**IN THE SUPREME COURT OF PAKISTAN**
(Appellate Jurisdiction)

**Present:**
Mr. Justice Umar Ata Bandial
Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Munib Akhtar

**CIVIL PETITION NO.846-L OF 2017 AND**
**CIVIL PETITION NO.2074-L OF 2017**
*(Against the order of Lahore High Court, Multan Bench dated 23.01.2017, passed in W.P. No.570 /2017 and order of Lahore High Court, Lahore dated 08.12.2016 passed in W.P. No.37508/2016)*

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| Commissioner Inland Revenue, Multan, etc. | : | (In CP 846-L/2017) |
| The Federation of Pakistan through Chairman FBR, etc. | : | (In CP 2074-L/2017) |
| | ... | ***Petitioner(s)*** |
| | ***Versus*** | |
| M/s. Acro Spinning & Weaving Mills Ltd., Multan, etc. | : | (In CP 846-L/2017) |
| M/S Al-Hamd Corp. (Pvt.) Ltd, etc. | : | (In CP 2074-L/2017) |
| | ... | ***Respondent(s)*** |

For the petitioner(s): Mr. Sarfraz Ahmad Cheema, ASC.
(In both cases)

For the respondent(s): Ex-parte
(In CP 846-L/2017)

Nemo
(Iin CP 2074-L/2017)

Date of hearing: 27.05.2021

**ORDER**

**UMAR ATA BANDIAL, J.-** These leave petitions, filed by the department, are against various orders of the learned High Court whereby that Court, relying on its own earlier judgment dated 09.11.2016, allowed the writ petitions that had been filed by the respondent taxpayers. The judgment last mentioned is reported as *MKB Spinning Mills (Pvt) Ltd. v. Federation of Pakistan and others* 2018 PTD 2364 ("*MKB Spinning Mills*"). (We may note that the

department had earlier sought leave to appeal against the judgment in *MKB Spinning Mills* but the same was refused by a learned two member Bench of this Court vide order dated 01.08.2019.) The issues of law arising in these leave petitions are the same as those in the reported case.

2. The matters arise under the Sales Tax Act, 1990 (**"Act"**), and are concerned with taxable supplies made by the respondent taxpayers to persons not registered under the Act. At the relevant time subsections (1) and (1A) of section 3 had provided as follows (as presently material):

> "(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; ....
>
> (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 two 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."

The combined effect of these two subsections was that sales tax was levied and payable on supplies made to persons not registered under the Act at the rate of 19%. The last portion of subsection (1A) empowered the Federal Government to exclude, by notification, such taxable supplies as it deemed fit from the applicability of the said subsection. In respect of such supplies it would (as presently relevant) be only subsection (1) that would apply, i.e., the rate of sales tax would be 17%. It is common ground

that no such notification was in the field at any time relevant for present purposes.

3. Section 4 of the Act provided that notwithstanding anything contained in section 3, the goods specified in the various clauses thereof were to be charged to tax at the rate of zero percent. Thus, clause (a) specifies, inter alia, that goods that are exported are to be so charged. Clause (c) empowers the Federal Government to notify other goods also for purposes of section 4, and those goods would then charged to tax at zero percent. In exercise of this power (and certain others as specified therein) the Federal Government issued SRO 1125(I)/2011 dated 31.12.2011. This notification was amended vide SRO 491(I)/2016 dated 30.06.2016, and the present matters are concerned with the amended notification ("amended SRO 1125"). The amended SRO 1125 provided, in sub-entry (iii) of entry No. 1 of Table II thereof that taxable supplies made by persons doing business in five specified sectors to "registered or unregistered persons" would be taxed at zero percent. It is common ground that each of the respondent taxpayers is a person who falls in one of the five sectors so specified.

