

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Munib Akhtar
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Miangul Hassan Aurangzeb

Civil Petition No. 2672-L of 2024

*[Against the order dated 15.10.2024 of the
Lahore High Court, Multan Bench passed in
Sales Tax Reference No. 43/20230]*

M/s Rafhan Maize Products Co. Limited. ... Petitioner

Versus

*The Appellate Tribunal Inland Revenue,
Multan and others. ... Respondents*

For the Petitioner: Mr. Muhammad Ajmal Khan, ASC.
[Via video-link from Lahore]

For the Respondents: Mr. Muhammad Yahya, ASC.

Date of Hearing: 27.05.2025.

ORDER

Muhammad Shafi Siddiqui, J. Petitioner being a subsidiary of multinational company engaged in the business of sale of various food products.

2. Petitioner filed sales tax return pertaining to tax periods October, November, December of 2013, February, May, June, October, November and December of 2014 under section 26 of the Sales Tax Act, 1990 ('**the Act**'). On scrutiny of such returns, discrepancies were noticed and communicated followed by issuance of show cause notice by Deputy Commissioner Inland Revenue on 03.05.2016. The show cause notice observed that petitioner failed to pay further tax at the rate of 1% in respect of supplies made to persons who were "un-registered" hence violated the provisions of sections 3(1A), 6, 7, 22, 23 and 26 read with section 2(14) of the Act. The show cause notice called upon petitioner to pay further tax amounting to Rs.2,475,682/- under section 11(2) alongwith default surcharge under section 34(1) and penalty under section 33 of the Act.

3. Points raised in the show cause notice were responded with documentary evidence that supplies were made to 'registered person' only. The Deputy Commissioner Inland Revenue accepted the contention of the petitioner to the extent of Rs.103,691/- only and passed order-in-original for recovery of Rs.2,371,991/- with default surcharge and penalty *vide* order dated 23.08.2016.

4. Petitioner preferred appeal before the Commissioner Inland Revenue (Appeals) which accepted the contention made by petitioner to the extent of Rs.542,938/ and maintained order-in-original in respect of rest of the amount.

5. Petitioner yet again preferred appeal before Appellate Tribunal Inland Revenue when to the extent of Rs.28,490/- contention was accepted whereas order was maintained for rest of the amount.

6. Reference filed under section 47 of the Act by the petitioner raising following three questions of law:

"(i) Whether under the facts and in the circumstances of the case, the learned ATIR was justified in confirming the levy of Further Tax under section 3(1A) of the ST Act by passing a non-speaking order?

(ii) Whether under the facts and in the circumstances of the case, the learned ATIR was justified in applying retroactively the amendment made in sub-section (1A) of section 3 of the ST Act by adding phrase "or he is not an active taxpayer" through Finance Act, 2022 (XIII of 2002) assented on 30.06.2022 on the supplies made during the tax periods 2013 to 2014?

(iii) Whether under the facts and in the circumstances of the case, the learned ATIR was justified in confirming the levy of further tax under section 3(1A) of the ST Act in respect of supplies made to Registered Persons during the tax periods 2013 to 2014, without answering to the legal aspect that merely a Registered Person with the status of non-filer or null-filer or Blacklisted or Suspended cannot be treated as the person who has not obtained registration number?"

In the impugned judgment first question was answered against the taxpayer-petitioner whereas petitioner failed to establish as to how the second question has arisen hence said question was not answered. For the third question Bench was pleased to remand the case to Appellate Tribunal.

7. We have heard the learned counsel for the parties and perused the material available on record.

8. Controversy is based on section 3(1A) of the Act and would come to an end on its proper interpretation as suspension and blacklisting were counted as being at par with unregistered entity by the High Court. The question regarding the applicability of section 3(1A) is inconsequential as even the petitioner has not questioned its application to the returns under consideration.

9. We would now see the requirement of section 3(1A) of the Act for levying further tax of 1% of the value in addition to the rate specified in sub-section (1), (1B), (2), (5) and 6. For the sake of convenience, Section 3(1A) of the Act, as it stood at the relevant time, is reproduced as under:-

"[(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 [one] 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."

10. Section 3(1A) forms part of charging Section 3. While interpreting charging section of a fiscal statute, the Court is obliged to interpret what is clearly said and there is no possibility for any intendment. While dealing with the question of interpreting a taxing Statute in the case of Cape Brandy Syndicate¹, Rowlatt, J observed as under:-

"It simply means that in taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about at tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used."

11. This jurisprudence is consistently followed by this Court in several cases. In the case of Hirjina and Co. (Pakistan) Ltd.² it was observed by this Court as under:-

¹ (1921) 1 K.B. 65(71) (Cape Brandy Syndicate v. Inland Revenue Commissioners)

² 1971 SCMR 128 (Hirjina and Co. (Pakistan) Ltd. Karachi v. Commissioner of Sales Tax Central)

"we may here observe that interpreting the taxing statute the Courts must look to the words of the statute and interpret it in the light of what is clearly expressed. It cannot import provisions in the statute so as to support assumed deficiency."

12. In the case of Jabees Ltd.³ this Court in the context of discussing charging section of fiscal statute stated as under:-

"... in order to contend that, while construing a taxing statute, strict construction is to be placed and in case of any ambiguity, the benefit should be given to the subject. It is a well-settled principle of law that all charges upon the subject must be imposed by clear and unambiguous language and a subject is not to be taxed unless the language of the statute clearly imposes the obligation and language must not be stretched in order to tax a transaction, which, had the Legislature thought of it, would have been covered by the appropriate words. It is also a well-sled principle of construction of a fiscal statute that one has to look merely at what is clearly said and there is no room for any intendment, there is no equity about a tax, there is no presumption as to a tax and nothing is to be read in and nothing is to be implied and one has to look fairly at the language used...."

This is followed in the case of Hashwani Hotel Ltd.⁴ and the recent pronouncement by this Court in the case of Al-Abid Silk Mills⁵

13. By applying the consistent view followed, in a situation where taxable supplies made to an entity whose registration was either suspended or consequently blacklisted, we may conclude that it is apparently not seen as the requirement of section 3(1A). The *ibid* provision calls for an additional tax of 1% only in a situation where the person to whom taxable supplies were made "*has not obtained registration*". Did he or did he not obtain registration is a simple question and the answer would serve the situation. The supplies made to the person was registered and this alone fulfils the prerequisites of section 3(1A). Any consequential event, which in any case has not "*cancelled the registration*" would not attract the situation of levying further tax of 1% and nothing more could be extracted by applying the above jurisprudence.

14. In view of the foregoing discussions and with this understanding of section 3(1A) of the Act, we convert this petition into an appeal and allow the

³ PLD 1991 SC 870 (Government of West Pakistan v. Jabees Limited)

⁴ PLD 1990 SC 68 (Government of Pakistan v. Hashwani Hotel Ltd.)

⁵ 2023 SCMR 1797 (Commissioner Inland Revenue Zone-IV v. Al-Abid Silk Mills Ltd.)

same in the above terms, resultantly, the impugned judgment dated 15.10.2024 passed by the High Court is set aside.

Judge

Judge

Judge

Islamabad:
27.05.2025

Approved for Reporting

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