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JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE.

JUDICIAL DEPARTMENT

Customs Reference No.52 of 2016

M/s Basfa Textile (Pvt.) Limited, Lahore

Versus

Deputy Director (Customs), Lahore & others

J U D G M E N T

Date of hearing: 02.02.2023.

Applicant by: Mr. Abad-ur-Rehman, Advocate.

Respondent-Department by: Mr. Izhar-ul-Haq Sheikh, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J. Through instant Reference Application under section 196 of the Customs Act, 1969, following question of law asserted to have arisen out of impugned judgment dated 01.08.2016, passed by learned Customs Appellate Tribunal, Bench-II, Lahore **("Appellate Tribunal")** has been pressed and argued for our opinion**:-**

> Whether the Customs Appellate Tribunal was justified to hold that the imported Indian Raw Cotton was subject to sales tax @ 16% instead of 2% as provided in SRO 1125(I)/2016 as amended by SRO 154(I)/2013?

2. Brief facts of the case are that applicant imported a consignment of Indian Raw Cotton, sought clearance vide G.D No.19338 dated 12.03.2013 and claimed benefit of SRO 1125(I)/2011 dated 31.12.2011 to pay sales tax @ 2%, which was allowed. However, during course of audit, it was observed that applicant was liable to pay sales tax @ 16%, thus, caused loss of revenue at Rs.1,778,540/-. This audit observation was

communicated to applicant, which culminated in passing order-in-original dated 08.04.2015, creating demand of said defaulted amount and penalty of Rs.15,000/-. Feeling aggrieved, applicant filed appeal against said order before Appellate Tribunal, which was rejected vide judgment dated 01.08.2016. Hence, instant Reference Application.

3. Learned counsel for the applicant submits that learned Appellate Tribunal has failed to take into consideration that SRO 1125(I)/2011, as amended by SRO 154(I)/2013, is also applicable on import by registered manufacturers of the five sectors mentioned in Condition (i). Adds that the imported raw cotton is an industrial input used for further manufacturing by applicant and sales tax @ 2% is leviable as given in condition (iii) of SRO 154(I)/2011, thus, impugned judgment is liable to be struck down on this score alone.

4. Conversely, learned counsel representing respondent-department has opposed the contentions of learned counsel for applicant and submitted that from bare perusal of SRO 154(I)/2011 it is evidently clear that it is applicable upon stages beyond spinning and there are two more stages in between ginning and spinning i.e. carding and combing. Adds that vide condition (ii) of said SRO, ginned cotton is specifically excluded from the purview of concession.

5. Arguments heard. Available record perused.

6. By way of SRO 154(I)/2013 dated 28.02.2013 (effective from 01.03.2012), certain amendments were brought in SRO 1125(I)/2011, and amendments in Conditions (i), (ii) & (ii) are relevant to answer the proposed question, thus, are reproduced hereunder for ready reference:-

CONDITIONS

(i) The benefit of this notification shall be available only to persons doing business in textiles (including jute), carpets, leather, sports and surgical goods sectors, who are registered as manufacturer, importer, exporter or wholesaler under the Sales Tax Act, 1990, and appear on the Active

> Taxpayers List (ATL) on the website of Federal Board of Revenue;
>
> (ii) this notification shall apply from-
>
> (a) spinning stage onwards, in case of textile sector;
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> (b) ---
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> (c) ---
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> (d) ---
>
> (e) ---
>
> (iii) on import by registered manufacturers of the five sectors mentioned in condition (i), sales tax shall be charged at the rate of two per cent on goods useable as industrial inputs,;

It is explicit from condition (ii)(a) that SRO 154(I)/2013 duly included the spinning stage (in textile sector) and argument of learned counsel for respondent-department that said Notification is applicable on the stage coming subsequent to spinning stage is totally misconceived. Through afore-referred SRO, the concession has been given on goods useable as industrial inputs (at spinning stage in textile sector) by charging sales tax @ 2%.

7. The next contention of learned counsel for respondent-department is that two additional steps are available in between ginned cotton and spinning stage i.e. carding and combing, emphasizing that only after completion of these stages, the produce can be termed as raw material for the spinning stage. The aforementioned different stages in the production of cotton are briefly explained. Ginning of cotton is a process which separates the seeds, hull and any foreign matter by passing the cotton through a gin. Carding is a process in which the cotton fibers go through the process to make them ready for later processing. This includes separation and disentanglement of fibers, alignment of fibers, removal of short fibers etc. Combing is an optional extra stage in the process which improves the quality of the cotton by removing short fibers and arranges them into a flat bundle where all the fibers go in the same direction. After carding and, if carried out, the combing process are complete, the next stage is turning the fiber to yarn is spinning.

8. Undoubtedly, carding and combing do not change the texture or form of material and only line up the fibers nicely to make them easier to spin. In these processes, neither textural form nor chemical composition is changed inasmuch as these are not essential to be performed for forming the cotton as raw material for spinning. The moment when cotton is ginned and converted into bales, whether or not it is carded and combed, it becomes raw material for spinning.

9. Needless to say that words in a taxing statute including notifications and orders, unless ambiguous, must be given their ordinary and natural meaning. The subject is not to be taxed unless the statute / notification clearly imposes the burden of tax, while language of the taxing statute / notification must not be strained to tax a transaction on the premise that had the Legislature thought of the same, it would have covered the events by appropriate words. It is now settled that while interpreting a taxing statute / notification, equitable consideration is entirely out of place. Nor can taxing statute / notification be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute / notification and interpret them. The court cannot imply anything that is not expressed; it cannot import provisions in the statute / notification so as to supply an assumed deficiency. Moreover, interpretation of fiscal statute / notification had to be made strictly and any doubts arising therefrom must be resolved in favour of taxpayer and even if two reasonable interpretations were possible, one favouring taxpayer had to be adopted. Reference can be made to *Messrs Khurshid Soap and Chemical Industries (Pvt.) Ltd. through Sheikh Muhammad Ilyas and others v. Federation of Pakistan through Ministry of Petroleum and Natural Resources and others* **(PLD 2020 Supreme Court 641)**, *Messrs Continental Chemical Co. (Pvt.) Ltd. v. Pakistan and others* **(2001 PTD 570)** and *Fatima*

Fertilizer Company Limited through Duly Authorized Officer v. Commissioner-II, Sindh Revenue Board **(2021 PTD 484)**.

10. In view of the above, we are of the considered opinion that applicant is entitled to the benefit of SRO 1125(I)/2011, as amended by SRO 154(I)/2013. Therefore, our answer to the proposed question is in ***negative*** i.e. in favour of applicant and against respondent-department.

The instant Reference Application is ***decided*** against the respondent-department.

11. Office shall send a copy of this judgment under seal of the Court to the Appellate Tribunal as per Section 196(5) of the Customs Act, 1969.

(Asim Hafeez)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan