

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Sales Tax Reference Application No.10 of 2016 Mirpurkhas Sugar Mills Ltd., v
Commissioner Inland Revenue & Others

Date _____ Order with signature of Judge _____

Hearing / Priority Case.

- 1) For hearing of main case.
- 2) For hearing of CMA No. 268/2016.

12.01.2021.

Mr. Jawaid Farooqui Advocate for Applicant.
Mr. Shakeel Ahmed Advocate for Respondent.

Through this Reference Application, the Applicant has impugned order dated 31.10.2015 passed in STA No.142/KB/2015 by the Appellate Tribunal, Inland Revenue Karachi proposing the following Questions of Law:-

- i) "Whether under the facts and circumstances of this case the learned Appellate Tribunal Inland Revenue was justified in disallowing the Applicant's claim of input tax adjustment against the output tax?"
- ii) Whether the assessment order dated 15.05.2014 was barred by section 11(5) of the Sales Tax Act, 1990 and further whether the Order-in-Appeal is barred under section 45(2) of the Sales Tax Act, 1990?
- iii) Whether under the facts and circumstances of this case the learned Appellate Tribunal Inland Revenue was justified in passing the impugned order without having recourse to section 46(2) of the Sales Tax Act, 1990 read with section 132(3) of the Income Tax Ordinance, 2001 for remanding the case for proper enquiry?
- iv) Whether it is a fit case for remand for conducting proper enquiry for considering claim of input tax adjustment against output tax?
- v) Whether under the facts and circumstances of this case the learned Appellate Tribunal Inland Revenue was justified in accepting imposing default surcharge and penalty on Applicant?"

Learned Counsel for the Applicant at the very outset has pressed Question No. (iv) and submits that despite best efforts the Tribunal as well as the authorities below have not appreciated the documents placed on record in support of the input tax claimed by

the Applicant. He has referred to application filed before the Tribunal along with three box files containing such documents.

On the other hand, learned Counsel for the Department has opposed such request and has placed reliance on the order-in-original and the order of the Appellate Authority and submits that all along the Applicant failed to produce any such required documents.

We have heard both the learned Counsel and perused the record. The relevant findings of the learned Tribunal is contained in Para 8 which reads as under:-

“8. We have heard the learned representative from both the sides and have perused the impugned Order-in-Original as well as Order-in-Appeal. It is observed that the adjudicating officer has ordered to pay the sales tax amounting to Rs. 25,259,925/- along with default surcharge and penalty on the basis of inadmissible input tax adjustment due to lack proper documentary evidence. Despite of several opportunities provided to the Registered person, he miserably failed to produce the GDs and the purchase invoices which are very much necessary for admissible in put tax adjustments in this case. The Registered person had neither before the adjudicating officer nor before the learned CIR (Appeals) or before this Tribunal produced any documentary evidence and proof of payments against which input tax credit was claimed.”

Perusal of the above findings reflects that the Tribunal has held that despite several opportunities provided to the Applicant necessary documents were not produced so as to determine the admissibility of the input tax adjustment in the instant matter. It has been further observed by the Tribunal that the Applicant, neither before the Adjudicating Officer, nor before the Commissioner Appeals or *even before the Tribunal* produced any documentary evidence and proof of payments against which input tax credit was claimed. When the above findings is read in juxtaposition with the record placed before us including the request of the Applicant’s Counsel dated 25.08.2015 along with 3 boxes of record duly received before the Tribunal, it appears that the Tribunal has failed to appreciate the facts and has misread the material placed before it. The Applicant had approached the Tribunal with all relevant documents including copies of Sales Tax invoices and details of payments along with cheque numbers as reflected from the said application available at Page 37 of this Reference Application. It is unclear as to from where the Tribunal has come to a conclusion that nothing was produced before it in support of such admissibility of the input tax claimed. This matter pertains to Sales Tax and the Appeal is governed by Section 46 of the Sales Tax

Act, 1990 read with Section 132 of the Income Tax Ordinance, 2001 which provides that the Appellate Tribunal may before disposing of an Appeal call for such particulars, as it may require in respect of the matters arising on the Appeal or cause further inquiry to be made by the Commissioner. Apparently, the Tribunal has failed to exercise such jurisdiction without appreciating the facts and record before it; hence, we are of the view that the order of the Tribunal cannot be sustained. Though various Questions of law have been proposed on behalf of the Applicant; however, in our considered view, only one question is relevant and i.e. *“Whether in the facts and circumstances of the case the Appellate Tribunal was justified in holding that the Applicant failed to produce any documents before it in support of the admissibility or otherwise of the input tax in the instant matter”* and the same is answered in negative in favour of the Applicant and against the Respondent Department.

Accordingly, the impugned order of the Tribunal as well as of the authorities below are hereby set aside and the matter is remanded to the Adjudication Officer before whom the Applicant shall produce all relevant documents and proof of payments as mentioned in their request before the Appellate Tribunal and the Adjudicating Officer after providing an opportunity of hearing shall decide the matter in accordance with law preferably within a maximum period of 60 days from the date of receiving of this order. The Reference is Application allowed in the above terms. Office shall send copy of this order to the Appellate Tribunal in terms of Section 47(5) of the Sales Tax Act, 1990.

J U D G E

J U D G E

Arshad/