

PESHAWAR HIGH COURT, PESHAWAR.

ORDER SHEET

Date of Order/ Proceedings	Order or other Proceedings with Signature of Judge.
<u>29/03/2021</u>	<p><u>WP No. 1355-P/2021 with IR</u></p> <p><u>Present:</u> Mr. Isaac Ali Qazi, Advocate, for the petitioner.</p> <p style="text-align: center;">==.==.</p> <p><u>SYED ARSHAD ALI, J.-</u> The petitioner, who is a private limited company, running its business under the name & style of M/s Poly Foam (Pvt) Ltd situated at Khyber Agency, seeks constitutional jurisdiction of this Court praying that:</p> <p style="text-align: center;"><i>“Considering the above submissions, it is therefore, respectfully prayed that on acceptance of this Petition, this Honourable Court may please to:-</i></p> <ul style="list-style-type: none"><i>(i) DECLARE that the Petitioner’s imports could only be subjected to the statutory laid down procedure under Entry No. 151 of Sixth Schedule to the Sales Tax Act, 1990 only.</i><i>(ii) DECLARE that the Impugned Customs General Order No. 01 of 2021 dated 25.02.2021 and subsequent Circular No. 09 of 2021 dated 01.03.2021 and Letter No. C. No. 2(2)L&P/2016 dated 02.03.2021 are ultra vires, unreasonable and suffering from excess of law and authority, thus, of no legal effect.</i><i>(iii) DIRECT the Respondents to clear the Petitioner’s Imports in accordance with the procedures laid down in Entry No. 151 of the Sixth Schedule to the Sales Tax Act, 1990 and in M/s Taj Packages Judgment dated 30.04.2015 reported as 2016 PTD 203.</i><i>(iv) DIRECT the Respondents to refund the exempt taxes paid by the Petitioners due to stuck up created by the impugned instrument.</i><i>(v) DIRECT the Respondents to issue delay detention certificate caused by the delay due to the aforesaid impugned ultra vires instruments”.</i>

2. The learned counsel appearing on behalf of the petitioner has argued that the industrial unit of the present petitioner situated at erstwhile Federally Administered Tribal Area (“*FATA*”) before the 25th amendment in the Constitution vide Act No. XXXVII of 2018 dated 05.06.2018 were enjoying complete immunity from payment of sales tax and income tax, however, after the merger of the erstwhile tribal area into the Province of Khyber Pakhtunkhwa through SRO. 1212(1)/2018 & SRO. 1213(1)/2018 both dated 05.10.2018, the same immunity were extended to the manufacturing unit of the present petitioner for a period of five years. The learned counsel has further maintained that respondent/Revenue had always questioned the said immunity and it was through the intervention of this Court that the present petitioner was able to get benefit of the said immunity. In order to frustrate the said immunity to the petitioner, the respondent has issued the impugned Notification/Customs General Order imposing unnecessary fetters on the business activities of the present petitioner which has adversely effected the cost of the present petitioner on transportation of the imported goods to its destination. The learned counsel has further maintained that the impugned orders are not only malafide but beyond the authority of the respondent as well as the rights of the present petitioner of free trade guaranteed through Article 18 of

the Constitution of Islamic Republic of Pakistan, 1973 (“*Constitution*”). In support of his arguments, the learned counsel has placed reliance on *Messrs Gadoon Textile Mills and 814 others vs. WAPDA and others* (1997 SCMR 641), *Capital Development Authority through Chairman and another vs. Mrs. Shaheen Farooq and another* (2007 SCMR 1328), *Muhammad Amin Muhammad Bashir Limited vs. Government of Pakistan through Secretary Ministry of Finance, Central Secretariat, Islamabad and others* (2015 SCMR 630), *Shuja Sharif and 7 others vs. FOP and 3 others* (PD 2019 Islamabad 491) and *Collector of Customs, Islamabad vs. Messrs Askari Cement (Pvt) Ltd and others* (2020 SCMR 649).

