

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

STR No.43/2023

**M/s Rafhan Maize Products
Co. Ltd.**

Versus

**The Appellate Tribunal
Inland Revenue, etc.**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
-------------------------------	------------------------------	---

15.10.2024

Sh. Aqeel Ahmad, Advocate for the
Applicant.
Mr. Iftikhar Majid, Advocate for respondent
No.3.
Mr. Muhammad Suleman Bhatti, Advocate
for respondent No.4.

Instant Sales Tax Reference Application
(‘Reference’) raises following legal questions,
having source in the decision of the Appellate
Tribunal Inland Revenue, Multan Bench, Multan
(‘Appellate Tribunal’), dated 26.04.2023,

- (i) *Whether under the facts and in the circumstances of the case, the learned ATIR was justified in confirming the levy of Further Tax under section 3(1A) of the ST Act by passing a non-speaking order?*
- (ii) *Whether under the facts and in the circumstances of the case, the learned ATIR was justified in applying retroactively the amendment made in sub-section (1A) of section 3 of the ST Act by adding phrase “or he is not an active taxpayer” through Finance Act, 2022 (XIII of 2002) assented on 30.06.2022 on the supplies made during the tax periods 2013 to 2014?*
- (iii) *Whether under the facts and in the circumstances of the case, the learned ATIR was justified in confirming the levy of further tax under section 3(1A) of the ST Act in respect of supplies made to Registered Persons during the tax periods 2013 to*

2014, without answering to the legal aspect that merely a Registered Person with the status of non-filer or null-filer or Blacklisted or Suspended cannot be treated as the person who has not obtained registration number?"

2. Fundamentally, controversy boils down to interpretation of sub-section (1A) of section 3 [Section 3(1A)] of the Sales Tax Act, 1990 [Act, 1990], in the context of levy of *further tax*. Questions proposed relate to tax periods spreading over the months of October, November and December 2013 and February, May, June, October, November and December 2014 – tax period(s) involved were covered under Section 3(1A) of the Act, 1990, inserted through the Finance Act 2013.

3. Heard.

4. First question is answered in the negative – order under reference clearly explains and elaborates the reasoning in support of the decision – [legality of the reasoning would be examined while answering third question].

5. Learned counsel for the applicant fails to establish that how second question has arisen out of the order of the Appellate Tribunal, wherein reference to amendment introduced through Finance Act 2022 was conspicuous by its absence. Second question need not to be answered.

6. Third question involves construction of Section 3(1A) of the Act, 1990, which reads as -

[as applicable at the time of relevant tax period(s)],

"[(1A) Subject to the provision of sub section (6) of section 8 or any notification issued thereunder, where taxable supplies are made to a person who has not obtained registration number there shall be charged, levied and paid a further tax at the rate of [one] percent of the value in addition to the rate specified in sub sections (1), (1B), (2), (5) and (6)]:

Provided that the Federal Government may, by notification in the official Gazette, specify the taxable supplies in respect of which the further tax shall not be charged, levied and paid."

7. It is evident and conspicuously so, that acquisition of registration number by a person, to whom taxable supplies are made, is mandatory condition before claiming exclusion from *further tax regime*. Appellate Tribunal correctly decided the issue that taxable supplies made to the persons, whose registration(s) were either suspended or consequently declared blacklisted, attracts application of *further tax regime*. Submissions by learned counsel of the applicant that once registration number has been obtained, then irrespective of the suspension or blacklisting of recipient's registration, registered person is not obligated to charge, levy or pay *further tax*, are fallacious. The expression '*.....has obtained registration number*' does not imply exemption, simplicitor, upon seeking registration number but it essentially mandates that registration, at relevant

time of reckoning of taxable supplies, must be effective, operative and must not suffer from any legal disability, otherwise. Extending endorsement qua submissions by learned counsel for the applicant would suggest that notwithstanding an ineffective, inoperative or dysfunctional registration, be it upon suspension or blacklisting of registration, liability to pay *further tax* could not be attributed to the application defeats the very objective of imposition of *further tax*. Hypothetically, if simplicitor procuring of registration number would presumably provide alleged protection from the charge / levy of *further tax*, then how was it justiciable to deny benefit of input tax adjustment(s), against taxable supplies made to such recipients, whose registration(s) was either suspended, declared blacklisted or otherwise suffering from any disability, under the Act, 1990. Use of expression “registration number” implies a valid and enforceable registration, and not otherwise. Any construction contrary thereto would be illogical and undermines apparent legislative intent. Hence, taxable supplies to the persons who had not obtained registration number and to those, who though had the registration number but otherwise registration was suspended or blacklisted must be treated alike and need to be

painted with the same brush. In view of the above, mere acquisition / obtaining of registration number is not enough for claiming exemption from *further tax regime*, and benefit could be claimed provided registration of the recipient, at the time of reckoning of taxable supplies, is effective, operative and functional for the purposes of Section 3(1A) of the Act, 1990.

8. Now we take up the situation where the recipient of supplies had obtained registration number but had notably failed to file tax return(s) – attracting status of a non-filer. This situation is slightly different from the scenario discussed in preceding paragraph. There is no cavil that failure to submit tax return for relevant tax period would not *per se* attract legal disability qua the registration, unless alleged failure matures into an event of statutory default, default being determinable in the context of the punitive action(s) / consequences provided in the Act, 1990. We are unable to identify any such exercise undertaken by the Appellate Tribunal, to ascertain that whether registration of non-filler(s) recipient had matured into statutory default, attracting legal disability qua the registration. Hypothetically, if recipient of taxable supplies has obtained

registration, who, later, had rectified failure before the incidence of taxable supplies, such situation would not attract *further tax*, but in a converse situation the *further tax* obligation would trigger, definitely. Appellate Tribunal had, simplicitor, without ascertaining the effect and consequence of non-filing of tax return, enforced *further tax* regime, which manifestly is an improper construction of Section 3(1A) of the Act, 1990, in the context of allegation of default in non-filling of tax return by the recipient of alleged supplies. It is pertinent to mention that non-filing of tax return may lead to suspension / blacklisting, as per Rule 12 of the Sales Tax Rules 2006 subject to the requirements prescribed.

Whether registration of non-filer recipients was ineffective, inoperative or under any legal disability at relevant time; this determination was conspicuously missing. And tenable findings were not recorded by the Appellate Tribunal, in this behalf.

9. In view of the above, third question is answered by holding that status of non-filer qua applicability of *further tax* was not determined, and for re-determination of liability of *further tax*, with reference to the allegation of non-filing of tax

returns by the recipient of supplies, who had otherwise obtained registration number(s), we are inclined to remand this matter to Appellate Tribunal, where, to this extent only, the appeal of the applicant shall be deemed pending.

10. Reference Application is decided in aforementioned terms.

11. 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 Sales Tax Act, 1990.

(ANWAAR HUSSAIN)
Judge

(ASIM HAFEEZ)
Judge

M.S.Aleem

APPROVED FOR REPORTING

Judge