

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

STR No.72126/2022

Commissioner Inland Revenue, **Versus** Unique Cycle Industry.
Lahore Bench, Lahore.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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26.09.2023. M/s Sh. Muhammad Ali, Ms. Maryam Asad,
Malik Aziz-ur-Rehman, Muhammad Sharfeen
and Abdul Hafeez, Advocates for the Applicant -
Department.
Ch. Anwar-ul-Haq, Advocate for respondent –
Registered person.

This and connected Reference Applications bearing STR No. 72127/2022, STR No. 72138/2022, STR No. 72132/2022 and STR No.72130/2022 are heard together wherein common questions of law are involved. Following question of law, stated to have arisen out of the order of the Appellate Tribunal Inland Revenue Lahore (Appellate Tribunal) dated 23.06.2022, is pressed and argued before us, which reads as,

i). Whether ATIR wrongfully held that the conditions (i) & (ii) of SRO 670(1)/2013 are independent of each other whereas both are conjunctive and supplemental to each other?"

2. Learned counsel for applicant department submits refund was not permissible on the premise that registered person fails to fulfil the conditions prescribed for claiming input tax adjustment against local procurement of raw materials for manufacturing bicycles, since

supply of bicycles was declared chargeable to zero percent tax in terms of SRO670(I)/2013 dated 18.07.2013. Submits that Appellate Tribunal erred in law while treating the conditions, contained in clauses (i) and (ii) mutually exclusive, which otherwise had to be read and interpreted jointly to avoid inconsistencies *inter-se* and redundancy of material part of the statutory order. Adds that availability of Input-Output Co-efficient Organization (**IOCO**) certificate was *sine qua non* for claiming benefit of statutory instrument.

3. Conversely, learned counsel for registered person pleaded separate and independent reading of conditions (i) and (ii) of SRO 670(1)/2013. Adds that registered person sought issuance of IOCO certificate, but procurement thereof was unnecessarily delayed and compelled registered person to procure raw materials for manufacturing.

4. Controversy at hand calls for construction of conditions (i) and (ii), whether same have had to be read conjunctively or disjunctively. It is expedient to reproduce the condition (i) and (ii) (**subject matter conditions**) and sub-clauses (b) and (c) of condition (ii) of SRO 670(1)/2013, which read as,

- (i) The zero-rating under this notification shall be available subject to determination of input/output ratios by the Input-Output co-efficient Organization (hereinafter referred to

as “IOCO”), if not already determined under an earlier concessionary notification issued for such goods:

Provided that this condition shall not be applicable in case of import of finished goods and their supply in same state; and

- (ii) For import and local procurement of raw materials, packing materials, subcomponents, components, sub-assemblies and assemblies for the manufacture of the goods specified in column (2) of the said Table, the following conditions and procedure shall be followed namely,

(a)

(b) the Commissioner shall approve the declaration of input-output ratio of the manufacturer without physical verification in case the declared input-output ratio and input requirement is in accordance with the prevailing industry average or the inputs consumption pattern of the applicant manufacturer or as already determined by IOCO under an earlier notification issued for such goods, in the format of approval prescribed as Annex-B to this notification;

(c) in case the Commissioner is not satisfied with the declared input-output ratios of the goods to be manufactured because of their being prima facie not in accordance with the prevalent average of the relevant industry or in case the input-output ratios are not already determined by IOCO, he may, after allowing a six months provisional quantity, make a reference to the IOCO for final determination thereof. On receipt of report from IOCO the Commissioner shall then

determine the final annual quantitative entitlement of inputs and grant final approval for zero-rated purchases or imports. In case of non-receipt of report from IOCO within four months of the application made by the manufacturer, the Commissioner shall provisionally allow another six months quantity to the applicant manufacturer;

(d).....

(e)”

[Emphasis supplied]

4. Appellate Tribunal erred in law while reading subject matter conditions disjunctively / separately, which interpretation jeopardizes the scope and purpose of SRO 670(1)/2013, rather threatens the very existence of entire Statutory instrument. The manner, in which, learned counsel for registered persons wants us to read subject matter conditions would in fact render requirements under condition (i) ineffective, inconsequential and optional. It is appropriate to dissect the real intent of condition (i), which necessitates the determination of input/output ratios. IOCO certificate is only one of the mode(s) for determination of input/put ratios. It implies that factum of determination of input/put ratios is the fundamental-cum-primary condition for claiming or extending the privilege of zero-rating facility under SRO No.670(1)/2013. It is evident from perusal of sub-clause (b) of condition (ii) of SRO No.670(1)/2013 that

requirement of determination of input/output ratios would be deemed fulfilled if Commissioner had approved the declaration of input/output ratios or determination thereof is otherwise available in terms of the alternatives provided in sub-clause (b), *supra*. And if Commissioner was not satisfied with alternatives available or IOCO certificate was not readily available, sub-clause (c) provides transitory/stop-gap arrangement. We are not called upon or possess jurisdiction to dilate upon the factual aspect of the matter that whether registered person applied for procuring of IOCO certificate or if Commissioner had performed or failed to perform obligations in terms of sub-clauses (b) and (c) of condition (ii) – that was the domain of the Tribunal. We are confining determination of the question of law proposed.

5. We disagree with the interpretation of the Appellate Tribunal that subject matter conditions exist and operate independent of each other. Subject matter conditions have had to be read and construed jointly. If condition (ii) is treated as separate and independent then the requirement of determination of input/output ratios, if not achieved otherwise, had to be carried out in the light of IOCO certificate, which appears to be penultimate / conclusive method of determination of input/output ratios for the purposes of extending benefit of SRO No.670(1)/2013. Sub-clause (c) of condition (ii) merely provided transitory deferment of the determination of input/output

ratios, which sub-clause does not conclusively provide for the effect of non-availability of IOCO certificate. And reading or treating non-provisioning of certificate, after lapse of temporarily extended period, per se as extinguishment of the requirement of determination of input/output ratios in terms of condition (i) is offensive to the scope, purpose and existence of SRO No.670(1)/2013. Condition (i) is primary condition for seeking benefit under SRO No.670(1)/2013 and condition (ii) is ancillary thereto, a subordinate condition. Declaring condition (ii) as mutually exclusive would imply redundancy of condition (i) which is unwarranted. Reading of SRO No.670(1)/2013 in bits and pieces would contravene the intent and purpose of statutory instrument, which purpose is grant of concession but subject to scrutiny qua determination of input/output ratios of the manufacturer. Strict adherence to the requirements of SRO No.670(1)/2013 would ensure supply of completely assembled bicycles and not the sale of parts of bicycles – which is the mischief sought to be addressed by introducing statutory instrument. Hence, harmonious reading of subject matter conditions would ensure enforcement of SRO No.670(1)/2013 in letter and spirit and lawful gaining of advantages / concessions extended thereunder.

6. In view of the above, question is answered in the affirmative and reference application is

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decided in favour of the department and against the registered person.

Since Appellate Tribunal had decided the lis before it based on erroneous construction of subject matter conditions therefore, we remand the matter to the Tribunal to decide appeal of the registered person afresh upon reading conditions (i) and (ii) of SRO No.670(1)/2013 conjunctively and not disjunctively.

7. Office shall send a copy of this order, under seal of the Court, to learned Appellate Tribunal, in terms of sub-section (5) of section 47 of the Sales Tax Act, 1990.

(Muhammad Sajid Mehmood Sethi)
Judge

(Asim Hafeez)
Judge

M.S.Aleem
APPROVED FOR REPORTING