

IN HIGH COURT OF SINDH AT KARACHI

(CONSTITUTIONAL JURISDICTION)

C.ONST PET.NO. 2144 OF 1997

Plastic Sack (Pvt) Limited,
a Private Limited Company having
its Registered Office at 3rd Floor,
Zakaria Palace, Virjee Street,
Jodia Bazar,
Karachi.

Presented on 29-11-97
H. Raza
O.S.D. (Judl.)

Petitioners.

Versus

1. Central Board of Revenue,
through its Chairman,
Government of Pakistan
Islamabad.
2. The Collector of Customs,
(Appraisement),
Customs House,
Karachi.
3. Assistant Collector/Bank Guarantee Cell,
Customs House,
Karachi.Defendants.

PETITION UNDER ARTICLE 199 OF
THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN



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HIGH COURT OF SINDH AT KARACHI

C.P No.D-2144 of 1997

Present: Mr. Justice Irfan Saadat Khan.
Mr. Justice Zafar Ahmed Raiput.

J U D G M E N T

Date of hearing: 18.02.2016.

Petitioner: Plastic Sack (Pvt) Limited through Mr. K.A. Wahab,
Advocate

Res. No.1: Central Board of Revenue through Mr. Asim Mansoor,
DAG

Rel. Nos.2&3: The Collector of Customs and Assistant Collector through
Ms. Masooda Siraj, Advocate

IRFAN SAADAT KHAN, J. The instant constitution petition has been filed
with the following prayers:

- "1. Declare that the threatened encashment of the petitioner's bank guarantees by the respondent No.2 and 3, its subordinates is unlawful, mala fide, without jurisdiction and violative of the vested, legal and constitutional rights of the petitioner.
2. Declare that the petitioner is entitled to the benefit of the concession under the notification SRO 487/1/95 dated 14.6.1995 in respect of raw materials imported and consumed as mentioned in para 5 of the petition.
3. Direct the respondents No.2 & 3 to release the petitioner's Bank guarantees.
4. Prohibit the Respondents No.1&2 by restraining them their subordinates and person acting under and through them for encashing and bank guarantees furnished by the petitioner to the respondent No.2 in terms of Notification No.SRO 487/1/95 dated 14.6.1995 taking any coercive action against the petitioner and



order/direct refund of the amounts so recovered by encashment of the cheques."

2. Briefly stated the facts of the case are that the petitioner is a private limited company engaged in the manufacturing of the Poly Propylene Woven bags. That the respondent No.1 issued a SRO bearing No.487/1/95 dated 14.06.1995 whereby concession of custom duty was granted to certain specified persons with certain conditions. Thereafter, vide SRO bearing No.444/1/96 dated 13.6.1996 the concession granted vide SRO 487/1/95 was suspended. It is the claim of the petitioner that since in view of the SRO 487/1/95 the petitioner had imported certain raw material for the manufacturing of the Poly Propylene Woven Bags the respondents could not withdraw the concession as they could not do the same on the ground of "Promissory Estoppel". Hence according to the learned counsel the benefit, which was available under the SRO 487 would remain available to the petitioner.

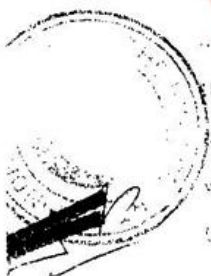
3. Mr. B.A. Wanjab advocate submitted that this petition was tagged with three other petitions bearing Nos. Nos. 1911/1997, 427/1997, 1041/1997 and 1226/1997 and was decided dated 10.9.1998 and order was directed to tax authorities along with the above referred petitions. Thereafter, the above three petitions were disposed of vide order dated 3.11.1998 through a short order but unfortunately the detailed reasons of these petitions were not decided, however, this petition somehow or the other was not disposed of along with those petitions. The learned counsel in this backdrop at the very outset, submitted that since the above numbered petitions were allowed through a short order, this petition may also be allowed on the same terms.

4. Mr. B.A. Wanjab, advocate has next submitted that the petitioner imported raw material for manufacturing of the Poly Propylene Woven bags and the concession granted in the SRO 487 would remain available to the petitioner and the respondents were not justified in taking away the said concession. While elaborating his view point, the learned counsel



submitted that the petitioner had fulfilled all the pre-requisite conditions as was set out in the said SRO 487 and consumed the raw materials in the manufacturing of the Poly Propylene Woven bags within the stipulated period hence the refusal of the concession by the respondents is not legal. He submitted that the SRO 487 was rescinded on 14.12.96 through SRO 444, 1996 when the petitioner had already filed the writ of Habeas Corpus in respect of the raw materials imported and hence the respondents were under legal obligation, in view of the principle of estoppel, to grant concession to the petitioner. As per the learned counsel since a vested right has been created in favour of the petitioner, the same could not be taken away. The learned counsel further submitted that prime importance was to be given to the fact that on the basis of the concession granted in SRO 487 the petitioner had made huge investment for the purchase of raw material and hence the refusal of the concession through the said SRO 444 is illegal. According to the learned counsel, the consumption of the raw material had to take place in one lot at the time of its import and that the department had misinterpreted the SRO 444 and erred in refusing to issue the required licence and certificate to the petitioner. He, therefore, stated that the writ of Habeas Corpus was called for and they may be directed to grant concession to the petitioner in accordance with law in support of this prayer contented by the learned counsel. He placed reliance on the following judgments: *1. Pakistan and others vs. Dr. Muhammad Aslam Khan* (1986 SCOR 510) and *Ansari Enterprise vs. The Federation of Pakistan* (1986 SCOR 1917).