4. In view of the amended SRO 1125, the respondent taxpayers charged sales tax in respect of supplies made to persons not registered under the Act at zero percent. This led to the issuance of show cause notices that were challenged by way of writ petitions filed in the High Court. Now earlier other such persons had also filed writ petitions which were allowed by the learned High Court by means of the judgment in *MKB Spinning Mills*. It was

held there that the amended SRO 1125 applied, as it stated on the face of it, not only to supplies made to registered persons (who would otherwise be covered by subsection (1) of section 3) but also those made to unregistered persons, who would be covered by both subsections (1) and (1A) of the said section. As already noted, in the present matters, the learned High Court relied on the earlier decision to allow the writ petitions. Hence, these leave petitions filed by the department.

5. Learned counsel for the department submitted that the power to exclude the levy of the further tax under section 3(1A) could only be exercised under the said sub-section, i.e., in terms of the last portion thereof, which has already been noticed. As noted, there was no relevant notification in the field under that provision. It was contended that the terms of section 4, allowing taxable supplies to be charged at zero percent, did not operate to relieve such taxable supplies from the further tax. It was contended that the charging of tax at zero percent on supplies made to unregistered persons was therefore a violation of section 3(1A) for which show cause notices had been validly issued. It was prayed that leave to appeal be granted.

6. The relevant provision for zero rating under section 4, to which reference has already been made, may also be reproduced for ready reference:

> "**4. Zero rating.-** Notwithstanding the provisions of section 3, the following goods shall be charged to tax at the rate of zero per cent:- ...
>
> (c) such other goods as the Federal Government may by notification in the Gazette, specify...."

It is clear from the aforesaid provision that zero rating of taxable supplies is an overriding provision on account of the non-obstante clause by which it starts. The provisions of section 3(1A) pertaining to further tax are subservient to the effect of zero rating. Consequently, zero rated goods are not liable to any of the provisions under section 3 of the Act. It follows (subject to what is further said below) that the learned High Court correctly considered and decided the matter in the *MKB Spinning Mills* case.

7. Notwithstanding what has just been said, there are unfortunately certain observations made by the learned High Court in the reported decision that are erroneous and cannot be sustained. It has been observed in para 5 of the judgment that "the Act visualizes two regimes of tax; one under section 3.... and the other under section 4 under which tax is to be charged at zero rate". It has also been said, of section 4, in para 10 of the judgment that "the benefit of zero percent tax conferred by this provision was meant to support that component of local industry which was engaged in manufacturing export oriented products". It must be clearly understood that these observations are incorrect. The Act does not impose two (or more) tax regimes. It creates and enforces one integrated tax regime, which operates as a single whole, namely the levy of tax in VAT (value added) mode. The manner in which the VAT mechanism works and the conceptual framework of the same including, in particular, the reason why exports are zero rated has been considered and explained in some detail by one of us (Munib Akhtar, J.) while in the High Court: see *Pakistan Beverage Ltd. v. Large Taxpayer Unit* 2010 PTD 2673 (paras 10-17; "*Pakistan Beverage*"). The cited observations of the learned High

Court run contrary to the conceptual framework of a tax levied in the VAT mode, and, if not corrected, are liable to mislead. However, this error, which is hereby rectified in terms of what has been said in *Pakistan Beverage*, does not affect the overall reasoning and conclusions of the High Court insofar as the facts and circumstances of the present cases are concerned. We may note for completeness that the learned counsel for the department submitted that by the Finance Act, 2017, section 4 was specifically amended such that the opening words now read as follows: "Notwithstanding the provisions of Section 3 except those of sub-section (1A)...." It may also be noted that the said Finance Act also amended section 3(1A), such that the various provisions listed therein now also include section 4. However, it is common ground that these amendments have no bearing on, or relevance for, the matters at hand.

8. In view of what has been said above, but subject to the clarifications made with regard to the *MKB Spinning Mills* case, no exception can be taken to the impugned orders, and we are of the view that they do not warrant any interference. Leave is therefore declined and these petitions are dismissed.

Judge

Judge

Islamabad,
27th May, 2021.
Approved for reporting
*Iqbal*

Judge