

P L D 2001 Supreme Court 340

**Present: Iftikhar Muhammad Chaudhry
and Rana Bhagwan Das, JJ**

**ANOUD POWER GENERATION LIMITED
and others--- Petitioners**

versus

**FEDERATION OF PAKISTAN
and others---Respondents**

Civil Petitions Nos. 1485, 1487, 1488, 1490, 1492, 1504, 1526, 1591 to 1599, 1600 to 1605 of 2000, decided on 16th November, 2000.

(On appeal from the judgment dated 31-7-2000 passed by Lahore High Court, Rawalpindi Bench in Writ Petitions Nos.506 of 1997, 510 of 1997, 94 of 1997, 1223 of 1996, 2305 of 1997, 505 of 1997, 511 of 1997, 509 of 1997, 946 of 1997, 982 of 1995, 983 of 1995, 1008 of 1995, 1731 of 1996, 1197 of 1995 and 1725 of 1995).

(a) Notification--

---- Retrospective effect of---Scope---Notification cannot operate retrospectively and benefits and advantages if already accrued in favour of a party during subsistence of the notification are available to the party until the same is amended or rescinded---Where the notification has been used for the benefit of the subject then the same can be made operative retrospectively but if its operation is to the disadvantage of party who is the subject of the notification then the same would operate prospectively.

Messrs Army Welfare Sugar Mills Limited and others v. Federation of Pakistan 1992 SCMR 1652; Taj Mahal Hotel Limited v. Karachi Water and Sewerage Board 1997 SCMR 503; Hashwani Hotel Limited v. Federation of Pakistan and others PLP 1997 SC 315; Messrs Elahi Cotton Mills Limited and others v. Federation of Pakistan through Secretary, M/O Finance, Islamabad and 6 others PLD 1997 SC 582 and Federation of Pakistan v. Shaukat Ali Mian and others PLD 1999 SC 1026 ref.

(b) Constitution of Pakistan (1973)---

----Art. 25---Discrimination---Element of discrimination in a fiscal statute--Effect---Element of discrimination in a fiscal statute cannot be pleaded nor such statute can be struck down on the touchstone of Art.25 of the Constitution---Different laws can be promulgated to deal with various types of persons, however, subject to reasonable classification.

I.A. Sherwani and others v. Government of Pakistan 1991 SCMR 1041; Government of Balochistan through Additional Chief Secretary v. Azizullah Memon and 16 others PLD 1993 SC 341 and Mehram Ali and others v. Federation of Pakistan and others PLD 1998 SC 1445 ref.

(c) Notification--

----Fiscal notification---Jurisdiction of Government---Government/Competent Authority can issue, rescind or amend any notification or legislation which may be less favourable to a party who has not availed the benefits arising out of the earlier notification or legislation for the purpose of generating funds to run the functionaries of Government etc.

Federation of Hotel and Restaurant v. Union of India AIR 1990 SC 1637; Commissioner of Agricultural Income-tax, East Bengal v. V. W. M. Abdur Rehman 1993 SCMR 445; Cap. Brandy Syndicate v. Inland Revenue Commissioner (1921) 1 KB 64; P.K. Kutty Haji and others v. Union of India and others (1989) 176 ITR 481 and Interpretation of Statutes by N.S. Bindra, 7th Edn., p.771 ref.

(d) Customs Act (IV of 1969)---

---S. 19---Sales Tax Act (VII of 1990), S.13(1)---Notifications Nos.SRO 279(1)/94 dated 2-4-1994 and SRO 584(1)/95 dated 1-7-1995---Constitution of Pakistan (1973), Arts.25 & 185(3)---Sales tax and customs duty, exemption of---Discrimination---Government vide Notification No.SRO 279(1)/94, dated 2-4-1994, exempted certain machinery and equipment from payment of sales tax and customs duty---Another Notification No.SRO 584(1)/95 dated 1-7-1995, was subsequently issued by the Authorities whereby the exemption was withdrawn---High Court in exercise of Constitutional jurisdiction found that the importers who had opened Letters of Credits after issuance of amended Notification No.SRO 584(1)/95, dated 1-7-1995, and submitted Bills of Entry, were not entitled for the benefit of original Notification No.SRO 279(1)/94, dated 2-4-1994, as the importers were not placed in similar circumstances qua the importers Who had fulfilled the conditions laid down in the unamended Notification and had filed Letters of Credits and Bills of Entry prior to its amendment---Contention of the importers was that they had been discriminated and the Authorities had no jurisdiction to withdraw or rescind the exemptions already granted---Validity---Powers of Competent Authority could not be curtailed and Notification once issued could not be allowed to remain intact for all times to come notwithstanding the fact that the circumstances had changed and it was not possible for the Government to extend the benefit of exemption of duty to the importers who had not yet decided to install projects or intending to do so in new circumstances prevailing after the date of issuance of amended Notification---Classification in both sets of companies was reasonable.

Collector Customs, Excise and Sales Tax, Peshawar and 3 others v. Messrs Flying Kraft Paper Mills (Pvt.), Charsadda, District Peshawar 1998 SCMR 1041 and AIR 1991 SC 1721 ref.

(e) Supreme Court Rules, 1980--

---O. XIII, R. 3(ii)---Limitation Act (IX of 1908), S.5---Petition for leave to appeal---Delay, condonation of---Prerequisites---Failure to file certified copies alongwith the petition---Effect---Petition must be accompanied by the judgment, decree, final order sought to be appealed from, one copy of the same has to be certified as correct, together with grounds of appeal or application before the High Court---Where no certified copies had been provided alongwith the petition, the same had not been filed according to the Rules and time could not be arrested unless duly certified copy was placed on record---Delay was not condoned in circumstances.

(f) Limitation Act (IX of 1908)---

---S. 5---Delay, condonation of---Government functionaries---Government functionaries are not entitled for any preferential treatment so far as question of limitation for institution of proceedings is concerned and are treated at par with the other litigants.

Government of Punjab through Secretary, Finance Department Lahore v. Mabarak Ali and others PLD 1993 SC 375 ref.

(g) Civil Procedure Code (V of 1908)---

---O. I, R.10---Misjoinder or non-joinder of parties---Termination of proceedings---Validity---No legal proceedings can be terminated for misjoinder or non-joinder of parties.

(h) Constitution of Pakistan (1973)---

---Art. 199---Civil Procedure Code (V of 1908), S.20---Constitutional petition---Maintainability---Jurisdiction of High Court---Scope---Jurisdiction under S.20, C.P.C. depended upon nature of relief which had been claimed ---Vires of a Notification issued by Federal Government having its offices at Islamabad was challenged before the High Court having its territorial jurisdiction at place Islamabad---High Court had jurisdiction to adjudicate upon the matter---Petition was maintainable in circumstances.

The Collector of Customs and Central Excise, Peshawar and others v. Messrs Rais Khan Limited through Muhammad Hashim 1996 SCMR 83; Sandalbar Enterprises (Pvt.) Limited v. Central

Board of Revenue and others PLD 1997 SC 334 and Flying Kraft Paper Mills (Pvt.) Ltd., Charsadda v. Central Board of Revenue, Islamabad and 2 others 1997 SCMR 1874 ref.

Raja Muhammad Akram, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Petitioners (in C.Ps. Nos.1485, 1487, 1490, 1492 and 1504 of 2000).

Raja Abdul Ghafoor, Advocate Supreme Court/Advocate-on-Record for Petitioners (in C. Ps. Nos.1526, 1591 to 1605 of 2000).

Nemo for Respondents (in all Cases).

Date of hearing: 16th November, 2000