

IN THE HIGH COURT OF SINDH, KARACHI

Spl. S. T. Ref. Appln. No. 105 of 2014

Date	Order with signature of Judge
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Before:

**Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Abdul Maalik Gaddi.**

- 1. For orders on Misc. No.2928/2016.**
- 2. For hearing of Main Case.**

15.09.2016:

Mr. Shakeel Ahmed, advocate for the applicant.

ORDER

Aqeel Ahmed Abbasi, J.: Through instant reference application, following questions have been proposed, which according to learned counsel for the applicant, are questions of law arising from the impugned order dated 07.03.2016, passed by the Appellate Tribunal Inland Revenue (Pakistan), Karachi in STA No.23/KB of 2013 (Tax Period March 2012):

- A.** *Whether on facts and circumstances of the case, the learned ATIR was justified to hold that the taxpayer was entitled to the benefits of Amnesty SRO 548(I)/2012 dated 07.06.2012, when the payment had been made beyond the prescribed period?*
- B.** *Whether on the facts and circumstances of the case, the learned ATIR was justified to hold that the taxpayer was entitled to the benefits of Amnesty SRO 548(I)/2012 dated 07.06.2012, due to the Revenue, when the notification No.SRO 548(I)/2012 dated 07.06.2012, issued by the Federal Board of Revenue used the words "sales tax and federal excise duty is paid", which had to be strictly construed in case of a notification providing a concession?*
- C.** *Whether on the facts and circumstances of the case, the learned ATIR was justified to hold that the taxpayer was entitled to the benefits of Amnesty SRO 548(I)/2012 dated 07.06.2012, due to the reason that the refund of Sales Tax of the taxpayer was due to the Revenue, when the aforesaid notification required that the outstanding principal amount of tax must be "paid" and it is an established principle of law that when the law*

required something to be done in certain manner, it had to be done in that manner or done not at all?"

2. Learned counsel for the applicant, after having readout the impugned order passed by the Appellate Tribunal Inland Revenue and the orders passed by the two authorities below, submits that since the short levied amount of sales tax was paid by the respondent after expiry of the last date, which was extended from 31st May 2012 to 30th June 2012, pursuant to SRO 545(I)/2012 dated 22nd May 2012 and SRO 768(I)/2012 dated 25th June 2012, therefore, the respondent corporation could not claim amnesty in terms of aforesaid SROs. Per learned counsel, since the principal amount was required to be paid in cash, therefore, irrespective of the fact that there was admitted amount of refund, which was due to the respondent, the respondent was not entitled the claim of benefit of amnesty given to aforesaid SROs for payment of short levied sales tax.

3. We have heard the learned counsel for the applicant, perused the record as well as the impugned order passed by the Appellate Tribunal in above reference, as well as the orders of two authorities below and the provisions of relevant SROs with the assistance of the learned counsel for the applicant.

4. Briefly the facts as stated in the instant reference application and duly noted by the Appellate Tribunal Inland Revenue, are that the respondent M/s. Pakistan Steel Mills Corporation (Pvt.) Limited registered under Sales Tax Registration No. 02-02-7213-005-73 filed return of sales tax for the month of March 2012 by making short payment. Respondent was liable to pay sales tax of Rs.72,830,091/- alongwith the return of tax period March 2012, however, due to financial crunch, could make payment of Rs.5,045,545/- only, whereas, for the balance amount of Rs.67,748,546, they made request to the concerned officer to adjust the said amount against the admitted sales tax refund. However, instead of making any adjustment or issuing any refund, the concerned officer issued Show Cause Notice for the short levy under Section 36 of the

