

Taxhelpline Case No. 122 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

STA No. 1430/LB/2009, Date of hearing: 23.01.2013. Date of order: 29.01.2013

**(CH. MUNIR SADIQ), JUDICIAL MEMBER, (SOHAIL AFZAL),
ACCOUNTANT MEMBER**

**Appellant by : Mr. Nasar Ahmad, Advocate. Respondent by :
Mr. Imran Hayee, D.R**

**M/s. 7-Up Bottling CO. (Pvt) Ltd, Lahore. Appellant
Vs
Additional Collector, Safes Tax, Customs, Lahore. Respondent**

ORDER---The captioned sales tax appeal has been filed by the appellant/registered person under section 46 of The Safes Tax Act, 1990 against the Order in Original NO. ST-10/2003 passed by the Additional Collector-II Adjudication dated 16-12-2003.

2. Brief facts leading to this judgment are that the Appellant received a show cause Notice dated 31.3.2003. Wherein it has been alleged that the Appellant had not paid further tax amounting to Rs 4,652,029/- as leviable under Section 3(1-A) of the Sales Tax Act, 1990 Accordingly, the Appellant was called upon to show cause as to why the afore-referred amount of further tax along with additional tax and penalty shall not be recovered from it. In response thereto, the Appellant filed a detailed reply to the show cause notice, however, the learned Additional Collector (Adjudication) was not satisfied with the reply tendered by the appellant and accepted the department's version and enforced the show cause directing the Appellant to pay the afore-referred amount of further tax along with additional tax to be collected under section 34 The learned Additional Collector further imposed a penalty of Rs. 139,561/- being 3% of the amount tax involved under section 33 of the Sales

Tax Act, 1990 This dispensation has compelled the appellant/registered person to come up in further appeal before the Hon'able Appellate Tribunal inland Revenue.

3. The learned Counsel of The Appellant appeared before the Tribunal and reiterated the contention raised in the appeal, he further argued that the further tax under section 3(1-A) as far as it concerns to beverages and other items listed in third schedule of the Sales Tax Act, 1990 has already been declared to be unconstitutional by the honourable Peshawar High Court vide its judgment in writ petition No 1365/99 dated 14 4 2004. He further relied on judgment of this Tribunal in case of Sufi Distributors Agency, Multan (STA No. 1539/LB/2009) in which in a similar case involving aerated beverages the learned Tribunal have taken the view that the further tax was not recoverable. The learned counsel for the Appellant thus prayed that the appeal of the appellant/registered person be accepted and the impugned demand may be set aside. On the other hand, the learned DR appearing for Department have supported the order passed by lower forums. He stated that in terms of Section 3(1-A), further tax is due from the Appellant and should be recovered.

4. We have given anxious thought to the arguments advanced by the rival parties and the relevant record as well as the case law submitted by the learned counsel perused. After having taken regard to The facts of the case in its entirety, we have observed that further tax under section 3(I-A) of the Sales Tax Act, 1990 which was the subject matter of this appeal was impugned before Peshawar High Court in Writ Petition No. 1365/99 decided on 14.4.2004. The learned Peshawar High Court declared the levy of said tax on Beverages to be unconstitutional on nine different grounds. We have further been informed that although Department have filed Petition for Leave To Appeal against the said judgment, however, leave has not yet been granted and the judgment has not been suspended till date. Respectfully following the dictum laid down by The Hon'able Peshawar High Court' the levy of further tax is declared un-constitutional and the demands of the same would be an illegality on the part of the department, hence cannot sustain in

the eye of law

5. In addition to the above, another Bench of this Tribunal in case of Sufi Distributors (STA NO.1539/LB/2009) declared that provisions regarding further tax have been repealed and that repeal appeared to be a curative measure and should take effect retrospectively from the date on which 3(I-A) was introduced. The learned DR appearing for the Department does not dispute this legal position and have not given any counter-argument and have merely supported the judgment of the forums below without any legal basis in support thereof.

6. Keeping in view of the aforementioned discussion, we are of the considered view that the contentions raised by the learned counsel for She appellant obviously carry much weight. Consequently, we have no ambiguity in our mind to cancel the order of the learned Additional Collector-II Adjudication dated 16.12.2003 which had illegally been passed and warrants to be set aside. This would result into acceptance of the appeal of the appellant/registered person.

7. As a result, the instant appeal is disposed of to the extent and in the manner as indicated above.

.....
Disclaimer /Note: We have reproduced the judgment for facilitation of readers, however, the readers must study the original or certified copy of the above said judgment before referring it in any Court of Law. The judgment as reproduced above is a reported judgment available in law magazines and journals namely **2013 PDS 1667**.
.....