3. Heard. Prior to the 25th amendment in the Constitution through Act No. XXXVII of 2018 dated 05.06.2018, there was a separate dispensation/mechanism for extension of laws to the erstwhile FATA. The relevant provision of the Constitution i.e. Article 247(3) for ease reference is reproduced as under:-

“247 (3). No Act of [Majlis-e-Shoora (Parliament)] shall apply to any Federally Administered Tribal Area or to any part thereof, unless the President so directs, and no Act of [Majlis-e-Shoora (Parliament)] or a Provincial Assembly shall apply to a Provincially Administered Tribal Area, or to any part thereof, unless the Governor of the Province in which the Tribal Area is situate, with the approval of the President, so directs; and in giving such a direction with respect to any law, the President or, as the case may be, the Governor, may direct that the law shall, in its application to a Tribal Area, or to a specified part thereof, have effect subject to such

exceptions and modifications as may be specified in the direction”.

4. There remained judicial consensus that the Income Tax as well as Sales Tax Laws were never extended to the FATA, prior to the promulgation of 25th amendment thereby omitting Article 247 from the Constitution. However, there has been a long standing dispute between the Federal Board of Revenue (“**FBR**”) and the trade community/business community of erstwhile tribal area regarding the imposition of income tax as well as sales tax on the import of raw material for the manufacturing units, which were located in the erstwhile FATA. This Court in its celebrated judgment authored by his Lordship Justice Yahya Afridi as he then was in the case of **Messrs Taj Packages Company (Pvt) Ltd through Manager vs. The Government of Pakistan through Federal Secretary Finance and Revenue Division and 6 other (2016 PTD 203)**, has elaborately dealt with the issue of taxing the raw material/goods which were imported for the purpose of its consumption in the erstwhile FATA. The said judgment was also approved by the august Supreme Court of Pakistan in case titled **Pakistan through Chairman, FBR and others Vs. Hazrat Hussain (2018 SCMR 939)**, wherein it has been unequivocally held that the business concerns/manufacturing units located in the PATA are immune from the impost of both, the income tax as

well as sales taxes; that similarly, the goods or machinery, which they are importing for their home consumption are equally immune from the impost of both taxes at the import stage, however, in order to ensure that the consumption of goods do not cross the limits of non-tariff area, the petitioners have to provide a security in form of post-dated cheques equal to the value of the imported goods.

The perusal of the aforesaid judgments would show that the main concern of the FBR was that there is no foolproof system ensuring that the goods which are imported for its consumption in the FATA and for that reason, this Court in the case of *Messrs Taj Packages Company (Pvt) Ltd (supra)* has issued the following directions.

“Accordingly, for the reasons stated hereinabove, this Court would hold and:--

- (i) Declare that advance tax charged on import under section 148 of the Income Tax Ordinance, 2001, is not payable by petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;*
- (ii) Declare that Sales Tax charged under section 3(1)(b) of the Sales Tax Act, 1990, is not payable by the petitioners importing goods for its utilization or consumption in Federally Administered Tribal Area or Provincially Administered Tribal Area;*
- (iii) Direct the Federal Government to take appropriate steps to ensure that persons carrying on business in FATA or PATA are rendered immunity from the payment of taxes*

under Income Tax Ordinance, 2001, and the Sales Tax Act, 1990, as the said statutes have not been extended to the said areas within the contemplation of Article 247(3) of the Constitution;

(iv) Direct the Federal Government to take necessary steps to formulate a uniform policy for seeking securities from the persons importing goods for its consumption and utilization in FATA or PATA, so that the immunity provided under the Constitution is not abused and in case the imported goods are utilized or sold out side the said area, then the revenue of the State is recoverable from the securities, so provided.

(v) Direct that till the decision is taken by the Federal Government regarding the security mechanism stated hereinabove, the Board shall obtain from the petitioners postdated cheques for the payment of taxes at import stage under the Act and the Ordinance, as security, for goods destined for utilization and consumption in FATA or PATA. The postdated cheques shall be returned to the petitioners upon production of consumption certificates duly issued by the concerned commissioners, as specified in Notification dated 28.2.2011. It will be the liability of the petitioners to approach the respondents for the issuance of consumption certificates.

