JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

S.T.R No. 14 of 2008

Collector Sales Tax and Federal Excise, Peshawar.

VS

M/s Flying Kraft Paper Mills (Pvt.) Limited and another.

Applicant by: Dr. Farhat Zafar, Advocate.

Respondent by: Malik Qamar Afzal, Advocate.

Date of hearing: 12.02.2020.

LUBNA SALEEM PERVEZ. J.- Instant Sales Tax Reference has been filed by the Applicant Department against judgment in Appeal No. 233/P.B/05 dated 08.05.2008 passed by the Custom, Federal Excise & Sales Tax Appellate Tribunal, Special Bench Islamabad, *(hereinafter referred to as the Tribunal),* whereby, seven questions were proposed for determination of this Court, however, following questions were selected as questions of law arising out of the impugned judgment of the Tribunal.

i. *Whether the Ld. Tribunal has read too much into the definition of the term "Factory" and ignored the term "Residence".*

ii. *Whether the respondent company misused the facility of adjustment of in-put tax on electricity and gas for the factory and illegally supplied the utilities to residential colonies."*

2. Necessary facts of the case are that on the basis of observations during departmental audit, show cause notice dated 18.02.2003 was issued to the Respondent on various issues which includes inadmissible input tax adjustment paid with electricity and gas bills supplied to the residential colonies for the months of January and February 2000 amounted to Rs. 100,890/- recoverable with additional tax of Rs. 76073/- under Section 34 of Sales Tax Act, 1991. After receiving the reply from the Respondent Company, the issue confronted through above show cause notice was decided vide Order-In-Original No. 04 of 2005 (hereinafter referred to as the ONO). Being aggrieved with the said ONO Respondent Company filed appeal before the Tribunal, and the Tribunal while placing reliance on their judgment reported as ***(2006 STR 728)*** decided the identical cases, whereby the adjustment of input tax paid with electricity & gas bills was held to be

inadmissible for the reason that the payment of Sales Tax paid on these utilities was against supply to residential colonies of workers and has no attribution towards furtherance of business. It was further held that adjustment of input tax against the output tax paid on electricity & gas bills of the registered person is justified especially when the electricity meter is in the name of registered person and the consumption charges and tax was paid at the commercial rate by the registered person (Company), hence, present reference.

3. Learned counsel for the department while arguing her case submitted that learned Tribunal has not appreciated the fact that Respondent Company has adjusted input tax paid against the tax paid on Electricity and Gas consumed by labor residential colonies. She submitted that under Section 7(1) of the Sales Tax Act, 1990, input adjustment is only admissible from the output tax against the taxable supplies. The electricity and gas used by labor residential colonies cannot be termed as taxable supplies which could attract the lawful adjustment of input tax against sales tax paid on these utility bills. Learned Counsel argued that case law of the Hon'ble Apex Court reported as ***D.G. Khan Cement Company Ltd. and others Vs. Federation of Pakistan and others (2004 SCMR 456),*** relied upon by the Respondent Company during the course of arguments before the Tribunal is not relevant to the facts and circumstances of the case. Learned Counsel prayed for setting aside the order of the Tribunal for being not legally sustainable.

4. Conversely, learned Counsel for Respondent Company supported the impugned order of the Tribunal and submitted that the labor residential colony is within the registered manufacturing premises of the Respondent Company and the utilities of Electricity and Gas are supplied to the workers accommodation through meters installed at commercial rates paid by the Respondent Company. Learned Counsel submitted that without involving the workers and labors, it is not possible for the Respondent Company to make taxable supplies, and submitted that the cost of the manufactured goods/ taxable supply includes sales tax paid on utility bills.

5. We have heard the learned Counsel for the parties and have also perused the relevant record with their able assistance.

6. The controversy in the present sales tax reference is regarding sales tax paid as input tax by the Respondent Company for consumption of utility bills i.e. Electricity and Gas, whether is adjustable against the output tax under Section 7(1) of the Sales Tax Act, 1990, when the electricity and gas is consumed by its workers and labors living in their labor colony situated

within the premises of the factory. Record shows that during the entire proceedings before the lower forums as well as before this Court, Applicant/Department has not contradicted this fact that labor colony, to which the electricity and gas is supplied, is within the four walls of the factory and these utilities to the labor colony are borne by the Respondent Company. The above fact since, not controverted at any stage is thus, considered to be admitted by the Applicant Department. The only grievance agitated by the Applicant Department through this reference is that the input tax paid with electricity & gas bills has been unlawfully adjusted against output tax as the sales tax collected on supply of these utilities to the residences of workers and laborers in the labor colony have no nexus with the taxable activity of the Respondent Company and same, as such, is not legally adjustable under section 7(1) of the Sales Tax Act 1990.

