

IN THE HIGH COURT OF SINDH, KARACHI
Special Sales Tax Reference Application No.542 of 2020

Date

Order with signature of Judge

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Zulfiqar Ali Khan

Applicant:

The Commissioner of Inland Revenue, Zone-II, CRTO, Karachi now The Commissioner Inland Revenue, Legal, LTO, Karachi, through Mr. Munawar Ali Memon Advocate

Respondent:

M/s. Gull Metal (Pvt) Limited.

Date of hearing:

22.11.2023.

Date of Order:

22.11.2023.

ORDER

Muhammad Junaid Ghaffar, J: Through this Reference Application, the Applicant has impugned Order dated 10.07.2020 passed by the Appellate Tribunal Inland Revenue in STA No. 325/KB of 2019 proposing the following questions of law:-

- “A) Whether under facts and circumstances of the case, the Appellate Tribunal-IR has erred in law to vacate show cause notice and set aside the order passed by the ADCIR & CIR (A) in the context of Section 11, 30 & 31 of the Sales Tax Act, 1990 relying on the orders of Honourable High Court. Such finding of learned Tribunal not contradicts Honourable Supreme Court of Pakistan judgment delivered in C. P. No. 398-L of 2018, C. P. No. 584-L of 2018, C.P. No. 674-L of 2018 all dated 18.09.2020?”
- B) Whether under facts and circumstances of the case, the Tribunal was justified to hold that Order-in-Original was barred by time limitation by ignoring extension of time period allowed by the competent authority under sub-section 5 of Section 11 of Sales Tax Act, 1990?”

Insofar as Question No. ‘B’ is concerned, admittedly, the proposed question as above, now stands decided by the Supreme Court¹ against the department in various cases under the Sales Tax Act, 1990 as well as The Customs Act, 1969, as both the

¹ Mujahid Soap & Chemical Industries (Pvt.) Ltd., v Customs Appellate Tribunal (2019 SCMR 1735); The Collector of Sales Tax v Super Asia Mohammad Din (2017 SCMR 1427) and respectfully followed in the case of A.J. Traders v Collector of Customs (PLD 2022 SC 817),

statutes have analogous provision insofar as passing of an Order in Original is concerned. It further appears that in the Order-in-Original though it has been mentioned that some extension was granted by FBR; however, we cannot look into this and examine the factual aspect of the matter, as now the Appellate Tribunal, being the last fact finding forum, has been pleased to consider this and has held that Order-in-Original was passed beyond the limitation period. Even otherwise it is a matter of fact that the extension, if any, was obtained after the mandatory period of 120 days as provided under 11(5) of the Sales Tax Act, 1990, had already lapsed. To this, the Counsel has made a feeble attempt to seek refuge by relying on the second proviso to Section 11(5) *ibid*; however, this does not appear to be a correct approach as in that case the Applicant ought not to have sought extension of time for passing the Order in Original.

In *Super Asia (Supra)* it has been held that wherever, the legislature has provided certain period for passing of an Order; then the said direction is mandatory and not directory and in that case non-compliance of such a mandatory provision would invalidate such act. In *Mujahid Soap (Supra)* it was held that since adjudication was beyond time as prescribed in Section 179(3) of the Act; therefore, the said decision is invalid. Both these views have been followed and affirmed in the case of *A.J. Traders (Supra)*.

In view of the above, question No. (B) as above, is answered against the Applicant and in favour of the Respondent and as a consequence thereof, answer to remaining Question(s) would be an academic exercise; hence, we deem it appropriate not to answer the same. Reference Application is hereby **dismissed**. Office shall send copy of this order to the Appellate Tribunal in terms of Section 47(5) of the Sales Tax Act, 1990.

J U D G E

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Arshad/