

TaxHelpline Case No. 179 of 2013

[ISLAMABAD HIGH COURT]

Sales Tax Appeal No.38 of 2003, heard on 4th April, 2013

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

**Hafiz Muhammad Idrees for Petitioner. Farhat Nawaz Lodhi
for Respondent**

**Messrs PREMIER KADANWARI DEVELOPMENT COMPANY LTD
Vs
CUSTOMS, CENTRAL EXCISE AND SALES TAX APPELLATE
TRIBUNAL, 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 3-1-2003 passed by the learned Customs, Excise and Sales Tax Appellate Tribunal, Islamabad Bench-I, Islamabad:--

(i) "On facts and circumstances of the case, whether or not the respondent Tribunal erred in holding that Rule 4(2) of the "Collection and Payment of Sales Tax on Natural Gas Rules, 1999" the appellant is required to file return by 15th day of the month following the month in which the gas has been supplied and not 15th day of the second month following the month in which supplies were made?

(ii) Whether the respondent Tribunal was justified in levying penalty under section 33 and additional tax under section 34 of the Sales Tax Act, 1990?"

2. Brief facts of the case are that the appellant, a registered company, is engaged in exploration, production and supply of Natural Gas. During audit, following discrepancies were noted:--

- (i) The unit did not pay sales tax for the month of October, 2000 in which Gas was supplied to the gas marketing Company i.e. SNGPL.
- (ii) The unit did not deposit sales tax in the relevant tax period, which attracted the additional tax.

The appellant was issued show cause notice to explain their position, as to why the evaded amount of sales tax amounting to Rs.78,51,418 along with additional tax of Rs.32,00,051 under section 34 should not be recovered from them. Consequently, the Adjudicating Officer held that Rule 4(2) is applicable to gas companies which sell the gas to the end user/consumer directly whereas this is not the case in respect of the appellant. Therefore, the charges levelled against the appellant were deemed to be fully established, but since the principal amount of sales tax stood paid, additional tax under section 34 with 3% penalty under section 33 of the Sales Tax Act, 1990 were ordered to be recovered. Feeling aggrieved, the appellant filed appeal before Customs, Central Excise and Sales Tax Appellate Tribunal, Islamabad, which was dismissed vide judgment dated 3-1-2003, hence this appeal.

3. Learned counsel for the appellant has argued that Rule 1(2) is applicable to the appellant, as it relates to collection and payment of sales tax on Natural Gas including Compressed Natural Gas (CNG) and Liquefied Petroleum Gas. He further contended that under Rule 4(2), every person and gas companies including the appellant are required to submit monthly return as prescribed under the Act. In case, if gas is (i) supplied to its consumers directly and (ii) the charges are billed on monthly basis, the date of filing return and payment of tax would be the 15th day of the second month following the month in which supplies are made. He has further referred Rule 4(2) in which, it has been stated that the registered person shall submit monthly return as prescribed in the Act and tax due shall be deposited by the 15th day of the month following the month in which the gas has been supplied, provided that in case of gas supplied by gas companies to its consumers directly and charges are billed on a monthly basis, the date shall be the 15th day of the second month following the month in which supplied were made.

The important legal aspect is that this rule applies to all companies engaged in the supply of natural gas like the appellant therefore the tax has been paid in the manner as laid down in law stated above i.e. on the 15th day of the second month following the month of supplies.

He has argued that learned Appellate Tribunal has erred in law by misinterpreting the term 'consumer' as specified in Rule 4(2) of Rules, 1999 and Rule 2(d) of Natural Gas Rules, 1960 by holding that the said provisions are not applicable in the case of appellant. Moreover, penalty levied under section 33 and additional tax under section 34 of Sales Tax Act, 1990 are not justified, as no willful default has been made on the part of appellant. Moreover, the appellant cannot be penalized for taking advantage of a lacuna in law. The appellant paid the tax in the mode and manner prescribed by law on the ground that SSGC is a 'consumer' as prescribed accordingly by the relevant law. He has requested that judgment of learned Appellate Tribunal may be set aside.

4. Learned counsel appearing for the respondent has vehemently supported the order of Adjudicating Officer as well as judgment of learned Appellate Tribunal.

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

7. Learned counsel for the appellant has referred S.R.O. dated 463(I)/2007 dated 9-6-2007, which was introduced by the Federal Government providing amnesty for defaulters. The very S.R.O. is reproduced hereunder:--

"In exercise of the powers conferred by section 34A of the Sales Tax Act, 1990, the Federal Government is pleased to exempt whole of the amount of default surcharge and penalties payable by a person against whom an amount of sales tax is outstanding on account of any audit observations, audit report, show cause notice or any adjudicating order, or who has failed to pay any amount of sales tax

or claimed inadmissible input tax adjustment or refund due to any reason other than tax fraud, subject to the condition that the outstanding principle amount of sales tax is paid by the 30th June, 2007, or has already been paid at the time of issuance of this notification."

8. Moreover, the Hon'ble Lahore High Court in a reported judgment (2006) 93 Tax 435 (sic) (H.C. Lah.) has held that the petitioner having paid the fixed rate due from him is as much entitled to the amnesty contemplated in the said S.R.O. as any other registered person/ manufacturer who pays the fixed tax amount after issuance of S.R.O.

9. In the instant case, the appellant has paid principle amount of sales tax, but the same had not been paid on or before the date fixed, hence penalty and additional tax was imposed. But the appellant had not been given benefit of the amnesty for defaulters as per above S.R.O. Therefore, the Adjudicating Officer as well as learned Appellate Tribunal has erred in law by imposing penalty and additional tax.

10. Under the above circumstances, instant appeal is allowed. The judgment of the learned Appellate Tribunal is set aside. The question No.1 framed by the appellant is answered in affirmative, while question No.2 in negative.

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