IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

MR. JUSTICE MUHAMMAD JUNAID GHAFFAR
MR. JUSTICE AGHA FAISAL

1.	C.P.No.D-6211/2016	M/s Liberty Mills ltd and others	Petitioners
2.	C.P.No.D-187/2017	M/s. N.F.K Exports (Pvt) Ltd and others	Petitioners
3.	C.P.No.D-5604/2016	M/s Multinational Export and others	Petitioners
4.	C.P.No.D-272/2017	M/s Sanaullah Textile and others	Petitioners
5.	C.P.No.D-925/2017	M/s Union Fabrics and others	Petitioners
6.	C.P.No.D-945/2017	M/s Cambridge Garment Ind. And others	Petitioners
7.	C.P.No.D-2400/2017	M/s. Denim Clothing Co. and others	Petitioners
8.	C.P.No.D-2475/2017	International Textile Ltd	Petitioner
9.	C.P.No.D-2486/2017	Mekotex (Pvt) Ltd. and others	Petitioners
10.	C.P.No.D-3045/2017	Sohail Textile Mills and others	Petitioners
11.	C.P.No.D-4824/2017	M/s Global Exports and others	Petitioners
12.	C.P.No.D-6352/2017	Zaman Textile Mills	Petitioner
13.	C.P.No.D-6620/2017	M/s. Fintex Mfg Corp. (Pvt) Ltd	Petitioner
14.	C.P.No.6738/2017	M/s Telecard Ltd	Petitioner
15.	C.P.No.D-7009/2017	Kassim Textile (pvt) Ltd & others	Petitioners
16.	C.P.No.D-7524/2017	Fashion Knit Ind.	Petitioner
17.	C.P.No.D-7674/2017	M/s MIMA KNIT (Pvt) Ltd	Petitioner
18.	C.P.No.D-8252/2017	M/s. Towellers Ltd	Petitioner
19.	C.P.No.D-660/2018	KAM Apparel & others	Petitioners
20.	C.P.No.D-984/2018	Ashraf Dad Khan	Petitioner
21.	C.P.No.D-985/2018	M/s. Kayson International (Pvt) Ltd.	Petitioner
22.	C.P.No.D-1373/2018	M/s. Alkaram Towel Ind. (Pvt) Ltd.	Petitioner
23.	C.P.No.D-1887/2018	M/s. Ayoub Steel Traders & others	Petitioners
24.	C.P.No.D-4491/2018	M/s. Proline (Pvt) Ltd	Petitioner
25.	C.P.No.D-4869/2018	M/s. Crown Textile	Petitioner
26.	C.P.No.D-5164/2018	M/s A. Majeed & Sons	Petitioner
27.	C.P.No.D-6403/2018	Ranyal Textile	Petitioner
28.	C.P.No.6506/2018	M/s.Gulfraz Fabrics	Petitioner
29.	C.P.No.D-1613/2019	Industrial Clothing Ltd	Petitioner
30.	C.P.No.D-2613/2019	Mustaqim Dyeing & Printing Ind (Pvt) Ltd	Petitioner
31.	C.P.No.D-2638/2019	Reliance Textile Ind.	Petitioner
32.	C.P.No.D-2713/2018	M/s. Afroze Textile Ind (Pvt) Ltd	Petitioner
33.	C.P.No.D-2809/2019	M/s. Homecare Textile	Petitioner
34.	C.P.No.D-2978/2019	M/s Unibro Ind Ltd	Petitioner
35.	C.P.No.D-3148/2019	M/s. Siddiq Sons Ltd	Petitioner
36.	C.P.No.D-3783/2019	D.L Nash (Pvt) Ltd.	Petitioners
37.	C.P No.D-8123/2019	M/s Pelikan Knitwear	Petitioner

Vs.