5. The apprehensions of the FBR in this regard are not without justification. The menace of tax evasion in collaboration with the government official is known to all. The Apex Court in the case of **Messrs Elahi Cotton Mills LTD and others vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others** (2016 PTD 1555) has also elaborately considered various aspect of this issue. The relevant paras for reference are reproduced as under:-

“In the scenario of the corruption obtaining in Government and semi-Government Departments and

so also to curb the dishonest tendency on the part of the tax-payers to evade the payment of lawful taxes by using unfair means, the Legislature is bound to adopt modern and progressive approach with the object to eliminate leakage of public revenues and to generate revenues which may be used for running of the State and welfare of the people”.

6. After 25th amendment in the Constitution, the trade community has raised voice for continuance of the said exemption from imposition of income tax and sales tax. The Federal Government through SRO.1212 (1)/2018 dated 05.10.2018 and SRO. 1213(1)/2018 dated 05.10.20218 had allowed the said exemption to the resident/domicile of the erstwhile FATA/PATA. Similarly, by inserting entry No. 151 and 152 in the 6th Schedule of the Sales Tax Act, 1990, a mechanism was provided for availing exemption of the sale tax on import of goods which were meant for its consumption in FATA. The said entries are reads as under:-

*“151. (a) Supplies; and
(b) imports of plant, machinery, equipment for installation in tribal areas and of industrial inputs by the industries located in the tribal areas, as defined in the Constitution of Islamic Republic of Pakistan,-
as may till 30th June, 2023, to which the provisions of the Act or the notifications issued thereunder, would have not applied had Article 247 of the Constitution not been omitted under the Constitution (Twenty-fifth Amendment) Act, 2018 (XXXVII of 2018):*

Provided that, in case of imports, the same shall be allowed clearance by the Customs authorities on presentation of a post-dated cheque for the amount of sales tax payable under the Sales Tax Act, 1990, and the same shall be returned to the importer after presentation of a consumption or installation certificate, as the case may be, in respect of goods imported as issued by the Commissioner Inland Revenue having jurisdiction:

Provided further that if plant, machinery and equipment, on which exemption is availed under this

serial number, is transferred or supplied outside the tribal areas, the tax exempted shall be paid at applicable rate on residual value.

152. Supplies of electricity, as made from the day of assent to the Constitution (Twenty-fifth Amendment) Act, 2018, till 30th June, 2023, to all residential and commercial consumers in tribal areas, and to such industries in the tribal areas which were set and started their industrial production before 31st May, 2018, but excluding steel and ghee or cooking oil industries”.

7. Even after the said exemption through SROs *ibid*, the FBR was still reluctant to provide exemption to the trade community, who would import raw material for consumption in the FATA and in this regard a good number of traders have approached this Court. However, the issue of safe transportation and avoiding the leakage of public Revenue still remained the concern of FBR as they had no mechanism for ensuring that the goods imported by a manufacturing unit located at FATA would be solely consumed in the FATA. This Court while dealing with the petitions filed by the trade community from erstwhile FATA impugning the conduct of the respondents/denial of the said exemption from tax through judgment passed in Writ Petition No. 2009-P/2020 dated 24.11.2020 has given the following declaration/direction:

“In view of the above, we, while disposing of these petitions, hold that:

a. The profit and gain/income of the present petitioners from their business activities solely limited within the territorial limits of erstwhile FATA is immune from payment of income tax, during the life of SRO N. 1213(1)/2018 dated 05.10.2018.

