

ORDER SHEET
LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
(JUDICIAL DEPARTMENT)

S.T.R. No.34/2023

The Commissioner Inland
Revenue, Legal Zone, LTO
Multan.

Versus M/s AN Textile Mills Ltd.
Sheikhupura Road, Faisalabad.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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17.10.2024 Mr. Muhammad Sulaman Bhatti, Advocate for the applicant-department.
Mr. Khubaib Ahmad, Advocate for the respondent-taxpayer.

Through instant Sales Tax Reference Application, following questions are proposed for determination, in the context of the order of 24.08.2021,

i) *Whether on the facts and circumstances of the case Ld. ATIR was justified to entitle benefits of a registered person to the persons liable to be registered in terms of Section 2(25) by ignoring the proviso attached to Section 2(25) and by bypassing the express provisions set out in Section 73(4) of the Sales Tax Act, 1990?*

ii) *Whether on the facts and circumstances of the case Ld. ATIR was justified to overstep express provisions of law provided u/s 73(4) of the Sales Tax Act, 1990 and strike down the demand under the garb of 'liable to be registered' as provided u/s 2(25) of the Sales Tax Act, 1990?*

2. Questions raised primarily seek interpretation of sub-section (4) of Section 73, in the context of the scope and effect of section 2(25) of the Sales Tax Act, 1990 (**Act, 1990**). It is appropriate to reproduce relevant provisions, under discussion, which read as,

“Subsection (4) of section 73 of Act, 1990.

A registered person shall not be entitled to deduct input tax (credit adjustment or deduction of input tax) which is attributable to such taxable supplies exceeding, in aggregate, one hundred million rupees in financial year or ten million rupees in a tax period as are made to certain person who is not a registered person under this Act.”

Section 2 (25) of the Act, 1990.

“Registered person” means a person who is registered or is liable to be registered under this Act:

Provided that a person liable to be registered but not registered under this Act shall not be entitled to any benefit available to a registered person under any of the provisions of this Act or the rules made thereunder.”

3. It is case of the applicant department that in terms of sub-section (4) of section 73 of the Act, 1990, benefit was only extended to the registered person, in the context of taxable supplies made to the person not registered, within prescribed monetary limits. Submits that proviso to section 2(25) of the Act, 1990 is not available to respondent for claiming benefit, outside the scope of sub-section (4) of section 73 of the Act, 1990. And no question of claiming benefit by non-registered recipient of taxable supplies arose.

4. Conversely, learned counsel for the registered person, respondent, contends that by legislative *fiat* status of deemed registration is acknowledged, qua the person not registered but otherwise liable to be registered. Adds that negligence of the department to effect registration of an eligible person cannot be instrumental in denying benefit to the respondent, who is entitled to seek input tax adjustment(s) against supplies made to persons, even liable to be registered, irrespective of the monetary limits prescribed. Explains that recipient of supply is liable to be registered under section 14 (e) of the Act, 1990.

5. Heard.

6. At the outset, it appears that submission by the counsel suffers from self-contradiction. Appellate

Tribunal recorded findings to the effect that supplier in this case, which is respondent, had paid *further tax* against the supplies made to persons not registered, who had not obtained registration number in terms of section 3 (1A) of Act, 1990. If recipients of supplies, who have had not obtained registration number, are treated as not registered persons for the purposes of *further tax*, how could they be treated as deemed registered person for the purposes of sub-section (4) of Section 73 of the Act, 1990. It is axiomatic that on one hand respondent had paid *further tax* qua the supplies made to person, without obtained registration number, and on the other, benefit is claimed simultaneously qua the supplies to person not registered, but simply claim to be potentially registerable persons under section 2(25) of the Act, 1990.

Sub-section (4) of section 73 of the Act, 1990 contemplates and extends specific / exclusive benefit to the registered person, upon allowing claim of input tax qua taxable supplies when made within the limits prescribed, which benefit, by any stretch of imagination, cannot be doled out to non-registered recipient by banking upon section 2(25) of the Act, 1990, which section cannot be construed contrary to the subject and context of sub-section (4) of section 73 of the Act, 1990. We have no ambiguity that in case of inconsistency between section 2(25) of the Act and sub-section (4) of section 73 of the Act, 1990, latter provision of the law would prevail – definition clause starts with qualification that 'In this Act, unless there is anything repugnant in the subject or context'. Sub-section (4) of section 73 of the Act, 1990 cannot be rendered repugnant by extending preference to the definition / interpretation clause. Even otherwise *proviso* to section 2(25) of the Act, 1990 envisaged benefit for potentially registerable person and such benefit cannot be extended or claimed by the

registered person. Sub-section (4) of section 73 of the Act, 1990 is a special provision, dealing with specific situation and providing special concession / benefit, and effect thereof cannot be invalidated in the context of general provisions. Reference to section 8(1)(m) of the Act, 1990 by Appellate Tribunal is misplaced, which provision specifically deals with input goods, attributable to the supplies.

7. In view of the aforesaid, Appellate Tribunal misconstrued scope, extent and distinctiveness of sub-section (4) of section 73 of the Act, 1990, which erred in law while extending unwarranted preference to section 2(25) of the Act, 1990, which construction and treatment constitute an illegality.

8. First and second questions are answered in negative. Reference Application is decided in favour of applicant department.

9. 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.

(Anwaar Hussain)
Judge

(Asim Hafeez)
Judge

Imran/*

Approved for reporting.

Judge