

IN THE HIGH COURT OF SINDH, KARACHI

**Spl. Sales Tax Ref. No.562 of 2011**

Present

Mr. Justice Aqeel Ahmed Abbasi  
Mr. Justice Farooq Ali Channa

Date of hearing : 21.08.2013

Date of order : 21.08.2013

Applicant : Commissioner of Inland Revenue  
Zone-II LTU through Mirza Siddiq Mirza,  
Advocate.

**Versus**

Respondent : M/s. General Tyre and Rubber Co. of  
(Pakistan) Ltd. Advocate.

**O R D E R**

**Aqeel Ahmed Abbasi, J.** Through instant sales tax reference application filed by the Commissioner of Inland Revenue Zone-II, Large Tax Payers Unit, Karachi, following questions of law are said set to have arisen from the impugned order dated 20.05.22011 passed by the Appellate Tribunal Inland Revenue of Pakistan (Karachi) in M.A. (Rect.) No.3/KB-2009 Sales Tax Appeal No.K-15/1998 (old No.):-

- i. Whether or not Appellate Tribunal Inland Revenue was justified in rejecting the rectification application where mistake was apparent from record?
- ii. Whether or not Appellate Tribunal Inland Revenue was justified while rejecting rectification application and holding that tyres and

tubes are parts and component of agricultural tractors within the meaning and scope of the SRO 553(1)/94 dated 09.06.1994?

- iii. Whether or not Appellate Tribunal Inland Revenue was justified in rejecting the rectification application and deciding the meaning of phrase “respective heading” as appearing in column No.3, independent of the column No.2 & column No.4 of the SRO.553(1)/94 dated 09.06.1994?
- iv. Whether or not Appellate Tribunal Inland Revenue was justified in ignoring the work “respective” while interpreting the phrase “respective hearing”?
- v. Whether or not Appellate Tribunal Inland Revenue was justified in deciding the meaning of the phrase “respective heading” by ignoring the classification in the PCT heading of chapter 87 of the first Schedule to Customs Act 1969?

2. Learned counsel for the applicant has argued that the question proposed are questions of law which arise from the order passed by the learned Appellate Tribunal Inland Revenue Pakistan Karachi, whereas, the learned Appellate Tribunal while dismissing the rectification application of the applicant has erred in law and fact by holding that tyres and tubes are parts and component of the agricultural tractors within the meaning and scope of SRO 553(1)/1994 dated 09.06.1994. It has been prayed by the learned counsel that the said finding recorded by the Appellate Tribunal Inland Revenue is erroneous, therefore, the impugned order may be set-aside and the questions proposed through instant reference application may be decided in favour of the applicant.

3. We have heard the learned counsel for the applicant and perused the impugned order passed by the Appellate Tribunal Inland Revenue Pakistan Karachi and have observed that the subject controversy relating to interpretation

of SRO 553(i)/1994 dated 09.06.1994 and its applicability to the case of the applicant was finally decided by the Customs, Excise and Sales Tax Appellate Tribunal Karachi Bench-I, while hearing the main appeal in Sales Tax Appeal No.K-15/1998 vide order dated 16.06.2008 vide order dated 16.06.2008 in the following terms:-

“10. According to the facts available on record, it is an admitted fact that tyre and tubes are used in all tractors for convenience and effective use. Accordingly, we believe that the disputed goods are covered within the phrase, “parts and components”. And “parts and components” falling within the framework of respective heading, that is in the corresponding classification of the Customs Tariff stands exempt for payment of sales tax within the framework of SRO 553 (1)/94. Having said that, it is evident that “parts and components” corresponding to relevant heading i.e. Chapter 40 or 87, as the case may be, stand exempt within the framework of SRO 553(1)/94. Be that as it may, we allow this appeal and set aside the impugned order.”

4. The applicant department, being aggrieved by aforesaid finding of the Tribunal, instead of filing reference application against the aforesaid order of the Appellate Tribunal, filed a purported rectification application, after a lapse of more than four years from the date of the order passed by the Tribunal, whereby it was contended as follows:-

- a) there is nowhere apparent that SRO 553(1)/94 grants specific exemption to tyres/tubes.
- b) that CBR's Letter dated 19.07.2000 dated 19.07.2000 is clarifactory one for the purposes of SRO 553(1)/94.

5. The Appellate Tribunal Inland Revenue Pakistan Karachi, after hearing the applicant, has decided the said application in the following terms:-

“03. Contesting parties have been heard and case record examined. At the outset, it may be observed that the present application is not a rectification application; rather it is a review application as is evident from the prayer part of the applicant. And it may be observed that the Tribunal has not been vested with the power of review of its own order. This application is thus misconceived as no apparent error or mistake has been pointed out.

04. It is well settled principle that for a rectification one has to prove that the intention of the Tribunal is not reflected in the orders passed. But the application made by the department is seeking a review of the order passed by the Tribunal which is not permissible.”

6. We do not find any error in the impugned order passed by the Tribunal as it depicts correct factual and legal position. Admittedly, the subject controversy in the instant case was finally decided by the Tribunal vide its order dated 16.06.2008 while deciding the main appeal on merits. No reference was admittedly filed by the applicant department before this Court within the stipulated period, instead the applicant department, after a lapse of a period of about four years, sought rectification of the order passed by the Tribunal, with a prayer to review its decision, which authority is not vested in the Appellate Tribunal. Moreover, scope of rectification is limited to the extent of rectification of a mistake apparent on the face of record of an order and which does not require any detailed scrutiny of facts and law. We may observe that subject controversy in the instant case was finally decided by the Tribunal vide order dated 16.06.2008

while deciding the main appeal and not in the impugned order declining the rectification application of the department, therefore, no question of law as proposed in the instant reference arise from the impugned order. Reference in this regard can be made to the case of Commissioner of Income Tax vs. National Foods 1992 PLD 570 and Commissioner of Income Tax v. Ateed Riaz 2002 PTD 570. Accordingly, instant reference application being devoid of any merits is hereby dismissed in limine along with listed application, however, with no order as to cost.

J U D G E

J U D G E

Nadeem