- b. *The import of the Present Petitioners for home consumption (industrial units located at erstwhile FATA) is not liable to the impost of income tax.*
- c. *The present petitioners are required to obtain exemption certificate u/s 159 of the Ordinance from the Commissioner Inland Revenue/FBR for availing the said exemption.*
- d. *The Commissioner shall grant the exemption certificate to the Petitioners if they fulfil the required criteria as provided in SRO No. 1213(1)/2018 dated 05.10.2018”.*

In the meanwhile, the respondents have issued the following Notifications whereby a procedure for clearance of goods imported by the industrial of erstwhile PATA/FATA was prescribed.

*“GOVERNMENT OF PAKISTAN
(REVENUE DIVISION)
FEDERAL BOARD OF REVENUE*

C.No. 2(2)/L&P/2004 Islamabad, the 25th February, 2021

CUSTOMS GENERAL ORDER NO. 01 OF 2021-04-09

SUBJECT: AMENDMENTS IN CUSTOMS GENERAL ORDER NO. 12 OF 2002 DATED 15.06.2002

The Federal Board of Revenue is pleased to direct that the following further amendments shall be made in Customs General Order No. 12 of 2002 dated the 15th June, 2002, namely:-

In the aforesaid order, after paragraph 116, the following new paragraph shall be inserted, namely:-

“117.PROCEDURE FOR CLEARANCE OF GOODS IMPORTED BY INDUSTRIAL UNITS OF ERSTWHILE FATA/PATA

In order to ensure safe and secure transportation of the raw material imported under SROs 1212(1)/2018 & 1213 (1)/2018 both dated 5th October, 2018, which grants exemption of leviable Sales Tax and Income Tax at import stage, if imported by industrial units, located in erstwhile FATA/PATA, following procedure is prescribed in respect of goods/raw materials imported thereof:-

- (i) On importation of goods/raw materials intended for use in*

industrial units availing the afore-referred benefits, TP will be filed at Karachi.

- (ii) Goods will be transported through bonded carriers only;*
- (iii) The goods and raw materials shall be cleared at the nearest dry port i.e. Azakhel and Peshawar;*
- (iv) The containers/vehicles carrying goods/raw materials meant for consumption in these industrial units shall be monitored in terms of Tracking and Monitoring of Cargo Rules, 2012 from Karachi to Peshawar and then to factory premises;*
- (v) The industrial units availing the exemption shall be subjected to annual audit regarding input and output and other parameters to be determined by the Directorate General of Post Clearance and Internal Audit”.*

Sd/---

(Wajid Ali)

Secretary (Law & Procedure)

*Government of Pakistan
Revenue Division
Federal Board of Revenue
Inland Revenue

C. No. 7(1)TIPU/IR/2020

Islamabad, the March 1, 2021

*Circular No. 09 of 2021 – Operations
(Inland Revenue/Customs)*

Subject: Mechanism to be adopted for the release of Consignment of FATA/PATA Residents Stuck-up at the Karachi Ports

A meeting was held under the Chairmanship of the Chairman, FBR with Inland Revenue-Operations and Customs Operations Wings to sort out the issues of imported goods of FATA/PATA residents stuck-up at Karachi Ports, Consumption/Installation Certificates, Postdated Cheques and Exemption Certificates under Section 148 of the Income Tax Ordinance, 2021.

2. After thorough deliberations between the Chairman, Member (IR-Operations) and Member (Customs-Operations) following mechanism was devised for the release of consignments of FATA/PATA residents stuck-up at the Karachi Ports:-

- (i) The stuck-up containers are to be released by Customs authorities against Postdated Cheques (PDCs) and sent to their destination (FATA/PATA) under standard tracker mechanism.*
- (ii) The Collector Customs (Enforcement & Compliance), Peshawar, will issue detention orders of the raw materials effective from day the consignment reaches the manufacturing premise of importers.*
- (iii) The importer/manufacturer will be responsible to take the import documents alongwith detention order to the*

CIR Corporate Zone, RTO, Peshawar and make arrangements to have the manufacturing premises/raw material/machinery/goods imported verified.