7. In view of the admitted facts and circumstances of the case, question No. 1, pertains to the definition of the terms "factory" and "residence", proposed to determine that whether Sales Tax on consumption of Electricity & Gas by workers living in the labor colony could be treated to be an adjustable input tax for the factory against the taxable activity and taxable supply. The term "factory" has been defined under the Factory Act 1935 as under:

> ***"Factory"*** *means any premises including the precincts thereof whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on 3[or is ordinarily carried on whether with or without the aid of power], but does not include a mine subject to the operation of the Indian Mines Act, 1923 (IV of 1923);*

Whereas, the term "residence" is defined in the Chambers Dictionary and Black's Law Dictionary as:

> *The Chambers Dictionary [10th Edition-2006]*
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> ***"Residence"*** *the act or duration of dwelling in a place; the act of living in the place required by regulations or performance of functions; a stay in a place; a dwelling-place; a dwelling-house, esp. one of some pretension; that in which anything permanently inheres or has its seat.*
>
> *Black's Law Dictionary [8th Edition-2004]:*
>
> ***"Residence"*** *The act or fact of living in a given place for some time. The place where one actually lives, as distinguished from a domicile. Residence usu. Just means bodily presence as an inhabitant in agiven place; domicile usu. Requires bodily presence plus an intention to make the place one's home. A person thus may have more than one residence at a time but only one domicile. Sometimes, though, the two terms are used synonymously. A house or other fixed abode; a dwelling. The place where a corporation or other enterprise does businsess or is registered to do business.*

Keeping in view the above, record has been examined which shows that the residential accommodation to the workers has been provided by the Respondent Company within the premises of the factory which premises have been duly registered with the department for manufacturing activities. These residences in the factory premises have been provided to the workers who are engaged in the process of manufacturing of the taxable goods thus, the cost of consumption of the electricity & gas of these workers used in the accommodation are directly connected with the taxable activity of the Respondent Company and are considered to be a direct manufacturing expenditure in relation to the cost of the goods. Moreover, the meters for the utilities are installed in the Respondent Company's name and at commercial rates which are higher than the residential rates. The respondent company thus while determining its sale tax, deducted input tax paid on the utility bills under section 7(1) of the Sales Tax Act, 1990. Input tax is a tax paid by the registered person on the purchases while the output tax is calculated on sale of goods. The provision of section 7(1) of the Sales Tax Act, 1990, provides the facility to the registered person as a legal right to deduct tax paid on purchases from the tax calculated on the sale of its taxable supplies so that the said registered person may not be vexed twice and saves the taxpayer from unnecessary hardship. Reliance is placed on case titled as *Karachi Shipyard and Engineering Works Limited vs. Government of Pakistan reported as PTCL 2011 504*. The Hon'ble Supreme Court in the case re: *Shiekoo Sugar Mills versus Government and Pakistan and others* reported as *(PTCL 2001 CL 331)* has held that provision of section 7 is a beneficial provision of law in nature providing facility to the registered person to adjust input tax at the time of making payment of output sales tax. Thus the provision of section 7 would be interpreted liberally in favour of the tax payer. Consequently, all the tax invoices in respect of the taxable supplies, including the electricity & gas utility bills, on which the sales tax is paid by Respondent Company, are legally entitled to be adjusted as input tax for determination of tax liability u/s 7(1) of the Sales Tax Act 1990.

8. So far as question No. ii is concerned, statedly the Respondent Company has illegally supplied electricity and gas to residential colony and thus misused the facility for adjustment of input tax, it is noted on perusal of record that this aspect has not been agitated and argued before any forum nor there is any finding to this effect, as such, it does not arise out of the impugned order of the Tribunal. The only stance of the Applicant Department is that utilities consumed in the labor colony situated in the factory premises being used in the residences of the workers, therefore, sales tax paid for these utilities cannot be adjusted as input tax against output tax. Whereas,

legalities/illegalities of supply of utilities to the labor colony is a question of fact and same cannot be agitated in reference jurisdiction.

9. For the forgoing discussion and in view of the admitted fact that the labor colony situated within the premises of the factory and residences provided by the Respondent Company to its workers with the facilities of electricity & gas, and paid sales tax on consumption of these utilities at the commercial rates, the answer, therefore, to both the questions is in **negative** against the Applicant Department and in favour of the Respondent Company. Resultantly, titled Sales Tax Reference stands dismissed.

10. Copy of this order be sent to Customs, Federal Excise and Sales Tax Appellate Tribunal, Islamabad.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the open Court on _____.

JUDGE **JUDGE**

APPROVED FOR REPORTING.
Blue Slip added

M. Junaid Usman