

TaxHelpline Case No. 177 of 2013

[ISLAMABAD HIGH COURT]

Sales Tax Appeal No.36 of 2003, heard on 4th April, 2013

Before Riaz Ahmad Khan and Noor-ul-Haq N. Qureshi, JJ

**Farhat Nawaz Lodhi for Petitioner. Ayaz Shoukat for
Respondents**

COLLECTOR OF SALES TAX AND CENTRAL EXCISE

Vs

Messrs HUSSAIN AND COMPANY, ISLAMABAD

JUDGMENT

NOOR-UL-HAQ N. QURESHI, J.---This Sales Tax Appeal has been filed on the following questions of law said to have arisen out of the order dated 29-11-2001 passed by the learned Customs, Excise and Sales Tax Appellate Tribunal, Islamabad Bench-I, Islamabad:--

(i) "Whether the judgment of the Tribunal is in conformity with the standards provided for a valid and legal/pronouncement and can it be treated as such?

(ii) Were the respondents not obliged to substantiate their claim (not manufacturers but mere suppliers) by producing sufficient and proper evidence to the fact?

(iii) Can the present respondents deviate from the declaration they made through the income tax returns and through the application for registration as manufacturer-cum-supplier person, under the provisions of the Sales Tax Act, 1990?"

2. At the very outset, an objection has been raised before us by the learned counsel for the respondent/taxpayer that instant tax appeal

is not maintainable for the reason that same has been instituted by an incompetent person i.e. the Law Officer, which is contrary to the requirements of section 47 of the Sales Tax Act, 1990.

3. He has further pointed out that contrary to the mandate of law, this appeal though has been filed in the name of Collector of Sales Tax, but same has not been signed by the Collector himself, rather Mr. Aamir Sultan, Law Officer, Collectorate of Sales Tax, Rawalpindi has signed memo. of appeal as well as affidavit in support thereof.

4. On the basis of such position, learned counsel for the respondent has stated that very Act does not permit any one else except Collector to sign pleadings so as to institute and file an appeal against the order of the learned Tribunal before the High Court. According to him, as it has not been done in accordance with law, thus this appeal has been filed in violation of Section 47 of the Act as stood in 2002.

5. Learned counsel for the appellant has controverted the stance taken by the learned counsel for the respondent, but does not dispute the assertions factually raised. He has conceded that this appeal has been filed under the signatures of the aforementioned Law Officer. However, it has been argued that this could be a violation of law at that time, but now same has been cured in terms of section 47(11) of the Sales Tax Act, 1990 under the referred provisions. According to him, such defect has now been cured through the legislation after newly promulgated provisions of subsection (11) of section 47 of the said Act. Therefore, it is now deemed to be an appeal filed by a competent person.

6. We have gone through the record and case-law submitted as well as arguments have been heard elaborately.

7. In this regard, to appreciate the position of the parties with regard to retrospective effect of the legislation, a new enactment authorizing to institute an appeal before the Court has been introduced. The system of authorization and the appointment of

Officers of Sales Tax in terms of a Notification has been introduced by law. By virtue of Section 32 of the Act, the powers referred can be delegated to subordinate officer subject to limited conditions specified therein.

8. Yet no provision of law or any guideline through any notification has been introduced whereby a Law Officer is held entitled to institute or file an appeal before the High Court under section 47 of the Act. The very section 47 of the Sales Tax Act, 1990, in its entirety as stood in 2002, is reproduced herein below:--

"Reference to High Court.---(1) Within ninety days of the communication of the order of the Appellate Tribunal under subsection (5) of section 46, the aggrieved person or any officer of Sales Tax not below the rank of [an Additional Collector, authorized by the Collector,] may prefer an application in the prescribed form along with a statement of the case to the High Court, stating any question of law arising out of such order".

8-A. Subsequently, by the Finance Act of 2006, subsection (11) was introduced in Section 47 of the Act. The said subsection is reproduced hereunder:--

(11) Notwithstanding anything contained in any provision of this Act, where any reference or appeal was filed with the approval of Collector by the officer of lower rank than the Collector, and the reference or appeal is pending before an appellate forum or the Court, such reference or appeal shall always be deemed to have been so filed by the Collector".

9. From perusal of aforementioned provisions, by comparison, it clearly manifest that in the year 2002, an appeal before the High Court against the order of the Tribunal could only be filed /instituted on behalf of Revenue or by the "Collector" himself and no one else. However, the Collector or any of the authorized officer not below the rank of Additional Collector could institute or file such appeal.

10. Admittedly, the Law Officer in terms of section 47 of the Act as

stood in 2002, could not exercise such powers of the Collector. Thus it becomes explicitly clear that appeal before the High Court filed by the Law Officer is incompetent, hence same is not maintainable at all.

11. So far the concern of applicability of subsection (11) of section 47 of the Sales Tax Act, 1990 for which, learned counsel for the appellant has taken a stance that such defect has now been cured. According to him, referred provision is retrospective in nature and is applicable to all pending cases before the High Court.

12. The arguments advanced in this regard are not tenable under the law. By statutory provision, even relating to fiscal law, are assumed to be prospective unless specifically manifest the same are retrospective in nature. But the very subsection (11) of section 47 by it self does not show its retrospective effect directly or impliedly. Section 6 of General Clauses Act also protects such legal analogy.

13. Hence under the legal perspective, we are of the confirmed view that present appeal, being non-maintainable, is hereby dismissed.

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