

TaxHelpline Case No. 159 of 2014

Appellate Tribunal

M.A. (Stay) No.27/LB of 2014 and S.T.A. No.1245/LB of 2013, decided on 08-01-2014

PRESENT:

CH. ANWAAR-UL-HAQ, JUDICIAL MEMBER

SAJJAD ALI, ACCOUNTANT MEMBER

**PETITIONERS: MESSRS MAGNA PROCESSING INDUSTRY (PVT.)
LTD., FAISALABAD**

VS

**RESPONDENTS: COMMISSIONER INLAND REVENUE (ZONE-I),
(R.T.O.), FAISALABAD**

Khubaib Ahmad Taunsvi for Appellant.

M. Nazir Rizvi, D.R. for Respondent.

Sales Tax Act 1990

Sec: 4, 10

Law: Constitution of Pakistan, 1973

Sections: 4, 25, 99

ORDER

SAJJAD ALI (ACCOUNTANT MEMBER).---The instant miscellaneous application seeking grant of stay against payment of sales tax in electricity bills charged by the FESCO due to denial of zero-rating facility by the tax authorities in conjunction with titled appeal against order bearing C.No. 466 of the learned Commissioner IR (Zone-I), R.T.O. Faisalabad dated 13-11-2013 have been filed at the instance of the registered person.

2. Brief facts of the case as emanating from the case record are that the appellant is a private limited company registered under the Sales Tax Act, 1990 running its business as a manufacturer-cum-exporter engaged in making of zero-rated supplies of textiles and textile articles thereof. The appellant filed an application for zero-

rating of sales tax on electricity bills before the Commissioner IR (Zone-I) on 26-2-2013 which was rejected in violation of S.R.O 1125(I)/2011 dated 31-12-2011 as duly communicated to him electronically on 30-3-2013.

3. FBR vide its letter C. No. 4(6)ST-L&P/2011-50774 dated 7-4-2012 has directed its field formations that all future requests for availing facility of zero-rating on electricity and gas shall only be entertained if the same is accompanied by a certificate from RTO/LTU that the registered person has been correctly discharging liabilities of sales tax under S.R.O 1125(I)/2001 dated 31-12-2011. On the basis of forgoing, application for grant of zero-rating facility of sales tax on electricity bills was not recommended to the Board on the ground that sales tax liability of Rs.5,598,884 on discrepancies pointed out by the "CREST" has been adjudged against him. Being aggrieved by the proceedings as mentioned supra, the appellant has filed the instant appeal before this Appellate Tribunal praying for setting aside the impugned order of the learned CIR (Zone-I), Faisalabad with a direction to the authorities not to charge sales tax anymore on electric bills in future.

4. We have heard the arguments advanced by both the rival parties and also carefully gone through the relevant record available on the file as well as case-law referred before us on behalf of the taxpayer.

5. We are of the considered view that the appellant is duly entitled for zero-rating of sales tax facility on electricity bills as being manufacturer-cum-exporter engaged in zero-rated supplies of textile and textiles articles thereof under section 4 of the Act and sales tax paid on electricity bills always becomes due for refund incurred in connection with such zero-rated exports under section 10 of the Act causing undue blockage of money in the national exchequer for a protracted period of time.

6. In the current scenario, no reason what to say plausible, has been given that likewise manufacturer-cum-exporters engaged in exports of textile and textiles articles thereof including appellant's sister concern unit namely Messrs Magna Textile Industries (Pvt.) Ltd., Faisalabad have already been availing this facility despite the fact that almost all of them have undergone by a similar thresh of discrepancies pointed out by the CREST and this facility is still continuously available to them even the appellant himself has already been availing sales tax zero-rating facility in case of natural gas through S.T.G.O. No. 17/2007 dated 13-9-2007 whereby zero-percent sales tax is being charged on gas bills and by way of this zero-

rating facility, the appellant has not to undergo with cumbersome process of refunds and his funds are not stuck up with the tax functionaries for a long period in case of natural gas conversely in case of electricity why the appellant is kept restrained from this facility. A similar facility of zero-rating sales tax in case of electric power as already available to likewise manufacturer-cum-exporters can be extended to the appellant as well because a facility allowed to some and denied to one is by all means a discrimination hit by the Article 25 of the Constitution of the Islamic Republic of Pakistan as also laid down by the August Supreme Court of Pakistan in case of "Government of Pakistan v. Messrs Village Development Organization" reported as (2005 SCMR 492). It is well-settled principle of law that a person equally placed must be treated alike in the matter of privileges and liabilities under the rule of equal protection of law. There exists no power to target incidence of tax in such a way that similarly placed person be dealt not only with similarly, but indiscriminately. A person placed at the same pedestal cannot be treated differently as it would constitute a negation of Articles 4 and 25 of the Constitution, 1973.

7. The doctrine of equality, as contained in Article 25 of the Constitution, enshrines the golden rules of Islam. It states that every citizen, no matter how highsoever, must be accorded equal treatment with similarly situated persons. The basic rule for the exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be treated alike and the reasonable classification must be based on reasonable grounds in a given set of circumstances, but the same in any case must not offend the spirit of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.

8. In the case of "Government of Punjab v. Naseer Ahmad through L.Rs. and others" reported as (2010 SCMR 431), the August Supreme Court laid down the following principle of equality under Article 25 of the Constitution of Islamic Republic of Pakistan 1973:--

"In fact, almost all legislation involves some kind of classification whereby some people acquire rights or suffer disabilities whereas others do not. What, however, is prohibited under this principle, is legislation favouring some within a class and unduly burdening others. The basic rule for the exercise of such discretion and reasonable classification is that all persons placed in similar circumstances must be treated alike and the reasonable classification must be based on reasonable grounds

in a given set of circumstances, but the same in any case must not offend the spirit of Article 25 of the Constitution Islamic Republic of Pakistan, 1973."

9. In view of what has been stated above and in line with the principles laid down by the superior courts in various pronouncements quoted supra, we are of the firm opinion that the appellant/registered person deserves for such relief as applied for grant of facility of zero-rating of sales tax on electric bills, therefore, we remand back the impugned order of the learned CIR (Zone-I) with the directions that appellant be given reasonable opportunity of being heard before passing a speaking order and he should not be discriminated unlawfully.

10. Since, the main appeal of the registered person has been decided as indicated above, therefore, miscellaneous application for interim relief has become infructuous which is hereby dismissed.

11. Resultantly, the titled appeals filed by the present appellant are disposed of in the manners and to the extent as dilated supra.

SD/-
CH. ANWAAR-UL-HAQ
JUDICIAL MEMBER

SD/-
SAJJAD ALI
ACCOUNTANT MEMBER

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