IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas

Special Sales Tax Reference Application No.35 of 2013

Applicant	M/s. Unilever Pakistan Ltd., Through Mr. Sattar Silat, Advocate
Respondent:	The Commissioner of Inland Revenue, LTU, Through Dr. Shahnawaz, Advocate
Dates of hearing:	**19.09.2023 & 26.09.2023**
Date of order:	**26.09.2023.**

O R D E R

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Order dated 15.11.2012 passed by the Appellate Tribunal, Inland Revenue (Pakistan), at Karachi in Sales Tax Appeal No. K-568/KB-2009, proposing various questions of law. However, while arguing the matter, the learned Counsel has only pressed question No.(v) which reads as under: -

> v) Whether the applicant having acted, invested and committed on the basis of the amnesty notification being SRO 461(I)/99 dated 9.4.1999 read with the letters dated 23.04.1999 and 18.05.1999 of the Collectorate of Sales Tax any subsequent demand of surcharge is barred by the doctrine of promissory estopel?

2. Learned Counsel for the Applicant submits that after issuance of Show Cause Notice on 31.01.1995, no Order-in-Original was passed until 29.06.2000 and before that an amnesty scheme introduced vide SRO 461(I)/1999 dated 09.04.1999, whereby, additional tax and penalty was exempted upon payment of the principal amount on or before 31.05.1999, was availed by the applicant. According to him notwithstanding this payment of principal amount and availing of the amnesty scheme, the adjudicating authority while passing the Order-in-Original had imposed a surcharge under Section 34 (d) of the Sales Tax Act, 1990 ("**Act**"), whereas, the Appellate authorities have also agreed with such findings. He submits that surcharge was leviable under Section 34(d) of the Act in question; but was omitted through Finance Act, 1996 w.e.f. 01.07.1996, and therefore, the adjudicating authority as well as the appellate forum were misdirected in law by imposing the surcharge in question. He lastly submits that the Tribunal

has miserably failed to give its own finding or reasoning on the issue raised by the applicant, and therefore, the proposed question be answered in favour of the applicant.

3. On the other hand, the department's Counsel has argued that the transaction in question relates to the period when surcharge was applicable, and therefore, the contention of the applicant's Counsel is incorrect. According to him under the amnesty scheme surcharge was not exempt; hence no case is made out. In support he has relied upon the cases reported as ***Oxford University Press Vs. Commissioner of Income Tax, Companies Zone-I, Karachi and others*** **(2019 SCMR 235)** and ***Messrs Getz Pharma (Pvt.) Limited through Authorized person and others Vs. Federation of Pakistan through Secretary and others*** **(2019 PTD 2209).**

4. We have heard both the learned Counsel and perused the record. It appears that on 31.01.1995 a Show Cause Notice was issued to the Applicant on the ground that some inadmissible input tax was claimed pertaining to the period from 1983 to October, 1990. The applicant contested the matter; but the same remained pending and before any Order-in-Original could be passed, the principal amount was deposited claiming amnesty under SRO 461(I)/1999 dated 09.04.1999. It further appears that despite payment of principal amount, the adjudicating authority while deciding the matter in respect of some other taxpayer, also finalized the case against the present applicant as well, by holding that surcharge under Section 34 of the Act has to be paid. Being aggrieved, an appeal was preferred before the Appellate Tribunal and after remand of the matter once again the adjudicating authority passed the Order-in-Original on 31.05.2008. The operative part of the said order reads as under: -

> "22. In view of above detailed discussion, the claim of input tax was not admissible and the charge leveled in show cause notice stand established. Therefore, an amount of sales tax of Rs.1,419,168/- along with additional tax and surcharge should be recovered. However, the respondent has paid the principal amount under amnesty of waiver from additional tax vide notification No. SRO 461(I)/99 dated 09.04.1999 read with notification No. SRO 520(I)/1999 dated 30.04.1999. As the said amnesty scheme does not cover the waiver against payment of surcharge clarified vide Board letter C. No.1(33)STP93/Pt-1 dated 12.09.1998, therefore an amount of Rs.1,442,442/- on account of surcharge now stands recoverable."

5. The Applicant preferred an appeal before the Tribunal and through impugned Order, the appeal has been dismissed; whereas, the operative part of the Tribunal's Order reads as under: -

> "2. Rival parties have been heard and the case record examined. It is evident from the record that in terms of Section 7(1)(2) of the Sales Tax Act, 1990 read with CBR instructions bearing No.1/10/91-STB dated 27.04.1991, the claim of the appellant was not entertained. The appellant has failed to show us that how his claim does falls outside the scope of the said law and instructions of the CBR. The appellant has failed to provide any such evidence or legal authority on the basis of which he can claim his input claim. In these circumstances, there is no merit in this appeal and the same is accordingly rejected."

