

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE FAISAL ARAB  
MR. JUSTICE IJAZ UL AHSAN

**CIVIL APPEAL NO.1419 OF 2009**

*(Against the judgment dated 16.6.2009 of the  
Islamabad High Court, Islamabad passed in  
STR No.1/2009)*

Chairman, Federal Board of Revenue, Islamabad

...Appellant(s)

**VERSUS**

M/s Al-Technique Corporation of Pakistan Ltd. etc.

...Respondent(s)

For the appellant(s): Mr. Khalid Abbas, ASC

For respondent No.1: Sh. Iftikhar Ahmad, ASC  
Mr. Sohail Akram Malik,  
Senior Law Officer, Al-Technique Corporation

Date of hearing: 22.11.2016

...  
**ORDER**

**MIAN SAQIB NISAR, J.-** The leave granting order in this appeal envisages three questions of law but the learned counsel for the appellant whilst arguing the matter has confined himself to only one i.e. whether sterilization of syringes or other medical/surgical products by respondent No.1 (*respondent*) falls within the definition of 'manufacture' under Section 2(16) of the Sales Tax Act, 1990 (*the Act*) and consequently is chargeable to sales tax. The other two questions are identical and dependent on the above proposition, and require no independent expression of opinion by us.

2. The brief facts of the case are that the respondent is engaged in the business of gamma sterilization of medical/surgical products which are provided to it by other individuals/companies. The appellant department issued a notice to the respondent claiming that it was liable to

pay sales tax on the sterilization process along with additional tax and thereafter passed an order in original to this effect. The respondent appealed against the order before the Sales Tax Appellate Tribunal but lost. However the learned High Court in the tax reference filed by the respondent held that the process of sterilization did not amount to 'manufacturing' and therefore sales tax was not payable.

3. Learned counsel for the appellant, by referring to the definition of 'manufacture' and 'taxable supply' (*as reproduced later in this opinion*), argued that value is added to the medical/surgical products on account of the sterilization process and this squarely falls within the definition of 'manufacture' and, therefore, the respondent is liable to pay sales tax. In support of his contention, he has cited the judgments reported as **Collector of Customs, Central Excise and Sales Tax and others Vs. Mahboob Industries (Pvt.) Ltd. and others** (PLD 2006 SC 148), **Adil Polypropylene Products Limited and others Vs. The Federation of Pakistan through Secretary Finance, Federal Secretariat, Islamabad and others** (2000 SCMR 1708) and **Sheikhoo Sugar Mills Ltd. and others Vs. Government of Pakistan and others** (2001 SCMR 1376).

4. Heard. It is settled principle of law that tax cannot be charged and levied unless it falls squarely within the purview of the charging provisions. Taxing laws are not to be extended by implication beyond the clear import of the language used. To hold otherwise would violate another principle of interpretation of taxing statutes: that tax laws should be construed in favour of the taxpayer and any substantial doubt resolved in favour of the citizen and against the government. This principle is based on the fact that taxation is a process which interferes with the personal and property rights of the people, although it is a necessary interference.

But because it does take from the people a portion of their property, the tax laws must be construed in favour of the taxpayer<sup>1</sup>. In this context, Section 3 of the Act mandates as under:-

“3. **Scope of tax.**—(1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of seventeen per cent of the value of—

(a) taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by him; and

(b) .....

”

‘Taxable supply’ has been defined in Section 2(41) as:-

“2(41) “taxably supply” means **a supply of taxable goods made by** an importer, **manufacturer**, wholesaler (including dealer), distributor or retailer other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero per cent under section 4”

(Emphasis supplied)

‘Manufacturer’ has been defined in Section 2(17) of the Act which reads as under:-

“2(17) “manufacturer” or “producer” means **a person who engages**, whether exclusively or not, **in the** production or **manufacture of goods** whether or not the raw material of which the goods are produced or manufactured are owned by him; and shall include—

(a) .....

<sup>1</sup> The Construction of Statutes, Crawford, 1998.

(b) .....

(c) .....

*Provided that.....”*

*(Emphasis supplied)*

'Manufacture' has in turn been defined in Section 2(16) of the Act which reads as follows:-

“2(16) “*manufacture*” or “*produce*” includes—

(a) *any process in which an article singly or in combination with other articles, materials, components, is either **converted** into another distinct article or product or is so **changed**, **transformed** or **reshaped** that it becomes capable of being put to use differently or distinctly and includes any process incidental or ancillary to the completion of a manufactured product;*

(b) .....

