

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D-5202 of 2017

Present

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Aziz-ur-Rehman

Date of hearing : 10.10.2017
Date of order : 10.10.2017
Applicant : M/s. D.M. Roller Flour Mills
Tando Adam, through Mr. M. Faheem Bhayo, Advocate.
Respondents : Federation of Pakistan and others
through Mr. Amjad Javaid Hashmi,
Advocate and Mr. Mir Hussain,
Asstt. Attorney General.

ORDER

AOEEL AHMED ABBASI, J:- Through instant petition, petitioner has challenged the applicability of further tax in terms of Section 3(1A) of the Sales Tax Act, 1990, pursuant to SRO 509(I)/2013 dated 12.06.2013, and has sought following relief:-

- a) Declare the levy of further tax charged under section 3(1A) of the Sales Tax Act, 1990 and extra tax vide SRO 509(I)/2013 dated 12.06.2013 to be inapplicable in the case of petitioner.
- b) Direct the respondents not levy and charge further tax at the rate of 2% and extra sales tax at the rate of 5% on electricity meter reference No.2437333 0420100 U for non registration of petitioner.
- c) Declare SRO 509(I)/2013 dated 12.06.2013 in sheer violation of section 13 readwith item No.19 of Sixth Schedule of Sales Tax Act, 1990 and to be completely unconstitutional, without jurisdiction, illegal, void ab-initio and of no legal effect so far as the case of petitioner is concerned.
- d) Declare the levy of extra sales tax at the rate of 5% charged on the electric bills of supplier of exempted goods of flour who is not required under the law to register for Sales Tax to be completely unconstitutional, without jurisdiction, illegal, void ab-initio and no legal effect so far as the case of petitioner is concerned.
- e) Direct the respondents to refund or give adjustment of further tax and extra sales tax already charged on the electric bills from the day of its recovery from the petitioner mills immediately.
- f) More and further relief may be granted as this Honorable Court may deems fit in the circumstances of the case.

2. Pursuant to Court Notice, Mr. Ahmed Ali Ghumro, advocate has shown appearance and has filed vakalatnama on behalf of respondent No.2, which is taken on record.

3. Learned counsel for the petitioner at the very outset submits that the controversy agitated through instant petition has already been decided by a common judgment passed by this Court on 15.03.2017 in C.P.No.D-940/2016 [M/s Al Zarina Glass Industries v. The Federation of Pakistan & others] alongwith several others and submits that instant petition can be disposed of in similar terms. In support of his contention, learned counsel for the petitioner has referred to copy of judgment passed in the aforesaid petitions, available at Page: 29 – 41 of instant file. Learned counsel for the petitioner has also placed on record copy of combined order dated 05.09.2017 passed by this Court in C.P.No.D-2747/2017 [M/s Rehman Glass Industries v. The Federation of Pakistan & others] and several others, which was also disposed of in terms of aforesaid judgment passed by this Court.

4. While confronted with such position, learned counsel for respondents could not deny such fact and submit instant petition involves the similar controversy, which has already been decided by this Court in above cases, hence do not oppose disposal of instant petition in similar terms.

5. Accordingly, by consent of the learned counsel for the parties, instant petition is disposed of in terms of Para 7 to 12 of the aforesaid judgment passed by this Court in Const. Petition No.D-940/2016 dated 15.03.2017 (along with several others) (***M/s. Al-Zarina Glass Industries vs. Federation of Pakistan & others***), which are reproduced hereunder for the sake of brevity and relevance:-

“7. We have heard learned counsel for the petitioners and Respondents as well as learned Standing Counsel, perused the record and also examined the case law relied upon by learned counsel for the petitioners in this regard.

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 SRO 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 SRO 509(I)/2013 dated 12.6.2013, issued by the Ministry of Finance, Economic Affairs, Statistics and Revenue, Government of Pakistan, under sub-section (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 sub-section (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 SRO 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 sub-section (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 sub-section (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 sub-section (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.WP 27097/2013 (Zia Brothers v. Federation of Pakistan etc.) while examining the provisions of section 3(1) and 3(1)(a) read with section 13 of the Sales Tax Act 1990 as well as the provisions of SRO 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 SRO 509(I)/2013 dated 12.6.2013 are not applicable to the petitioners who enjoy exemption in terms of section 13 read with item 29 C 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.”*

Instant petition stands disposed of in the above terms alongwith listed application.

JUDGE

JUDGE

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.As No. 51 to 55 of 2016

Date	Order with signature of Judge
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Hearing / Priority Case

1. For orders on Misc. No.58/2017.
2. For hearing of Main Case.

06.10.2017

Mr. Amjad Jawaid Hashmi, advocate for the applicant(s).

1. Granted subject to all just exceptions.
2. Learned counsel for the applicants after having readout proposed questions, submits that the subject controversy has already been decided by this Court in a reported decision in the case of ***M/s. Wazir Ali Industries Ltd. (2012 PTD 405)***, however, requests for time to ascertain such fact and to assist this Court on the next date of hearing. Time is granted.

