

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

Special S.T.R.A. No. 120 of 2020

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. 22.
2. For orders on Misc. No.545/2020.
3. For hearing of Main Case.

12.11.2020:

Mr. Muhammad Zubair Hashmi, advocate for the applicant.

ORDER

1. Through instant Income Tax Reference Application, the applicant has proposed following questions, which according to learned counsel for the applicant, arising from the impugned order dated 05.11.2019 passed by the Appellate Tribunal Inland Revenue of Pakistan Karachi Bench Karachi in STA No.392/KB/2018 [Tax Periods January 2011 to June 2012], for opinion of this Court:-

“i. Whether under the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to uphold the order of the learned Commissioner (Appeals) deleting the disallowance of claim of input tax on account of supplies received from blacklisted/suspended concern, when the disallowance was validly made in accordance with the provisions of Section 7, 8 and 21(3) of the Sales Tax Act, 1990 read with the Rule 21(v) of the Sales Tax Rules of the Sales Tax Rules, 2006?

ii. Whether under the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to uphold the order of the learned Commissioner (Appeals-I) whereby Commissioner (Appeals-I) set aside the Order-in-Original in respect of claim of input tax from blocked/suspended person despite that Rule 21(v) of the Sales Tax Rules, 2006 read with Section 21(3) of

the Sales Tax Act, 1990 in which it is mentioned that once a person is blacklisted, the refund or input tax credit claimed against the invoices issued by him, whether prior or after such blacklisting,, shall be rejected?

iii. Whether under the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to uphold the order of the learned Commissioner (Appeals) under which the Commissioner (Appeals-I) had deleted the demand of Sales Tax, default surcharge & penalty by setting aside the impugned Order-in-Original whereby input tax claimed on account of supplies from block /suspended person was held inadmissible under Sections 7, 8 and 21(3) of the Sales Tax Act, 1990 read with Rule 12(v) of the Sales Tax Rules, 2006?"

2. Learned counsel for the applicant after having read out the proposed questions and the impugned order passed by the Appellate Tribunal in the instant case, has candidly stated that though the questions proposed hereinabove are questions of law, however, the order passed by the Appellate Tribunal Inland Revenue in the instant case, is based upon earlier decision of the Appellate Tribunal Inland Revenue as well as various High Courts on the subject legal controversy involved in the instant case. It has, however, argued by the learned counsel for the applicant that since the questions proposed are questions of law, therefore, this Court may decide the same after hearing the parties in accordance with law.

3. We have heard the learned counsel for the applicant, perused the record and gone through the impugned order passed by the Appellate Tribunal with his assistance and have also gone through with the impugned order passed by the Appellate Tribunal in the instant case as well as the orders of the two authorities below, has rightly pointed out by the learned counsel for the applicant. The questions proposed through instant Reference have been decided by the Appellate Tribunal Inland Revenue after

scrutiny of the facts and while placing reliance on the earlier decisions of the Appellate Tribunal Inland Revenue as well as different High Courts in respect of legal controversy involved in the instant case. The facts have not been disputed by the learned counsel for the applicant, not the learned counsel could assist this Court as to whether the facts or the ratio of the decisions referred in the impugned order are distinguishable from the facts and the legal issue involved in the instant case. It has also come on record that the sales tax on the amount of sales was duly deposited into Government Treasury, whereas, at the time of making supplies and claiming input tax thereon, the suppliers were not blacklisted. It may be further observed that an earlier decision of the Appellate Tribunal Inland Revenue is binding upon the subsequent Bench of the Appellate Tribunal Inland Revenue, including the order passed by the Superior Courts, therefore, if decision reached while placing reliance of the binding decision of the Appellate Tribunal Inland Revenue or the Superior Court does not give rise to any question of law, which may require opinion of this Court, unless an aggrieved party can demonstrate that the impugned order as well as the order passed by the previous Bench of the Appellate Tribunal or by Superior Courts, has been reversed or the same as per-incuriam or contrary of law. Learned counsel for the applicant has not been able to demonstrate any of aforesaid eventually and has candidly stated that the impugned order prima facie does not suffer from any factual legal error.

4. 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.

5. Before parting with this order, we may further observe that under Reference Jurisdiction in terms of Section 133(1) of the Income Tax Ordinance, 2001, only substantial legal question(s) can be examined and not every question can be referred for the opinion of this Court as a matter of routine or in a form of appeal or revision, whereas, scope of Reference Jurisdiction is limited, only to the extent of examining the substantial question of law or public importance and general application.

JUDGE

JUDGE

A.S.