

# **IN THE HIGH COURT OF SINDH AT KARACHI**

(Extraordinary Constitutional Jurisdiction)

**Const. Petition No. D – 8023 of 2018**

Date	Order with signature of Judge
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**Present:**

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

**Priority.**

1. For hearing of Main Case.
2. For hearing of Misc. No.35119/2018.

**22.02.2019:**

Mr. Arshad Hussain, advocate for the petitioner  
a/w. Mr. Naeem Suleman, advocate.

Dr. Shah Nawaz Memon, advocate for the respondent.

Ms. Lubna Pervez, Deputy Attorney General.

**ORDER**

1. Learned counsel for the petitioner at the very outset submits that legal issue agitated through instant petition, has already 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 & others* {2018 PTD 1600}, wherein, it has been held that if any person, who enjoys exemption in terms of Section 13 read with Item No. 7 Table-II of the Sixth Schedule of Sales Tax Act, 1990 and not making any taxable supply in terms of Section 2(41) of the Sales Tax Act, 1990, then such person is not required to pay further tax and extra Sales Tax in terms of Section 3(1A) and SRO 509(I)/2013 dated 12.06.2013.

2. While confronted with hereinabove submissions of the learned counsel for the petitioner, learned counsel for respondent and the learned DAG could not controvert the same and submit that instant petition can be disposed of in similar terms.

3. We have heard the learned counsel for the parties, perused the record with their assistance and also gone through the judgment of Divisional Bench as referred to hereinabove. It will be advantageous to reproduce the relevant findings as contained in Para: 8 to 13 of the above judgment, which reads as follows:

*“8. Admittedly, the supplies being made by the petitioners i.e. glass bangles, are exempt from payment of sales tax in terms of section 13 read with Item No. 29C of the Sixth Schedule to the Sales Tax Act, 1990 whereas, the petitioners are not required to be registered under Sales Tax Act, 1990 as they do not make any taxable supplies in terms of section 2(41) of the Sales Tax Act, 1990. In terms of section 14 of the Sales Tax Act, 1990, read with rule 4 of Chapter 1 of Sales Tax Rules, 2006, only such persons who are engaged in making taxable supplies are required to be registered under Sales Tax Act, 1990 whereas, since the petitioners' supplies are exempt from payment of sales tax, therefore, the petitioners are not under any legal obligation to be registered under the Sales Tax Act, 1990. The petitioners are, admittedly, making payment of sales tax on taxable supplies purchased by them from SSGC and HESCO, however, in view of the fact that the supplies of manufactured glass bangles are exempt from levy of sales tax under section 13 read with Item No. 29C of the Sixth Schedule to the Sales Tax Act, 1990, therefore, the petitioners are not under any legal obligation to get sales tax registration number and since they are not liable to be registered under the Sales Tax Act, 1990, therefore, they are not under any legal obligation to pay further tax and extra tax under section 3(1)(a) of the Sales Tax Act, 1990 in terms of S.R.O. 509(I)/2013 dated 12.6.2013 which can be made applicable in respect of such persons who were required to be registered under Sales Tax Act, 1990, however, have chosen not to be registered in accordance with law.*

*9. From perusal of S.R.O. 509(I)/2013 dated 12.6.2013, issued by the Ministry of Finance, Economic Affairs, Statistics and Revenue, Government of Pakistan,*

*under subsection (5) of section 3 of the Sales Tax Act, 1990, it appears that levy of extra tax at the rate of 5% of total billed amount excluding the amount of federal taxes in addition to the tax payable under subsection (1) of section 3 of the Act, has been imposed on supplies of electric power and natural gas to persons having industrial or commercial connections, and whose bill for any month exceeds Rs.15,000/- but who have either not obtained sales tax registration number or are not on the active taxpayers list maintained by the FBR. The purpose of levying extra tax, in addition to the tax under sub-section (1) of section 3 of the Act, is to charge the said tax from those persons who are liable to be registered under the Sales Tax Act, 1990 but have chosen not to get themselves registered to avoid payment of sales tax in accordance with law, whereas, in the case of the petitioners, since the supplies manufactured by them i.e. glass bangles, have been exempted from payment of sales tax in terms of section 13 read with Item 29C of the Sixth Schedule to the Sales Tax Act, 1990, therefore, the petitioners are not under any legal obligation to obtain sales tax registration or to appear on the active taxpayers list maintained by the FBR. Once the Legislature, in its own wisdom, has chosen to exempt the supplies manufactured by the petitioners, i.e. glass bangles, exempt from payment of sales tax, they cannot be made liable to make payment of any further tax or extra tax only on account of their non-registration under the Sales Tax Act, 1990.*

*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 S.R.O. 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 subsection (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 subsection (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. W.P. 27097/2013 (Zia Brothers v. Federation of Pakistan etc.) while examining the provisions of sections 3(1) and 3(1)(a) read with section 13 of the Sales Tax Act, 1990 as well as the provisions of S.R.O. 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 S.R.O. 509(I)/2013 dated 12.6.2013 are not applicable to the petitioners who enjoy exemption in terms of section 13 read with item 29C 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.*

13. *By our short order dated 15th March, 2017, the aforesaid petitions were allowed and above are the reasons for such short order."*

Since the facts and the legal issue raised through instant petition are the same, therefore, following the earlier judgment of Divisional Bench of this Court on the subject, instant petition stands allowed in the above terms alongwith listed application.

**J U D G E**

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**A.S.**