

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W. P.No.4921 of 2013

National Sugar Industries Ltd Vs. Federation of Pakistan, etc.

J U D G M E N T

Date of Hearing	11.03.2013.
Petitioner By:	Mr. Khurram Shahbaz Butt, Advocate.
Respondents By:	Mr. Sarfraz Ahmad Cheema, Advocate.

Ayesha A. Malik.J: Through this petition, the Petitioner has impugned letter dated 14.02.2013 issued by Respondent No.4 under Section 14 (A) of the Federal Excise Act, 2005 (the FEA, 2005) whereby bank accounts of the Petitioner have been attached and proceedings have been initiated against it for recovery of Rs.10,603,210/-.

2. Brief facts of the case are that a Special Excise Duty was levied against the Petitioner under Section 3A of the FEA, 2005 through notification SRO No.655(I)/2007 dated 29.06.2007. This levy was challenged and subsequently, it was decided in favour of the Respondents that the levy was to be recovered from the Petitioner in terms of the stated notification through an order dated 18.10.2011 passed in Civil Petitions No.1575 to 1582 and 1588 of 2011 by the Hon'ble Supreme Court of Pakistan. The Respondent No.4 after the pronouncement of the aforementioned judgment of the apex court initiated proceedings for recovery of the Special Excise Duty for an amount of Rs.13,603,210/-. The Respondent No.4 attached the bank accounts of the Petitioner under letter dated 06.06.2012. The Petitioner made some partial payments and requested the Respondents to adjust the remaining demand against the amounts already deposited by the Petitioner on account of advance tax. The Respondent No.3 at that time detached the bank accounts of the Petitioner as the Petitioner made some payment to the Respondents. However, it again initiated

proceedings vide order dated 14.02.2013 for the recovery of Rs.10,603,210/- from the Petitioner. Hence this Petition.

3. The case of the Petitioner is that the amount of Rs.10,603,210/- is not a determined amount and without a formal determination under Section 14 of the FEA, 2005, the Respondents cannot attach the bank accounts of the Petitioner. In terms of Section 14 of the FEA, 2005, a show cause notice was required to be issued for payment of such duty after which, the amount of the duty was to be determined along with the default surcharge and penalty. Learned counsel argued that this procedure has not been followed, hence the impugned order of 14.02.2012 is against the provision of FEA, 2005. He further argued that advance tax has already been deposited with the Respondents and the Petitioner seeks an adjustment against the advance tax for the demand raised by the Respondents for Special Excise Duty. He argued that an amount of Rs.12,414,451/- is approximately lying with the income tax department for refund.

4. Learned counsel for the Respondents argued that the Respondents are acting under the provision of Section 14A of the FEA, 2005 where short paid amounts as indicated in the return, are recoverable through attachment of bank accounts by the Respondents. He argued that the amount of Rs.10,603,210/- is an admitted liability by the Petitioner through his own letter dated 18.02.2013. He further argued that the initial liability as calculated by the Respondents was in the amount of Rs.13,603,210/- for which a demand was raised on 06.06.2012. He argued that the Petitioner agreed to settle the amount due to the Respondents through their letter dated 14.06.2012. They agreed to pay Rs.3 Million as down payment and requested that the balance amount of Rs.10.6 Million be adjusted against a sum of Rs.10,884,329/- already deposited with the income tax department on account of advance tax. He further argued that liability has already been determined and is admitted by the Petitioner. Hence the Respondents have proceeded under Section 14A of the FEA, 2005 to attach the bank accounts of the Petitioner in accordance with law.

5. Heard learned counsel for the parties and reviewed the record available on the file.

6. The main issue between the parties is with respect to Section 14 and Section 14A of the FEA, 2005. Sections 14 (1) and (2) provide that:-

“14. Recovery of unpaid duty or of erroneously refunded duty or arrears of duty, etc.—(1) Where any person has not levied or paid any duty or has short levied or short paid such duty or where any amount of duty has been refunded erroneously, such person shall be serviced with notice requiring him to show cause for payment of such duty provided that such notice shall be issued within three years from the relevant date. (2) The [office of Inland Revenue], empowered in this behalf, shall after considering the objections of the person served with a notice to show cause under sub-section (1), determine the amount of duty payable by him and such person shall pay the amount so determined along with default surcharge and penalty as specified by such officer under the provisions of this Act.”

The said section is basically applicable where the liability or payment of duty is disputed, meaning that a duty has to be paid but the amount has to be determined.

Section 14A provides that:-

“14A. Short paid amounts recoverable.- Notwithstanding the provisions of this Act or the rules made thereunder, where a registered person pays the amount of duty less than the duty due as indicated in his return, the short paid amount of duty along with default surcharge shall be recovered from such person by stopping removal of any goods from his business premises and through attachment of his business bank accounts without prejudice to any other action under this Act or the rules made there under:

Provided that no penalty under this Act or rules made thereunder shall be imposed unless a show cause notice as given to such person.”

Section 14A of the FEA, 2005 applies to an undisputed amount as indicated in the return, which is due by the registered person and is not being paid. Powers given through Section 14A of the FEA, 2005 enable the Respondents to recover the amount due through attachment of business account, without prejudice to any further action under this Act. In the case of

the Petitioner, the amount to be recovered is admitted through its own letter dated 14.06.2012 and 18.02.2013. The Petitioner admits to a short payment of Rs.10,603,210/- on account of balance payment of Special Excise Duty for the months of August 2009 to March 2011. The argument that this amount is disputed or that it is yet to be determined is not supported through the documents relied upon by learned counsel for the Petitioner. The argument that the amount of Special Excise Duty is to be determined from the return that has been filed by the Petitioner is also not supported by the documents relied upon by the Petitioner as they admit to the payment as being the amount due and payable as Special Excise Duty for the period August 2009 to March 2011. Hence the recovery of duty through attachment of bank account under Section 14A of the FEA, 2005 is in accordance with law. On the issue of adjustment through a refundable amount mentioned by the Petitioner as lying with the Income Tax Department, there is no clog on the right of the Respondents to recover Special Excise Duty, admitted as due, by the Petitioner. The amount reflected as balance tax refundable by the Petitioner is yet to be ascertained by the Income Tax Department. Hence there is no obligation to settle the liability of Special Excise Duty due against any refund, the Petitioner is claiming.

7. As such no case for interference is made out, this petition is dismissed. *f*

Sd/-AYESHA A.MALIK
JUDGE

Announced in open Court On 20.3.13

Sd/-AYESHA A.MALIK
JUDGE

TRUE COPY

In Case No.

[Signature]
29/3/13
Examiner: J.C.B (Copy Branch)
Lahore High Court, Lahore.