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Judgment Sheet
IN THE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Intra Court Appeal No.48 of 2020.

D Watson Chemist Vs Federation of Pakistan, etc.

JUDGMENT

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|-----------------|---------------------------------|
| Date of hearing | 08.09.2020 |
| Applicant by: | Hafiz Muhammad Idris, Advocate. |

Shahid Jamil Khan, J:- This and connected appeals are to challenge consolidated judgment dated 09.03.2020 by learned Single Judge, whereby amendments in Sales Tax Rules 2006 through SRO 1360(I)/2018 dated 12.11.2018 (“**SRO 1360**”) and SRO 1203(I)/2019 dated 10.10.2019 (“**SRO 1203**”) are declared *intra vires* besides discarding plea of discrimination to declare, the provisions of Section 2(43A) of the Sales Tax Act 1990 (“**Act of 1990**”) as *ultra vires* and W.P. No.75 of 2020, along with connected writ petitions, was dismissed.

Tier-1 Retailors, as defined in Section 2(43A), were required, by the impugned amendments (through the SRO 1360 and 1203), to install software for real time reporting and declaration of sales to FBR. The rules so inserted also required issuance of electronic invoices with other obligations.

2. The appellants/petitioners challenged the provisions, inserted or amended, to be in violation of Articles 4, 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973 (“**the Constitution**”). The requirement of filing electronic invoices and real time reporting was argued to be in violation and in conflict of various provisions of the Act of 1990. Issuance of the SROs was also assailed to be in excess of delegation and without lawful authority.

3. Learned counsel for the appellants has reiterated the arguments as noted in the impugned judgment and emphasized that Section 23 of the Act of 1990 was required to be amended for submission of electronic invoices. He explained that monthly declarations for a tax period were required to be completed in three stages and any change in this procedure could only be made by amendment in Section 23, as was done earlier by inserting subsection (3) through Finance Act, 2005 for requiring electronic invoices for a supply from one registered person to another registered person. Further submits that by inserting clause (43A) the petitioners have been segregated from rest of the registered persons to impose extra burden of compliance through the impugned SROs, which amounts to discrimination.

4. Heard at preliminary stage. Record perused.

5. Learned Single Judge attended to all the arguments and addressed the issues elaborately by referring to the judgments by superior courts of Pakistan and foreign jurisdiction.

However, it may be added that by inserting clause (43A), through Finance Act, 2017, in Section 2 of the Act of 1990, a class of retailers titled “*Tier-1 Retailors*” is defined, in which petitioners also fall. Subsection (9A) is also inserted in Section 3, simultaneously, which envisages integration of retail outlets, of the Tier-1 Retailors, with Board’s computerized system for real time reporting of sales. Both the insertions are reproduced for ease of reference:-

2. Definitions.-

“(43A) **Tier-1 retailer** means,-

- (a) a retailer operating as a unit of a national or international chain of stores;
- (b) a retailer operating in an air-conditioned shopping mall, plaza or centre, excluding kiosks;
- (c) a retailer whose cumulative electricity bill during the immediately preceding twelve consecutive months exceeds rupees six hundred thousand;
- (d) a wholesaler-cum-retailer, engaged in bulk import and supply of consumer goods on wholesale basis to the retailers as well as on retail basis to the general body of the consumers; and

(e) a retailer, whose shop measures one thousand square feet in area or more.

3. Scope of tax.-

“(9A) Notwithstanding anything contained in this Act, **Tier-1 retailers** shall pay sales tax at the rate as applicable to the goods sold under relevant provisions of this Act or a notification issued there under:

Provided that the customers of a Tier-1 retailer shall be entitled to receive a cash back of up to five percent of the tax involved, from such date in the manner and to the extent, as may be prescribed by the Board:

Provided further that from such date, and in such mode and manner, as prescribed by the Board, all Tier-1 retailers shall integrate their retail outlets with Board’s computerized system for real-time reporting of sales.

[emphasis supplied]

6. The objection of learned counsel regarding amendment in Section 23 as a pre-requisite for requiring electronic invoices and real time reporting has not impressed us. In our view, the insertion of subsection (9A) in Section 3 gives the mandate, because the phrase “*real-time reporting of sales*” includes issuance of electronic invoices, even in absence of any amendment in Section 23, in particular for *Tier-1 Retailors*. For real time electronic system, integrated with the Board’s system, a manual invoice does not find any place. Issuance of tax invoice is mandatory under Section 23(1) for a registered person making taxable supplies. If we read provisions of Section 23 in absence of subsection (3), the manner and procedure for regulating the issuance and authentication of tax invoices can be prescribed by Board under Section 23(4), besides general rule making power under Section 50 of the Act of 1990. Section 23(4) is also reproduced hereunder:-

“**23. Tax Invoices.** (1)

(2).

(3).

(4). The Board may, by notification in the Official Gazettee, prescribe the manner and procedure for regulating the issuance and authentication of tax invoices.”

7. Section 50A, with the title “**Computerized System**”, also found place in the Statute, after insertion vide Finance Act, 2006.

Presence of the provisions, under this section, does not require the Legislature to make amendments like subsection (3) of section 23. It gives vast rule making powers to the FBR for use of computerized system for carrying out the purpose of the Act of 1990 including receipt of applications, returns and other declarations, like invoices etc, through computerized system online or otherwise. Section 50A is reproduced:-

“50A. Computerized system.- (1) the Board may prescribe the use of computerized system for carrying out the purposes of this Act, including the receipt of applications for registration, returns and such other declarations or information required to be provided under this Act and the rules made thereunder, from such date and for such registered persons or class of persons as the Board may, be notification in the official Gazette, specify.

(2) The Board may make rules for regulating the conduct and transaction of business in relation to the submission of returns or other information to the Board by the persons required to transmit or receive any information through the computerized system, including matters such as grant of authorization, suspension and cancellation of authorization and for security of the information transmitted or received through the computerized system.

(3) Unless otherwise proved, the information received in the computerized system from or on behalf of any registered person shall, for all official and legal purposes, be deemed to have been furnished by and received from such registered person.”

(4) The business information gathered through computerized system shall be confidential to be used only for official and legal purposes and no unauthorized person shall claim for any access to such information.”

[emphasis supplied]

In existing age of information technology, when all the transactions from sales and purchase to interbank transfer of funds are being done online, introduction of any procedure for filing or reporting to the Board electronically has become inevitable and to enforce that ample powers were given by Section 50A alone.

8. The ground of discrimination to declare any legislation, including subordinate legislation, has by now been settled by

various judgments of superior Courts, starting from *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* (PLD 1997 SC 582 = 1997 PTD 1555), laying down that intelligible classification for the purpose of levying or collecting tax or for that matter reporting tax compliance does not offend the fundamental right, guaranteed under Article 25 of the Constitution.

In addition to the reasons noted above, we endorse the decision and reasons given by learned Single Judge, therefore, the captioned as well as connected appeals (ICA Nos.44 to 47 and 49 to 51 of 2020) are *dismissed*.

(Abid Aziz Sheikh)
Judge

(Shahid Jamil Khan)
Judge

APPROVED FOR REPORTING

Judge

Judge