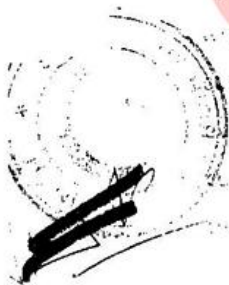
Mr. Masooda Saeed, counsel for the respondents No 2 & 3 and Mr. A. A. Wani, counsel for respondent No.1, have vehemently refuted the arguments of Mr. K.A. Wani, advocate for the petitioner by stating that the facts of the instant petition are totally different from the facts of the above numbered petitions as there must have been valid reasons available with the bench, while disposing of the above numbered petitions on 01.11.1998 not to decide the instant petition on the ground that the issues



posed in the instant petition are totally different from those petitions. Mr. Asim Munsoor learned D.A.G. stated that in above mentioned petitions (reference of SRO 508(1)/95 dated 14.6.1995) was challenged whereas in the instant petition the petitioner has not challenged the vires of SRO 444(1)/95 but has simply claimed that they were entitled for concession on the ground of "promissory estoppel". Both these counsel for the respondents therefore submitted that the request now made by Mr. K.A. Wadab is declined for and may be declined and this petition may be heard and disposed of on the basis of facts obtaining in the instant petition.

2. Ms. Masooda Sraaj, learned counsel for the respondents No.2 & 3, has further refuted the arguments of Mr. K.A. Wadab advocate so far as other points agitated by him and submitted that the concession claimed by the respondents is not available to them, since the SRO No.487/1/95 was issued on 13.06.1996 through SRO No.444/1/95, hence the petitioner not entitled to the concession. She stated that if after 13.06.1996 goods were declared by the petitioner, the concession was not available to the petitioner. She submitted that the FBR has full authority under the law to issue or to rescind a SRO. While elaborating her view point, she submitted that the petitioner is liable to make payment of the duty/taxes in respect of the goods which were not consumed within the validity period of the SRO 487. She stated that the ground of "promissory estoppel" is not available to the petitioner in view of section 19(1) of the Customs Act 1968 and finally submitted that this petition is without any merit, hence it is to be dismissed.

3. Mr. Asim Munsoor, learned D.A.G. while adopting the arguments of Ms. Masooda Sraaj, advocate submitted that this petition is not maintainable since petitioner itself admitted in para 4 of the petition that when the petitioner applied to the respondents with regard to the concession of SRO the same was declined verbally. He stated that no evidence has been produced by the petitioner with regard to the bona fide nature of the raw material within the stipulated period and due to that reason the respondents were fully justified in refusing the concession.



He further invited our attention to the comments filed by the department and stated that the petitioner was liable to make payment of the duty/taxes in respect of goods imported, which were not consumed by them within the validity period, as mentioned in the SRO 487. He further submitted that this petition being meritless, is liable to be dismissed.

8. We have heard all the learned counsel at considerable length and have perused the record and the decisions relied upon by the counsel for the petitioner.

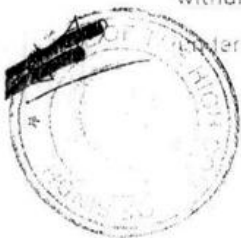
9. In the present petition the main thrust of the arguments of the counsel for petitioner was with regard to creation of a vested right in their favour since the petitioner had entered into certain agreements with their foreign sellers for import of raw material; therefore, according to the learned counsel for the petitioner the principle of promissory estoppel is fully attracted and the respondents thus have no authority under the law after granting concession as per SRO 487 to withdraw the same vide SRO 444 as the said concession in respect of import of raw material in his view would remain available to the petitioner. According to the learned counsel for the petitioner, the petitioner had entered into agreement with foreign sellers for the import of raw material which was withdrawn by the respondents causing huge loss and damage to them. Before proceeding any further we would like to quote herein below subsection 3 of Section 19 of the Customs Act 1969 (the Act) which reads as under:

"[(3) Notwithstanding anything contained in any other law for the time being in force, including but not limited to the Protection of Economic Reforms, 1992 (XII of 1992), and notwithstanding any decision or judgment of any forum, authority or court, no person shall, in the absence of a notification by the Federal Government published in the official Gazette expressly granting and affirming exemption from customs duty, be entitled to or have any right to any such exemption from or refund of customs duty on the basis of the doctrine of promissory estoppel or on account of any correspondence or admission or promise or commitment or concessionary order made or understanding given whether in writing or otherwise, by any government department or authority.]" [underline ours]