Federation of Pakistan & others.....*.....Respondents*

FOR THE PETITIONERS:	M/s. Arshad Hussain Shahzad, Naeem Suleman, Ameen M. Bandukda, Naeem Suleman, Shafqat Zaman, Syed Danish Ghazi, Faisal Shahzad, Aijaz Ahmed, Saman Rafat Imtiaz, Nadir Hussain Abro, Sehrish Wasif, Faiz Khalil, S. Muhammad Ali Mehdi, Imran Ali & Ajeet Kumar Advocates.
FOR THE RESPONDENTS	M/s. Ameer Bakhsh Metlo, Pervaiz Ahmed Memon, Dr. Raana Khan, Masooda Siraj, Pervaiz Ahmed Memon, Muhammad Taseer Khan, Mr. Shakeel Ahmed holding brief for Mr. Muhammad Aqeel Qureshi, Kafeel Ahmed Abbasi (DAG), Muhammad Khalil Dogar, Kashif Nazeer, Irfan Ali, Advocate for Respondent.
FEDERATION:	Through Mr. Muhammad Ahmer, Assistant Attorney General.
Dates of Hearing:	22.10.2020 & 09.11.2020.
Date of Judgment:	24.12.2020.

JUDGMENT

Muhammad Junaid Ghaffar J.- All these petitions involve a common controversy, whereby, the Petitioners are aggrieved of a Proviso [1] inserted in Condition (x) in S.R.O 1125(I)/2011 dated 31.12.2011 **(1125)** through an amending S.R.O. 491(I)/2016 **(491)** by virtue of which the claim of input tax and or refund on all sorts of packing materials has been disallowed on the supply and export of zero rated goods as

[1] Provided that no input tax credit or refund shall be admissible on the packing material of all sorts:

specified in SRO 1125. The prayer in the leading petition is as follows;

a. Declare that the proviso to condition (x) in SRO 491(I)/2016 is unlawful, unconstitutional, and void ab-initio insofar as it relates to the disallowance of Input Tax on packing material.

b. Declare that restriction placed through condition "x" of the SRO 491(I)/20116 dated 30th June 2016 is not applicable to zero rated supplies in terms of clause 'a' of section 4 of the S.T.A 1990.

c. Declare that the denial to allow adjustment of Input Tax under the Impugned Notification on packing material is ultra-vires the provisions of the Sales Tax Act 1990 as well as against the fundamental rights enshrined under the Constitution of the Islamic Republic of Pakistan, 1973.

d. Declare that the powers conferred upon the Federal Government to disallow input tax adjustment through Section 8(b) are only available to be used harmoniously with the provisions of Section 7 and in view of the overall theme of Section 8 and 8B.

e. Restrain the respondents from preventing the Petitioners submission of their monthly sales tax returns filled under the Act 1990 electronically and / or manually in which input adjustment is claimed by them for Packing Material as stated in the proviso to condition (x) of SRO 491(I)/2016 and/or restrain the respondents from rejection of refund claim of the Petitioners against Packing Material in the garb of proviso to condition (x) of SRO 491(I)/2016 and/ or from taking any coercive action against the Petitioners.

f. Any other, better, consequential, adequate and/ alternate relief which this Honourable Court may deem fit under the circumstances to grant.

g. Cost of the petition may be granted.

2. Mr. Arshad Hussain appearing on behalf of some of the Petitioners has contended that by virtue of this Proviso input tax credit or refund has been denied on the packing material of all sorts used in the manufacture of zero rated goods, notwithstanding that it is an integral part of taxable supply having direct connection with the taxable supply of the goods; that the business of the petitioners and its sales tax liability is 0% or zero rated under Section 4 of the Sales Tax Act, 1990 **(Act)** read with S.R.O 1125; hence, claim of input tax and or refund cannot be circumscribed; that it is discriminatory as well as confiscatory in nature as through an S.R.O, a benefit conferred by the Statute i.e. the Act, has been withdrawn; that

input tax adjustment or refund is a right conferred by the Statute; hence cannot be taken away without any lawful justification; that admittedly the final taxability of the product(s) is zero rated; hence if this amendment and the Proviso is sustained, it would increase the input cost without having any justification; that even otherwise packing material is admittedly a direct constituent of the taxable supply, therefore, input tax adjustment or refund in terms of Section 7 of the Act cannot be denied; that this Proviso has been subsequently deleted by restoring S.R.O. 1125 to its original position through a new S.R.O. 777(I)/2018 dated 21.06.2018 ("**777**") and being a beneficial notification must be given retrospective effect as the Petitions were pending; that this restriction via the proviso to condition (x) has failed to appreciate the essence of value added tax regime; that the petitioners pay sales tax on purchase of all raw materials which is their input, utilize it in manufacturing and when the end product is sold, (being zero rated), either take input adjustment or claim refund of the excess amount of input tax available, and therefore, it is a substantive right which cannot be curtailed through an amending notification; therefore, in view of these submissions, the Petitions be allowed. In support he has relied upon[2].