- (iv) The CIR Corporate Zone, RTO, Peshawar will be liable to verify/undertake physical visit as conducted by the importer/manufacturer to the manufacturing premises where the goods are kept under detention, and allow the raw material to be consumed/utilized in writing.*
- (v) The CIR, Corporate Zone, RTO, Peshawar will ensure the monthly stock-taking of the raw materials to consumed in the production of manufactured goods by these manufacturing units. This stock-taking will facilitate in issuance of the Consumption Certificate under S. No. 151 of the Sixth Schedule of the Sales Tax Act, 1990.*
- (vi) The residents of FATA/PATA will apply for tax exemption certificates under section 159 of the Income Tax Ordinance, 2001 for the import of raw material/machinery in light of the Honorable Peshawar High Court, Mingora Bench (Dara-ul-Qaza), Swat's decision dated 24.11.2020.*

3. Commissioner Corporate, RTO, Peshawar and Collector Customs (Enforcement & Compliance), Peshawar would keep a close liaison to successfully implement the laid down mechanism.

Sd/---

*Dr. Nasser Janjua
Chief (IR-Analysis)*

8. It is the contention of the learned counsel for the petitioner that issuance of these notifications are not only beyond the authority of its maker but amounts to illegal interference in their trade activities. Therefore, we would first examine the authority of FBR as to whether it is competent to have issued the said notifications. The FBR is established under Section 3 of the Federal Board of Revenue Act, 2007 ("**Act of 2007**"). FBR is the successor of the Central Board of Revenue ("**CBR**"), which was established on 1st April, 1924 through Central Board of Revenue Act, 1924. In 1944, the CBR was put under the Revenue Division

with the Ministry of Finance until, 1960, when on the recommendation of “Administrative Reorganization Committee” the CBR was made into a Division of Ministry of Finance. Under the Act of 2007, indeed FBR is a State instrumentality responsible for enforcing fiscal laws and collecting revenue for the Federation. The perusal of Section 4 of Act of 2007 would show that main functions of FBR, inter alia, are (i) formulation and administration of fiscal policies (ii) to make regulations, polices, programs, strategies in order to carry out the purposes of this Act; (iii) levy and collection of federal duties, taxes and other levies; (iv) quasi judicial functions of deciding taxation cases/another appeals.

Subsection (ii) of Section 4 clearly envisages that the FBR where deemed appropriate may issue statutory rules and orders (SROs), orders, circulars and instruction for the enforcement of any of the provision of the fiscal law. The impugned Customs General Order No.01 of 2021 and Circular No. 09 of 2021 appear to be policy decision of the Federal Board of Revenue ensuring the transportation of goods right from Karachi till its safe transit to the dry port at Peshawar or the industrial unit of the consumer/importer. These circulars neither offend any statutory right of the present petitioner nor the petitioner could refer to any law or rules contradicting the said

policy rather this police appears to be in conformity with the concerns of the Apex Court highlighted in the case of *Messrs Elahi Cotton Mills* for eliminating leakage of public revenue.

Therefore, we are not swayed and impressed by the arguments of learned counsel for the petitioner that the impugned Customs General Order/SRO is either contrary to any law, fundamental rights of the petitioners guaranteed under the Constitution or beyond the authority of the Federal Board of Revenue.

9. The close perusal of impugned circular/order would show that the object of issuance of this circular/order is to ensure the safe transportation of imported goods, which are destined for its consumption at the erstwhile tribal area, lest it may not reach into the hands of those industrial units, which are located in the settled area. At this juncture, we may add that the other industries located in specialized zone enjoying similar exemptions are subjected to similar fetters/contours relating to the import of raw material. His Lordship Yahya Afridi J. as then he was has referred to all such restrictions in para-14 of the judgment delivered in *Messrs Taj Packages Company (Pvt) Ltd (supra)*, which reads as under:-

Notification	Nature of Exemption	Condition for ensuring consumption
SRO 450(I)/2001 dated 18.6.2001. The Customs Rules, 2001 Customs Rules,		

