

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ  
MR. JUSTICE AMIR HANI MUSLIM  
MR. JUSTICE FAISAL ARAB

**CIVIL PETITION NO. 84-Q OF 2011**

(On appeal against the judgment dated 26.05.2011  
passed by the High Court of Balochistan, Quetta in  
Sales Tax Appeal No. 3/2004)

M/s Chiltan Ghee Mills, Quetta etc

... Petitioners

**VERSUS**

Deputy Collector of Sales Tax (Refund), Customs House, Quetta and  
another

... Respondents

For the Petitioners: Mr. Sahibzada Muhammad Khan, M.D, in  
person

For the Respondents: N.R.

Date of Hearing: 03.10.2016

**JUDGMENT**

**FAISAL ARAB, J.**- The petitioner is engaged in the activity of producing 'ghee', which before its marketing is canned in tin containers also manufactured by the petitioner. For the purpose of manufacturing tin containers, the petitioner purchases tin plates. On the purchase of tin plates, sales tax is payable whereas the petitioner mill at the relevant time was exempted from the payment of sales tax on its taxable supplies under SRO 580(I)/91 dated 27.06.1991. For the period during which the petitioner was enjoying tax exemption on its supplies, the petitioner sought refund of the sales tax paid on the purchase of tin plates that were used in the manufacture of tin containers. The reasoning behind such claim was that as its tin containers are exempt from the payment of sales tax under the said SRO No. 580(I)/91 dated 27.06.1991, the sales tax paid on tin plates may be refunded. Taking into consideration the legal position that the sales tax paid on goods that are used in the manufacture of 'exempt supplies' cannot be refunded under Section 8(1)(a) of the Sales Tax Act, 1990, the Sales Tax Department refused to accept the petitioner's claim. The decision

of the Department was challenged by the petitioner in an appeal before the Customs, Excise and Sales Tax Appellate Tribunal, which was dismissed. The same was then challenged in Sales Tax Appeal before the High Court, which too met the same fate. Hence this petition.

2. Sahibzada Muhammad Khan, who is the Managing Director of the petitioner company, appeared in person and argued the case. He submitted that since the tin containers, which the petitioner manufactured during the relevant period, were exempt from sales tax under SRO No. 580(I)/91 dated 27.06.1991 then any input tax paid on tin plates used in the manufacture of such tin containers was liable to be refunded as denying such relief would defeat the purpose of granting exemption under the said SRO. In support of his contention, he relied upon the cases of M/s Mayfair Spinning Mills Ltd, Lahore Vs. Customs, Excise and Sales Tax Appellate Tribunal, Lahore etc (PTCL 2002 CL 115) and Azad Jammu & Kashmir Government Vs. Spintex Limited (1998 PTD 3200) in order to demonstrate that where exemption is granted then the principle of promissory estoppel is attracted and no tax is to be charged.

3. We have considered the contention of the petitioner mill's Managing Director. Section 7 of the Sales Tax Act provides that for the purposes of determining tax liability in respect of 'taxable supplies', a registered person shall be entitled to deduct input tax paid during the tax period. Such concession is clearly available only when a registered person makes 'taxable supplies' and is not available where the supplies are totally exempt from the sales tax liability. This mandate of the law is further affirmed in Section 8(1)(a) of the Act, which provides that notwithstanding anything contained in any other provision of the Act, a registered person shall not be entitled to claim input tax paid on goods that are used in the making of supplies which have been exempted from the sales tax liability under the provisions of Section 13 of the Act. This clearly means that adjustment of input tax only can be claimed in a situation where the goods that have been manufactured

or produced fall within the definition of 'taxable supplies'. Where the goods that are to be supplied are exempt from sales tax then the question of seeking refund of the sales tax paid on the purchase of raw material used in the production of exempt supplies does not arise at all. The whole object behind the provision of Section 8(1)(a) of Sales Tax Act, 1990 seems to be that where at any stage sales tax has been legitimately paid then refund of input tax cannot be claimed where such goods were used in the manufacture of 'exempt supplies'. Thus where a registered person is exempted from the liability of sales tax on its supplies, it does not mean that the tax that was paid on the purchase of raw material used in the making of such supplies would be liable to be refunded. The Department, therefore, was not liable to refund the same. In view of the legal position as emanating from the plain reading of the provisions of Section 7 and 8 of the Sales Tax Act, 1990, it is evident that there is no promise of the Legislature that the sales tax paid on the goods used in the manufacture of 'exempt supplies' would be liable to be refunded. Reliance placed on the cases of M/s Mayfair Spinning Mills Ltd, Lahore Vs. Customs, Excise and Sales Tax Appellate Tribunal, Lahore etc (PTCL 2002 CL 115) and Azad Jammu & Kashmir Government Vs. Spintex Limited (1998 PTD 3200) is totally misplaced as the same have no application to the present case.

4. For what has been discussed above, we do not find any merit in this petition, which is dismissed and leave is refused.

CHIEF JUSTICE

JUDGE

JUDGE

Quetta, the  
3<sup>rd</sup> of October, 2016  
Approved For Reporting  
Khurram