3. Mr. Ajeet Sundar in some of the Petitions, in addition to adopting these arguments, has further contended that the rules cannot go beyond the Statute; that Section 8 of the Act can only be exercised in respect of the classes of goods provided therein, whereas, packing material itself is a direct constituent of the taxable supply; hence Section 8 ibid cannot be invoked; that the Petitioners have been discriminated and a right conferred by the Statute cannot be taken away through a Notification. In support he has relied upon[3]. Insofar as other

[2] 2016 PTD 427 (China Harbour Engineering Company Limited v. Federation of Pakistan 1999 PTD 1892 (Attock Cement Pakistan Ltd. v. Collector of Customs, and 4 others), 2005 PTD 2012 (Collector of Sales Tax v. Dhan Fibre Limited, 1999 SCMR 1402 (Collector of Customs and others v. Sheikh Spinning Mills) and PLD 2013 Lahore 693 (DG Khan Cement Company v. The Federation of Pakistan etc. Limited.)

[3] PTCL 2018 C.L 328 (Coca-Cola Beverages Pakistan Ltd. v. Customs, Excise and Sales Tax Appellate Tribunal and others) 2016 SCMR 550 (National Electric Power Regulatory Authority v. Faisalabad Electric Supply Company Limited and 2015 PTD 1100 (Muhammad Amin Muhammad Bashir Limited v. Government of Pakistan through Secretary Ministry of Finance, Central Secretariate, Islamabad and others.

learned Counsel are concerned they have adopted these arguments.

4. Mr. Ameer Bakhsh Metlo, appearing on behalf of the department in some of the cases has contended that the Act is not entirely based on the concept of value added tax; hence restriction can be placed; that the Act confers powers to deny input tax adjustment and refund; that Section 8 of the Act has an overriding effect by means of a non-obstante clause; that the amending Notification is not a beneficial notification, but a conscious decision of the Government in implementing its policies; hence no right accrues to the Petitioners. In support he has relied upon[4].

5. Mr. Kafeel Ahmed Abbasi also appearing for the department in some of the cases has contended that Section 4 by itself is not unrestricted, and the Government in terms of the Proviso, can place restrictions on the class of goods on which input tax claim or refund can be denied; that the argument that the amending proviso remained in field for some specified period and has been withdrawn, hence, SRO 777 be given retrospective effect is misconceived and not tenable inasmuch as it was pursuant to a conscious policy decision of the Government and once the purpose being served, was then reversed; therefore, amending Notification cannot be given retrospective effect; hence, the petitions are liable to be dismissed. Other learned Counsel appearing on behalf of the department have adopted these arguments.

6. We have heard all the learned Counsel and perused the record. It appears that the Federal Government in order to promote exports and ease out the procedure and to lessen the burden on the export oriented industries introduced a scheme of zero rating in respect of five different categories of industries including Leather, Textile, Carpet, Surgical and Sports Goods and for such purposes issued S.R.O. 1125 in exercise of the

[4] 2019 PTD 2209 (Getz Pharma (Pvt) Ltd. v. Federation of Pakistan), PLD 1991 SC 963 (Humayun Ltd. v. Pakistan), PLD 1990 S.C 68 (Government of Pakistan v. Hashmani Hote Limited) and PTCL 2011 CL 213 (M/s. Dewan Cement v. Pakistan through Secretary Ministry of Finance) and 2000 PTD 254 (Commissioner of Income Tax V. National Agriculture Ltd. Karachi).

