

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

**Mr. Justice Umar Ata Bandial, HCJ**

**Mrs. Justice Ayesha A. Malik**

**Mr. Justice Athar Minallah**

**CIVIL APPEAL NO.1032 OF 2018**

*(Against the judgment dated 27.03.2018 of the High Court of Sindh, Karachi passed in STRA No.737 of 2015)*

Commissioner Inland Revenue  
Zone-IV, Large Taxpayer Unit,  
Karachi

... Appellant(s)

Versus

M/s Al-Abid Silk Mills Ltd. A-39,  
Manghopir Road, SITE, Karachi

... Respondent(s)

For the petitioner(s): Mrs. Asma Hamid, ASC

For the respondent(s): Mr. Ghulam Rasool Mangi, ASC/AOR  
(via video-link, Karachi)

Date of hearing: 14.02.2023

**JUDGMENT**

**Athar Minallah, J.-** The Commissioner Inland Revenue had sought leave against judgment, dated 27.03.2018, of the High Court whereby questions of law proposed in a sales tax reference application, filed under section 47 of the Sales Tax Act 1990 (**'Act of 1990'**), were answered and leave was granted by this Court vide order dated 20.07.2018.

2. The respondent, M/s Al-Abid Silk Mills Ltd. (**'taxpayer'**), is registered under the Act of 1990 and is engaged in the business of manufacturing and export. Pursuant to a report of the Directorate General, Intelligence and Investigation (**'Directorate of I&I'**), the Deputy Commissioner Inland Revenue served a show cause notice upon the tax payer, dated 31.01.2014. It was alleged that eight

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distinct entities, described in the show cause notice, were allegedly involved in the issuance of fake/flying invoices and they had not deposited the tax in the treasury. It was further alleged that the taxpayer had claimed input tax against invoices issued by the said eight distinct suppliers. It was, therefore, assumed that the invoices relating to supplies made by the eight entities were fake/flying. The taxpayer was, therefore, called upon, through the show cause notice, to explain why the input tax claimed against the alleged fake/flying invoices should not be recovered along with the default surcharge and additional tax. It is noted that the Directorate of I&I had not conducted an audit under section 25 of the Act of 1990 nor was it vested with jurisdiction to do so. The Deputy Commissioner Inland Revenue had also mechanically proceeded on the basis of the report of the Director General, Directorate of I&I, because neither an audit was conducted under section 25 nor information was sought to have been obtained from the taxpayer under section 38 of the Act of 1990. The show cause notice was adjudicated against the taxpayer vide Order-in-Original No.30/2013, dated 28.05.2014. The appeal preferred by the taxpayer was dismissed by the Commissioner Inland Revenue (Appeals) vide Order-in-Appeal dated 26.08.2014. The appeal preferred before the Appellate Tribunal Inland Revenue (**'Tribunal'**) also did not succeed and it was dismissed vide judgment, dated 05.05.2015. The taxpayer invoked the jurisdiction of the High Court under section 47 of the Act of 1990, by proposing questions of law stated to have arisen from the judgment of the Tribunal. The High Court answered the proposed questions against the Department.

3. We have heard the learned counsels for the parties.

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4. It is an admitted position that the show cause notice was issued pursuant to the report received from the Directorate of I&I. Before the issuance of the show cause notice no meaningful effort was made by the sales tax officials to conduct an audit nor was a proper inquiry made by exercising powers conferred under the Act of 1990 in order to verify the allegations made in the report. The show cause notice was based on vague allegations and an assumption that, since some of the supplies were made by the eight entities which were involved in the issuance of fake/flying invoices, therefore, the invoices relating to such supplies must also have been of the same status. It was not the case of the Department that the eight entities were never engaged in business nor had made supplies. The taxpayer was asked by the sales tax authorities to provide documents which, at the relevant time, were not required to be maintained by a registered person under section 22 of the Act of 1990 e.g. gate passes, goods inward inventory record and transportation challans. These documents were inserted in section 22 of the Act of 1990 through the Finance Act 2013, dated 29.06.2013, while the alleged transactions had taken place prior thereto. The Department, in a nutshell, had alleged that since the eight distinct suppliers were allegedly involved in issuance of fake/flying invoices, therefore, the presumption was that the supplies relating to the invoices against which input was claimed had not been made. On this assumption it was alleged that the input claimed was inadmissible under section 8(1)(c)(a) of the Act of 1969. The said provision contemplates that input cannot be claimed on goods or services in respect of which sales tax has not been deposited in the government treasury by the respective supplier. In essence, the onus was on the Department to first establish that the eight suppliers had not made actual supplies

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and, thus, the invoices against which the input was claimed were fake/flying invoices. Moreover, it was the Department's responsibility to verify whether or not the eight entities had deposited the sales tax in the government treasury relating to the invoices against which the taxpayer had claimed input tax. It is evident from the record that the Department had made no attempt to verify whether the invoices relatable to the claim of input tax were fake/flying or otherwise. The expression input tax and output tax have been defined under clauses 14 and 20 of section 2 of the Act of 1990, respectively. The liability raised against the taxpayer, vide the Order-in-Original, was based on mere presumptions while the sale tax authorities had failed in their duty to establish the allegations before the adjudicating authorities. The appeals were dismissed by the Commissioner Inland Revenue (Appeals) and the Tribunal on the ground that though the record sought from the taxpayer was not required to be maintained under section 22 of the Act of 1969, yet it was the latter's obligation to prove that supplies were actually made to it. After issuing a show cause notice without conducting an audit or making a proper inquiry a reverse onus was placed on the taxpayer.

