

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Before: **Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Agha Faisal**

Special Sales Tax Reference Application
Nos.183 and 184 of 2017

Silver Surgical Complex (Pvt.) Ltd.
Versus
Commissioner Inland Revenue Zone-V

Date	Order with signature of Judge
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1. For orders on office objections.
2. For hearing of main case.
3. For hearing of CMA1717/17

Dated: 13.08.2021

Mr. Aminuddin Ansari for applicant.
Ms. Dil Khurram Shaheen for respondent.

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Applicant on concurrent findings of three forum below attempted to persuade on the proposed questions of law for the special sales tax reference applications. Stay order has been operating herein for the past four years, restraining the collection of adjudicated public revenue.

Brief facts of the case are that during scrutiny by officer of the department it was observed that in the monthly sales tax and Federal excise return of the period (i) July 2014 to 2015 and (ii) July 2015 to February 2016 the amount of input tax incurred for making both exempt and taxable supplies has not been claimed as per apportionment formula prescribed under the Sales Tax rules 2006 read with Section 8(2) of Sales Tax Act 1990.

Applicant's case revolved around the arguments that applicant being registered person is entitled to claim input tax on exempt supplies.

Question before lower forums as per show Cause Notice was whether the formula prescribed under the rule 25(3) *ibid* was applied by the applicant for apportionment of tax? This is in fact a question before us and will be answered accordingly.

Supplies involving exempt and taxable purchase cannot be treated in a generalized way. Applicant while having input tax adjustment of the above period forgot to apply rule 25(3) of the *ibid* rules 2006 which does not permit the adjustment of input tax in its entirety when they deal with both taxable and exempt supplies.

Section 8(2) of Sales Tax Act, 1990 to which is relied upon is as under;

"8. Tax credit not allowed.-- (1) ...

(2) If a registered person deals in taxable and non-taxable supplies, he can reclaim only such proportion of the input tax as is attributable to taxable supplies in such manner as may be specified by the Board."

Learned counsel for the applicant has argued to the extent of claiming refund in terms of section 10 of the Sales Tax Act. The scheme of Section 10 caters for an event other than applicant's case. In terms of the facts and circumstances of the case where input adjustment is claimed on both exempt and taxable supplies as is the case of applicant before lower forums, we have to apply an unambiguous provision that deals the event and i.e. 8(2) of the *ibid* Act which directly deals with the input tax in respect of the supplies involving both exempt and taxable supplies.

Under Section 8(2) the federal Board of Revenue has notified a formula for objective apportionment of input tax under Sub Rule 3 of

Rule 25 of the *ibid* rules vide notification being SRO 555(I)/2006. For convenience it is reflected hereunder:

25. *Determination of input tax.—(1) Input tax paid on raw material relating wholly to the taxable supplies shall be admissible under the law.*

(2) Input tax paid on raw material relating wholly to exempt supplies shall not be admissible.

(3) The amount of input tax incurred for making both exempt and taxable supplies shall be apportioned according to the following formula, namely:--

$$\text{Residential Input tax credit on taxable supplies} = \frac{\text{Value of taxable supplies}}{\text{(Value of taxable + exempt supplies)}} \times \text{Residual input tax}$$

The amount of input tax incurred for making both exempt and taxable supplies shall be apportioned according to the above formula. This application was ignored which warranted action by the officer who after show cause passed the assessment order.

As stated above applicant's case falls within the frame of Section 8(2) of the Act and does not call for application of section 10 of the Sales Tax Act 1990, primarily for the reasons that the issue of both taxable and exempt supply is triggered only by Section 8(2) in an unambiguous form. By applying the arguments of applicant, the scheme of sales tax act shall be disturbed as by then reclaim of input on exempt supplies will also be allowed with which we do not agree as sales tax is a value-added entity and a generalized form of reclaim cannot be applied. The claim of input tax is attributable to taxable supply only and the present law on the subject does not consent to the reclaim of input tax on account of exempt supplies.

For the purposes of present case, section 10 of the sales tax Act does not provide any overriding effect on the applicability of an unambiguous provision of Section 8(2) of the Sales Tax Act.

Relevant clause of Section 8(f) of *ibid* Act provides as under:-

8. Tax credit not allowed.-- (1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to reclaim or deduct input tax paid on -

(a)

.....

(f) goods and services not related to the taxable supplies made by the registered person;

This is not a situation where applicant finds himself at the conclusion of its supply in relation to which tax is being reclaimed. It is couched twice with negative covenant which means it prohibits tax reclaim for exempt goods. However if supply includes both exempt and taxable goods and services the situation is catered by 8(2) of Sales Tax Act.

Since section 8(1) starts with non-obstante clause it leaves no application of any other provision for the subject event, which otherwise meant for other situation (not being one where applicant could be seen).

The questions framed does not germane to the root of the case and perhaps a possible question that we have derived is whether the formula prescribed under Rule 25(3) of *ibid* Rules was applied by the applicant for apportionment of tax ? The question is answered in 'Negative' in favour of the department and against the applicant. The special sales tax reference applications are accordingly dismissed along with listed application.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, Inland Revenue (Pakistan), Karachi, as required by section 47(5) of Sales Tax Act, 1990.

Judge

Judge