	<p>2001 are general in nature, the below are various regimes which are in practice whereby goods clearing, forwarding and transporting from Port of Entry say at Karachi to upcountry warehousing or consumption without payment of duties and taxes and any of the regimes with suitable amendments / adjustment can be adopted by the Revenue to ensure tax enforcement of the constitutional immunity under Article 247(3) of the Constitution from taxes leviable under the Sales Tax Act, 1990 and Income Tax Ordinance, 2001 to the residential and consumer of Tribal Area.</p>			
	<p>1. Warehousing Rules 342 to 363 ibid Sections 86 to 115 of the Customs Act, 1969.</p>	<p>In warehousing duties and taxes are DEFERRED under section 80 ibid at the port of entry and finally, the duties and taxes are paid at the place of manufacturer at the time of clearance of consumption under section 104 ibid.</p>	<p>The person must be licensee of bonded warehouse granted by the Collector Customs of its jurisdiction under section 13 ibid. Goods are transported under Bond which released on reaching the goods at warehouse.</p>	
	<p>2. Public Bonded Warehouse</p>	<p>Do</p>	<p>Do</p>	
	<p>3. Transshipment</p>	<p>Is the facility from</p>	<p>The goods are allowed</p>	

	Rules 236 to 338 ibid sections 121 to 126 ibid	allowing transporting of goods from one Customs Station to the other generally from the port of entry to the other Dry Ports elsewhere in the Country without payment of Duties and Taxes.	to be transporting from one custom station to the other only by license bonded career which are Pakistan Railway, NLC and other licensee private bonded career who are responsible for carrying the goods.
	Export Related Regime: Export related regime are closely akin to the requirement of Tribal Area, the consume good imported for consumption in foreign Territory or non-tariff territory.		
	4. Export- Processing Zone Rules 225 to 236 ibid	Export Processing Zone ("EPZ") is a non-tariff area established within the Tariff Area separated by clear demarcation. The raw material or machinery are imported free of duties and taxes and goods manufactured out of it mostly exported from Pakistan or exported to Pakistan.	It is a kind of Customs Station where the goods are transhipped from the port of entry to the EPZ and finished goods to exporting customs port. Imports are made against Bond.
	5. Manufacturing into Bond Rules 237 to 263 ibid	This is again carrying the same feature as of bonded warehouse which facility is normally extended to the export oriented industries with only differentiating feature is that it carrying a concept of no payment of duties and taxes at import and no duty drawback or refund at export.	The conditions of transportation are same as of warehousing. The rest of the features are same of the DTRE Rules which are delineated in the next section. Imports are made against Bond.
	6. Duty and	It is more liberal	The person entitled for

	<p>Taxes Remission Rules 296 to 307 ibid</p>	<p>regime of manufacturing into bond, its features are delineated in the next column.</p>	<p>availing DTRE facility should be a sales tax registered person and should make at least 15% value addition and have a valid export contract. The exporter is allowed to make imports and acquire locally manufacture goods without payment of duty and taxes used in this finished product to be exported against postdated cheques/ corporate guarantee. The goods imported or locally acquired shall be utilized in manufacturer of the goods to be exported within 12 months or in such extended period as approved by the competent authority. The person entitled shall apply to the Regulatory Collector of Customs in whose jurisdiction its manufacturing facility is located. That on satisfaction, the Regulatory Collector against the security in form of bond and bank / corporate guarantee to grant license. Prior to approval, Regulatory Collector shall verify manufacturing facility requested for the goods intended to be exported. That on receipt of Application within 3 days issue the Provisional DTRE Approval subject to final determination of the input output ratios to the "Input Out Coefficient Organization (IOCO) or Engineering Development Board (EDB)". The Regulatory</p>
--	--	---	--

