfered by this Court when the challenge was made.

4. Under the SRO the treatment of such goods on its import as zero percent duty is not absolute; it is qualified/contingent upon terms in the SRO itself. The requisite condition in respect of goods on zero percent in terms of Serial (3) of the Table in Column (2) is apparent which requires approval by the Ministry of National Food Security and Research which has not been fulfilled by the petitioner. The goods were imported and were classified under HS Code 3402.1190 and 3402.1300 of the Pakistan Customs Tariff. On the strength of HS Code alone, as available in the column, the treatment cannot be extended as zero percent duty, for such goods the pre requisites are inevitable.

5. The treatment of goods disclosed in the SRO were subject to fulfillment of certain obligations. The amended SRO itself put the petitioner under obligations to provide its qualification in order to fetch the exemption as it

was only available for manufacturing or formulation of agricultural pesticides by manufacturers and formulators and this could only be recognized and approved by the Ministry of National Food Security and Research. The Column (2) has restricted and prescribed a condition and the treatment of goods of Column (3) in terms of exemption of customs duty could only be if condition prescribed in Column (2) is met. Admittedly, the petitioner is neither recognized nor approved by the Ministry of National Food Security and Research either as manufacturer or formulator of Agricultural pesticides.

6. The application of the order passed in Constitution Petition No.D-8496 of 2017 was also rightly distinguished in impugned judgment as it relates to clause 133 of the Sixth Schedule to the Sales Tax Act, 1990 and was not *pari materia* with the aforesaid SRO. The Restriction, as is apparent in the *ibid* SRO, is not seen in respect of goods disclosed in clause 133 of the Sixth Schedule to the Sales Tax Act, 1990.

7. At the conclusion of the arguments, on the count of reasonable classification, learned counsel for the petitioner requested that since the petitioner has been discriminated in terms of the aforesaid SRO he may be given permission to challenge the *vires* of SRO, which had curtailed its vested rights. By the aforesaid findings in respect of merit of the case, though we have not curtailed any such rights of the petitioner to make such a challenge, however, if he chooses to protect any such alleged right which claimed to have been violated by the aforesaid SRO, he is at liberty and if any such right is exercised, it may be dealt in accordance with the law, the permission as such is not required.

8. With the aforesaid understanding of law, leave to appeal is declined and the petitions are dismissed.

Chief Justice

Judge

Judge

Islamabad:
18.04.2025
(Asif Bhatti)