ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1768 of 2022
M/s Khyber Tobacco Company Limited
Versus
The Federal Board of Revenue and others

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	20.05.2022	**Mr. Usman Jillani, Advocate for the petitioner.**

Through the instant writ petition, the petitioner, M/s Khyber Tobacco Company Limited, impugns:-

(i) Sales Tax General Order No.8 of 2022 (“S.T.G.O.”) dated 18.01.2022 issued by the Federal Board of Revenue (“F.B.R.”) under Section 40C(2) of the Sales Tax Act, 1990 (“the 1990 Act”) and Rule 150ZF of the Sales Tax Rules, 2006 (“the 2006 Rules”), whereby a deadline of 30.04.2022 was fixed for the implementation of the track and trace system for the tobacco sector;

(ii) Addendum dated 26.04.2022 issued by the F.B.R., whereby the said deadline of 30.04.2022 was extended to 20.05.2022;

(iii) Notice dated 16.05.2022, whereby the F.B.R. called upon the petitioner not to remove tobacco products from the production site without affixation of tax stamps by the extended deadline of 20.05.2022. Furthermore, the petitioner was required to place purchase order and receive deliveries of tax stamps so that the required tax stamps are available with the petitioner for affixation on cigarette packets / packages; and

(iv) Letter dated 18.05.2022 from the F.B.R. to the Chief Commissioners at Karachi, Islamabad and Peshawar informing them that no tobacco products shall be allowed to be removed from production site / factory premises without affixation of tax stamps beyond the extended date of 20.05.2022. Furthermore, a direction was issued that no tobacco product shall be removed from factory premises without tax stamps. The Chief Commissioners were requested to ensure compliance with the said directions of the F.B.R. to depute staff in the tobacco manufacturing units falling in their respective jurisdictions in order to monitor that no tobacco product shall be removed from the factory premises / production sites without affixation of tax stamps.

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2. The record shows that a tri-partite agreement was executed on 11.03.2022 between the petitioner, the F.B.R. and respondent No.3 (Consortium of Authentix Inc., AJCL (Pvt.) Ltd. and MITAS Corporation) under which the petitioner, as a manufacturer and importer of tobacco, having registration with the F.B.R. agreed to participate in the track and trace initiative and to implement the track and trace system. The responsibilities of the petitioner are set out in clause 2 of the said agreement, which included the provision and installation of a tax stamper or stamping / conveyor system. Furthermore, the petitioner was obligated to provide to respondent No.3 with a forecast setting out the number of Unique Identification Markings (tax stamps) required for the following quarter not later than 15th of December, March and September each year. The petitioner was also required to place an order by means of Management Information System that manages ordering, payment and invoicing with respect to each order of tax stamps.

3. Learned counsel for the petitioner submitted that the petitioner, in compliance with its obligations under clause 2(a)(xiii) of the tri-partite agreement, placed an order for four tax stampers from two different manufacturers prior to the execution of the said agreement; that the said order was placed in February, 2022 i.e., prior to the execution of the tri-partite agreement; that since the F.B.R. had attached the petitioner's bank accounts, payment to the manufacturers of tax stampers was delayed; that on 18.01.2022, the F.B.R. issued S.T.G.O. notifying that no tobacco products shall be allowed to be removed from the

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production site, factory premises or manufacturing plant without affixation of tax stamps / unique identification marking with effect from 30.04.2022; that this date was subsequently extended to 20.05.2022 vide addendum dated 26.04.2022; that the deadline of 20.05.2022 is restrictive in nature and the petitioner's failure to abide by the said deadline may be met with coercive action; that respondent No.3 has not been able to deliver tax stamps to the petitioner; that if the petitioner is not able to meet the deadline for the installation of the tax stampers, it would not be allowed to remove any manufactured products from its factory; and that the said restriction would cause irreparable loss to the petitioner as well as to the national exchequer. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

4. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

5. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraph 2 above, and need not be recapitulated.

6. It is not disputed that Section 40C(2) of the 1990 Act read with Rule 150ZF of the 2006 Rules empowered the F.B.R. to notify the date for the implementation of electronic monitoring of production and sales of goods, including tobacco, in the manner prescribed in the law on all manufacturing sites.

7. The petitioner was well aware of the S.T.G.O. dated 18.01.2022 issued by the F.B.R. under Section 40C(2) of the 1990 Act and Rule

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150ZF of the 2006 Rules notifying that no tobacco products shall be allowed to be removed from the production site, factory premises or manufacturing plant without affixation of tax stamps / unique identification marking with effect from 30.04.2022 which were to be obtained from respondent No.3.

8. Fully cognizant as to the deadline for the implementation of the track and trace system for the tobacco sector, the petitioner entered into a tri-partite agreement dated 11.03.2022 with F.B.R. and respondent No.3, clause 2(a)(xiii) obligated the petitioner to provide and install a tax stamper or stamping / conveyor system.

9. Through an addendum dated 26.04.2022, the F.B.R. extended the said deadline from 30.04.2022 to 20.05.2022. In paragraph 6 of the writ petition, it has been pleaded that the F.B.R. *"upon insistence of the petitioner issued an Addendum dated 26.04.2022, whereby the date of implementation i.e. 30.04.2022 provided in the impugned order was extended to 20.05.2022."*

10. Vide letter dated 16.05.2022, the F.B.R. cautioned the petitioner that under the Sales Tax General Order No.8 of 2022 dated 18.01.2022, no tobacco products could be removed from the production site without affixation of tax stamps with effect from 20.05.2022. Furthermore, the petitioner was directed to place purchase orders and receive deliveries of tax stamps so that the required tax stamps are available with the petitioner for affixation on cigarette packets / packages.

11. The petitioner seeks the setting aside of the S.T.G.O. dated 18.01.2022; the addendum dated 26.04.2022 as well as notice dated 16.05.2022

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and letter dated 18.05.2022 from the F.B.R. to the Chief Commissioners at Karachi, Islamabad and Peshawar to ensure compliance with the requirements of the said S.T.G.O. dated 18.01.2022.

12. The deadline for the implementation of the track and trace system is 20.05.2022. For this Court to allow the petitioner to sell tobacco products without the affixation of tax stamps beyond 20.05.2022 would be tantamount to nullifying the S.T.G.O. dated 18.01.2022. The mere fact that the petitioner could not pay the manufacturer of the tax stamper due to the petitioner's accounts being attached by the F.B.R. for reasons that are not before this Court cannot furnish a plausible ground to relieve the petitioner from its contractual obligations to have all the necessary equipment installed at its premises so as to ensure the implementation of the track and trace system by the deadline of 20.05.2022.

13. The petitioner chose to file the instant writ petition on 19.05.2022 i.e., one day prior to the deadline for the implementation of the track and trace system for tobacco sector. No plausible explanation was given for the delay in filing of the instant petition given the fact that the extended deadline of 20.05.2022 had been imposed through addendum dated 26.04.2022.

14. In view of the above, I do not find any merit in the instant petition, which is dismissed in *limine*. Office is directed to transmit a copy of this order to the Chairman, F.B.R.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham*

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