			on receipt of the Application within 7 days refer the Application to either IOCO or EDB which has to finally determine the ratios within 30 days. That where after the Regulatory shall issue final approval of DTRE to the Applicant. That no DTRE Application shall be rejected without affording opportunity to the Applicant.
	7. Common Bonded Rules Warehouse (conventional) Rules 279 to 295 ibid	It is carrying all the features of the manufacturing into bond license for export oriented industries, however, it is deferred in because like public bonded warehouse, it can be used by many industries together.	Goods are imported under Bond or Postdated cheques.
	SRO 108(I)/1995 dated 12.02.1995 In exercise of powers conferred by Section 19 of the Customs Act, 1969 and subsection (1) of Section of the Sales Tax Act, 1990 exemption of quantity of equal to one-fourth is exempted from whole of Customs Duty and Sales Tax leviable for a period of five years.	Exemption from Customs Duties and components as are imported for the exclusive manufacturers of goods by recognized industrial units located in approved industrial estate of Gadoon Amazai, NWFP.	<p>i. Suitable in-house capacity to manufacture the goods. ii. Manufacturer shall furnish the list of items that he is manufacturing along with the details of raw material. iii. To prepare a deletion program spreading over a maximum period of five years within which period he shall achieve a minimum deletion target to the extent of 75 percent of the C&F value of the inputs of manufacturer item. (2)</p> <hr/> <p>iv. Declaration by the manufacturer to the effect that raw materials and components have been imported in accordance with his</p>

			entitlement in terms and conditions. v. Bank Guarantee equivalent to the customs duty and sales tax in respect of which exemption is sought. vi. Maintenance of the record of raw materials and components and items manufactured out of them. vii. Apply for discharging of bank guarantee within one year of date of importation. viii. Maintain record of the sales of the items manufactured under this Notification.
	<p>SRO 71(I)/1995 dated 19.01.1995</p> <p>(a) The industries excluding those specified in the table in this SRO which commence commercial operation upto the 31st December, 2002 in Special Industrial Zone and whose letter of credit are opened upto 31st January 1996. (b) All industries that are not already existing till the date of this notification in Pakistan and are setup in special Industrial Zones shall be exempt for a period of ten years from whole of customs duty and sales tax on import of raw materials which are not produced</p>	<p>Exemption from twenty-five percent of the Customs Duty leviable under first schedule of Customs Act, 1969 on import of such raw materials which are not produced locally for the manufacture of their goods. Exemption of whole Custom Duty and Sales Tax on import of raw materials which are not produced locally.</p>	<p>i. The project shall cost more than US\$ ten million and should employ minimum one hundred person. ii. Suitable in-house facilities for manufacture of goods. iii. Furnish list of goods he is manufacturing or intends to manufacturing to the person authorized. iv. Written declaration of the Bill of entry that raw materials imported according to conditions. v. undertaking to collector customs to abide by the conditions given in this notification. vi. To maintain record of raw materials and components manufactured as prescribed by CBR. ix. Shall maintain a record of the sale of manufactured goods and machinery and shall produce the same on demand of competent authority. x. To communicate the</p>

	<p>locally provided the letter of credit for their plant and machinery are opened upto the 31st of January and commercial operations are commenced upto the 30th June, 1999.</p>		<p>consumption of imported goods within one month of consumption. If not consumed within 180 days than custom duty and taxes to be paid and plausible reason shall be given and seek extension for a reasonable period.</p>
	<p>S.R.O. 530(I)/89 dated 03.06.1989</p>	<p>Exemption from customs duty and sales tax on Plant and machinery.</p>	<p>The importer shall, at the time of importation, by documents in his possession, satisfy the Collector of Customs that the plant and machinery have been imported for projects located in the areas specified in the Table and shall furnish an indemnity bond in the FORM set out below to the extent of customs duties and sales tax exempted under this Notification. The said indemnity bond will be discharged subsequently on production of a certificate from the Assistant Collector, Customs and Central Excise, the Secretary Kashmir Affairs Division, or an officer authorized by him in this behalf or the Resident Commissioner for Northern Areas, as the case may be, the effect that the plant and machinery as declared to the customs have been duly installed in an area specified in the Table and such other evidence as the Collector of Customs may require and after such enquiry as he deems fit, in order to establish such</p>

