IN THE HIGH COURT OF SINDH AT KARACHI

Spl. STA No. 127 of 2005

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

M/s Kohistan Cotton Ginners,
Panj Moro, Hyderabad. ….. Appellant.

Versus

The Collector of Customs, Sales Tax &
Central Excise, Hyderabad. ….. Respondents.

Date of hearing as well
as of short order : **03.10.2019**

Appellant M/s Kohistan Cotton Ginners,Panj Moro through Mr. Abdul Sattar Silat, advocate.

Respondent The Collector of Customs, Sales Tax & Central Excise through Mr. Shakeel Ahmed, advocate.

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:- The appellant has filed the instant appeal against the majority judgment of Customs, Excise and Sales Tax Appellate Tribunal, Karachi pronounced on 27-05-2004 in Sales Tax Appeal No. 47/2003. The appellant has formulated several questions of law based upon the impugned order but at the time of initial hearing; the instant appeal was admitted to consider the following sole question of law.

> *"Whether the learned Customs, Excise and Sales Tax Appellate Tribunal was justified in holding by the majority opinion that the notice under Section 36 was not barred by limitation?"*

2. The appellant is a partnership firm engaged in the business of cotton ginning. The firm leased out a factory for the purpose of ginning and onward supply the cotton lint to its spinning and textile factories. Meanwhile, through a Notification issued under Section 3-A of the Sales Tax Act, 1990 (hereinafter referred as 'the Act'), the liability of payment of sales tax was shifted to the purchaser. Consequently, by virtue of the Special Procedure for Ginning Industry Rules, 1996 as notified through

SRO 1271 (I)/96 dated 10-11-1996, the liability to pay sales tax in respect of delivery of ginned cotton was shifted to registered spinning mills.

3. The appellant received a show cause notice on or about 16.04.2002 from the Additional Collector, Sales Tax and Central Excise (Adjudication). As per the said show cause notice, an audit team of DRRA, Karachi had observed that the appellant had supplied cotton lint to various buyers during the months of September, October and December 1998 and collected Sales Tax from them amounting to Rs. 25,40,379/- but did not deposit the same. Per show cause notice, the said amount was recoverable under Section 36 of the Act along-with additional tax computable under Section 36 as well as penalties under Section 33 of the Act. Consequently, Additional Collector, Customs, Sales Tax and Central Excise (Adjudication) by order dated 13-12-2002 held that the appellant was to pay sale tax amounting to Rs. 25,40,379/- plus additional sales tax and penalty of or Rs 25,000/-. The appellant challenged the said order before the learned Customs, Excise and Sales Tax Appellate Tribunal but lost through the impugned order.

4. Mr. Abdul Sattar Silat, learned counsel for the appellant submits that the Member Technical and a Member Judicial have given their findings against the appellant. He emphasised that the case of the appellant actually falls under Section 36(2) and not under Section 36(1), as such after lapse of 3 years no demand for sales tax can be made. According to him, the language of show cause notice is vague, as such its advantage should go in favour of the taxpayer. He submits that one of the learned members of the Tribunal has observed in favour of the appellant and his reasoning appears to be coherent, as such the same may be appreciated and upheld. In support of his contentions, he relied upon the cases of **Caltex Oil (Pakistan) Ltd vs Collector, Central Excise and Sales Tax and others (2005 PTD 480), M/s Inam Packages vs Appellate Tribunal Customs, C.E., and Sales Tax (PTCL 2008 CL. 126)** and **Assistant Collector Customs and others vs Messers Khyber Electric Lamps and others (2001 SCMR 838)**.

5. Mr. Shakeel Ahmed, learned counsel for the department, supports the impugned judgment. According to him, the majority opinion of the Tribunal was the findings of the Tribunal and the same was properly reasoned out. He submits that it will make no difference that if sub-section was not mentioned in the show cause notice, as the intention was manifest from the contents of the show cause notice.

6. We have heard the arguments and perused the available record as well as the citations referred during the course of arguments.

7. In the instant matter, the pivotal document is the show cause notice itself. We have gone through the show cause notice issued by the department to the appellant. We have observed that neither it was mentioned that under which sub-section of Section 36 of the Act, the said show cause notice was issued nor it was manifested from its contents. We are of the view that the show cause notice in its present form was ambiguous and the same did not clarify what would be the limitation for demanding sales tax from the appellant. It is the settled law that in case of any ambiguity a fiscal law has to be construed in favour of the taxpayer and not in favour of the revenue authority. If there is any ambiguity in the language of any notification or notice, it cannot be stretched in a way that it will be advantageous to the department. However, if the language used is clear and unambiguous, there will be no question of its being interpreted in favour of the taxpayer. Similarly, if two reasonable constructions of a taxing provisions are possible, then construction which favours the assessee must be adopted. In the present case, the language of the show cause notice, has not properly conveyed its message and there was an ambiguity as to which period of limitation was meant through such notice. Hence in our view the period of limitation which favours the assessee / taxpayer will be preferred and adopted.

8. Nevertheless, when the language of show cause notice did not describe either the same was issued under sub-section (1) or sub-section (2) of Section 36 of the Act, the situation which favours assessee should be preferred. In the former situation, the demand for sales tax can be made within 5 year, while in latter case the period of limitation will be shrunk to 3 years. Consequently, we are of the view, that the show cause notice was actually dealing with sub-section (2) of Section 36 of the Act for which the period of limitation for demanding tax has clearly been mentioned as 3 years. The respondent department has demanded sales tax for the months of September, October and December, 1998, while the show cause notice for such demand was issued on 16th April 2002 i.e. after lapse of more than 3 years; therefore, we are of the considered view that the same was barred by limitation.

9. Through our short order dated 03.10.2019 we have already replied the proposed question in ‘negative’ i.e. in favour of the appellant

(taxpayer) and against the department and these are the reasons for our short order dated 03-10-2019, whereby the instant appeal was disposed of.

10. Office is directed to send a copy of this order under the seal of the Court to the Registrar, learned Customs, Excise and Sales Tax Appellate Tribunal, Karachi, as required under the law.

JUDGE

JUDGE

Dated:_____