

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Special Sales Tax Reference Application No. 76 of 2017
Along with
SPL. S.T.R.A. No. 140 of 2017 and 582 of 2019

Date	Order with signature of Judge
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Hearing/ Priority case

- 1) For orders on office objection
- 2) For hearing of main case
- 3) For hearing of CMA No.919 of 2017 [Stay Application]

04.03.2025

Mr. Khalid Jawed Khan, Advocate for Applicant.
Mr. Muhammad Aqeel Qureshi, Advocate for Respondent.
Mr. Adeel Kaiser, Acting Deputy General Manager,
Tax Department (SSGC),
Mr. Shah Hilal, Manager Tax Department (SSGC)
Mr. Raja Love Kush, Deputy Manager, Legal (SSGC)

Today, Mr. Khalid Jawed Khan, Advocate has filed Vakalatnama in Special Sales Tax Reference Application No.582 of 2019 on behalf of the Respondent which is taken on record.

On 09.12.2024, the following order was passed:-

“Learned counsel for the application in SCRA No.76 of 2017 has relied upon a recent Judgment of the Hon’ble Supreme Court dated 12.11.2024 passed in Civil Appeal No.947 of 2002, 980, 981 & 982 of 2007, 224 of 2010 and Civil Petition No.246 of 2009 *The commissioner Inland Revenue, Legal Zone, Large Taxpayer Office, Lahore & another Versus M/s. Mayfair Spinning Mills Ltd* and others and learned counsel submits that the Hon’ble Supreme court has now decided the controversy that any input tax claimed on loss or damaged goods or as is in the case in hand Unaccounted for Gas (UFG) the entire input tax can be claimed. When confronted learned counsel for the Department seeks time. At his request adjourned. Learned counsel for the department is also directed to come prepared with questions proposed by the department in Spl. STRA No.139 of 2017 and 140 of 2017.

To come up on 18.12.2024. Office to place a copy of this order in connected Reference Applications.”

Thereafter, learned Counsel for the Department / Commissioner had sought time to seek instructions on 18.12.2024 & 12.02.2025 and today he submits that the

department has no objection if the matter is disposed off / decided in the light of orders passed by the Hon'ble Supreme Court in **Mayfair Spinning Mills Ltd**¹

Record reflects that the main issue agitated by the concerned Commissioner is in respect of claim of Input Tax adjustment on line losses / Unaccounted for Gas (UFG) allowed by the Tribunal to the extent of threshold prescribed by OGRA, as according to the department no such input tax could be allowed in terms of section 8(1) of the Sales Tax Act, 1990, as the same had not been ultimately used in the supply of gas, whereas, in the connected References, the contention of the taxpayer is that the entire Input Tax adjustment is admissible notwithstanding the threshold fixed by OGRA.

Learned Counsel for taxpayer has relied upon the case of **Mayfair Spinning Mills Ltd** (supra) and submits that in view of this now the entire input tax claim is adjustable. In **Mayfair** (supra) the Hon'ble Supreme Court has been pleased to hold that if any sales tax is paid on a product, which for some reason is not fully utilized in the production or manufacture of the finished goods, the Input Tax so paid can still be claimed and be fully adjusted against the tax liability. The issue before the Supreme Court was in respect of certain raw material which was damaged due to fire and could not be fully utilized in the production of cotton yarn, whereas sales tax had been paid on it. The taxpayer's claim for adjustment of such input tax was denied by the department on the ground that the said raw material was never used in final production of the finished goods. The Hon'ble Supreme Court held as under;

14....."A careful reading of the above provision suggests that section 8 only prohibits the claim, credit or deduction of input tax on input/ raw materials that were either never intended for use in making taxable supplies or were actually used for purposes other than making taxable supplies by a registered persons. **The loss of input/raw materials through fire, as in the present case, does not fall within the scope of "used or to be used for any purpose other than for taxable suppliers made or to be made", as stipulated in section 8. Loss of**

¹ Commissioner Inland Revenue, v Mayfair Spinning Mills Ltd, and others (2025 SCMR 1)

goods due to damage does not equate to “use”. Therefore, section 8(1)(a) does not apply to cases where input/raw materials have been lost through fire. Moreover, as we are informed, no notification under section 8(1)(b) related to goods lost due to damage or fire has ever been issued. Even otherwise, section 8(1)(b) permits the exclusion of specific input goods from the scope of section 7 of the Sales Tax Act, requiring a clear identification of such goods or classes of goods, which, as we are informed, has never included damaged cotton-gin. Accordingly, the objection raised by the appellant-tax authority against the claim of the respondent-taxpayer is rejected.

Conclusion in the case of Mayfair Spinning Mills Ltd.

“15. For the above reasons, we find that the majority opinion in the impugned judgment of Lahore High Court has applied the law correctly, requiring no intervention by this Court. Consequently, the appeal filed against it by the appellant-tax authority is dismissed.”

In view of the above, since it has been held that loss of input / raw materials does not fall within the scope of *“used or to be used for any purpose other than for taxable supplies made or to be made”* as stipulated in section 8(1) of the Sales Tax Act, 1990, the question that *“whether the applicant is entitled for adjustment of entire input tax including that which has been paid on unaccounted for gas (“UGF”), notwithstanding the threshold fixed by OGRA?”* and the same is answered in the *affirmative*; in favor of the Tax-payer (SSGC) and against the department.

Accordingly, the Reference filed by the Taxpayer (SSGC) is **allowed** and the order of the Tribunal stands set-aside / modified, whereas the Reference Applications filed by the department are hereby **dismissed**. Let a copy this order be issued to the Tribunal in terms of sub-section (5) of Section 47 of the Sales Tax Act, 1990. Office shall also place copy of this order in all connected files.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*