ORDER SHEET

IN THE HIGH COURT OF SINDH KARACHI

Special Sales Tax Reference Applications No.75 & 76 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGES

Hearing of case [Priority]

1. For hearing of main case
2. For hearing of CMA No.1198 of 2021 [Stay Application]

17.03.2025

Mr. Sami-ur-Rehman Khan, Advocate holds brief for Mr. Hyder Ali Khan, Advocate for Applicant

Mr. Ameer Baksh Metlo, Advocate for Respondent

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Through these Reference Applications, the Applicant has impugned Order dated 11.02.2021 passed in STA No.276/KB-2019 & STA No.277/KB-2019 by the Appellate Tribunal Inland Revenue of Pakistan Karachi Bench, Karachi, proposing the following questions of law:-

(a) Whether the learned ATIR erred by disallowing the input tax claim of the Applicant under Section 8(1)(h) of the Act?

(b) Whether the learned ATIR fell in error by presuming that the issue before it in appeal already stood settled by the Honourable High Court of Sindh at Karachi?

(c) Whether the use of materials covered by Section 8(1)(h) of the Act by the Applicant in its factory premises is governed by the exclusion in such subsection?

(d) Whether the phrase *"direct use in the production on manufacture of taxable goods"* is to be read widely in view of Section 8(1)(h) being a restriction on the right to property of the Applicant and also a limitation on the basic features of the Act provided under Section 7?

(e) Whether the learned ATIR was justified to uphold the imposition of default surcharge and penalty in absence of willful non-compliance or *mens rea* on part of the Applicant?

Heard learned Counsel for the parties and perused the record. At the very outset both learned Counsel have jointly placed reliance on judgment reported in the case of ***Dewan Sugar Mills Ltd[1].*** whereby, the questions proposed have

[1] Dewan Sugar Mills Ltd., versus Federation of Pakistan (2021 PTD 1007),

already been answered against the Taxpayer and in favour of the Department, whereas, the impugned Judgment of the Tribunal has also decided the issue on the basis of said judgment passed in the case of ***Messrs Dewan Sugar Mills Ltd., and others (supra)***. No exception can be drawn to the finding recorded in the above judgment as the subject Judgment is a Division Bench Judgment and is binding on this Bench as well.

At the same time learned Counsel for Respondent Department has also referred to order dated 2.10.2024 passed in SSTRA No.149 of 2024 and submits that an identical question of law[2] has been decided against the taxpayer. On perusal of the said order, it his contention appears to be correct. The said order reads as under:

> "……..Though various questions have been proposed on behalf of the Applicant as above; however, for the present purposes, out of the above proposed questions, only Question No.(c) in both the Reference Applications is relevant. The said question revolves around the correct interpretation of section 8(1)(h), of the Sales Tax Act, 1990, which reads as under:
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> > *(h) goods used in, or permanently attached to, immovable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods;*
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> From perusal of the aforesaid provision, it reflects that input tax cannot be claimed on purchase of various goods, including goods used in, or permanently attached to, immovable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods. Learned counsel for the Applicant has tried to argue that the exception provided in the above provision entitles the Applicant to claim input tax as goods in question were meant for direct use in the production and manufacture of taxable goods. However, we are not inclined to agree with such argument because a clear exclusion has been provided in respect of certain category of the goods i.e. cement, steel, fertilizer, paints, wires and cables, which are nothing, but goods used in respect of construction of immovable property by the industry, including the Applicant. In our considered view, the exclusion is not on these goods as misunderstood by the Applicant; rather it is on sale or re-sale of these goods. Secondly, the exclusion is available if these goods are for direct use in the production or manufacture of taxable goods. This means that if a registered person is engaged in sale or resale of these

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[2] *Whether under the facts and circumstances of the case the learned Tribunal has erred in law to disallow the input tax credit under Section 8(1)(a), (f). (g), (h) & (i) of the Sales Tax Act, 1990 on "cement, steel, fertilizer, paint, wires and cables etc"?*

products; then naturally, such person will be entitled to claim adjustment of input tax paid on purchase of these goods. Secondly, if these goods are required as a raw material for a particular type of business of a registered person; and if it is established that they have been directly used in the production or manufacture of taxable goods, then the said registered person can claim input tax so paid. Here in the instant matter this is not the case of the Applicant. Admittedly, the goods in question have been utilized for construction or for the purpose other than in direct manufacture or production of the taxable goods. The Applicant is a sugar mill and the goods in question are not a raw material for it. The Tribunal has also repelled the contention of the Applicant to this effect, and we are fully in agreement with such observations.

Insofar as the remaining questions of law including the question that no proper reasoned order has been passed by the Tribunal; that certain directions of the Commissioner (Appeals) while remanding the matter in the first round have not been appreciated are concerned, in view of our above findings on merits and the main legal issue, we do not deem it appropriate to deal with them and record an answer, as on merits no case is made out.

In view of the above, Question No.(c) in both these Reference Applications is answered in negative against the Applicant and in favour of the Respondents. Consequently, both these Reference Applications are dismissed in limine with pending applications.

In view of above and for the reasons so recorded in the Judgment of ***Dewan Sugar Mills Ltd., and others (supra)***, and the order SSTRA No.149 of 2024, the proposed questions are answered against the Taxpayer and in favour of the Department; and consequently, thereof both these Reference Applications are **dismissed.** Let a copy of this order be sent to the Appellate Tribunal Inland Revenue, Karachi Bench in terms of subsection (5) of Section 47 of the Sales Tax Act, 1990. Office is further directed to place a copy of this order in connected Reference Application.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*