

OUT TODAY
IN THE LAHORE

From

The Addl. Registrar,
Lahore High Court, Lahore.

To

1. Govt of Pakistan through its Secretary Finance, Pakistan Secretariat Constitution Avenue, Islamabad.
2. Central Board of Revenue/Federal Board of Revenue through its Chairman Constitution Avenue, Islamabad.
3. Member Sales Tax, Federal Excise & Legal, CBR House, Constitution Avenue Islamabad.
4. Secretary of the Revenue Division, Constitution Avenue, Islamabad.
5. Director General, Large Taxpayers Unit(LTU), Tax House Nabha Road, Lahore.

Subject: - WRIT PETITION NO. 7608/2007

Brothers Sugar Mills Versus Govt of Pakistan.etc

Sir,

In continuation of this Court letter No 38434
dated 25.10.10.

I am directed to forward for information and immediate compliance
a copy of this Court's Order/Judgment dated 13.5.2011 passed in the
above noted case.

Your's Faithfully

ASSISTANT REGISTRAR (WRIT)
FOR ADDL. REGISTRAR (JUDICIAL)

on 27 MAY 2011
Received in /Ch. Sectt.
FBR eDOX Dy. No. 77907-R

Office on 11/6/2011
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Received in Chief (Legal)
Office on 31/5/2011

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7608/07
23-5-11

23/5/2011

IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W.P. _____ No. 7608 of 20⁰⁷

JUDGMENT

Date of hearing 13.05.2011

Appellant by M/s Ijaz Ahmad Awan, Komal Awan, Naman Mushtaq Awan, Azeem Abbas Kazmi, Rana Javed Advocates.

Respondent by M/s Asmar Ahmed Shamas, Agha M.Akmal Khan, Tariq Manzoor Sial, Izharul Haque and Ms.Kausar Parveen Advocates

SH:AZMAT SAEED J.,

This order shall dispose of

Writ Petitions 7608/2007, 4558/2007, 7770/2007, 10162/2007, 7654/2007, 7902/2007, , 7901/2007, , 8756/2007, 7904/2007, 7903/2007, 7758/2007, 7705/2007, 7704/2007, 7732/2007, 8757/2007, 8755/2007, 8939/2007, 7856/2007, 10161/2007, 7731/2007, 7656/2007, 7655/2007, 7653/2007, 7900/2008, 64/2008, 15486/2009, 22666/2009, 24297/2009, 22278/2009, 742/2010, 22209/2010, 22821/2010, 1398/2010, 7946/2007, 12241/2009, 15234/2009, 15235/2009, 15236/2009, 15237/2009, 15238/2009, 15239/2009, 15264/2009, 15482/2009, 15483/2009, 15484/2009, 15485/2009, 15487/2009, 15488/2009, 15598/2009, 15599/2009, 15600/2009, and 15775/2009 involving common questions of law and fact. All these Constitutional Petitions have been filed to call in question the vires of SRO # 655(1)/2007 dated 29.6.2007 and the General Order # 3 of 2007 dated 30.7.2007.

2. In pith and substance, it is the case of the petitioners that SRO dated 29.6.2007 has been issued purportedly in exercise of powers vested under section 3(A) of the Federal Excise Act 2005,

while the said section 3(A) was introduced into the Federal Excise Act 2005 vide the Finance Act 2007 which came into force on 1.7.2007. It is the case of the petitioners that on the crucial date on which the offending SRO was issued, the Law i.e., 3(A) ibid was not in force, hence, the SRO is not only ultra vires the Federal Excise Act 2005, but also without jurisdiction and lawful authority, hence of no legal effect along with the General Order issued subsequently. It was the claim of the petitioners that no tax can be levied except by or under the Act of Parliament, as has been prescribed in Article 77 of the Constitution of the Islamic Republic of Pakistan. And no Money Bill even if passed by the National Assembly, becomes the Law until the President has given assent thereto in terms of Article 75(3) of the Constitution, therefore, on the fateful day i.e., 29.6.2007 section 3(A) was not part of the Law, and no powers thereunder could be exercised nor any SRO or notification issued. In support of their contentions, learned counsels have relied upon the judgments reported as PLD 2001 Karachi 415 and 2011 CLD 373.

3. Learned counsels for the respondents have controverted the contentions being raised on behalf of the petitioners. It was canvassed by the learned counsels for the Department that the SRO in question, though dated 29.6.2007 was stated to take effect on 1.7.2007 as is specifically mentioned in Paragraph 3 thereof. It was also contended by the learned counsels for the Department that by virtue of section 22 of the General Clauses Act, 1897 the authority vested in the Federal Board of Revenue to frame the Rules Orders

and issue notification under section 3(A) of the Act, the moment it was passed by the Parliament even before its commencement date, hence, such Rules, Regulations and SROs are valid, and subject only to the condition that the same shall become enforceable on the date of the commencement of the Act. In the instant case, SRO dated 2.6.2007 was issued after passing of the Finance Bill by the National Assembly, and was to come into force on 1.7.2007, on which date, the Finance Act 2007 had come into force, as is mentioned in section 1 sub section 2 thereof, therefore, no exception can be taken to the SRO which is valid and enforceable.