6. Perusal of the above order passed by the Tribunal reflects that it has miserably failed to adjudicate the issue in hand as to whether after availing the amenity scheme, the applicant was still liable for payment of any surcharge under Section 34 (ibid). However, since the matter pertains to 2013, we are not inclined to remand it back to the Tribunal as the proposed question is still arising out of the order and the memo of appeal filed by the applicant.

7. Insofar as the order passed by the adjudicating authority is concerned, from perusal of the operative part as above, it reflects that it has relied upon some circular of CBR dated 12.09.1998; whereby, some clarification was issued in respect of some amnesty scheme. However, the amnesty scheme in question was promulgated much later in time i.e. 09.04.1999, and therefore, without dilating any further on the said circular, we are clear in our minds that any relevance of the said Circular in the present facts and circumstances is misconceived as the amnesty scheme in question was not in existence at that point of time.

8. Levy of surcharge under question was, at the relevant time governed by Section 34 of the Act, which reads as under; -

> "**34. Additional Tax.** Notwithstanding the provisions of section 11. If a registered person fails to pay the tax within the time specified in section 6, he shall, in addition to the tax due, be liable to pay additional tax and surcharge at the following rates:-
> (a) ……..
> (b) …….
> (c) …….

> (d) surcharge at the rate of 1 per cent for every month or part thereof on the total accumulated amount that remains unpaid after the expiry of three months."

9. From perusal of the above it reflects that if a registered person fails to pay the tax within the time specified in Section 6, he shall, in addition to the tax due is liable to pay surcharge at the rate of 1% for every month or part thereof on the total accumulated amount that remains unpaid after the expiry of three months. It further appears that this provision was omitted through Finance Act, 1996 by substitution of Section 34 and admittedly from 01.07.1996, no surcharge is payable on any such outstanding amount. It is a matter of fact that the applicant had paid the principal amount much before passing of the first Order-in-Original on 29.06.2000 by availing the amnesty scheme. The said Scheme provided exemption from additional tax as well as penalties subject to payment of the principal amount before the cut-off date as provided thereunder. It is not in dispute that the applicant had paid the principal amount within such date. Now the question, which arises is that *"Whether while passing the Order-in-Original in the year 2000 could the Adjudicating Authority impose any surcharge when the principal amount of sales tax had already been paid".* In our considered view it could not. The reason being that as and when the principal amount was paid under the amnesty scheme by fiction of law, there was no principal amount outstanding against the applicant, and if it was so, then there was no question of levying any surcharge. It is also a matter of fact that when the principal amount was paid, there was no determined liability against the present applicant and it was merely a Show Cause Notice which was in field, and on such basis no surcharge could have been demanded even otherwise. It becomes due only, when the adjudicating authority, keeping in view the facts and circumstances of a particular case, passes an order imposing additional tax; penalty or for that matter, a surcharge as well. However, insofar as the present case is concerned since surcharge was omitted w.e.f. 01.01.1996, therefore, while passing the Order-in-Original in the year 2000, it could not have been levied or imposed. Secondly, the Board while issuing the amnesty scheme was fully aware that surcharge is no more applicable under the Act; hence no amnesty was provided from payment of any surcharge. It does not appeal to our minds that though a person has been asked to avail an amnesty

scheme and has been exempted from payment of additional tax and penalties; but would still be asked or required to pay any surcharge thereon.

10. Per settled law, the amnesty schemes are to be interpreted liberally in favour of the taxpayer and therefore, even otherwise it does not seem to be the intention of FBR that it would still demand surcharge on the outstanding principal amount of sales tax. Such an interpretation would defeat the very intent and purpose of an amnesty scheme. The spirit and object of the amnesty scheme is to incentivize quick recovery of stuck up tax revenue and is advantageous for the department as the same is voluntarily deposited by the taxpayer, which is in line with the scheme of the amnesty being offered by the department[1]. Additionally, amnesty notification being beneficial subordinate legislation must be viewed liberally in favour of the taxpayer in order to achieve the solitary fiscal object of quick recovery of stuck up tax revenue[2], so that it does not either trap an unwary taxpayer or else otherwise succeeds in taking away with the other hand while giving it by the one[3]. This is notwithstanding the fact that in the instant matter there was even otherwise no determined outstanding principal amount before passing of the first Order-in-Original and therefore, the demand of any surcharge would otherwise be unsustainable.

11. In view of hereinabove facts and circumstances of this case, the proposed question is answered in favour of the Applicant and against the department and as a consequence thereof, this Reference Application is allowed and orders passed by the authorities including that by the Appellate forums are set-aside. Let copy of this order be sent to Appellate Tribunal in terms of sub-section (5) of Section 47 of the Sales Tax Act, 1990. Reference is disposed of in the above terms.

J U D G E

---

[1] Commissioner of Inland Revenue v Mughal Board Industry (2022 SCMR 580)
[2] Commissioner of Inland Revenue v Mughal Board Industry (2022 SCMR 580)
[3] Sheikh Waheed-Ud-Din Industries Pvt Limited v Additional Collector Sales Tax (2006 PTD 336)

J U D G E

Ayaz