

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

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL  
 MR. JUSTICE SAJJAD ALI SHAH  
 MR. JUSTICE MUNIB AKHTAR

*(AFR)(D J)*

**CIVIL PETITION NO.1972-L OF 2017**

(Against the judgment dated 24.05.2017 of the Lahore High Court, Lahore passed in Sales Tax Reference No.74 of 2010)

M/s Fateh Yarn Pvt. Ltd. Faisalabad

...Petitioner(s)

**VERSUS**

The Commissioner Inland Revenue,  
 Faisalabad, etc.

...Respondent(s)

For the petitioner(s): Mr. Shahbaz Butt, ASC (v.l.  
 Lahore)

Respondent(s): Dr. Farhat Zafar, ASC

Date of Hearing: 15.01.2021

**ORDER**

**UMAR ATA BANDIAL, J.** This petition for leave to appeal impugns the judgment of the Lahore High Court dated 24.05.2017 passed in Sales Tax Reference No.74 of 2010 (“Reference”). The primary grievance of the petitioner is that the learned High Court answered the Reference in favour of respondent No.1 on the basis of questions which were neither rooted in law nor were they discussed in the order of the learned Appellate Tribunal. For the sake of convenience, the questions considered by the learned High Court in the Reference are produced below:

“...2. Whether any forged documents may have any value unless it is shown that Sales Tax for

the 'supply invoice' was actually deposited in the state treasury?

.....  
4. Whether the refund can be made even [though] the prerequisites laid down by the provisions of Sales Tax Act, 1990 have not been fulfilled?..."

2. The relevant facts are that the petitioner is a registered person under the Sales Tax Act, 1990 ("the Act"). On account of its alleged abnormal tax profile, the petitioner was issued a show cause notice ("notice") on 19.04.2006 asking an explanation as to why the entire output tax of Rs. 76.563 million for the period February, 2001 till March, 2005 should not be recovered from it. Such query was put to the petitioner as it had claimed input tax credit to the tune of Rs. 72.963 million and had only deposited net tax of Rs. 1.215 million for the aforementioned period. Subsequently, multiple follow-up notices were sent to the petitioner, however, these were returned undelivered. As a result, the petitioner was proceeded against ex-parte. Thereafter, on the basis of available material, the Additional Collector vide order dated 18.07.2006 upheld the charge framed against the petitioner in the notice and ordered the recovery of Rs. 76.563 million from it for the period beginning in February, 2001 and ending in January, 2006. It also rejected the petitioner's claim of input tax credit valued at Rs. 72.963 million.

3. Feeling aggrieved by the outcome, the petitioner filed an appeal before the Collector (Appeals) who vide order dated 11.09.2006 affirmed the decision of the Additional

Collector. The petitioner then preferred an appeal before the learned Appellate Tribunal which in its order dated 01.07.2010 set aside the findings recorded by the two fora below. As a result, the petitioner was discharged from having to pay the output tax liability of Rs. 76.563 million and was allowed to claim input tax credit of Rs. 72.963 million. Against this order, respondent No.1 filed a Reference before the learned High Court which through its judgment dated 24.05.2017 reversed the decision of the learned Appellate Tribunal and endorsed the findings of the Additional Collector and Collector (Appeals).

4. Before us learned counsel for the petitioner has argued that the impugned judgment has travelled beyond the points of law raised before and decided by the learned Appellate Tribunal. On the other hand, learned counsel for the respondents has supported the impugned judgment.

5. We have heard learned counsel for the parties and have also examined the record. The matter before us has raised both questions of law and fact. While it is a settled proposition of our jurisprudence that superior courts cannot engage in factual controversies, an exception has been carved out for situations where a substantial defect in the reading of oral or documentary evidence is pointed out [ref: **Abdul Majeed Vs. Muhammad Subhan** (1999 SCMR 1245) at para 10]. Applying this test, we are of the opinion that the learned High Court has rightly intervened in the finding recorded by

the learned Appellate Tribunal with respect to the petitioner's claim of input tax credit. The matter had been thoroughly examined by both the Additional Collector and the Collector (Appeals) who had concluded that since no reliable documentary evidence was provided by the petitioner to support its claim of input tax credit to the tune of Rs. 72.963 million, therefore the same should be disallowed (in fact whatever evidence had been provided was fake). However, the learned Appellate Tribunal ignored this material fact and committed a serious error which called for rectification. Consequently, in our considered view there are no grounds for interfering with the finding of the learned High Court on this issue.

6. Be that as it may, we have observed that the notice issued to the petitioner covered the period from February, 2001 to March, 2005. Now it is an admitted fact that an audit of the petitioner's records was conducted by the sales tax authorities for the period commencing in February, 2001 and ending in November, 2001 by virtue of which tax in the amount of Rs. 359,725/- was ordered to be recovered from the petitioner. However, on appeal the Collector (Appeals) vide order dated 05.05.2005 accepted the contention of the petitioner and set aside the Order-in-Original. This order was never challenged by the sales tax department so it has attained finality. Therefore, any further scrutiny of this period is now barred by the doctrine of past

and closed transaction. Consequently, this period is excluded from the purview of the impugned orders passed by the Collector and Collector (Appeals).

7. Likewise, it is an accepted fact that the allegation levelled against the petitioner in the notice was for the period ending in March 2005. However, the subsequent orders passed by the fora below have imposed a tax liability on the petitioner for the period ending in January 2006. This Court has already held in The Collector Central Excise and Land Customs Vs. Rahm Din (1987 SCMR 1840) that an order of adjudication passed on the basis of a ground not stated in the notice is 'palpably illegal and void on the face of it' [para 7]. We see no reason why the same logic should not extend to an order imposing a tax liability for a time period not mentioned in the notice. The purpose of serving a notice on a taxpayer is to notify him of the case against him. When such a document contains incomplete information it can seriously prejudice the taxpayer's defence. As the petitioner has undoubtedly been saddled with a tax liability for a period which was not disclosed in the notice, we exclude the said additional period (March, 2005 till January, 2006) from the purview of the impugned orders passed by the Collector and Collector (Appeals). Accordingly, the taxing officer shall recalculate the outstanding tax liability of the petitioner from the period December, 2001 to February, 2005.

8. These then are the detailed reasons of our short order of even date:

"For the reasons to be recorded later, this petition is converted into appeal and partly allowed in the terms that the period for which audit was conducted i.e. February, 2001 to November, 2001 and the period for which the Order-in-Original exceeded the period covered by the show cause notice from March, 2005 to 1.1.2006 shall stand excluded from the purview of the impugned order passed by the Assessing Officer and the Commissioner (Appeals)."

Sd/- J  
Sd/- J  
Sd/- J

Islamabad

15.01.2021

*Irshad Hussain/Meher LC*

NOT APPROVED FOR REPO