

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Spl. S.T.R.A No.104 of 2019

Commissioner Inland Revenue Zone-I
Versus
M/S Faizan Steel

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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**Present: - Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Mahmood A. Khan.**

Fresh Case

1. For orders on office objection No.18 and 19.
2. For order on CMA No.793/2019 (Exemption)
3. For hearing of Main Case.

18.10.2021

Mr. Syed Mohsin Imam, Advocate for the applicant.

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Muhammad Shafi Siddiqui, J.- The respondent being a taxpayer is manufacturer/re-roller/re-melter of steel and iron products and for the purposes of sales tax is subjected to a special procedure in terms of Section 71 of the Sales Tax Act, 1990, read with Rules 58F, 58G and 58H. For the purpose of present controversy, Rule 58H is being pressed for consideration read with Sales Tax Special Procedure Rules, 2007. The question as framed is *whether the registered person, who is paying sales tax under Rule 58H of the Sales Tax Special Procedure Rules, 2007, cannot be subjected to pay further tax under Section 3(1)(A) of the Sales Tax Act, 1990 on the supplies.* This perhaps is the only question to consider for the purposes of dispute in this Reference as the other proposed questions are consequential.

We have heard learned counsel for the applicant and perused the material available on the record.

We have noticed that the registered person is engaged in the manufacturing of steel products and is discharging his sales tax liabilities under Rule 58H of Chapter 11 of the Sales Tax Special

Procedure Rules, 2007 issued in terms of Section 71 of the Sales Tax Act, 1990. The *ibid* provision provides that *the Federal Government may, by notification in the official Gazette, prescribe special procedure for scope and payment of tax and for other ancillary requirements*. It thus provided a complete set of Code as far as the tax liabilities are concerned and falls within the special procedure provided. There is no cavil that the respondent being a manufacturer of steel products comes within the frame of special procedure extended through Section 71 of the Sales Tax Act, 1990. The question proposed is whether the said registered person is liable to pay additional sales tax in terms of section 3(1)(A) of the Sales Tax Act, 1990.

We have also noticed that a special procedure for payment of sales tax liabilities has been curbed by the federal government by issuing a Notification. Since the respondent being particular entity is being dealt with especially through a special regime, therefore, the general treatment may not be applied for the recovery of additional sales tax in terms of Section 3(1)(A) of the Act for supply of goods. The Division Bench of this Court in the case of *DIGICOM Trading (Pvt.) Ltd. vs. Federation of Pakistan through Secretary Revenue Division/Chairman and another* reported in 2016 PTD 648 dealing with such issues has set controversy conclusively as under:-

*Once the mechanism has been prescribed by the Federal Government by issuance of a Notification in terms of various provisions of the Act, including Section 13(2)(a) of the Act *ibid*, the question of payment of any additional tax in terms of Section 3(1)(A) of the Act, for supply of goods to unregistered person(s) does not arise. The provision of Section 3(1)(A) could only be invoked in respect of goods which are being charged Sales Tax under Section 3(1) of the Sales Tax Act, 1990 at the rate specified therein at ad-valorem basis which is presently @ 17%. Once the mode and manner and the rate of Sales Tax has been altered, modified or fixed by the Federal Government either through subsections (2)(b) & (6) of Section 3, read with Section 8(1)(b) of the Sales Tax Act, 1990, as well as under Section 13, no further tax can be demanded once the liability of Sales Tax is discharged on*

the basis of a special procedure as contemplated under S.R.O. 460(I)/2013.

Rule 58H provides that *“every steel-melter, steel re-roller etc. etc. having a single electricity meter excluding units operated by sugar mills or other persons using self-generated electricity shall pay sales tax at the rate of rupees seven per unit of electricity consumed for the production of steel billets, ingots and mild steel (MS) products excluding stainless steel, which will be considered as their final discharge of sales tax liability.”* The provision of Section 71 thus has an overriding effect on other general provisions of the Act. Section 3(1)(A) could only be enforced in respect of the goods which are being charged sales tax under Section 3(1) of the Sales Tax Act, 1990 at the rate specified therein on ad-valorem basis.

We are of the view that no interference is required in the impugned order of the Tribunal. The question framed above is answered in negative in favour of the respondent and against the applicant department and consequently Reference Application is dismissed alongwith pending application(s).

Copy of this order be sent to the Appellate Tribunal in terms of Section 47(5) of the Sales Tax, Act, 1990.

JUDGE

JUDGE

Ayaz Gul