To come up on 16.10.2017, as requested.

JUDGE

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A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 241 of 2016

Date	Order with signature of Judge
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Hearing / Priority Case

For hearing of Main Case.

06.10.2017

Mr. Kashif Nazeer, advocate for the applicant.

Learned counsel for the applicant after having argued the matter at some length, requests for short adjournment to assist this Court as to how the order of Appellate Tribunal is incorrect in fact and law, whereas, the decision of Tribunal is otherwise based on the judgment of the Hon'ble Supreme Court.

To come up on 17.10.2017, as requested.

JUDGE

JUDGE

A.S.

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI**C .P. No. D – 6700 of 2017**

Date	Order with signature of Judge
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Fresh Case

1. For orders on Misc. No. 27810/2017.
2. For orders on Misc. No. 27811/2017.
3. For orders on Misc. No. 27812/2017.
4. For hearing of Main Case.

06.10.2017:

Mr. Arshad Hussain Shahzad, advocate for the petitioner.

1. Granted.
2. Granted subject to all just exceptions.
- 3-4. Learned counsel for the petitioner at the very outset submits that the controversy agitated through instant petition, *whereby*, the authority of Sindh Revenue Board to collect the sales tax on services being provided to the foreign clients has been challenged by the authorized indenting house in number of petitions including C.P.No.D-1574/2017 [*M/s Al Ameen Trading v. Province of Sindh & others*] and several others, wherein, notices have been issued to the respondents, who have been restrained from passing any final order pursuant to impugned Show Cause Notices. It has been prayed that similar relief may also be granted to the petitioners and instant petition may be directed to be taken up alongwith aforesaid petitions on the next date. In support of his contention, he has referred to order dated 20.03.2017 passed in the aforesaid petition.

Let pre-admission notice be issued to the respondents as well as Advocate General Sindh for **27.10.2017** to be served through first three modes, when comments shall be filed. In the meanwhile, petitioner may submit response to the impugned Show Cause Notice, however, no final order may be passed till next date of hearing.

Office is directed to fix this petition alongwith aforesaid and other identical petitions on the next date.

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ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 132 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.251/2017
2. For hearing of Main Case.

05.10.2017:

Mr. Nadeem Ahmed, advocate holding brief for Mr. Raheel Kamran Sheikh, advocate for the applicant, who could not reach from Lahore and requests for short adjournment.

Adjourned to **12.10.2017**, as suggested by the learned counsel holding brief.

JUDGE

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A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 133 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.252/2017
2. For hearing of Main Case.

05.10.2017:

Mr. Nadeem Ahmed, advocate holding brief for Mr. Raheel Kamran Sheikh, advocate for the applicant, who could not reach from Lahore and requests for short adjournment.

Adjourned to **12.10.2017**, as suggested by the learned counsel holding brief.

JUDGE

JUDGE

A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 202 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.242/2017
2. For hearing of Main Case.

25.09.2017:

Mr. Muhammad Sarfaraz Ali Metlo, advocate for the applicant.

1. Granted subject to all just exceptions.
1. Learned counsel for the applicant requests for time to reformulate the questions. Two weeks' time is granted. Let needful be done, however, subject to all just exceptions.
To come up in the 4th week of October 2017.

JUDGE

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A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 134 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.253/2017
2. For hearing of Main Case.

05.10.2017:

Mr. Nadeem Ahmed, advocate holding brief for Mr. Raheel Kamran Sheikh, advocate for the applicant, who could not reach from Lahore and requests for short adjournment.

Adjourned to **12.10.2017**, as suggested by the learned counsel holding brief.

JUDGE

JUDGE

A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 315 & 316 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.402/2017
2. For hearing of Main Case.

25.09.2017:

Mr. Altamish Faisal Arab, advocate for the applicant.

1. Granted subject to all just exceptions.
2. Learned counsel for the applicant submits that the decision of the Appellate Tribunal is based on its earlier decision in the case of the applicant for earlier orders, therefore, requests for time to seek instructions as to whether the department has preferred reference against such decision and also to obtain certified copy of such order for placing the same on record. Time is granted. Let needful be done before the next date of hearing. To come up in the 4th week of October 2017.

JUDGE

JUDGE

A.S.

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
I.T.R.A. No. 315 & 316 of 2017

Date	Order with signature of Judge
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Fresh Case

1. For hearing of Misc. No.403/2017
2. For hearing of Main Case.

25.09.2017:

Mr. Altamish Faisal Arab, advocate for the applicant.

1. Granted subject to all just exceptions.
2. Learned counsel for the applicant submits that the decision of the Appellate Tribunal is based on its earlier decision in the case of the applicant for earlier orders, therefore, requests for time to seek instructions as to whether the department has preferred reference against such decision and also to obtain certified copy of such order for placing the same on record. Time is granted. Let needful be done before the next date of hearing. To come up in the 4th week of October 2017.

JUDGE

JUDGE

A.S.