powers conferred by sub-section (1), clause (b) of sub-section (2) and sub-section (6) of section 3 and clauses (c) and (d) of section 4 read with clause (b) of sub-section (1) of section 8 and section 71 of the Sales Tax Act, 1990. Though all exports are otherwise zero rated pursuant to s.4(a) of the Act; however, through this mechanism under SRO 1125 the said category of Export Industries were further facilitated to have a concept of no input tax; hence no output tax. This was in fact the initial model of the scheme which from time to time has gone through a considerable change through various amendments; but for the present purposes, the controversy surfaced when S.R.O. 491 was issued and condition (x) was substituted and a Proviso was added[5]. It could be seen that the very amendment by way of substitution of clause (x) of SRO 1125 is in fact conferring certain benefit to the tax-payer by allowing input tax adjustment of tax paid on purchases ultimately used in the goods meant for exports. However, by virtue of the Proviso, it was provided that no input credit tax or refund shall be admissible on the packing material of all sorts. Here interestingly on the one hand the proviso has been challenged as being ultra vires and unlawful; but at the same time benefit of clause (x) itself is being claimed and justified; notwithstanding the fact that SRO 1125 has been issued in terms of the same provision of the Act. How this could be done is not clear to us. Is it the case of the Petitioners that this proviso to clause (x) of SRO 1125 is ultra vires to the Constitution then perhaps the very provision i.e. s.4 and s.7 read with s.8 will also have to be declared to be so, if at all any case is made out, which in our opinion is not the case. Nonetheless, in that case even the exemption and other benefits of input tax and zero rating being enjoyed by the Petitioners would whisked away. This is definitely for sure is not what the Petitioners want through these petitions. What perhaps they want is only that the proviso be declared as ultra

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[5] "(x) a registered person who has consumed inputs acquired on payment of sales tax, shall be entitled to input tax adjustment, subject to the relevant provisions of the Sales Tax Act, 1990 and Rules made thereunder. ***Provided that no input tax credit or refund shall be admissible on the packing material of all sorts.***

Provided further that the post-refund audit and scrutiny shall be conducted and finalized in the manner as provided in the Sales Tax Rules, 2006."

vires; but to what is not explained by them in any manner. We have not been assisted as to in what manner, and with which entry of the legislative list(s) of the 4th Schedule to the Constitution, the same is in conflict and ultra vires.

7. The Act in question provides a mechanism of input tax as against output tax and the refund, if so accrued. The said mechanism in governed by the provisions of s.4 (Zero Rating)[6],s.7(determination of tax liability)[7] and s.8 (Tax Credit not

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[6] **4.Zero rating.**– Notwithstanding the provisions of section 3, the following goods shall be charged to tax at the rate of zero percent;

(a) goods exported, or the goods specified in the Fifth Schedule;

(b) supply of stores and provisions for consumption aboard a conveyance proceeding to a destination outside Pakistan as specified in section 24 of the Customs Act, 1969 (IV of 1969);

(c) such other goods as the Federal Government may, by Notification in the Gazette, specify:

(d) such other goods as may be specified by the Federal Board of Revenue through a general order as are supplied to a registered person or class of registered persons engaged in the manufacture and supply of goods at reduced rate of sales tax.

Provided that nothing in this section shall apply in respect of a supply of goods which –

(i) are exported, but have been or are intended to be re-imported into Pakistan; or

(ii) have been entered for export under Section 131 of the Customs Act, 1969 (IV of 1969), but are not exported [; or]

(iii) have been exported to a country specified by the Federal Government, by Notification in the official Gazette

Provided further that the Federal Government may by a notification in the official Gazette, restrict the amount of credit for input tax actually paid and claimed by a person making a zero-rated supply of goods otherwise chargeable to sales tax.

[7] **7. Determination of tax liability.**–(1) [Subject to the provisions of [section 8 and] 8B, for] the purpose of determining his tax liability in respect of taxable supplies made during a tax period, a registered person shall [, subject to the provisions of section 73,] be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made, or to be made, by him from the output tax [excluding the amount of further tax under sub-section (1A) of section 3.] that is due from him in respect of that tax period and to make such other adjustments as are specified in Section 9

[Provided that where a registered person did not deduct input tax within the relevant period, he may claim such tax in the return for any of the six succeeding tax periods.]

