IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NOS. 271-P TO 295-P OF 2011
(On appeal from the judgment of the Peshawar High Court, Peshawar, dated 29.03.2011 passed in Customs References No.42 to 66 of 2010).

M/s Agro Pack (Pvt) Limited, Peshawar — Petitioner (in all petitions)

Versus

Assistant Commissioner Inland Revenue Peshawar and another — Respondents (in all cases)

For the Petitioner: (in all cases) — Mr. Abdul Latif Yousafzai, Sr. ASC; Mr. Muhammad Ajmal Khan, AOR

For the Respondents: — Dr. Farhat Zafar, ASC (in all cases)

Date of Hearing: 24.01.2013

JUDGMENT

NASIR-UL-MULK, J.- The petitioner manufactures plastic bags in its factory setup in Industrial Estate, Gadoon Amazai, District Swabi, Khyber Pakhtunkhwa. It was granted Manufacturing Bond License under Rule 238 of the Customs Rules, 2001. The petitioner exports its products to Afghanistan through land route. It was exempted from payment of sales taxes on raw material utilized in the manufacturing of its export products. A controversy arose regarding their claim for refund of sales

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Supreme Court of Pakistan,
Peshawar.

tax from May 2005 to May 2007 paid by the petitioner on the electricity bills and locally manufactured packing material on the ground that both were used for the products exported to Afghanistan in terms of Rule 247 of the Customs Rules, renumbered as Rule 352. Instead of entertaining the claim of refund the Assistant Collector (Refund) Regional Tax Office, Peshawar, issued a show cause notice to the petitioner as to why its claim shall not be rejected. It was ultimately rejected by the Assistant Collector in his order in original dated 13.08.2007. The said order was upheld by the Collector (Appeals), then by the Appellate Tribunal Inland Revenues, Peshawar and finally by the Peshawar High Court in References filed by the petitioner.

The petitioner's claim was rejected in view of the provisions of SRO 190(I)/2002 issued by the Federal Government in exercise of the powers conferred upon it by the first proviso to section 4 of the Sales Tax Act, 1990. Two relevant provisions to the present controversy are Rule 247, renumbered 352, on which reliance is placed by the petitioner and SRO 190(I) of 2002 pressed into service by all the forums in rejecting the petitioner's claims. For the sake of facility they are reproduced as under:-

> "Rule 247. Procurement of input goods for production of finished goods meant for export.—The input goods for production of finished goods according to the specifications approved in the Analysis Certificate shall be procured by the licensee in any of the following manner:-
>
> (a) .....

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Supreme Court of Pakistan,
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(b) .....

(c) Procurement of sales taxable input goods:

(i) the taxable goods meant for further processing shall be supplied to the licensee of the manufacturing bond against a tax invoice after payment of sales tax; and the licensee shall be entitled for refund of input tax credit in accordance with the **Sales Tax Refund Rules, 1996**."

"Notification No. SRO 190(I)/2002 dated 2nd April, 2002.--- In exercise of the powers conferred by clause (iii) of the first proviso to section 4 of the Sales Tax Act, 1990 and in suppression of its Notification No. SRO 751(I)/99 dated the 15th June, 1999, the Federal Government is pleased to direct that the provisions of the said section shall not apply in respect of supply of the following categories of goods, **exported by air or via land route to Afghanistan and through Afghanistan to Central Asian Republics.**—

(a) Manufactured in the Export Processing Zones or in manufacturing bonds;

(b) .....

(c) ....."

(d) .....

The learned counsel appearing for the petitioner submitted that the petitioner's claim for refund was under a separate regime provided for under the Customs Rules 2001, Rule 247(c)(i) of which entitles the petitioner to refund of input tax credit in accordance with the Sales Tax Refund Rules, 1996. He contended that SRO 190(I)/2002 was issued under a different regime under the Sales Tax Act and not attracted to the claim of the petitioner under the Customs Rules, 2001. Elaborating he argued that the latter SRO neither makes reference to nor supersedes the said

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Supreme Court of Pakistan,
Peshawar.

Rule 247. In the alternative, it was submitted that even under Section 4 of the Sales Tax Act, providing for zero rating, the petitioner was not liable to pay sales tax on all exported goods. With reference to the restriction made on export of goods to Afghanistan, the learned counsel referred to **Pakistan** v **Aryan Petro Chemical Industries (Pvt) Ltd** (2003 SCMR 370).

After going through the judgment in the said case of **Aryan Petro Chemical Industries (Pvt) Ltd** (ibid) we straightway found that the principle laid down there is inapplicable to the issue in the present case. The controversy in that case was over legality of sub rule 6 of rule 15 of Manufacturing In Bond Rules of 1997 under which restriction was imposed on the export of shopping bags and plastic sheets to any country by land route. While maintaining the judgment of the Peshawar High Court this Court held that the impugned Rule made by the Central Board of Revenue in exercise of its powers under Section 219 of the Customs Act 1969, Section 50 of the Sales Tax 1990 and Section 30 of the Central Excise Act 1944 was beyond the scope of such powers as they were conferred to carry out the purpose of the said statutes through subordinate legislation, which did not include the power of restriction or prohibition. That such powers exclusively lay with the Federal Government under Section 3 of the Imports and Exports (Control) Act 1950. In the present

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Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

case, there is no prohibition and the SRO 190(I) of 2002 was issued by the Federal Government in exercise of a specific power to withdraw exemption from sales tax at the rate of zero per cent, in other words withdrawal of exemption from payment of sales tax.