5. Subsequently, an SRO 548(I) dated 07.06.2012 was issued by the Federal Board of Revenue, whereby, amnesty was announced from making any payment of penalty and default surcharge, whereas, principal amount of sales tax was to be paid on or before 31st May 2012. Such deadline was, however, extended till 30th June 2012 vide another SRO 768(I)/2012 dated 25th June 2012. The respondent, under compulsion, made payment of disputed balance amount of Rs.9,559,330/- on 25.07.2012, after expiry of 25 days from the last date as provided under the aforesaid SROs. The respondent did not allow the benefit of amnesty to the respondent on the ground that since the principal amount was not paid in cash before the expiry date i.e. 30.06.2012, therefore, respondent was not entitled to claim the benefit of amnesty pursuant to aforesaid SRO. It will be relevant to reproduce the SRO extended amnesty, which reads as follows:-

***"NOTIFICATION
(Sales Tax and Federal Excise)***

"S.R.O. 545(I)/2012. In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990 and sub-section 40 of section 16 of the Federal Excise Act, 2005, the Federal Government is pleased to exempt whole of the amount of default surcharge and penalty of no-payment payable by a person against whom an amount of sales tax or Federal Excise duty is outstanding on account of any audit observation, audit report, show cause notice or any adjudication order, or who has failed to pay any amount of sales tax or federal excise duty or claimed inadmissible input tax credit, adjustment, refund drawback of rebate due to any reason, subject to the condition that the outstanding principal amount of sales tax or federal excise duty is paid by the 31st May 2012.

Provided that where refund becomes due to any person is consequence of a decision or judgment of court after the issuance of this Notification, the deposited by that person under this Notification shall be refunded to him.

Benefit of this Notification shall not be available in cases of fraudulent refund or drawback and other tax fraud.

[C. No.4(21)ITP/2011]

***Sd
(Shahid Hussain Asad)
Member (Inland Revenue/***

6. From perusal of hereinabove SRO, it is clear that a registered person(s), who could not make payment of sales tax due within the prescribed period, were given amnesty to make payment of principal amount by 30th June 2012 to avoid payment of default surcharge and penalty. However, in the instant case, admittedly, there was payment in excess, which was due from the respondent corporation, when they filed tax return of the relevant tax period i.e. March 2012. The respondent corporation requested for refund or adjustment of such excess amount of sales tax as the corporation was facing a financial crunch, however, such request was not acceded by the applicant department without any lawful excuse.

7. We are of the opinion that admitted refund becomes due as soon it is duly assessed by the departmental authorities, therefore, any delay in payment of refund of such amount to the registered person or making adjustment for any tax liability cannot be attributed to the taxpayer, who cannot be treated as a defaulter in payment of tax liability for the relevant tax period when such refund had become due. Moreover, in the instant case, the respondent corporation had made payment of the balance amount alongwith tax return and also paid the disputed amount as well after delay of twenty five days, though such amount was as such not due in view of admitted refund of sales tax. The Appellate Tribunal Inland Revenue has dealt with such factual and legal position in its Para: 7 & 8 of the impugned order, which reads as follows:-

"7. The ibid SRO reveals that the last date for payment of principal amount was 31st May 2012 and such deadline was extended till 30-06-2012 and admittedly the last payment made by the appellant on 25-07-2012 and prior to that refund was due but the same was not adjusted against outstanding sales tax for the Month of March because there is procedure provided for refund under Sales Tax Act, which is mere technicality because amount was already due with revenue. Mere on the procedural formalities the taxpayer cannot be deprived to avail the fruit of the amnesty scheme provided under SRO No.548(I)/2012 dated 22-05-2012.

substance. For the forgoing reasons, we are of the considered that appellant is entitle to the relief claimed accordingly order passed by the below forum are set-aside and demand of penalty and default surcharge levied are vacated."

8. In view of hereinabove undisputed facts and circumstances of the case, we do not find any error or illegality in the aforesaid findings as recorded by the Appellate Tribunal Inland Revenue in the instant case, which is otherwise based on proper appreciation of facts and application of the relevant SROs, hence depicts correct legal position. Accordingly, the questions proposed hereinabove are answered in Affirmative against the applicant and in favour of the respondent.

Instant Special Sales Tax Reference Application stands disposed of in the aforesaid terms alongwith listed application.



JUDGE



JUDGE