10. Perusal of the above provision clearly reveals that this provision of law starts with "Non-obstante clause" which has an overriding effect on other provisions of the law and further clearly provides that the exemption from customs duty cannot be claimed on the basis of promissory estoppel on account of any correspondence or admission. Perusal of this section in our view would leave no room of doubt that ~~the benefit of the concession is not available to the petitioner through any exception or exemption provided under the section but these situations are not applicable and available to the petitioner in the present petition.~~ The respondents have full authority under the law to withdraw a concession once granted hence no vested right in our view could be claimed in this behalf by the petitioner. It is a settled proposition of law that the authority vested with power to grant the concession also has the power to withdraw the same. Reference in this regard may be made to the decision given in the case of *Abdur Rashid vs. Central Board of Revenue and others* (PLD 1965 (W.P.) Peshawar 249).

11. The issue with regard to vested right came for hearing before the Hon'ble Supreme Court in the case of *Al-Samrez Enterprize Vs. the Federation of Pakistan* (1986 SCMR 1917), wherein it was observed that after opening of a letter of credit by a party in favour of foreign supplier a vested right is created in favour of that party, which cannot be taken away. However to overcome the above judgment section 31-A of the Customs Act was inserted through by Finance Act 1988 with retrospective effect. After the said amendment a number of judgments were given by the Hon'ble Supreme Court of Pakistan wherein it was observed that neither any vested right nor the principle of promissory estoppel would now be available to the petitioner. In the case of *Government of Pakistan Vs. Factor Belarus Tractors Limited* (PTCL 2000 CL320) the Hon'ble Supreme Court of Pakistan held that the benefit once granted could be withdrawn. The Hon'ble Supreme Court of Pakistan has observed as



"Consequently, when SRO 92(I)/94 and SRO 1189(I)/94 which were applicable earlier, were amended vide SRO 388(I)/96 and SRO 414(I)/96, dated 13.6.1996, the earlier notification ceased to be operative and customs duty and sales tax on the said tractors after the subsequent notifications came into force became payable in accordance with the rates applicable in terms of section 31-A of the Customs Act. Although, the letter dated 26-6-1996 issued by the Ministry of Food, Agriculture and Livestock had authorized the respondent to avail benefit of exemption under the earlier notifications which were applicable during the first phase of the said scheme and on the faith of the said letter, the respondent claims to have entered into an agreement with the foreign supplier for import of the said tractors, but promissory estoppel cannot be invoked against provisions of any legislation even if they authorise the Government to impose new obligation or to withdraw existing concessions. Consequently, the doctrine of promissory estoppel appears to have been erroneously invoked by the High Court to defeat the provisions of section 31-A of the Custom Act."

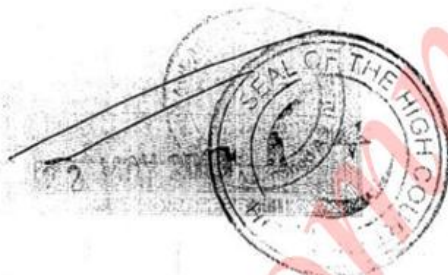
12. ~~We, therefore, hold that the High Court was not entitled to allow the respondent to invoke the doctrine of promissory estoppel against the provisions of the Customs Act.~~
- ~~creation of a vested right and application of principle of promissory estoppel is not available to them.~~ It is seen that vide letter dated 16.1.1997 the Secretary, Central Board of Revenue has categorically directed the Collector of Central Excise to allow 33 M. Tons of P.P. Granules (T.G) consumed upto 13.06.1996 and the Collector of Customs was directed to recover the duty and taxes leviable in respect of the raw material imported thereafter. In the petition bearing C.P. No.D-914/97 and the other petitions while allowing the petitions the bench categorically directed the respondents to issue requisite consumption certificate in respect of the raw material imported before 13.6.1996 and consumed in accordance with SRO No.580 dated 13.6.96. The most significant aspect which is to be examined is not only with regard to the import made by the petitioner but also with regard to the consumption of the raw material before 13.6.1995. In our view, the petitioner is entitled to the concession in respect of the raw material imported and consumed prior to 13.6.1996 in accordance with SRO 487; however no concession could be claimed by the petitioner on the ground that letters of credit were opened, bill of



entry were furnished, goods have arrived in Pakistan on the ground of vested right or that of application of principle of promissory estoppel.

13. We, therefore, dispose of this petition by directing that the petitioner is entitled to the concession only in respect of the raw material imported and consumed before 13.6.1996 in accordance with SRO 487/95 and the department is under legal obligation to issue, if not issued, a consumption certificate to the petitioner after satisfying itself that all the requisite legal and codal formalities have duly been fulfilled by the petitioner.

Petition stands disposed of in the above terms.



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HIGH COURT OF SINDH AT KARACHI

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