IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

Special S.T.R.A. No. 260 of 2018

Date	*Order with signature of Judge*

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmed Khan

Fresh Case

1. *For orders on office objection No. 18.*
2. *For orders on Mic. No. 2262/2018*
3. *For hearing of Main Case.*

25.09.2020:

Mr. Muhammad Aqeel Qureshi, advocate for applicant

O R D E R

1. Through instant Special Sales Tax Reference Application, following question has been proposed, which according to learned counsel for the applicant, is a questions of law, arising from the impugned order dated 02.03.2018 passed by the Appellate Tribunal, Inland Revenue (Pakistan) Karachi Bench, Karachi in STA No. 485/KB of 2017 [Tax Period Nov. 16, Jan. 17 to March 17]. The question reads as follows:-

> *"Whether on the facts and in the circumstances of the case can seller treat a buyer as manufacturer ignoring the fact that the buyers have registered itself as retailer?"*

2. After having read out the above proposed question and the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, learned counsel for the applicant submits that the impugned order is based on misreading of facts, therefore, the same may be set-aside and answered in favour of the applicant and against the respondent.

3. Attention of learned counsel for the applicant was drawn to the proposed questions, which prima facie does not refer to any finding of the Appellate Tribunal Inland Revenue in the instant case on the legal point, relating to application of provision of Sales Tax Act, 1990, whereas, such question prima facie being a question of fact, otherwise does not arise from the impugned order passed by the Appellate Tribunal in the instant case. In response to such query of the Court, learned counsel could not submit any response, nor assist the Court as to how the proposed question is a question of law, arising from the impugned order passed by the Appellate Tribunal in the instant case. It will be advantageous to reproduce the relevant finding in the impugned order, relating to merits and application of provision of Sales Tax Act, 1990, as well as the relevant SRO 1125(I)/2011 dated 31.12.2011 as amended vide SRO 491(I)/2016 dated 30.06.2016, which read as follows:-

> *"12. On merits of the case we have noted that the appellant supplied goods on zero rated sales tax invoices to the registered buyers in terms of SRO.1125(I)/2011 dated 31.12.2011 as amended vide SRO.491(I)/2016 dated 30.06.2016 against undertakings provided by respective buyers. Such undertakings were placed before us in original which have been verified and copies of which have been placed on record. We have further noted that there has been no disputed between the parties on the facts that the appellant supplied finished fabrics and the alleged buyers sell readymade garments. Now, the question arises if the departmental contention is taken and it is assumed that the appellant supplied finished fabrics then there is no evidence on record which may lead us to a*

conclusion that the buyers sold finished fabrics in same state and not readymade garments. We specifically asked the departmental representative to place on record any concrete documentary evidence to substantiate their claim, however he failed to do so.

13. Now we revert to the claim of the appellant that he made supplied to the buyers who are not manufacturers but deemed to be manufacturers and the relevant SRO. 1125(I)/2011 dated 31.12.2011 as amended vide SRO.491(I)/2016 dated 30.06.2016 allows them such facility or otherwise, we have noticed that the appellant has claimed that clause (vi) of Table-II of SRO 491(i)/2016 allows their buyers zero rating facility. For the sake of brevity the relevant clause (vi) is reproduced hereunder:

> ***"Supplies of finished fabric to manufacturers of five sectors specified in condition (i) below"***

It would also be advantageous to reproduce serial No.02 of aforesaid SRO which is relevant to the present controversy.

> ***"Processed goods, including fabrics Processing of goods owned by other persons by registered manufacturers of the five sectors mentioned in condition (i) below"***

14. On close perusal of above clause (vi) and serial No.02 of subject SRO, prima facie it appears that there is no bar under the law to get the fabrics processed from a third party who is manufacturer of five zero rated sectors mentioned in condition (i) of said SRO. The department has not

> *disputed that the alleged buyers of the appellant are not sellers of readymade garments thus it can safely be presumed that if the buyers had no own facility of manufacturing then they would have got the finished fabrics processed from other manufacturers. Such arrangement of alleged buyers has not been disputed by the department and the appellant also issued zero rated invoices on the valid undertakings of the buyers which have also been placed before us. The department has only relied upon the profiles of the alleged buyers and has claimed that the zero rating facility cannot be extended to them as they are registered as retailers but the law does not put any bar on it. Rather in terms of serial No.02 of subject SRO as quoted supra it extends zero rating even on fabrics owned by other persons and processed by manufacturers of five zero rated sectors."*

From perusal with hereinabove finding of the Appellate Tribunal Inland Revenue, it appears that finding of fact as recorded by the Appellate Tribunal to the effect that the fabric processed from a third party, who is manufacturer of five zero rated sectors mentioned in condition (i) of SRO 491(I)/2016 dated 30.06.2016 could be covered for the purposes of extending zero rated facility as per aforesaid SRO and there is no bar under the law or in terms of aforesaid SRO to claim zero rated facility in respect of five sectors as detailed in the SRO.

4. Keeping in view with hereinabove circumstances of the case, we are of the opinion that the question proposed through instant Reference Application is not a question of law arising from the impugned order passed by the Appellate Tribunal Inland Revenue

in the instant case, we are reformulating the question in the following terms:-

> *"Whether the Appellate Tribunal Inland Revenue was justified to extend zero rating facility in terms of SRO 1125(I)/2011 dated 31.12.2011 as amended vide SRO 491(I)/2016 dated 30.06.2016 to the retailers/suppliers, who admittedly do not have facility and get the fabric processed from third party?"*

5. Accordingly, the question reformulated hereinabove is answered in ''***AFFIRMATIVE***' against the applicant and in favour of respondent.

6. Instant Special Sales Tax Reference stands disposed of in the above terms alongwith listed application.

JUDGE

JUDGE

A.S.