

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, KARACHI**  
SPL. S.T.R.A. No. 102 / 2006

Date

Order with signature of Judge

**HEARING OF CASE.**

- 1) For hearing of CMA No. 1231/2006.
- 2) For hearing of main case.

**16.03.2023.**

Mr. Inziam Sharif, Advocate for Applicant.  
Mr. Rana Sakhawat Ali, Advocate for Respondent.

Through this Reference Application, the Applicant has impugned order dated 03.03.2006 passed in Sales Tax Appeal No. H-267 of 2005 by the then Customs, Excise and Sales Tax Appellate Tribunal Karachi Initially, various questions of law were proposed; however, today, Counsel has only pressed Question No. 4 which reads as under:-

“Whether the learned Tribunal had not erred by holding that additional tax was chargeable on the inadmissible input tax although principal amount of sales tax was paid by the company vide Amnesty Schemes?”

2. He submits that admittedly, the amount of Sales Tax was paid as soon as it was realized that input tax could not have been adjusted even before issuance of show cause notice and passing of the Order-in-Original and therefore, in view of the Judgments passed by the Courts reported as ***Messrs Premier Kadanwari Development Company Ltd Vs. Customs, Central Excise and Sales Tax Appellate Tribunal, Islamabad (2013 P T D 1037), Collector of Customs, Sales Tax and Central Excise and Others Vs. Messrs Sanghar Sugar Mills Ltd. Karachi and Others (P L D 2007 SC 517), D. G. Khan Cement Company Ltd. And Others Vs. Federation of Pakistan and Others (2004 S C M R 456) and Special STRA No. 191 of 2018 (Commissioner Inland Revenue, Zone-IV Vs. Byco Petroleum Pakistan Limited)***, the levy of additional tax is not justified.

3. On the other hand, Respondent's Counsel could not controvert this position that tax in question was paid before the issuance of show cause notice and passing of the Order-in-Original; however, submits that

since inadmissible input tax was claimed and was retained for a number of years; hence, additional tax is payable.

4. Heard and perused the record. Insofar as the fact that the tax in question was paid much prior to the issuance of notice and passing of the order-in-original is concerned, the same stands admitted by the departmental representative as recorded in the order. Despite this, the adjudicating authority after accepting this fact has imposed additional tax and penalty on the ground that this by implication establishes the guilt of the Applicant. With respect we are not in agreement with such observations as for imposition of additional tax and penalty element of *mense-rea* has to be established. A mere fact that as soon as a wrong claim of input tax adjustment was detected, the amount was immediately paid would not *ipso facto* mean that the tax was avoided intentionally and element of *mense-rea* was present. It is a matter of fact that for certain period; the levy of sales tax was exempt on the supplies in question, and input tax was adjusted. This, in and of itself, is not a ground to sustain imposition of additional tax and penalty, as for that some corroborative material to the contrary must be on record. There is none in this case. Therefore, in our considered view, and based on the law cited as above, is not a case wherein the imposition of penalty and the levy of additional tax must ought to be sustained.

5. Accordingly, proposed question is answered in favour of the Applicant and against the Respondent by holding that in the fact and circumstances of this case, the levy of additional tax and imposition of penalty was unjustified. The Reference Application is allowed in these terms.

**J U D G E**

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Arshad/