

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Special Sales Tax Appeal No. 275 of 2002

Date	Order with signature of Judge(s)
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For regular hearing

14.02.2023

Mr. Ahmed Hussain, advocate for the appellant

Through this Special Sales Tax Appeal, the appellant has impugned order dated 23.05.2002 passed in Sales Tax Appeal No. 349 of 2000 by the then Customs, Excise & Sales Tax Appellate Tribunal Bench-III Karachi, and though this various questions were proposed and this Appeal stands admitted vide order dated 04.03.2003 on such questions; however, on 24.01.2023, the following order was passed.

"In so far as question No.1 is concerned, it is informed that same stands decided by a Division Bench of this Court vide Judgment dated 22.04.2022 in STRA No.59 of 2007 in favour of the department. As to the remaining questions, learned counsel needs time to assist the court, whereas it appears that counsel then representing the department has been expired.

Therefore, in the interest of justice, notice to the respondents be issued for the next date through TCS. To come up on 14.02.2023"

Today, learned counsel for the appellant submits that it is only question No.2 which is being pressed. The same reads as under: -

"2. Whether SRO 818(1)/1999 dt. 5.7.1999 is retrospective or applicable to transactions past and closed including price valuations reflected in invoices dt. 1.7.1999 to 4.7.1999 i.e. before the date of introduction of the subject SRO?"

According to the appellant's counsel the impugned SRO was issued on 05.07.1999; hence, it cannot be applied retrospectively on invoices issued from 01.07.1999 to 04.07.1999, and therefore, the said question be answered in favor of the appellant. None has turned up on behalf of respondents, whereas, on the last date of hearing notice was repeated and it has been returned by the

respondent's office on the ground that this case does not pertain to their department, therefore, no further notice required.

We have heard the learned counsel and perused the record. Insofar as the above question and the arguments so made by the learned counsel for the appellant is concerned, we may observe that based on the facts as available on record, any answer to this question is merely academic in nature as apparently the appellant during pendency of the proceedings before the adjudicating authority had availed amnesty and paid the demanded amount. In this context it could be advantageous to refer to the findings of the Adjudicating Officer at para 4 (ii) which reads as under:-

“Under notification No.SRO.818(1)/99 dated 05.07.1999 value of taxable supply of locally produced sugar falling under heading Nos. 1701.1100 and 1701 1200 of the First Schedule to the Customs Act, 1969, was fixed at Rs.14/- per Kg for the month of July, by the Central Board of Revenue. As such this value was applicable to all supplies made from 1st to 31st July, 1999. It is an established principle of law that a notification can not be given retrospective effect unless it is specifically mentioned in it. Since, value was fixed for whole of the month of July, 1999 therefore, it is also applicable to the supplies made prior to the issuance of notification i e 05.07.1999. In view of foregoing charge (ii) stands established. Since, M/s Matiari Sugar Mills, has deposited the demanded amount of Rs.55108/- along with 25% of the additional tax due (i e Rs.4685/- out of Rs. 18742/-) and availed the benefit of amnesty scheme notified vide SRO.1349(1)/99 dated 17.12.1999, therefore no amount remains outstanding on this account. A copy of Return-cum-Challan submitted in this regard is placed in the case file for record. The representative of department confirmed the authenticity of paid challan and also confirmed that benefit of amnesty scheme was availed by the party correctly.

From perusal of the above, in our considered view it would be an academic exercise if the question now being pressed is answered. The appellant after availing amnesty for the above period of four days, has opted to take concession as per the amnesty scheme and has paid the disputed amount along with additional sales tax at reduced rates without any objection or protest; hence in view of the above we need not answer the proposed question, and therefore, this Special Sales Tax Appeal is accordingly dismissed.

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