

IN THE HIGH COURT OF SINDH AT KARACHI

Spl. STRA No. 354 of 2010

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

The Commissioner (Legal),
 Inland Revenue, Regional
 Tax Office, Hyderabad.

.....

Appellant

Versus

M/s. Fateh Textile Mills Ltd.,
 Hyderabad.

.....

Respondents

Date of hearing as well as
 of short order:

12.09.2019

Applicant the Commissioner (Legal) through Mr. Kafeel Ahmed Abbasi,
 advocate.

Respondent M/s. Fateh Textile Mills Ltd., Hyderabad through
 Mr. Muhammad Adeel Awan, advocate.

ORDER

FAHIM AHMED SIDDIQUI, J:-

The Commissioner

(Legal), Inland Revenue, Regional Tax Office, Hyderabad has filed the instant Sales Tax Reference Application on behalf of the Department of Sales Tax against a single order dated 29-06-2010, passed by the Appellate Tribunal Inland Revenue (Pakistan) in STA No. 901/H/09 to STA No. 905/H/09. Regarding the impugned order, the applicant has raised the following question of law for the opinion of this Court.

- “i) Whether the Tribunal erred in law by declaring the order passed by the relevant officer of the sales tax as having without pecuniary jurisdiction by disregarding Section 36 of the Sales Tax Act, 1990 and Rule 8 of Sales Tax Refund Rules 2002, which specifically allows for the recovery of inadmissible refund by the officer-in-charge of the Refund Division?

- ii) Whether the Tribunal has erred in law by setting aside the orders of the Collector (Appeals) and all the relevant Order-in-Original since the Tribunal was not invested with the power to set-aside the orders impugned in terms of sub- section (2) of Section 46 of the Sales Tax Act, 1990?
- iii) Whether the Tribunal has erred in law by declaring the refund obtained by the respondent as legal in the presence of Section 8 (1) (d) of the Sales Tax Act, 1990 which disentitles a registered person for claiming input tax on fake invoices?

2. The factual matrix of the case is that the respondent filed different refund claims amounting to Rs. 2,402,146,929/- for the tax period from November 2002 to April 2005. Out of the said amount, an amount of Rs.2,315,785,749/- was sanctioned in terms of Section 10 (2) & 66 of the Sales Tax Act, 1990 read with the Sales Tax Refund Rules, 2002 notified vide SRO 575 (1) 2002 dated 31-08-2002. Nevertheless, an amount of Rs.86,152,520/- was deferred owing to various objections raised by the STARR (Sales Tax Automated Refund Repository). The STARR objected that various suppliers were found to be 'blacklisted', 'de-registered' or with status of 'registration suspended'. Purportedly, the respondent was called upon by various notices to 'Show Cause' as to why not the refund claim up to the extent of aforementioned deferred amount may be rejected as per provision under Section 11 (2) of the Sales Tax Act, 1990 read with Rule 8 of the Sales Tax Refund Rules, 2002 as well as imposing penalty as per provision under clauses (5), (11), (13) and (19) of Section 33 of the Sales Tax Act, 1990.

3. After listening to the respondent, the Order-in-Original No. 18/2006 dated 13-11-2006 was issued against the respondent, whereby the refund claim of aforementioned deferred amount was rejected. The respondent filed an appeal against the said Order-in-Original before the Collector (Appeals) Customs, Sales Tax & Federal Excise, Hyderabad, which was dismissed through Order-in-Appeal No. 44/2007 dated 05-04-2007. The respondent filed an appeal against the referred Order-in-Appeal, which was ultimately heard by the learned Appellate Tribunal, Inland Revenue, Karachi which was decided in favour of respondent through the impugned order.

4. We have heard the learned advocates appearing for the applicant as well as respondent at length and also scanned the relevant material in the light of valued submissions and citations placed before us during the course of arguments.

5. Learned counsel for the applicant Department argued at length. The substance of his submissions is that learned Tribunal erred in holding that the Order-in-Original was passed without jurisdiction by injudiciously holding that the same is without the pecuniary jurisdiction of the officer, who passed the same. Since the respondent has purchased goods from the sellers, who were subsequently blacklisted, de-registered or registration suspended; therefore, the invoices issued by those sellers are actually fake and flying invoices and respondent could not claim refunds on those invoices. In fact, it is all setup and blacklisted sellers, who have actually issued only 'invoices' and no goods were exchanged regarding those 'fake, forged and flying invoices'. Initially, the Department has only suspended the 'refund claims' and after the failure of respondent to satisfy about those purchases, the 'Order-in-Original' was passed and there is nothing wrong in the same.

6. On the other hand, the gist of arguments of the learned counsel for the respondent is that at the time of issuance of the 'invoices', the sellers were very much in the list of registered company/party by the Sales Tax Department. If the said seller is blacklisted, de-registered or suspended; there is no fault of the respondent in respect of purchases made earlier to such order of blacklisting or de-registering etc.

