

Is Deferment Of Price Permissible On Custom Made Items?

Ref: IEC.0072

Date:27-09-23

What do Islamic scholars say concerning the following: I sell garments and make different garments based on customer orders. Before I finalize a deal, I calculate the cost for each piece and clearly state to the customer the amount each piece will cost. However, since I do not have the money to buy materials like cloth and other necessary items, nor do I have money to cover other expenses for making the garments, I take some cash in advance and the rest of the amount is given after the delivery or after some time. What is the Sharia ruling for me if I make deals in this way?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الجواب بعون الملك الوهاب اللهم هداية الحق والصواب

Manufacturing garments on order is called Istisna (the Manufacturing contract). It is necessary to mention the genus (Parent category) and kind (Subcategory) of the manufactured item along with its required specifications and quantity in such a way that the item becomes clear. Similarly, deciding on a specific price is also necessary. Therefore, both parties are required, at the time the order is placed, to decide on the kind of fabric to be used, the design, the number and size of pieces to be made, and the cost for manufacturing these garments, along with other necessary details which might cause dispute if not mentioned. Once the above-mentioned details are decided, the contract will be valid.

As far as receiving the price in advance is concerned, it is

permissible in a Manufacturing contract to receive the entire price or a part of it in advance after mutual understanding, and the rest of the price may be paid later. Even the entire price may be deferred, but a ruling must be known: if the deal is made such that the entire price or a part of it will be paid later, then it will be necessary to decide the time of payment. The deal will be invalid (فاسد) if the time of payment is unknown.

The book Raddul Muhtar defines Istisna (Manufacturing contract) with following words:

“طلب العمل منه فى شىء خاص على وجه مخصوص”

Translation: Having a specific item made by someone in a specific manner is called Istisna.

(Raddul Muhtar, Vol. 5, Page 223, Beirut)

It has been stated in the book Majallatul Ahkam:

“كل شىء تعمول استصناعه يصح فيه الاستصناع على الاطلاق”

Translation: Once Istisna for an item becomes an established practice among people, the manufacturing contract for such items becomes valid unconditionally.

(Majallatul Ahkam Ma Sharhihee, Vol. 1, Page 423, Darul Jeel)

The book Raddul Muhtar quotes from the book Baday:

“من شروطه: بيان جنس المصنوع ونوعه وقدره وصفته وان يكون مما فيه تعامل-”

Translation: Following are from amongst the conditions for the Istisna: The genus and kind of to be manufactured item must be specified along with its quantity and quality. Also, the manufactured item must be from amongst the items for which Istisna has become an established practiced

(Raddul Muhtar, Vol. 5, Page 223, Beirut)

In a manufacturing contract, the attributes or qualities of the item to be manufactured must be mentioned explicitly so that the item is clearly defined and no ambiguity remains. Fatawa Hindiyyah states:

“انما جاز الاستصناع فيما للناس فيه تعامل اذا بين وصفا على وجه يحصل التعريف“

Translation: The istisna for the item for which it has become an established practice, will only be permissible if all necessary attributes of the item are explicitly mentioned and the item becomes known.

(Fatawa Hindiyyah, Vol. 3, Page 207, Peshawar)

While addressing the rulings related to receiving payment in advance or deferring it in a manufacturing contract, the book Majallah and its commentary, Sharh Durur al-Hukkam, state:

“لا يلزم فى الاستصناع دفع الثمن حالا اى وقت العقد،، فكما يكون الاستصناع صحيحا بالتعجيل
يكون صحيحا بتأجيل بعض الثمن، او كله“

Translation: Payment of price in the contract of Istisna at the time of making the contract is not necessary. Just as early/advance payment is allowed in istisna, deferment of entire payment or part of it is also allowed.

(Durur al-Hukkam Sharh Majallatul Ahkam, Vol. 1, Page 424, Darul Jeel)

If payment of price is deferred, then the time of payment must be fixed. It has been stated in the book Multaqal Abhur:

“(يصح) موجل باجل معلوم“

Translation: the istisna is valid with deferred payment if time of payment is fixed

The book Majma-ul-Anhar comments on the above statement as follows:

“جهالة الاجل تفضى الى المنازعة فالبايع يطالب فى مدة قريبة والمشتري ياباها فيفسد“

Translation: if time of payment is unknown, it will lead to dispute because seller will demand the payment earlier while buyer will refuse to do so. This sort of istisna is invalid (فاسد).

Addurrul Muntaqa a commentary on the book Multaqal Abhur states:

”ولا يثبت الاجل الا بشرط“

Translation: The deadline for the payment will not be set unless it is specified as a condition.

(Majma-ul-Anhar Ma Addurrul Muntaqa Fi Sharhi Multaqal Abhur, Vol. 3, Page 13. Quetta.)

Ala Hazrat Imam-e-Ahle-Sunnat Imam Ahmed Raza Khan

رحمة الله عليه writes in Fatawa Razaviyya:

کسی سے کوئی چیز اس طرح بنوانا کہ وہ اپنے پاس سے اتنی قیمت کو بنادے، یہ صورت استصناع کہلاتی ہے کہ اگر اس چیز کے یوں بنوانے کا عرف جاری ہے اور اس کی قسم و صفت و حال و پیمانہ و قیمت وغیرہا کی ایسی صاف تصریح ہو گئی ہے کہ کوئی جہالت آئندہ منازعت کے قابل نہ رہے۔۔۔ یہ عقد شرعاً جائز ہوتا ہے۔

Translation: Having something manufactured by someone on a specific price will be (a contract of) Istisna provided this sort of contract (of manufacturing) has become an established practice and all the details like kind, quality, condition, measurement and price etc. are so clearly mentioned that there remains no room for any future dispute.....This contract is permissible.

(Fatawa Razaviyya, vol. 17, page 597-598, Raza Foundation)

والله اعلم عز وجل ورسوله اعلم صلى الله تعالى عليه وآله وسلم

Written by

Abu Muhammad Mufti Ali Asghar Attari Madani

20 Shawwal-ul-Mukarram 1444 Hijri/ May 11, 2023

Translated by Maulana Abdul wajid madani