

IN THE HIGH COURT OF SINDH, KARACHI

PRESENT:

**MR. JUSTICE MUHAMMAD JUNAID GHAFFAR MR.
JUSTICE AGHA FAISAL**

| | | | |
|----|-----------------------------|---|------------|
| 1. | C.P. No. D-4980/2015 | Amaan Steel | Petitioner |
| 2. | C.P. No. D-4815/2013 | ASG Metals Ltd | Petitioner |
| 3. | C.P. No. D-5065/2013 | M/s. Amerli Steels Ltd | Petitioner |
| 4. | C.P. No. D-5584/2013 | Karachi Electric Supply Company Limited | Petitioner |
| 5. | C.P. No. D-220/2014 | Agha Steel Industires | Petitioner |
| 6. | C.P.No. D-2709/2014 | M/s. Diamond Metals | Petitioner |
| 7. | C.P.No.D-4762/2014 | M/s. Jabbar Steel Industry | Petitioner |
| 8. | C.P.No.D-4763/2014 | M/s. Diamond Steel Industry | Petitioner |

Vs.

Federation of Pakistan & others*Respondents*

PETITIONERS:

Through Mr. Mansoor-ul-Arfin,
Advocate in C.P No.D-4980/2015,
4815, 5065/2013 & 2709/2014.

M/s. Naeem Suleman & Arshad Shehzad,
Advocates in C.P No.D-220/2014.

RESPONDENTS

Mr. Mayhar Kazi, Advocate for
Respondent (K-Electric) and for Petitioner
in C.P No.D-5584/2013.

FBR / Commissioner Inland Revenue
through Mr. Shahid Ali Qureshi, & Mr.
Pervaiz Ahmed Memon, Advocates.

Date of Hearing:

01.03.2021.

Date of Judgment:

01.03.2021.

JUDGMENT

Muhammad Junaid Ghaffar J.- These Petitions have been filed by the Petitioners primarily against respondent No.4 (K-Electric), seeking directions to give full effect to the Adjustment Certificates issued by the office of Commissioner Inland Revenue

in respect of adjustment of sales tax in their monthly electricity bills.

2. Mr. Mansoor-ul-Arfin, learned Counsel for the Petitioners submits that pursuant to Sales Tax General Order No. 01/2013 dated 03.01.2013, a procedure for payment/adjustment of Sales Tax by Steel Melters and Re-Rollers had been issued pursuant to SRO 1486/(I)/2012 dated 24.12.2012, which the respondent No.4 is not complying with. According to him as per the said procedure, the Commissioner issues an Adjustment Certificate on production of certain documents, which the concerned Distribution Company, and in the present cases K-Electric has to comply with by reducing the amount of sales tax on electricity bills for the next subsequent months to the extent of the amount specified in the referred Certificate from the tax payable at the rate of Rs.4 per unit. According to him suddenly K-Electric has refused to fully adjust these Adjustment Certificates and unilaterally issued bills asking the Petitioner to pay sales tax at a higher rate. Per learned Counsel the law is clear and K-Electric is bound to follow; hence these petitions merit consideration and be allowed accordingly.

3. Mr. Mayhar Kazi, appearing for K-Electric, submits that the procedure notified by FBR is in violation of the sales tax return itself and if the same is followed, K-Electric cannot adjust the Input Tax fully; hence these Petitions are liable to be dismissed. He has further argued that K-Electric is bound to follow the law, whereas, the procedure adopted in respect of the Petitioners is in violation of the substantive provisions of the Sales Tax Act, 1990.

4. All learned Counsel appearing on behalf of FBR/respective Commissioners of Inland Revenue have supported the stance of the Petitioners as according to them STGO as well as SRO is binding in nature, whereas, respondent No.4 is acting only as a withholding agent, and therefore, cannot object to the mechanism as well as the quantum of sales tax, which is to be paid by the Petitioner.

5. We have heard both the learned Counsel and perused the record. It appears that on 21.11.2013 in C.P No.D-4815/2013 an ad-interim order was passed in the following terms:-

“1. Granted

2. Granted subject to all just exceptions.

3&4. Learned counsel for the Petitioner contends that the Petitioner has paid Sale Tax and the concerned department has already issued adjustment certificates, which are enclosed as page-61(P/10) dated 24.10.2013 & page-65(P/11) dated 25.11.2013 respectively, wherein the adjustable amount of Sales Tax is mentioned Rs.3,471,589/- and Rs.12,154,963/- respectively and as per procedure copies thereof were forwarded to M/s. K.E.S.C Ltd. but the K.E.S.C./Respondents No.4 & 5 are not adjusting the Sales Tax in the electricity bills. Learned Counsel further contends that Petitioner approached to the Director Taxation of Respondent No.4 to reduce the amount from electricity bills for the billing month of November, 2013, but till date no action has been taken by the Respondents No.4 & 5.