7. So far as the Question No. 1 is concerned, the same pertains to pecuniary jurisdiction of the officer, who has passed Order-in-Original. In a case involving contravention on the part of a registered person with respect of assessment of tax, the monetary competence to adjudicate the matter lies as under:

Additional Collector :	unlimited
Deputy Collector :	above Rs. 1 million and below Rs. 2.5 Million
Assistant Collector :	above Rs. 10,000/- and below Rs. 1 million ¹

¹ <http://download1.fbr.gov.pk/Docs/201012211412172902008stax.pdf>

8. In the present case, the Order-in-Original was passed by the Assistant Collector, Sales Tax (Refund) and the amount of the refund claims is Rs. 86,152,520/-, which is definitely does not fall within the pecuniary jurisdiction of Assistant Collector; as such the same was passed without jurisdiction because the same was beyond his monetary competence of passing such order. In these circumstances, this question of law is answered in the negative i.e. against the Department and in favour of the taxpayer.

9. So far as the Question No. 2 is concerned, the same pertains to power of the tribunal to set-aside the Order-in-Original in terms of sub-section (2) of Section 46 of the Sales Tax Act, 1990. During the course of arguments, the learned counsel for the applicant tries to make out a great point that the word 'set-aside' is neither used in the aforementioned statutory provision nor in Section 131 or 132 of Income Tax Ordinance, 2001. For the sake of brevity, we produce sub-section (2) of Section 46, which is as under:

"46. Appeals to Appellate Tribunal.— (1) Any person.....

(2) The Appellate Tribunal may admit, hear and dispose of the appeal as per procedure laid down in Sections 131 and 132 of the Income Tax Ordinance, 2001(XLIX of 2001), and rules made thereunder."

10. It is worth noting that in sub-section (2) of Section 46, it is mentioned that the appeal will be disposed of as per procedure laid down in Sections 131 & 132 of the Income Tax Ordinance, 2001 (hereinafter referred as "the Ordinance"). The procedure of disposal of appeal is laid down in Section 132 of the Ordinance and in clause (a) of sub-section 1 of Section 132 of the Ordinance, it is mentioned that the Tribunal is invested with the powers of "affirm, modify or annul", which means that the power of 'annulment' is very much available with the Tribunal. The word 'annul' has been described in the online digital edition of Black Law Dictionary, as under:

"To annul a judgment or judicial proceeding is to deprive it of all force and operation, either *ab initio* or prospectively as to future transactions."²

While, the word 'set aside' is defined in the following words:

² <https://thelawdictionary.org/annul/>

"To set aside a judgment decree, award, or any proceedings is to cancel, annul, or revoke them at the instance of a party unjustly or irregularly affected by them."³

11. Hence, it is clear that the word 'annual' and 'set aside' are synonym to each other and may be used for the same meaning. We are; therefore, of the considered view that the annulment includes the power of setting aside of the Order-in-Original, as such the contention of the learned counsel for the applicant does not bear any weight. Resultantly, this question is also replied in the negative i.e. against the Department and in favour of the taxpayer/registered person.

12. Finally, we address the Question No. 3, pertaining to the legality of the refund obtained by the respondent on allegedly fake and flying invoices. It is the contention of counsel for the applicant Department that as the invoices issued from those sellers, who were subsequently declared as blacklisted or de-registered; therefore, no refund can be allowed to the respondent. In response to a query, the learned counsel for the applicant Department frankly admits that at the time of issuance of invoices to the respondent, the sellers' status was shown as 'registered' on the STARR system. We consider that unless the status of a registered person as declared as blacklisted, de-registered or suspended in the STARR system; it cannot be said that the invoices issued by such registered person are fake and flying invoices. No invoice issued by a registered person can be declared as invalid or fake retrospectively. It is the admitted position, when the invoice issued to the respondent by the registered seller, nothing adverse was showing against him and department has not mentioned him as blacklisted, de-registered or suspended, hence the invoices were validly issued as per law. If any derogatory action is done by the seller, the department will be justified to take action against the seller but it will be unfair to take action against those purchasers, who have purchased goods from that seller during the period when he was enjoying the status of 'registered person'. It is our considered opinion that the refund claims preferred by the respondent in respect of invoices issued by the seller during the period when no adverse action was taken against him are valid for preferring such refund claims; as such refund claims are proper and legal. In the context of the above discussion, we reply Question No. 3 in the negative against the applicant Department and in favour of the respondent taxpayer.

³ <https://thelawdictionary.org/set-aside/>

13. The above are the reasons for our short order dated 12-09-2019, whereby all the aforementioned questions were replied in negative i.e. against the applicant Department and in favour of taxpayer/respondent registered person.

14. The ultimate outcome of the reasons discussed in the preceding paras, the instant Special Sales Tax Reference Application is dismissed along with all the listed and/or pending applications. These are the reasons of our short order dated 12-09-2019.

15. Office is directed to send a copy of this order under the seal of the Court to the Registrar, learned Appellate Tribunal Inland Revenue, as required under the law.

J U D G E

J U D G E

Dated:_____