

IN THE HIGH COURT OF SINDH, KARACHI

Spl. S.T.R.A. No. 156 of 2016

| Date | Order with signature of Judge |
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Present:

**Mr. Justice Aqeel Ahmed Abbasi.
Mr. Justice Arshad Hussain Khan.**

07.12.2017:

Mr. Abdul Rahim Lakhani, advocate for the applicant.

ORDER

Aqeel Ahmed Abbasi, J. Through instant Special Sales Tax Reference Application, the applicant initially proposed five (05) questions, arising from the impugned order dated 23.08.2016 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in STA No.55/KB/2013 (under Section 45-B of Sales Tax Act, 1990) for the tax period July 2009 to June 2010, however, after having readout the proposed questions and the impugned order passed by the Appellate Tribunal in the instant case, learned counsel submits that he will press question No.1 only, which according to learned counsel, is a question of law arising from the impugned order, which reads as under: -

“1. *Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue has erred in holding the supply of Palm Fatty Acid is taxable under section 3 of the Sales Tax Act, 1990, whereas, clarification issued by the Federal Board of Revenue declaring such supply is exempt vide clarification No: letter No:C.No.1 (3) CEB/04(pt)-33678-R dated 05.03.2012?*

2. Learned counsel for the applicant has placed on record a copy of Notification No.SRO 24(1)/2006, dated 7th January, 2006, as well as letter C.No.1(3)CED/04(pt)-33679-R dated 05th March, 2012 issued by the Federal Board of Revenue, and has contended that the applicant, after having made payment @ Rs.1/- per K.G. in respect of refined, bleached and deodorized (RBD) Palm Oil at import stage, was entitled to exemption from payment of FED in terms of Notification No.SRO 24(1)/2006, dated 7th January, 2006. However, according to learned

counsel, 95% of RBD Palm Oil is utilized in the manufacturing of edible oil, whereas, 5% is utilized in manufacturing of Palm Fatty Acid recovered from the manufacturing process of ghee/oil for which, the applicant is entitled to exemption from payment of FED. However, per learned counsel, such exemption to the applicant has been declined by the respondent without any valid reasons. It has been prayed that the question proposed through instant reference application may be answered in affirmative in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the record and have also examined the contents of the SRO No.24(1)/2006, dated 7th January, 2006, as well as letter C.No.1(3)CED/04(pt)-33679-R dated 05th March, 2012 issued by the Federal Board of Revenue in this regard. Record shows that the claim of exemption in respect of by-product of RBD Palm Oil i.e. Palm Fatty Acid by the respondent has been declined for the reason that no exemption is available to supply of Palm Fatty Acid, and said supply is held to be taxable under Section 3 of the Sales Tax Act, 1990. It is pertinent to note that letter dated 05.03.2012 issued by the FBR, which was relied upon by the Commissioner (Appeals) in the instant case while allowing appeal of the appellant, was subsequently withdrawn through letter dated 11.07.2013, realizing the mistake while making interpretation of the exemption clause in respect of Palm Fatty Acid. This aspect of the matter, however, has been examined thoroughly by the Appellate Tribunal Inland Revenue in the impugned order in the following terms:-

“9. We have heard the learned representatives from both the sides, case laws and have perused the orders of the authorities below. The questions before us are whether the palm fatty acid is a taxable supply under the provisions of Sales Tax Act, 1990 and whether the apportionment was made as per rules by the Department. We find that the palm fatty acid is by-product of the refining process of palm oil. The law provides special procedure of the taxability of ghee and cooking oil/edible oil. However, the law does not provide for any exemption to the supply of by-products of palm oil. The Sales Tax Act, 1990, creates charge of sales tax u/s 3 of the Sales Tax Act 1990 on the supply of all

taxable goods. However, it does not provide for any exemption to palm fatty acid therefore, it is a taxable supply. Perusal of the show cause notice and Order-in-Original reveals that taxpayer himself has declared this by-product as taxable in the sales tax return. Therefore, there is no dispute between the Department and taxpayer regarding the taxability of by-product which is palm fatty acid at the time of passing of order. However, confusion arises from the Board's clarification letter C.No.1(3)CEB/04(Pt-33698-R dated 05.03.2012. However, it is evident from record that the Board after considering the mistake, withdrawn the said clarification vide letter C.No.1(3)CEB/04(Pt-94076-R dated 11.07.2013 treating the same as ab initio. In addition to that field formations were also directed by the Board to recover sales tax involved in the light of this withdrawal. We find that the entire order of the learned CIR (Appeals) hinges upon the clarification of the Board dated 05.03.2012 which was subsequently withdrawn by the Board. Accordingly, after the withdrawal of said letter by the Board, the order of the learned CIR (Appeals) is not sustainable under the law as the substantive law does not provide for any exemption to the supply of palm fatty acid."

It may be observed that the claim of exemption reduced rate of tax by a taxpayer has to be specific as there can be no presumption as to claim of exemption, whereas, exemption granting provisions are construed strictly in favour of revenue. Legal position regarding claim of exemption to by-product of RBD Palm Oil i.e. Palm Fatty Acid is clear from the plain language of law, and was duly acknowledged by the applicant itself, who did not claim such exemption until some confusion was created pursuant to a letter dated 05.03.2012 issued by the F.B.R. which was subsequently withdrawn vide F.B.R's letter dated 11.07.2013.

4. In view of hereinabove facts and circumstances of the case, we are of the opinion that the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case does not suffer from any factual or legal error, which otherwise depicts correct legal position, hence, does not require any interference. Accordingly, instant reference application is hereby dismissed in limine, and the question proposed through instant reference application is answered in negative against the applicant and in favour of the respondent.

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