(2)A registered person shall not be entitled to deduct input tax from output tax unless,-

(i) in case of a claim for input tax in respect of a taxable supply made, he holds a tax invoice [in his name and bearing his registration number] in respect of such supply for which a return is furnished [:]

Provided that from the date to be notified by the Board in this respect, in addition to above, if the supplier has not declared such supply in his return or he has not paid amount of tax due as indicated in his return;

(ii) in case of goods imported into Pakistan, he holds bill of entry or goods declaration in his name and showing his sales tax registration number, duly cleared by the customs under section 79 [, section 81] or section 104 of the Customs Act, 1969 (IV of 1969);]

(iii) in case of goods purchased in auction, he holds a treasury challan, [in his name and bearing his registration number,] showing payment of sales tax;]

allowed)[8] and perusal thereof reflects that in terms of S.4, goods exported or goods specified in the 5th Schedule shall be charged

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[(iv) ***]

[(3) Notwithstanding anything in sub-sections (1) and (2), the Federal Government may, by a special order, subject to such conditions, limitations or restrictions as may be specified therein allow a registered person to deduct input tax paid by him from the output tax determined or to be determined as due from him under this Act.]

[(4) Notwithstanding anything contained in this Act or rules made there under, the Federal Government may, by notification in the official Gazette, subject to such conditions, limitations or restrictions as may be specified therein, allow a registered person or class of persons to deduct such amount of input tax from the output tax as may be specified in the said notification.]

[8] [**8. Tax credit not allowed.** – (1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to reclaim or deduct input tax paid on –

[(a) the goods [or services] used or to be used for any purpose other [***] for taxable supplies made or to be made by him;]

(b) any other goods [or services] which the Federal Government may, by a notification in the official Gazette, specify;

[(c)] [***] the goods under [sub-section] (5) of section 3 [**:**]

[(ca) the goods [or services] in respect of which sales tax has not been deposited in the Government treasury by the respective supplier;]

[(caa) purchases, in respect of which a discrepancy is indicated by CREST or input tax of which is not verifiable in the supply chain;]

[(d) fake invoices; [***]

(e) purchases made by such registered person, in case he fails to furnish the information required by the Board through a notification issued under sub-section (5) of section 26 [;]

(f) goods and services not related to the taxable supplies made by the registered person.

(g) goods and services acquired for personal or non-business consumption;

(h) goods used in, or permanently attached to, immoveable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods;

(i) vehicles falling in Chapter 87 of the First Schedule to the Customs Act, 1969 (IV of 1969), parts of such vehicles, electrical and gas appliances, furniture furnishings, office equipment (excluding electronic cash registers), but excluding such goods acquired for sale or re-sale]

(j) services in respect of which input tax adjustment is barred under the respective provincial sales tax law;

(k) import or purchase of agricultural machinery or equipment subject to sales tax at the rate of 7% under Eighth Schedule to this Act; and

(l) from the date to be notified by the Board, such goods and services which, at the time of filing of return by the buyer, have not been declared by the supplier in his return [or he has not paid amount of tax due as indicated in his return.]

(2) If a registered person deals in taxable and non-taxable supplies, he can reclaim only such proportion of the input tax as is attributable to taxable supplies in such manner as may be specified by the Board.

(3) No person other than a registered person shall make any deduction or reclaim input tax in respect of taxable supplies made or to be made by him.

[(4) ***]

[(5) Notwithstanding anything contained in any other law for the time being in force or any decision of any Court, for the purposes of this section, no input tax credit shall be allowed to

to tax at the rate of 0%; the first Proviso provides for some restrictions and inadmissibility of zero rating, whereas, the second Proviso restricts the amount of credit of input tax paid by a person in respect of a zero rated supply of goods otherwise chargeable to sales tax. Similarly, S. 7 postulates that ***subject to Section 8 and Section 8B*** a taxpayer is entitled to deduct input tax paid or payable for the purposes of taxable supplies made or to be made by him from output tax due from him in respect of a particular tax period. There are other restrictions and mechanisms under Section 7 of the Act, which for the present purposes are not relevant; however, one may make note of the fact that such admissibility of input tax adjustment or refund is qualified by and through s.8 ibid. Lastly, S. 8 of the Act puts an embargo and restriction, providing inter alia that a tax credit shall not be allowed and a registered person shall not be entitled to reclaim or deduct input tax paid for any purpose other than for the taxable supply made or to be made by him; and again on any other goods, which are notified by the Federal Government and so on and so forth. It is the case of the Petitioners that once it has come on record that the goods in question being used for packing of the finished product; is a material used in the taxable supply as covered by s.8(1)(a); therefore, there was no occasion to deny the facility of input tax adjustment or refund, or for that matter pursuant to any notification or order issued in terms of s.8(1)(b). According to the petitioner's case in SRO 1125, Section 8(1)(b) has been invoked and this restriction is confiscatory, discriminatory and in violation of S.4 read with S.7 and S.8(1)(a). However, we are not inclined to agree with this contention as this issue is already settled by a learned Division Bench Judgment of this Court in the case of ***AMZ Spinning***[9] by holding[10] that on account