We have compared the provisions of Rule 247 and SRO 190(I)/2002. Sales tax is levied under Section 3 of the Sales Tax Act 1990 and Section 4 provides for exemption from the tax, the relevant part thereof for our purpose reads:-

> "4. **Zero rating...** Notwithstanding the provisions of Section 3, the following goods shall be charged to tax at the rate of zero per cent:-
> (a) **goods exported**, or the goods specified in the Fifth Schedule;
> (b) .....
> (c) .....
> **Provided that** nothing in this section shall apply in respect of a supply of goods which-
> (i) .....
> (ii) .....
> (iii) Have been exported to a country specified by the Federal Government, by notification in the official Gazette."

SRO 190(I) of 2002 was issued by the Federal Government expressly in exercise of its powers under clause (iii) of the first proviso of Section 4 of the Sales Tax Act. The exemption on exported goods under clause (e) of Section 4 is subject to the powers of the Federal Government under clause (iii) of the first proviso of Section 4, allowing the Government to withdraw the exemption from payment of sales tax on goods exported. The learned counsel was not in

a position to dispute conferment of such statutory powers of the Federal Government or its exercise in terms of SRO 190(I) of 2002.

The contention of the learned counsel was that withdrawal of exemption by the Federal Government under SRO 190(I)/2002 could not take away the exemption granted to the petitioners under a different regime namely, the Customs Rules of 2001. This argument is not founded on true interpretation of the relevant statutory provisions. The levy, collection of and exemption from sales tax are provided for under the Sales Tax Act and the Rules framed there under. Section 3 is the charging section and Section 4 of the Act provides for exemptions. Rule 247, later renumbered as 352, on proper construction does not provide for such exemption. The said Rule can be split into two parts; the first provides for issuance of sales tax invoice after payment of sales tax and the second relates to entitlement of refund of input tax credited in accordance with Sale Tax Refund Rules, 1996. It is the second part that relates to the refund which is to be made in accordance with the Sales Tax Refund Rules, 1996 if the exporter is entitled to a refund. We are mindful that the said Rule appears in the Customs Rules of 2001 and according to Rule 2(d) the officials entrusted to perform functions under the Rules are those of the Department of Customs. However, we have also noted that for quite a while it was

the Department of Customs that was conferred powers under the Sales Tax Act and used to collect such taxes. The provision of issuing invoice under the first part of Rule 247(c)(i) is only procedural and not a substantive provision granting exemption from sales tax. Exemption can be granted only under the Sales Tax Act and the Rules framed there under. That is why for the purpose of refund reference has been made in Rule 247 of the Customs Rules 2001 to the Sale Tax Refund Rules, 1996. The argument of the learned counsel that the petitioner was being granted exemption under a different regime than the Sales Tax Act has therefore no merits.

For the afore-stated reasons, the judgments of the High Court as well as the other forums are maintained. All these petitions are dismissed and leave declined.

Sd/- Nasir-ul-Mulk, J.
Sd/- Tariq Parvez, J.

Certified to be true copy
04.02.2013
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

Peshawar,
January 24, 2013
Shirazi/*

"NOT APPROVED FOR REPORTING"

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Nasir-ul-Mulk
Mr. Justice Tariq Parvez

Civil Petition No.271-P of 2011

M/S Agro Pack (Pvt.) Ltd., Peshawar ... Petitioner

Vs.

Assistant Commissioner Inland Revenue, Peshawar and another ... Respondents

For the Petitioner : Mr. Abdul Latif Yousafzai, ASC.

For the respondents : Mrs. Farhat Zafar, ASC.

Date of hearing : 17.01.2013.

ORDER

The learned counsel for the petitioner seeks time to obtain copy of judgment of this Court dated 27th July, 2002 relating to export of goods by land route on which reliance was placed by the Collector of Customs in order dated 23rd May, 2003, appended at page-56 of this petition. The learned counsel also wants further time to prepare the brief. Relist on 24th January, 2013 subject to availability of the Bench.

Sd/- Nasir-ul-Mulk, J.
Sd/- Tariq Parvez, J.

Islamabad the,
17th January, 2013.
Naveed Ahmad

Certified to be true copy

Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR.JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NOs. 271-P TO 295-P OF 2011

M/S Agro Pack (Pvt.) Ltd ...**Petitioner.**

VERSUS

Assistant Commissioner Inland Revenue Peshawar & others ...**Respondents.**

For the Petitioner: Mr. Abdul Latif Yousafzai, Sr. ASC.

For the Respondents: Mrs. Farhat Zafar, ASC.

Date of Hearing: 14.01.2013.

ORDER.

The learned counsel for the petitioner wants to further prepare the brief. **Re-list for 17.01.2013.**

Sd/- Nasir-ul-Mulk
Sd/- Tariq Parvez

SUPREME COURT OF PAKISTAN
PESHAWAR
14th January, 2013.
Ghulam/

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04.02.2013
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.