4. After hearing the learned counsels for the parties, the controversy has crystallized. The offending SRO was issued on the 29th of June 2007 under section 3(A) of the Federal Excise Act 2005, and the section ibid was introduced through an amendment in the Federal Excise Act 2005 by way of Finance Act 2007, which came into force as mentioned in section 1 sub section 2 thereof on the 1st of July 2007. Admittedly, on the date of the issuance of the SRO section 3(A) did not form part of the Federal Excise Act 2005, whereunder, the SRO in question has purportedly been issued. The SRO however was to come into effect on 1.7.2007, on which date, section 3(A) was part of the Federal Excise Act 2005. The primary question requiring adjudication in the instant case which floated to the surface is whether the respondents were vested with the jurisdiction to issue the SRO in terms of section 22 of the General Clauses Act, 1897 in

anticipation of the commencement and coming into force of the Finance Act 2007.

Section 22 of the General Clauses Act, 1897 reads as follows:

22. Making of Rules, or Bye-Laws and issuing of Orders between passing and commencement enactment.- Where by any Central Act or Regulation which is not to come into force immediately on the passing thereof, a power is conferred to make Rules or Bye-Laws or to issue orders with respect to the application of the Act or Regulation, or with respect to the establishment of any Court or office of the appointment of any Judge or officer thereunder, with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation, then that power may be exercised at any time after the passing of the Act or Regulation, but Rules, Bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation'

5. The scrutiny of the above quoted provision of law reveals that Rules, Bye-Laws can be made, orders and notifications issued under the Act during the period between passing of the said Act and before its commencement. It is immediately noticed that passing of an Act has been used in contradiction to the commencement of Act. At this juncture, perhaps reference can also be made to section 5 of the General Clauses Act, 1897 which postulates that a Central Act unless it is expressed to the contrary therein shall come into operation on the date it receives assent of the President. Said provision is in consonance with Article 75 (3) of the Constitution. Same Laws even after the assent of the President may take effect on a later date if so mentioned therein. It has also been noticed that in section 22 of the General Clauses Act, 1897, the Legislature in its wisdom has chosen to use the phrase 'passing of the Act' rather than its receiving the Assent of the competent authority viz the President.

The concept of passing an Act is not alien to our jurisprudence and has an obvious meaning as is apparent from Article 73(1)(a) of the Constitution which is reproduced as under:

73. *Procedure with respect to Money Bills... (1) Notwithstanding anything contained in Article 70, A Money Bill shall originate in the National Assembly:*

Provided that simultaneously when a Money Bill including the Finance Bill containing the Annual Budget Statement is presented in the National Assembly, a copy thereof shall be transmitted to the Senate, which may within seven days, make recommendations thereon to the National Assembly.

(1A) The National Assembly shall consider the recommendations of the Senate and after the Bill has been passed by the Assembly with or without incorporating the recommendations of Senate, it shall be presented to the President for assent.

6. The aforesaid provisions leaves little room for doubt that the word 'passing' of the Act when employed with reference to a Money Bill would mean, when such Bill is passed by the National Assembly. Thus, the aforesaid leaves little room for doubt that after the Money Bill has been passed by the National Assembly, and before it comes into force, the power under section 22 of the General Clauses Act, 1897 can be exercised. However, any Rule made or orders issued would become effective in Law, unless otherwise provided, on coming into force of the said Act.

7. In the instant case, apparently the Finance Act 2007 was passed by the National Assembly on 22.6.2007 as is evident from the published record of the Parliament viz the National Assembly Debates Official Report dated 22.6.2007. The offending SRO has been issued thereafter, i.e., on 29.6.2007. The aforesaid makes it clear and obvious that issuance of SRO in dispute by the respondents is in

purported exercise of powers available to them in terms of section 22 of the General Clauses Act, 1897. Exercise of powers of delegated legislation by making Rules and Bye-laws issuance of orders under an Act in anticipation of its coming into force is not unknown, and such powers have been exercised even in fiscal matters by our erstwhile eastern neighbor, and validity of such Rules, Bye-Laws and orders have been held to be valid by various pronouncements by the Supreme Court of India including the cases reported as AIR 1953 Supreme Court 49 Venkateswaraloo and others Vs Superintendent Central Jail Hyderabad State and others and AIR 1969 Supreme Court 880 The State of Rajasthan Vs The Mewar Sugar Mills Ltd Bhopalsagar.

8. For the foregoing facts and reasons, the contentions being raised on behalf of the petitioners cannot be accepted with the result that the captioned Constitutional Petitions being misconceived and devoid of any merit must fail and are accordingly disposed of.

Sd/-SH. AZMAT SAEED
JUDGE

‘Approved for reporting’

Sd/-SH. AZMAT SAEED
JUDGE

Johnson

TRUE COPY

In Case No.

Examiner: J.C.B (Copy Branch)
Lahore High Court, Lahore

10/5/11