(c) .....”

*(Emphasis supplied)*

We reiterate that there is no cavil with the principle that a charging provision in a fiscal statute is to be given a strict interpretation and if a case does not fall within the purview thereof, tax cannot be charged from a person from whom it is being claimed. As is clear from Section 3 of the Act, sales tax can only be charged/levied against a person who makes a taxable supply which has been defined in Section 2(41) of the Act which specifically and unequivocally provides that it is supply of taxable goods by *inter alia* a manufacturer. According to Section 2(17) of the Act a manufacturer is a person who engages in the manufacture of goods and therefore, the definition of manufacture provided in Section 2(16) of the

Act becomes germane in the instant case. It is settled that a definition clause is foundational when construing provisions of law. The definition given in the Act should be so construed as not to be repugnant to the context and would not defeat or enable the defeating of the purpose of the Act. It must be read in its context and the background of the scheme of the statute and the remedy intended by it<sup>2</sup>. A bare reading of the definition of 'manufacture' suggests that it is a process where:-

- (i) an article singly or in combination with other articles, materials, components, is either converted into another distinct article or product; or
- (ii) an article is so changed, transformed or reshaped that it becomes capable of being put to use differently or distinctly; and
- (iii) includes any process incidental or ancillary to the completion of a manufactured product.

Does the process of sterilization of the syringes/surgical products convert them into a distinct article or product or is the article (*syringes*) changed, transformed or reshaped? The answer will depend on the meaning attributed to said words. It may be pointed out at this juncture that the part of Section 2(16) of the Act "*any process incidental or ancillary to the completion of a manufactured product*" is *ejusdem generis* to the earlier part of the definition [*paragraphs (i) and (ii)*]. The alleged manufacturing activity must fall within the first two categories else the third category would have no independent application or legal significance. Returning to the issue at hand, the words 'convert', 'change', 'transform' and 'reshape' are important. Chambers 21<sup>st</sup> Century Dictionary has defined them as follows:-

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<sup>2</sup> Interpretation of Statutes, N. S. Bindra, tenth edition.

*“Convert – to change the form or function of one thing into another;*

*Change – to make or become different;*

*Transform – to change in appearance, nature, function, etc. often completely and dramatically;*

*Reshape – to form or fashion or to give a particular form to something, again, or again and in a different way.”*

The Concise Oxford Dictionary (1982 ed.) has assigned the following meanings:-

*“Convert – change; change in character or function;*

*Change – making or becoming different;*

*Transform – make change in the form, outward appearance, character, disposition, etc.;*

*Reshape – create, form, construct, model, mould, fashion, bring into desired or definite figure or form once more, again, afresh.”*

Further, ‘sterilization’ means *“the treatment of food, surgical or laboratory equipment, etc. with heat, chemicals or radiation in order to destroy all living micro-organisms”*.<sup>3</sup>

5. Adverting to the case law referred to by the learned counsel, the cases of **Mahboob Industries** (*supra*) and **Adil Polypropylene Products** (*supra*) pertain to excise and are therefore not relevant to the instant matter. In **Sheikhoo Sugar Mills** (*supra*) this Court held that the definition of the word ‘manufacture’ in Section 2(16) of the Act clearly suggested that the bagasse produced during the extrusion of sugarcane had an independent identity, status and character and was capable of being put

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<sup>3</sup> Chambers 21<sup>st</sup> Century Dictionary.

to use differently therefore it fell within the said definition, therefore supplying bagasse fell within the definition of taxable supply.

6. From the facts of the present case, it is quite clear that the activity of gamma sterilization, which the respondent is engaged in – a process that eliminates all forms of living organisms – does not involve the conversion of any article singly or in combination with other articles into another distinct article or product. The process does **not** change, transform or reshape the syringes in any way, thereby rendering them capable of being put to use differently or distinctly. The syringes remain syringes after sterilization. Therefore, a bare reading of all the aforementioned definitions in their legal and usual context makes it manifest that the process of sterilization of medical/surgical products does not fall within the meaning of ‘manufacture’ as provided in Section 2(16) thus the respondent is not a ‘manufacturer’ under Section 2(17) and is not making a ‘taxable supply’ as per Section 2(41) and therefore cannot be charged to sales tax under Section 3 of the Act. In light whereof, this appeal is dismissed.

JUDGE

JUDGE

JUDGE

Bench-I  
Islamabad, the  
22<sup>nd</sup> November, 2016  
Not Approved For Reporting  
Waqas Naseer/\*