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the persons who paid fixed tax under any provisions of this Act as it existed at any time prior to the first day of December, 1998.]

[(6) Notwithstanding anything contained in any other law for the time being in force or any provision of this Act, the Federal Government may, by notification in the official Gazette, specify any goods or class of goods which a registered person cannot supply to any person who is not registered [***] under this Act.]

[(7) ***]

[9] (2006 PTD 2821) judgment authored by *Faisal Arab,J.* as his lordship then was.

[10] Section 8(1)(b) on the other hand is clear deviation from the above referred criteria provided in section 7(1)and section 8(1)(a) as section 8(l)(b) disentitles a taxpayer to claim adjustment of input tax even on such goods which though otherwise were entitled for adjustment, but on account of being specified by the Federal Government in the official Gazette, are denied the benefit of adjustment. Thus under section 8(1)(b), the legislature has specifically empowered the Federal Government to deny adjustment of input tax on any item which may have been used by a taxpayer for the manufacture or production of taxable goods or supplies.

of a non obstante clause in s.8, it shall override and prevail over the provisions of s.7 and that the disentitlement to seek adjustment is based upon provision of s.8(1)(b) itself and the very purpose of enacting s.8(1)(b) was to deny adjustment of input tax also on such items which though are used in the manufacture and production of taxable goods or supplies; but the Federal Government in its discretion denies to extend such benefit to the taxpayer. This judgment is a complete answer to the argument of the petitioners Counsel that once an item is covered by s.8(1)(a) ibid; it cannot be notified in terms of s.8(1)(b) to deny any such input or refund of tax.

8. As to the second limb of the argument of the Petitioners Counsel that after two years and during pendency of these petitions the impugned proviso has then been omitted vide SRO 777 and must be given retrospective effect is also misconceived inasmuch as again this judgment of ***AMZ*** has also dealt with this issue. It that case a list of products was notified vide SRO 578 and diesel was included in such items on which no input tax was admissible at the relevant time. Thereafter an amendment was made and diesel was then deleted from the list of items notified vide SRO 578 and it was argued that such amendment be given retrospective effect. However, the learned Division Bench was least impressed by this argument and was pleased to discard the same.

9. In somewhat identical facts in the case of ***Dewan Cement***[11] a Petition was filed seeking a declaration that second Proviso to Section 4 of the Act and the SROs issued thereon are ultra vires to the Act itself as Input Tax Facility on a zero rated item cannot be

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The argument of learned counsel for the applicant that benefit of adjustment of input tax could not be denied to applicant through a subordinate legislation as this amounts to nullifying the intent of the legislature as envisaged in sections 7(1) and 8(1)(a) of the Act is therefore misconceived. In our view the disentitlement to seek adjustment is based upon provision of section 8(1)(b) itself. The very purpose of enacting section 8(1)(b) was to deny adjustment of input tax also on such items which though are used in the manufacture and production of taxable goods or supplies but the Federal Government in its discretion denies to extend such benefit to the taxpayer. We don't see any other purpose of section 8(1)(b) other than this. If the intention of legislature was to deny adjustment of input tax only on such items which were not used for making taxable goods and supplies, then the provisions of section 8(1)(a) were sufficient to cover such a situation and there was no need to incorporate section 8(1)(b). Thus it is under the provisions of section 8(1)(b) itself that the Federal Government derives power to notify items against which adjustment cannot be claimed though used in the making of taxable goods and supplies. Where the notification itself derives its legitimacy on the basis of the provisions of the main enactment i.e. section 8(1)(b), then how such notification can be termed as violative of the provisions of the Sale Tax Act.