5. The Act of 1990 is a complete comprehensive statute dealing with the levy, charge and payment of sales tax on taxable supplies made by a registered person in the course or furtherance of any taxable activity carried on by such registered person. The levy, charge or payment of sales tax is attracted when there is taxable supply and such taxable supply must have been made in the course or furtherance of any taxable activity carried out by a registered person. The expression 'taxable supply', 'value' and 'taxable activity' have been defined in section 2 (41), (46) and 35 respectively. The

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expression 'output tax' has been defined in section 2(20) in relation to a registered person as, *inter alia*, meaning tax levied under the Act of 1990 on the supply of goods made by the person. The liability to pay the output tax is, therefore, that of a supplier which in this case were the eight distinct entities. Section 7 describes the mechanism for determination of the tax liability and provides that, subject to the provisions of section 8, a registered person shall be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made or to be made from the output tax. The expression 'input tax' has been defined under section 2(14) in relation to a registered person as, *inter alia*, meaning the tax levied under the Act of 1990 on supply of goods to the person. As a corollary, a person who receives a supply of taxable goods is entitled and eligible to deduct tax paid on the supply of goods received by the latter. The input tax in this case was adjusted by the taxpayer.

6. It is settled law that, while interpreting fiscal statutes, the court looks to what is clearly said and there is no room for any intendment nor is there any equity about a tax. There is no presumption as to tax and nothing was to be read in or implied and one could only look fairly at the language used.<sup>12345</sup>.

7. The scheme of the Act of 1990 clearly envisages that the obligation to establish that a person was liable to pay any tax or charge and the same has not been levied or paid or has been short-levied is essentially that of the sales tax authorities. The burden to

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<sup>1</sup> M/s Mirpurkhas Sugar Mills Ltd. v. Govt. of Sindh and others (1993 SCMR 920)

<sup>2</sup> Muhammad Younus v. Central Board of Revenue and others (PLD 1964 SC 113)

<sup>3</sup> Commissioner of Income Tax v. Mst. Khatija Begum (PLD 1965 SC 472)

<sup>4</sup> Govt. of West Pakistan and others v. M/s Jabees Ltd. (PLD 1991 SC 870)

<sup>5</sup> Govt. of Pakistan and others v. M/s Hashwani Hotels Ltd. (PLD 1990 SC 68)

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prove that the tax has not been paid is on the sales tax authorities. In order to discharge this obligation they have been vested with wide powers under the Act of 1990. It is well settled that whoever asserts a fact is also burdened with the duty to establish that it is highly probable to be true. In some exceptional cases, the legislature, in its wisdom, has provided for what is known as reverse onus, by placing the burden on the person against whom an allegation has been made. Section 187 of the Customs Act, 1969 and section 14 of the National Accountability Ordinance, 1999 are such illustrations. The concept of reverse onus i.e. placing the burden on the person against whom an allegation has been made runs contrary to the established principle of presumption of innocence. It is therefore, for this reason that Courts lean in favour of interpreting or reading down such provision in an effort to safeguard the fundamental principles of fair trial. There is no provision *pari materia* with section 187 of the Customs Act 1969 or section 14 of the National Accountability Ordinance, 1999, in the Act of 1990. The legislature, therefore, did not intend to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Act of 1990. The proceedings before the adjudicating authority or the statutory appellate forum under the Act of 1990 are quasi judicial in nature. When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful. The duty to establish facts on the standard of balance of probabilities is on the department under the Act of 1990.

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8. In the case in hand, the show cause notice was issued in a mechanical manner. The allegations were vague and the facts had not been verified. Moreover, the taxpayer was asked to establish that its suppliers i.e. the eight distinct entities had not made supplies and that they had not deposited the output tax in the government treasury. It was on this basis that it was presumed that the invoices were fake/flying and thus the input tax adjusted against such invoices was alleged to be inadmissible. The taxpayer was further asked to produce documents which were not required to be maintained under the Act of 1990 at the relevant time. The department had issued a vague show cause notice pursuant to a report, without first making an inquiry of its own to verify the facts relating to the eight entities i.e whether they had deposited the tax in relation to the supply made to the taxpayer. The High Court has correctly interpreted the provisions of the Act of 1990 in the context of the facts and circumstances of the case before us. The appreciation of the provisions of the Act of 1990 by the High Court have been found to be unimpeachable. The Department has not been able to make out a case for grant of leave and, therefore, the petition is accordingly dismissed.

These are the reasons for our short order dated 14.02.2023.

**Chief Justice**

**Judge**

**Judge**

**Islamabad the,**  
23<sup>rd</sup> May, 2023  
NOT APPROVED FOR REPORTING.  
*M. Azhar Malik/\**