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JUDGMENT SHEET
LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT

S.T.R No.25/2021

Commissioner Inland Revenue

Versus

M/s Multan Electric Supply Company Limited

J U D G M E N T

Date of Hearing	12.09.2024
Applicant by:	Mr. Muhammad Suleman Bhatti, Advocate
Respondent by:	Ch. Mumtaz-ul-Hassan, Advocate

Anwaar Hussain J. Through this single judgment, present as well as connected reference application bearing S.T.R No.26/2021, filed under Section 47 of the Sales Tax Act, 1990 (**‘the Act’**) against common order dated 04.03.2021 passed by the learned Appellate Tribunal Inland Revenue, Lahore Bench, Lahore, Special Full Bench (**“the Tribunal”**) in separate appeals preferred by M/s MEPCO and M/s FESCO (**“the DISCOs”**) are collectively being decided as common questions of law are involved therein.

2. Though multiple questions of law have been framed, however, the common questions pressed for our opinion in these reference applications are articulated as under:

- i) Whether on the facts and the circumstances of the case the learned Appellate Tribunal was justified to ignore that the Tariff Differential Subsidy (TDS) received from Federal Government as part of the electricity price has not been exempted from levy of sales tax in terms of Section 13 read with Sixth Schedule of the Sales Tax Act, 1990?
- ii) Whether on the facts and the circumstances of the case the learned Appellate Tribunal’s interpretation of clause (46) of Section (2) of the Sales Tax Act, 1990 has assigned a narrow meaning which confines value of supply to the extent of consideration received directly from

recipient of supply by ignoring component of payments received on behalf of recipient of supply?

3. At the outset, learned counsel for the DISCOs submits that by way of amendment effected in the year 2022, the explanation has been added at the end of sub-clause (i) of Clause (46) of Section 2 of the Act, as a consequence of which it is clarified by the legislature that the value of supply does not include the amount of subsidy provided by the Federal Government or the Provincial Governments to the electricity consumers. Confronted with the situation, learned counsel for the applicant-department submits that the amendment has no retrospective applicability. Adds that issue of subsidy was decided in favour of the department in the case of “Commissioner Inland Revenue, LTO, Lahore v. Messrs Gujranwala Electric Power Co. (GEPCO)” (2024 PTD 440).

4. Heard.

5. The nub of the matter is to examine applicability of explanation added in sub-clause (i) of Clause (46) of Section 2 of the Act, which contemplates an unequivocal clarification that the subsidy is not chargeable to the tax under the Act in case of DISCOs. For facility of reference, the amendment is reproduced hereunder:

“3. **Amendments of the Sales Tax Act, 1990.** – In the Sales Tax Act, 1990, the following further amendments shall be made, namely:–

(1) in section 2, –

(a) ...

(b) ...

(c) ...

(d) ...

(e) at the end of sub-clause (i) of clause (46), for the expression “; and”, the expression “:” shall be substituted and thereafter the following Explanation shall be inserted, namely:–

Explanation. — **It is clarified that the value of supply does not include the amount of**

subsidy provided by the federal government or provincial governments to the electricity consumers and has never been chargeable to tax under the Act; and”

(Emphasis supplied)

It is imperative to note that similar question came before this Court in S.T.R No.77467/2022 titled “Commissioner Inland Revenue v. M/s GEPCO Limited” and *vide* judgment dated 25.05.2023, a Division Bench of this Court, at the Principal Seat held as under:

“The argument of learned counsel for the applicant/ department that the amendment effected in sub-clause (i) of Clause (46) of Section 2 of the Act has no retrospective effect has no force inasmuch as the legislature has clearly explained that subsidy provided by the Government(s) was never chargeable to tax under the Act, therefore, question whether or not said amendment has retrospective effect becomes irrelevant.”

6. Similar opinion was expressed by another learned Division Bench of this Court in reference application bearing S.T.R No.113/2014 titled “Commissioner Inland Revenue v. M/s Faisalabad Electricity Supply Co. Ltd.”, *vide* order dated 06.02.2024 in the following terms:

2.In this regard having heard the parties, we do not find that the Appellate Tribunal Inland Revenue has committed an error in the construction of the rule 13(2)(b) of the Sales Tax Special Procedure Rules, 2007 to hold that the term ‘all charges and surcharges, loan and all duties and taxes chargeable to tax’ should not be read in isolation and must have nexus with the supply of electric power. Further, the Appellate Tribunal was correct in holding that since the primary law prescribes charges exclusively in relation to supply of goods, therefore, the rules could not be construed otherwise.”

7. It is pertinent to mention that Explanation to section 2(46) of the Act was inserted through the Finance Act 2022, after the passing of order(s) by the Tribunal. The matter was decided against

department by the Tribunal while observing that there was no clarification in the law regarding the identity of the obligator. Notwithstanding subsequent introduction of the Explanation, when scope and applicability of the Explanation is clear, and already interpreted in the case of *M/s GEPCO Limited supra*, we are not inclined to remand the matter. Judgment cited by learned counsel for applicant-department in the case of *Commissioner Inland Revenue, LTO, Lahore supra* has no relevance to the subject matter questions, which is regarding determination of Income Tax liability in the context of turnover tax regime – [Section 113 of the Income Tax Ordinance, 2001].

8. In view of the above discussion, the present as well as connected reference application are **decided** in favour of the respondents and against the applicant-department. Reference applications are accordingly **dismissed**.

9. Office shall send a copy of this order under Seal of the Court to the Tribunal as per Section 47(5) of the Act.

(ASIM HAFEEZ)
Judge

(ANWAAR HUSSAIN)
Judge

Approved for reporting

Judge

Judge