IN THE HIGH COURT OF SINDH AT KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas

Special Sales Tax Reference Application No.192 of 2006.

For the Applicant	Collector of Sales Tax & Federal Excise, LTU, Karachi Through Dr. Shah Nawaz Memon, Advocate
For the Respondent:	M/s. Hilton Pharma (Pvt) Limited Through M/s. Abdul Rahim Lakhani, Suneel Ali Memon and Atta Mohammad Qureshi, Advocates
Date of hearing:	**21.09.2023**
Date of order:	**21.09.2023.**

O R D E R

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant Department has impugned order dated 19.05.2006 passed in Sales Tax Appeal No. K-142 of 2004 by the then Customs, Excise and Sales Tax Appellate Tribunal Karachi Bench-I, Karachi. On 23.11.2006, the Applicant's Counsel had pressed the following questions of law: -

i. Whether or not the input tax adjustment can be claimed on the stock of raw material consumed in the supply of exempt goods?

ii. Whether or not the right of input adjustment remains intact when the goods were purchased with the intention to use in taxable supply, but actually used in the supply of exempt goods?"

2. It appears that in the earlier round this Reference Application was dismissed by this Court vide order dated 27.02.2008 whereby the proposed questions were answered against the Applicant Department by placing reliance on judgment dated 29.11.2006 passed in Special Sales Tax Reference Application No.140 of 2005 (***Collector of Sales Tax v Johnson & Johnson (Pak) Pvt. Ltd***) and other connected matters. The Department being aggrieved preferred a Civil Appeal bearing No.1311 of 2008 and vide order dated 19.03.2015, the Supreme Court while remanding the matter had set aside the order passed by this Court on the ground that proper reasons were not assigned and a non-speaking judgment was passed.

3. We have heard both the learned Counsel and perused the record. There is no denial that both the above Questions have already been decided by this Court vide judgment dated 29.11.2006 in Special Sales Tax Reference Application No.140 of 2005 (***Collector of Sales Tax v Johnson & Johnson (Pak) Pvt. Ltd***) and per settled law it is a binding precedent for us. We have otherwise perused the said judgment and it appears that the questions were identical. The relevant finding of the learned Division Bench, whereby Section 7 of the Sales Tax Act, 1990 (as prevalent at the relevant time) has been interpreted is as under: -

> 9. We have examined the case in the light of the arguments of the learned counsel, the judgment relied on by the learned counsel and have carefully perused the impugned orders, the orders in original and the records of the cases.
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> 10. Although no specific contradiction has been made in the statement of facts of the case but we inquired from the learned counsel for applicant if he would deny the Tribunal's observation that input tax paid on purchases made before 21st March which were used after 22nd March for purposes of taxable supplies has not been adjusted against output tax. The learned counsel was unable to deny the correctness of the above observation.
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> 11. Since the subject of the controversy in these references involve section 7 & 8 of the Sales Tax Act, it will be relevant to reproduce the above sections.
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> > *"7. Determination of tax liability. (1) For the purpose of determining his tax liability in respect of taxable supplies made during a tax period, a registered person shall be entitled to deduct input tax paid [during the tax period] for the purpose of taxable supplies made, Or to be made, by him] from the output Tax that is due from him in respect of that tax period and to make such other adjustments as are specified in Section 9.*
> >
> > *(2) A registered person shall not be entitled to deduct input tax from output tax unless, (i) in case of a claim for input tax in respect of a taxable supply made in Pakistan, he holds a tax invoice in respect of such supply for which a return is furnished;*
> >
> > *(ii) in case of goods imported into Pakistan, he holds the bill of entry duly cleared by the customs under Section 79 or section 104 of the Customs Act, 1969 (IV of 1269)*
> >
> > *[8. Tax credit not allowed. -.- (1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to reclaim or deduct input tax paid on---a) the goods used or to be used for any purpose other than for the manufacture or production of taxable goods or for taxable supplies or to be made, by him]; and*
> >
> > *b) any other goods which the Federal Government may, by a notification in the Official Gazette, specify [; and]*
> >
> > *c) on the goods under sub-sections (1A and (5) of section 3.]*

12. From a perusal of Section 7, it is clear that the adjustment of input tax which has been paid during the tax period for the purposes of taxable supplies has to be adjusted in that tax period against the output tax irrespective of the fact whether the supplies have been made in that tax period or not. It is an admitted fact that in the tax period in which this tax was paid it was on goods purchased for the purposes of taxable supplies. On this point the observation of the Tribunal which has not been denied by the learned counsel for applicant is important because when input tax was not paid for the purposes of taxable supplies but the goods were later used for making taxable supplies the input tax was not adjusted against the output tax.

