

HCJD/C-121
JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

I.T.R. NO.300/2010

COMMISSIONER INLAND REVENUE, LTU, ISLAMABAD

Versus

M/S ATTOCK PETROLEUM LTD, ISLAMABAD, ETC

APPLICANTS BY:

Mr. Babar Bilal, Advocate.

RESPONDENTS BY:

Mr Shaukat Ali Qureshi, Advocate.

DATE OF HEARING:

22-01-2020.

ATHAR MINALLAH, CJ.- The applicant Department has filed the instant Tax Reference under Section 47 of the Sales Tax Act, 1990 (hereinafter referred to as the "**Act of 1990**"), proposing for our consideration questions of law stated to have arisen out of judgment, dated 24.02.2010, passed by the learned Appellate Tribunal Inland Revenue, Islamabad (hereinafter referred to as the "**Tribunal**").

2. The facts, in brief, are that the Collector (Adjudication) issued show cause notice, dated 02.02.2005, which was adjudicated vide Order-in-Original No.09 of 2005, dated 31.05.2005. The appeal preferred by the respondent Company was disposed of vide judgment, dated 24.02.2010.

3. With the able assistance of the learned counsels, we have perused the record, particularly order, dated 24.02.2010 passed by the learned Tribunal. The appeal filed by the respondent Company was pressed only to the extent of interpretation of section 2(46)(b) of the Act of 1990. The said provision is reproduced as follows:-

*"(b) in case of trade discounts, the discounted price
excluding the amount of tax; provided the tax invoice*

shows the discounted price and the related tax and the discount allowed is in conformity with the normal business practices;"

4. The learned Tribunal vide order, dated 24.02.2010 remanded the matter for fresh calculations having regard to the aforementioned provision and subject to verification of the record. The learned counsel for the applicant Department has been heard at length. He has mainly argued that the respondent Company was not entitled to any benefit under section 2(46)(b) of the Act of 1990 because the tax invoices did not show the discounted price.

5. With the able assistance of the learned counsels, we have perused the record. It is an admitted position that the learned Tribunal has remanded the matter to the adjudicating authority. Moreover, the matter has been remanded for reassessment in the light of definition of the expression 'value of supply' and section 2(46)(b) of the Act of 1990 in particular. The learned Tribunal has explicitly observed that the assessment shall be subject to verification of the record/documents. The argument advanced by the learned counsel for the applicant Department is regarding factual controversies requiring verification of the record. The learned Tribunal has made the assessment and calculation of tax subject to verification of the record. The proposed questions of law are misconceived and do not arise out of judgment, dated 24.02.2010 for our consideration. The adjudicating officer would obviously be carrying out reassessment/calculations after verification of the record and having regard to the definition of the expression 'value of supply'.

6. In view of the above discussion, this tax reference is not competent and, therefore, accordingly dismissed.

7. The office is directed to send a copy of this order to the learned Tribunal under the seal of this Court.

(LUBNA SALEEM PERVEZ)
JUDGE

(CHIEF JUSTICE)

Asif Mughal/*

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