			<p>installation; the importer shall, at the time of importation of the plant and machinery, furnish a bond to the Collector of Customs to abide by the conditions laid down in this Notification failing which he would pay the amount of customs duties and sales tax due and make payment of any penalties that may be imposed in this behalf. The certificate of installation referred to in such paragraph (2) shall be submitted to the Collector of Customs not later than one year from the date of importation of such plant and machinery and if the plant and machinery are removed to an area other than that for which these have been imported within a period of ten years from the date of installation; the amount of customs duties and sales tax exempted under this notification and any penalties that may be imposed in this behalf shall be recovered under section 202 of the Customs Act, 1969 (IV of 1969).</p>
	<p>SRO 1125(I)/2011 dated 31.12.2011 It is zero rated regime under the Sales Tax Act, 1990 for 128 Article for five sectors for being export oriented</p>	<p>The benefit of this notification shall be available to every such person doing business in textile (including jute), carpets, leather, sports and surgical goods sectors, who is registered as:- (a) manufacturer; (b) importer; (c) exporter; and (d) wholesaler;</p>	<p>On import by registered manufacturers of five zero-rated sectors mentioned in condition (i) above, sales tax shall be charged at the rate of zero per cent on goods useable as industrial inputs; The goods imported by, or supplies made to manufacturers, other than manufacturers mentioned in condition (i) above, shall be</p>

			<p>charged , sales tax at the rate of five per cent; The commercial importers, on import of goods useable as industrial inputs, shall be charged sales tax at the rate of two per cent along with one per cent value addition tax at the import stage, which will be accountable against their subsequent liabilities arising against supply of these goods to the zero-rated sector at the rate of zero per cent or to non-zero-rated sectors or unregistered persons at the rate of five per cent as the case may be. The balance amount shall be paid with the monthly sales tax return or in case of excess payment shall be carried forward to the next tax period;</p>
<p>10. Having said that the issuance of the aforesaid notification was within the competence of FBR then this Court is left with very less jurisdiction to interfere in the policy matters of a competent authority. The Apex Court in the case of <u><i>Dossani Travels Pvt. Ltd and others vs. Messrs Travels Shop (Pvt) Ltd and others (PLD 2014 Supreme Court 1)</i></u> has observed that in absence of any illegality, arbitrariness or established malafides, it is not open for the High Court to annul the policy framed by the competent authority. Similarly, in the case of <u><i>The Secretary Punjab Public Service Commission, Lahore and others vs.</i></u></p>			

Aamir Hayat and others (2019 SCMR 124), the Apex Court has observed that:-

“We also notice that the High Court lost sight of the fact that it is settled law that Courts cannot interfere in lawful exercise of discretion by the concerned departments and substitute lawful decisions of the departments, by their own. The jurisdiction of the High Court under Article 199 of the Constitution is limited to the extent of ensuring that state functionaries do what they are required by law to do and refrain from doing what they are prohibited by law to do. Unless an act or omission of a state functionary falls within the above parameters it is not liable to be interfered with. Such interference would constitute overstepping its jurisdiction by the High Court and entering the domain of the executive which is contrary to the concept of trichotomy of powers as per the scheme of the Constitution”.

11. Moving on to the last limb of the arguments of learned counsel for the petitioner that the impugned policy/order offends the mandate of Article 18 of the Constitution. No doubt, the right of free trade, business or profession is guaranteed by Article 18 of the Constitution but the same right is not absolute and it can be subjected to reasonable restriction and regulation as may be prescribed by law. In our understanding the impugned Customs General Order No. 01 of 2021 and Circular No. 09 of 2021 being issued by a competent authority does not amounts unnecessary fetter on the business activities of the present petitioner but prima facie is aimed to protect the public revenue from being leakage and appears to be a first step regulating the foolproof transportation/escort of the goods imported solely for

the purpose of consumption in the erstwhile FATA.

12. In view of the above, we find no merits in this petition, which is accordingly dismissed in *limine* along with Interim Relief.

Judge

Judge