

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

Special S.T.R.A. No. 162 of 2018

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

- 1 For orders on office objection No. 21 & 23.
- 2 For orders on Misc. No. 1527/2018.
- 3 For hearing of Main Case.

08.02.2021:

Mr. Muhammad Aqeel Qureshi, advocate for the applicant.

ORDER

1. Learned counsel for the applicant has filed Statement, whereby, question has been reformulated. The same is taken on record. After having readout the reformulated question and the impugned order dated 26.01.2018 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in STA No.210/KB/2015, learned counsel for the applicant submits that the proposed question is a question of law, arising from the impugned order passed by the Appellate Tribunal Inland Revenue, whereas, the finding as recorded by the Appellate Tribunal is erroneous in law, which may be set-aside and the question may be answered in AFFIRMATIVE in favour of the applicant and against the respondent. Reformulated question reads as follows:-

“ Whether on the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified to reject the departmental appeal when the statutory provision of Section 21(3) bars the refund and input adjustment made prior or after the blacklisting order?”

2. We have heard the learned counsel for the applicant, perused the record and also gone through with the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case. From perusal of the impugned order passed by the Appellate Tribunal Inland Revenue, it appears that concurrent finding of fact has been recorded by the appellate authorities to the effect that the supplier's Sales Tax Registration was suspended after three years' from the date of transaction made between the respondent/ taxpayer and supplier, therefore, there was no justification to disallow input adjustment for the relevant period when suppliers were not blacklisted. It will be advantageous to reproduce the finding of the Appellate Tribunal Inland Revenue to this effect as contained in Para: 11 of the impugned order, which reads as follows:-

"11. We minutely consider the submissions as urged before us while considering the contentions of respective sides we appraise the material available with us. Precisely the allegation of the department against the taxpayer is that he is involved in purchases from blacklisted/suspended suppliers. Keeping in mind the allegation of department, we consider the record, record reveals that this allegation relates to various periods for suppliers namely, M/s. M. King International (09/2009, 11/2009), M/s. J.A. International (03/2010), M/s. Royal Enterprises (07/2010 to 11/2010), M/s. Umer Traders (07/2009, 08/2009), M/s. Sagar Enterprises (02/2011), M/s. Nadeem Impex (10/2009, 12/2009) and M/s. Abbas Enterprises (01/2010). In this respect record reveals that aforementioned suppliers blacklisted/suspended after three years from the date of transactions made regarding business committed between the taxpayer and with above named suppliers meaning thereby they were active at the time of business transactions with the taxpayer. Such fact is also evident from the record even that the office has not bothered to verify the same through FBR web portal beside this it is contention of the taxpayer he made all transactions with its suppliers through banking channel so in such circumstances the officer was required to verify the said

transactions through banking channel or entry register4s but has not done so.”

3. In view of hereinabove facts and circumstances of the case, we do not find any substance in the instant Reference Application, which is accordingly hereby dismissed in limine alongwith listed application. Consequently, the question proposed through instant Reference Application is answered in “AFFIRMATIVE” against the applicant and in favour of the respondent.

Instant Special Sales Tax Reference Application stands dismissed in the above terms alongwith listed application.

JUDGE

JUDGE

A.S.