

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ
Mr. Justice Ijaz Ahmed Chaudhry
Mr. Justice Iqbal Hameedur Rahman

Constitution Petition No.33 & 34 of 2005

(Regarding sudden increase in petroleum products on
13.06.2013 due to increase in sales tax)

And Civil Misc. Application No.3821 of 2013

Engineer Iqbal Zafar Jhagra
Senator Rukhsana Zuberi

...Petitioners

Versus

Federation of Pakistan and others

...Respondents

For the petitioners:

Mr. M. Ikram Ch. ASC
(in Constitution Petition No.33/05)

Nemo (in Cons.P.34/05)

For the Federation:

Mr. Munir A Malik,
Attorney General for Pakistan
Assisted by:
Mr. Faisal Siddiqui, Adv.
Mr. Dil Mohammad Alizai, DAG
Raja Abdul Ghafoor, AOR

For FBR:

Dr. Rana M. Shamim, ASC
Mr. Arshad Ali Chaudhry, AOR
Mr. Muhammad Aaqil, Member (Legal)
Mr. Raza Baqir, Member
Mr. Ashfaq Tunio, Chief Sale Tax

For OGRA:

Mr. Salman Akram Raja, ASC

Mr. Saeed Ahmad Khan, Chairman
Mr. Abdul Basit, Law Officer
Ms. Misbah Yaqoob, JED(F)

For M/o Petroleum: Ch. Akhtar Ali, AOR
For M/o Finance: Nemo
For M/o Climate Change: Mr. Dilawar Khan, Dy. Director
For OCAC: Nemo
Date of hearing: 19/20/21.06.2013

ORDER

Iftikhar Muhammad Chaudhry, CJ.— For the reasons to be recorded later, it is declared and held as under: -

- (i) The Government is not authorized to impose or increase Sales Tax from 16% to 17% on the value of taxable supplies, i.e. by inserting in the Finance Bill (Money Bill) 2013-14 a declaration under section 3 of the Provisional Collection of Taxes Act, 1931 [hereinafter referred to as 'the Act, 1931'] as such declaration neither has the status of legislation nor sub-legislation, therefore, it has no force of law.

AND

Immediate recovery of Sales Tax from 16% to 17% on the value of taxable supplies w.e.f. 13.06.2013 is unconstitutional being contrary to Articles 3, 9, 24 and 77 of the Constitution;

- (ii) Under proviso to rule 20(2)(c) of the Sales Tax Special Procedures Rules, 2007, 9% in addition to the Sales Tax

prescribed under section 3 of the Sales Tax Act, 1990 imposed or recovered from the consumers on CNG is unconstitutional and contrary to Articles 3, 9, 24 and 77 of the Constitution as well as section 3 of the Sales Tax Act;

- (iii) Section 4 of the Act, 1931 as a whole is declared unconstitutional being contrary to Article 70 of the Constitution, which lays down the procedure for legislation;
- (iv) Section 5 of the Act, 1931 does not lay down parameters for the purpose of refund of the recovered taxes to the consumers, as such, in absence of any workable mechanism, it is not enforceable in its present form;
- (v) As a consequence of above declaration, the Federal Government has no lawful authority to levy, impose and recover Sales Tax @ 17% from 13.06.2013 on the value of taxable supplies made in course or furtherance of any taxable activity until passing of the Finance Bill (Money Bill) 2013-14, which has already been tabled before the Majlis-e-Shoora;
- (vi) The excess amount equal to 1% (17%-16%) of the Sales Tax recovered on the petroleum products/CNG or any other taxable supplies w.e.f. 13.06.2013 onwards, thus is refundable to consumers and concerned authorities accordingly are directed to deposit it with the Registrar of this Court subject to passing of the Finance Bill (Money

Bill) 2013-14 by or under the authority of the Majlis-e-Shoora;

If the Sales Tax is imposed by the Majlis-e-Shoora to be recovered with retrospective effect, same shall be paid to the Government, otherwise appropriate orders will be passed for its disbursement;

- (vii) The Government is also directed to deposit 9% out of 26% of the Sale Tax on CNG as per notification dated 13.06.2013 in the same manner as it has been noted above;
- (viii) A statement shall also be filed by the Government showing the amount of Sales Tax recovered @ 9% under proviso to rule 20(2)(c) of the aforesaid rules 2007 on value of the CNG from the consumers in addition to declared Sales Tax of 16% imposed under section 3 of the Act, 1990 as this amount is also to be refunded to the consumers, for which appropriate order shall be passed subsequently;
- (ix) As prices of essential commodities mentioned in the Sixth Schedule to the Act, 1990 have exorbitantly increased according to the media reports, therefore, Federal Government and the Provincial Governments are directed to take action under sections 6 and 7 of the Price Control and Profiteering and Hoarding Act, 1977 to keep the prices consistent as per the Sixth Schedule under section 13(1) of the Act, 1990 (Essential Commodities);

- (x) Pending passing of the Finance Bill (Money Bill) 2013-14, Sales Tax shall be recovered from consumers on the taxable supplies including petroleum products and CNG at the rate prescribed under section 3 of the Sales Tax Act; and
- (xi) The OGRA shall issue revised notification fixing prices of CNG as per above observations forthwith recovering Sales Tax @16% Sales Tax on taxable supplies till passing of Finance Bill (Money Bill) 2013-14 by the Majlis-e-Shoora.

The titled Civil Miscellaneous Application is disposed of in the above terms.

Chief Justice

Judge

Judge

Islamabad, the
21st June, 2013
Nisar/*