It is the prerogative of the legislature to impose any tax which it is legally competent to impose under the Constitution. It can choose the duration during which it is to be imposed and can also withdraw any tax at any time. Subsequent withdrawal of a tax does not create any justification to avoid the tax for the period during which it was chargeable. The Federal Government was within its right to include any item listed in S.R.O. 578(I)/98, dated 12-6-1998 on which adjustment of input tax could not be claimed and was equally competent to subsequently delete any items from such list. For the entire period during which an item was part of the notification issued under section 8(1)(b) of the Sales Tax Act, no adjustment of input tax could be claimed by a taxpayer.

[11] (2010 PTD 1717) a judgment authored by *Gulzar Ahmed, J*, as his lordship then was.

denied through a Notification under Section 8(1)(b) of the Act. It was further argued that during pendency of the proceedings, the Notification, whereby, the Input Tax was restricted and denied, was withdrawn, and therefore, retrospective effect can be given to that Notification. A learned Division Bench of this Court was least impressed and while dismissing the Petition was pleased to observe[12] that Section 8(1) starts with a Non-Obstante Clause, and therefore any zero rating under Section 4(ibid) was qualified and subject to Section 8(1)(b). As to giving retrospective effect to the subsequent SRO, whereby, the earlier Notification restricting Input Tax Adjustment was withdrawn; again the learned Division Bench was not convinced with this argument and went on to hold that this would amount destroying and disturbing or impairing the obligations and rights that have accrued pursuant to the earlier Notification in field; hence the argument of beneficial construction and or retrospective effect to the subsequent SRO cannot be availed or granted to the Petitioner. In view of the above pronouncements, in our considered view, the controversy raised on behalf of the petitioners already stands settled; hence, no case for deviating from these precedents is made out. Both the issues raised and argued that s.7 read with s.8(1)(a) allows and permits input tax adjustment and or refund even on zero rated supply of goods on all materials which are used as a constituent part of the taxable supply; as well as seeking retrospective effect of a notification issued subsequently (later in time) pursuant to which input tax adjustment or refund is again permitted, have been decided against the petitioner / taxpayers and it has been held that in terms of s.8(1)(b) any goods can be notified for disallowing such input tax adjustment or refund including such goods which though are used in the manufacture and production of taxable goods (packing material here) on which input tax adjustment and or refund is normally admissible. The

[12] Subsection (1) of section 8 starts with words `notwithstanding' which means that it is non obstante clause and provides that a registered person shall not be entitled to reclaim or deduct input tax paid and clause (b) of it provides that it will apply on any goods or services which the Federal Government may by notification in the official Gazette specify. It has already been noted above that the second proviso of section 4 gives power to Federal Government by notification to restrict the amount of credit for input tax actually paid and claimed by a person making zero-rated supply of goods otherwise chargeable to sales tax and in similar fashion section 8(1)(b) also gives power to Federal Government by notification in official Gazette disentitling a registered person to reclaim or deduct input tax paid on any goods or services specified.
....In order to sustain the claim that the said S.R.O. is ultra vires the provision under which it is made, it has to be shown that it is in excess of the provisions of the statute or is in contravention of or inconsistent or repugnant to the provisions of the statute or the power to issue said S.R.O. did not exist in the Federal Government. Now, on reading of the provisions of section 8(1)(b) read with the second proviso of section 4 of the Act manifestly and in clear terms shows that express power is given to the Federal Government to issue the notification in the official Gazette not entitling the registered person to reclaim or deduct input tax paid on goods specified therein and restrict the amount of credit for input tax actually paid and claimed by a person making a zero rated supply of goods otherwise chargeable to sales tax..
...Secondly, S.R.O. No.1212(I)/2006 cannot be given retrospective effect for the reason that it will amount to destroying and disturbing or impairing the obligation and right that have been created while S.R.O. No.389(I)/2006 remained in the filed..

conclusion is that all such input tax adjustment or refund would be governed by and in terms of s.8(1)(b) of the Act.

10. Accordingly, we are of the view that the petitioners have failed to make out any case for indulgence under our constitutional jurisdiction; hence, all listed petitions are hereby dismissed.

Dated 24.12.2020

JUDGE

JUDGE

Ayaz P.S.