

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Special Sales Tax Reference Application No.455 of 2017

Commissioner Inland Revenue  
Versus  
M/s New Allied Electronics Industries (Pvt.) Ltd.

Date	Order with signature of Judge
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1. For orders on CMA 1426/20
2. For hearing of main case

**Dated: 08.09.2021**

Mr. Ameer Baksh Metlo for applicant.

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This Special Sales Tax Reference Application under section 47 of Sales Tax Act, 1990 was filed on the following questions, as proposed:-

1. Whether on the facts and circumstances of the case learned Tribunal was justified to hold departmental order and Commissioner Inland Revenue (Appeals-I) Karachi's order which upheld the departmental action, as void when sub-sections (3) & (4) of Section 11 of the Sales Tax Act, 1990 provides for recovery of sales tax short levied due to collusion or deliberate act or inadvertence, error or mis-construction?
2. Whether on the facts and circumstances of the case the learned Tribunal was justified to hold departmental order and Commissioner Inland Revenue (Appeals-I) Karachi's order upholding departmental action for recovery of sales tax levied, as void when the respondent did not declare the true specifications of their Cell phones as Smart Phones holding touch screen at import stage, where sales tax was chargeable at Rs.500/- per smart phone under SRO 460(I)/2013 dated 30.05.2013?

A show-cause notice was issued on 10.10.2013 under section 33(5) read with Section 34 of the Sales Tax Act, 1990 on the assertion that the respondent imported smart cellular phones and have paid Rs.250/- for

each mobile set as sales tax instead of Rs.500/- for each mobile set as required under SRO 460(I)/2013. The Order-in-Original then was passed on 25.11.2013 directing the respondent to pay sales tax under section 11(3)/(4) along with penalty of 5% of the amount avoided under section 33(5) and default surcharge under section 34 of the Sales Tax Act, 1990. Appeal under section 45B of Sales Tax Act, 1990 then was preferred by the respondent before Commissioner Appeals Inland Revenue, which concurred with the conclusion drawn in Order-in-Original. Consequently the Appellate Tribunal Inland Revenue was approached by respondent and vide order dated 07.05.2017 the appeal was allowed and the orders impugned therein were declared to be null and void, hence this reference application.

We have heard the learned counsel and perused record.

The show-cause notice was dependent on the alleged misdeclaration of the category of mobile phones imported during the period 05.07.2013 to 09.09.2013 in terms of SRO 460(I)/2013 dated 30.05.2013. This SRO contains three categories of mobile phones, which are as under:-

1	2	3
Description/categories	Rate on import	Rate on supply (to be collected at the time of sale or activation of SIM Card)
A. <u>Low Priced Mobile Phones or Satellite Phones</u> i. All cameras: 2.0 mega-pixels or less. ii. Screen size: 2.6 inches or less iii. Keypad	Rs.150/-	Rs.250/-
B. <u>Medium Priced Mobile Phones or Satellite Phones</u> i. One or two cameras between 2.1 to 10 mega-pixels. ii. Screen size: 2.6 inches or 4.2 inches iii. Micro processor: less than 20HZ	Rs.250/-	Rs.250/-

<p>C. <u>Smart cellular Phones or Satellite Phones</u></p> <p>i. One or two cameras between: 10 mega-pixels and above.</p> <p>ii. Touch Screen: size 4.2 inches and above</p> <p>iii. 4 GB or Higher Basic Memory</p> <p>iv. Operating system of the type IOS Android V2.3, Android Gingerbread or higher windows 8 or Blackberry RIM</p> <p>v. Micor-Processor: 2GHZ or higher, dual core or quad core.</p>	Rs.500	Rs.250/-
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The importer/respondent paid duties on the basis of second category i.e. Medium Priced Mobile Phones or satellite phones and paid duty accordingly at the rate of 250/- per piece whereas the Sales Tax Department is of the view that the mobile phones attract category (c) and it (respondent) is apparently evading the sale tax, which the department intend to recover under section 11 of Sales Tax Act, 1990. The Sales Tax Department on presumption of such misdeclaration has issued a show-cause notice to the respondent on the basis of which proceedings were initiated. The core issue was thus a misdeclaration.

Under Customs Act, 1969, Section 79 onwards is a procedure which regulates the import through filing of Goods Declaration along with necessary documents including examination of imported goods and clearance thereof. Such mechanism was adopted and exhausted by the customs when goods declaration was dealt with. The purported allegation of misdeclaration was in fact within the domain and jurisdiction of Collectorate of Customs, which, in case of any controversy, could have retained the consignment/goods for further inquiry or chemical test and determine the duty provisionally till disposal of the inquiry or reassessment. This has not happened in the instant case as had it been a misdeclaration of the goods, the officers concerned may have taken cognizance and could have objected to the

assessment in terms of Section 193 and 195 of Customs Act, 1969 read with Section 32 of the said Act. Sales Tax Act, 1990 does not deal with issue of misdeclaration as being dealt with by the customs officials under Customs Act, 1969. Therefore, unless a misdeclaration is established by the customs officials such recourse of recovery of short levy of sales tax could not have been triggered. The dispute of classification was never raised at customs level.

On the strength of above facts, it appears that exercise undertaken by the sales tax department is a futile attempt in the absence of any concrete resolution of a misdeclaration, which exercise in any event could not have been undertaken by the sales tax department. With this observation the proposed questions are answered in affirmative i.e. the Appellate Tribunal was justified in allowing the appeal of the respondent and that the action of recovery of sales tax was a flawed process. The questions are accordingly answered in favour of respondent and against the applicant. Resultantly, instant Special Sales Tax Reference Application is dismissed along with listed application.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, Inland Revenue (Pakistan), Karachi, as required by section 47(5) of Sales Tax Act, 1990.

**Judge**

**Judge**