Issue Notice to the Respondents and D.A.G. for 06.12.2013. ***Respondents No.4 & 5 are directed to issue reduced bill after adjustment of already paid Sales Tax as stated above and issue fresh bill within seven days' time from today and extend the date of payment in the next bill.***”

6. Today, we have been informed that such order has been complied with, which thereafter was also passed in respective connected Petitions, whereas, as of today, a new procedure is in vogue in respect of which there appears to be no dispute. It is also a matter of record that for subsequent monthly bills, same orders have been passed and implemented. It further appears that after filing of these Petitions K-Electric also filed C.P No.D-5584/2013, through which K-Electric sought a Declaration that STGO No.01/2013 has been issued without lawful authority and is void ab-initio with a further declaration that K-Electric is entitled to charge sales tax at the rate specified in Section 3(1) of the Sales Tax Act, 1990; however, on 17.02.2016, Counsel for K-Electric, under instructions, sought withdrawal of C.P No.D-5584/2013. Learned Counsel for the Petitioner in the other Petitions had requested the Court to keep the said Petition alive so as to finally resolve the controversy. The Order dated 17.02.2016 reads as under:-

“Our attention is drawn to the order of the previous date. Learned counsel for the Department in various Petitions are either on general adjournment or are unable to attend this matter today on account of personal reasons.

As noted in the order of the previous date, upto now on account of earlier order C.P No.D-5584/2013 was being treated as lead case,

C.P No.D-5584/2013 is filed by the K-Electric and the learned counsel for the K-Electric is states, on instructions, that K-Electric will not be pressing this Petition. The K-Electric is the Respondent in our Petitions.

Mr. Mansoorul Arin, learned counsel for the Petitioner states that the Petitions filed by the K-Electric ought to remain alive since its disposal as not pressed may have some material bearing on outcome of the Petition in which learned counsel appears. As to this, learned counsel for K-Electric reserves his position accordingly.

In view of this development subject to what is noted above from the next date onwards C.P No.D-4815 of 2013 will now be treated as the lead case and hearing will proceed accordingly and for the time being, but again subject to what has been stated above, C.P No.D-5584/2013 is being kept pending.

Adjourned to 17.03.2016.

Interim order passed earlier to continue till the next date of hearing.”

7. Today, we have confronted the learned Counsel for K-Electric as to the above order as after withdrawal of the Petition filed by K-Electric what other justification remains to oppose the prayer of the Petitioners, which is even otherwise supported by official respondents including the Commissioner Inland Revenue and FBR. He has not been able to satisfactorily respond except the arguments as noted hereinabove. We are of the view that firstly as a respondent being a private entity and acting as a withholding agent, K-Electric has no right to object either to the rate of Sales Tax being charged from the Petitioners; or the mode and manner of charging the same; or its adjustment as notified through STGO No.01/2013. The only responsibility, which the law entrusts upon respondent No.4 i.e. K-Electric is to collect Sales Tax at the time of generating electricity bills in the mode and manner and at the rates notified by FBR. We may also clarify that even if by virtue of this mechanism a person is not able to claim the entire amount of his input tax as against his output tax, the same within itself does not grant a blanket permission not to obey the procedure prescribed by FBR. For that a very strong prima facie case is to be made out, which in the instant case is not only lacking; even the petition filed for such purposes is not being pursued and withdrawal has been sought. We have also confronted that whether for following the special mechanism any show cause notice was issued to respondent No.4 and it has been admitted that this is not the case of respondent No.4. In the given facts and circumstances when the Petition, under instructions, is being withdrawn, in our view, no case is made

out on behalf of K-Electric so as to oppose the Petitions in question. Moreover, through interim orders, bills have also been generated according to STGO No.01/2013, which have been paid and returns for the relevant periods have been filed and no useful purpose would be served, if the contention of K-electric is accepted as the amount of sales tax, and the liability stands discharged.

8. In view of hereinabove facts and circumstances of this case, all listed Petitions are allowed as prayed, whereas, C.P No.D-5584/2013, filed by K-Electric is dismissed as withdrawn, under instructions. Office is directed to place copy of this order in connected petitions as above.

Judge

Judge

Ayaz P.S.