13. In the judgment relied on by the learned counsel for the respondent, Mr. Nasim Sikandar J., while authoring the majority judgment has held as under:

> *19. According to section 7 a registered person is entitled to deduct input tax paid during the tax period for the purpose of taxable supply made or to be made by him from the output tax. The learned Counsel for the appellant is correct in pointing out that the use of word "purpose" and "supplies made or to be made" are indicative of the fact that the payment of input tax is available for adjustment as well as refund not with regard to any specific goods but with regard to the input tax paid during a particular tax period. The negatives contained in section 8 were also improperly interpreted by the Departmental authorities. According to sub-section (1) of Section 8, a registered person is not entitled to reclaim or deduct' input tax paid inter alia on the grounds used or to be used for any purpose other than for taxable supplies made or to be made by him. The goods on which input tax was paid by the appellant and were subsequently destroyed were not meant for use nor were intended to be used for any purpose other than taxable supplies. The intention of the appellant at the time of receiving the supplies and making and payment. (input tax) was apparently to make taxable supply of them. It has never been the case of the Department that either the supplies were not received or that these supplies were covered by the negative list as given in section 8 of the Act. The only objection of the department being that the goods for which input tax was paid were no more available for taxable supplies. While holding that opinion, as noted earlier, the departmental authorities over looked the use of word "purpose" and "supplies made or to be made", as used in section 7.*
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> *20. It is rightly pointed out in the order of the Customs authorities that, the provisions of sections 7 and 8 of the Act are not charging provisions and that these are machinery provisions to crystallize the liability to pay the tax as contemplated in sub-section (3) of section 3 of the Act. To co-relate payment of input tax to the goods in question, in my way of thinking, is not in accordance with the provisions of the Act. The interpretation of departmental authorities does not appear justified while placing stress more on goods in respect of which the input tax was paid rather than the amount of tax itself and the period during which it was paid. Section 7 of the Act supports out rightly the submissions made at the bar by the learned counsel for the appellant that the claim of input tax for adjustment as well as for refund is co-related only to the payment of input tax "paid during the tax period" and for the purpose of "supplies made or to be made."*

14. On the interpretation of section 7 & Section 8, we respectfully subscribe to the majority view in the judgment quoted Supra. We also find a

lot of weight in the argument of the learned counsel for respondent that the Department cannot blow hot and blow cold at the same time.

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15. The learned counsel for the applicant has not advanced any arguments on the additional question admitted in Special Sales Tax Reference Application No. 142 of 2005. Since for all practical purposes he has not pressed this question, therefore, we would refrain from answering this question.

16. In the light of the above discussion, we are of the opinion that the order of the Tribunal is based on correct appreciation of law which is unexceptionable and no interference is called by this Court. In our opinion question No.1 is of general nature and does not require adjudication by this Court. We would answer question No.2 in affirmative and before answering question No.3, we would modify it to read as under: -

> *Whether the Tribunal was justified in holding that input tax has to be adjusted against output tax according to tax periods.*

17. We would answer the above modified question in affirmative. As à consequence these Special Sales Tax Reference Applications are dismissed being devoid of merits"

4. When the facts of the case in hand are looked into, it appears that in 2002 for a brief period, the drugs and medicines manufactured by the Respondent were liable to sales tax with effect from 21.03.2002 to 22.08.2002 and the Respondent accordingly paid sales tax at the specified rates on such manufactured goods. While doing so, the Respondent also claimed input tax adjustment in respect of those materials which were purchased during this relevant tax period and were consumed in making taxable supplies. The Department's case is that the goods manufactured by the Respondent were exempt from payment of sales tax from 22.08.2002 onwards, therefore, the claim of input tax adjustment during 21.03.2002 to 22.08.2002 was not justified and as a consequence thereof, a Show Cause Notice was issued. It is a matter of fact that the Respondent only adjusted the input tax paid by it up to 22.08.2002, as up to that time, the raw material purchased was meant for consumption in production of taxable supplies. Whereas, the Applicant's case is that by virtue of Section 81(a) of the Act this input tax was inadmissible. However, this contention of the Applicant does not appear to be in consonance with law inasmuch as the material which were purchased and consumed were meant for taxable supplies during the period in dispute. This finding of fact has been stated and affirmed by the Tribunal and there is no denial to that extent. The intention of Respondent at the time of receiving the supplies and payment of input tax was meant for use of the same in production of

taxable supplies as during the period under question the produced goods were liable to sales tax.

5. Moreover, subsequently, the law i.e. section 7 of the Sales Tax Act, 1990 regulating the admissibility of input tax has been amended[1], which now states that input tax adjustment is subject to the provisions of Section 8 ibid, including Section 8(1)(a) which states that a registered person shall not be entitled to reclaim or deduct input tax paid on the goods or services used or to be used for any purpose other than for taxable supplies made or to be made by him. This insertion / amendment would apply prospectively and clarifies that such an adjustment of input tax was earlier available and now stands withdrawn specifically. Besides the above reasoning, this also goes against the case of the Applicant.

6. Since the questions already stand answered by a learned Division Bench of this Court as above, which judgment is binding on us, whereas, no case for an exception or disagreement has been made out on behalf of the Applicant; nor we have been assisted that whether the said judgment was assailed before the Supreme Court and has been decided or not. Therefore, in addition to what has been observed hereinabove, even to this extent no case of indulgence is made out.

7. Therefore, in view of the above observations and reasoning and following the judgment dated 29.11.2006 in Special Sales Tax Reference Application No.140 of 2005 (***Collector of Sales Tax v Johnson & Johnson (Pak) Pvt. Ltd***), both the questions are answered against the Applicant Department and in favour of the Respondent. As a consequence, thereof, this Reference Application is hereby dismissed.

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[1] Vide Finance Act, 2014.

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