

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Constitutional Jurisdiction)

C. P. No. D – 5635 of 2017

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Maalik Gaddi.

Priority.

1. For orders on office objection.
2. For hearing of Misc. No.23445/2017.
3. For hearing of Main Case.

31.01.2019:

Mr. Ajeet Sundar, advocate for the petitioner.
Mr. Muhammad Aqeel Qureshi, advocate for the respondent.
Ms. Lubna Pervaiz, DAG.

ORDER

1. Learned counsel for the petitioner at the very outset submits that the legal controversy agitated through instant petition has already been decided by a Divisional Bench of this Court in the case of *Messrs Al-Zarina Glass Industries v. Federation of Pakistan through Secretary, Revenue Division and Ex-Officio Chairman, Federal Board of Revenue, Islamabad and 3 others (2018 PTD 1600)*, wherein, according to learned counsel, in the above cited judgment has been held that petitioners are not liable to pay further tax and extra tax in terms of SRO No.509(I)/2013 dated 12.06.2013, if the petitioners are not making any taxable supplies in terms of Section 2(41) of the Sales Tax Act, 1990, whereas, according to learned counsel, petitioner is exempt from payment of sales tax on services in terms of Section 13 read with item No. 19 under the heading

“Cereals and Products of Milling Industries” having PCT Heading 1101.0010 of Sixth Schedule to Sales Tax Act, 1990.

2. While confronted with hereinabove position, learned counsel for the respondent and the learned DAG could not controvert the same and candidly stated that instant petition can be disposed of in terms of above cited judgment.

3. Accordingly, keeping in view of hereinabove facts, and while respectfully following the ratio of aforesaid judgment of the Divisional Bench of this Court, instant petition is allowed in the similar terms as contained in paragraphs 10 to 12 of above referred judgment, which is reproduced hereunder for the sake of brevity and ready reference:-

“10. A Division Bench of this Court in the case of Digicom (Pvt.) Ltd. (supra), while examining the provisions of section 13(1) of the Sales Tax Act 1990 and SRO 460(I)/2013 dated 03.5.2013, has been pleased to hold as under: -

‘7. On a minute examination of the provisions of Section 13(1) of the Act, it appears that it provides, notwithstanding the provisions of section 3 for exemption from the levy of sales tax on the supply or import of goods specified in the Sixth Schedule, subject to such conditions as the case may be, whereas, sub-section (2)(a) provides, that notwithstanding the provisions of sub-section (1), the Federal Government may by Notification in the official gazette exempt any taxable supplies made or import or supply of any goods or class of goods, from the whole or any part of the tax chargeable under this Act, subject to conditions and limitations specified therein. On perusal of S.R.O. 460(I)/2013 it reflects that it has been specifically issued in terms of sub-section (2)(a) of section 13 in addition to other relevant provisions of the Act, and, therefore, we are of the view that through S.R.O. 460(I)/2013 the Federal Government has fixed the rate of Sales Tax as mentioned in Column 2 of the Table of the SRO at different rates and such fixation of Sales Tax appears to be the final liability of Sales Tax at import and supply stage. The words used in section 13(2)(a) of the Act are very specific and provides for exemption any taxable import or supply of any goods from the whole or any part of the Sales Tax chargeable under the Act and not merely under Section 3(1) of the Act as contended by the learned Counsel for respondent No.2. This would mean that the provision of section 13 of the Act has an overriding effect on the

chargeability of Sales Tax in terms of section 3(1) as well as 3(1)(a) of the Act. 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 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 subsection (2)(b) and (6) of Section 3, read with 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.”

11. *Similarly, a learned Single Judge of the Lahore High Court, in Writ Petition No.WP 27097/2013 (Zia Brothers v. Federation of Pakistan etc.) while examining the provisions of section 3(1) and 3(1)(a) read with section 13 of the Sales Tax Act 1990 as well as the provisions of SRO 648(I)/2013 dated 09.07.2013, has been pleased to hold that section 3(1A) of the Sales Tax Act 1990 has no applicability to the case of petitioners who enjoy exemption under the Act and are not making any taxable supplies in terms of section 2(41) of the Sales Tax Act 1990.*

12. *In view of hereinabove facts and circumstances of the case, and by respectfully following the ratio of the aforesaid decisions, we are of the opinion that the provisions of SRO 509(I)/2013 dated 12.6.2013 are not applicable to the petitioners who enjoy exemption in terms of section 13 read with item 29 C of the Sixth Schedule to the Sales Tax Act 1990 from payment of sales tax as the petitioners are not making any taxable supplies in terms of section 2(41) of the Sales Tax Act 1990.”*

4. Petition stands disposed of in the above terms along with listed application.

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