

APPELLATE TRIBUNAL INLAND REVENUE
DIVISION BENCH (DB-1) ISLAMABAD

STA No. 135/IB/2015

Tax Period –August, 2013 to September, 2013

STA No. 136/IB/2015

Tax Period-October, 2013 to March, 2014

M/s Zain Filing Station, Near Lari Adda,Appellant
Sahiwal.

Versus

CIR, RTO, Sargodha.Respondent

Taxpayer by : Khawaja Nouman Iftikhar, ITP
Department by : Mr. Niaz Ahmed, DR.

STA No. 157/IB/2015

Tax Period- August, 2013 & September, 2013

STA No. 158/IB/2015

Tax Period - October, 2013 to March, 2014

CIR, RTO, SargodhaAppellant

Versus

M/s Zain Filing Station, Near Lari Adda,Respondent
Sahiwal.

Department by : Mr. Niaz Ahmed, DR.
Taxpayer by : Khawaja Nouman Iftikhar, ITP

Date of Hearing : 21.08.2025
Date of Order : 21.08.2025

ORDER

Danish Ali Qazi (Member):- These two sets of cross appeals have been filed by the registered person and Department against Order-In-Appeal No.23/2014 and 24/2014, both dated 18.12.2014 passed by the learned Commissioner Inland Revenue (Appeals), Sargodha, in respect of the tax periods October-2013 to March-2014 and August-2013 to September-2013 respectively, on the grounds as set forth in respective memo of appeals. As the matter is identical, therefore, both the appeals are being decided through this consolidated order.

2. Brief facts giving rise to appeals STA No.135/IB/2015, filed by registered person and STA No. 157/IB/2015, filed by Department, are that registered person was issued a show cause notice dated 02.06.2014, wherein registered person was alleged of 100% input tax adjustment during the period August-2013 and September-2013, instead of 90% adjustment, in violation of section 8B of the Sales Tax Act, 1990 ("the Act") readwith SRO 647(I)/2007 as amended, thus, balance 10% of Rs.1,266,115/- were alleged to be excess input tax adjustment. Registered person submitted a reply, however, not satisfied with the reply, assessing officer vide assessment order No. 06/2014 dated 26.09.2014 upheld the charges of show cause notice. Aggrieved of the said order, registered person filed an appeal before learned CIR(A) and vide Order-in-Appeal No. 24/2015 dated 18.12.2014, learned CIR(A) deleted the principal amount of tax for being procedural violation, while upheld the assessment order to the extent of imposition of penalty and default surcharge. Aggrieved of the said treatment, both registered person and Department filed instant cross appeals.

3. Similarly, brief facts related to appeals STA No. 136/IB/2015, filed by registered person and STA No. 158/IB/2015, filed by Department, are that registered person was issued a show cause notice dated 19.06.2014, wherein registered person was alleged of 100% input tax adjustment during the period October-2013 and March-2014, instead of 90% adjustment, in violation of section 8B of the Sales Tax Act, 1990 ("the Act") readwith SRO 647(I)/2007 as amended, thus, balance 10% of Rs.3,211,845/- were alleged to be excess input tax adjustment.

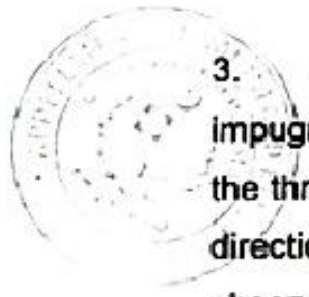
Registered person submitted a reply, however, not satisfied with the reply, assessing officer vide assessment order No. 06/2014 dated 26.09.2014 upheld the charges of show cause notice. Aggrieved of the said order, registered person filed an appeal before learned CIR(A) and vide Order-in-Appeal No. 23/2014 dated 18.12.2014, learned CIR(A) deleted the principal amount of tax for being procedural violation, while upheld the assessment order to the extent of imposition of penalty and default surcharge. Aggrieved of the said treatment, both registered person and Department filed instant cross appeals.

4. Both sets of cross appeals were earlier dismissed vide consolidated Order dated 29.12.2006, against which both the parties filed tax references before honourable Lahore High Court. Department had filed single reference STR No. 11515/2017, while registered person had filed two separate references STR Nos. 81656/2017 and 81660/2017, which were all decided vide Judgment dated 19.03.2025, whereby both sets of cross appeals were remanded back to this Tribunal for decision afresh. For the sake of clarity, judgment supra of the honourable High Court is reproduced as under:

"Through this order we will decide the titled reference application as well as STR Nos. 81656 and 81660 of 2017 being outcome of the impugned order dated 29.12.2016 (the '*impugned order*'). The reference-applications by both sides are filed being aggrieved from the same order. Only dispute raised by Mrs. Kausar Parveen, learned counsel for the revenue is that the questions raised by the applicants in STR Nos. 81656 and 81660 of 2017 are not arising out of the order passed by the learned Appellate Tribunal Inland Revenue (the

'Tribunal'). It came to surface that the points raised in the relevant appeal and / or arguments before the learned *Tribunal* have not been addressed. This itself is a question arising out of the *impugned order*. The objection, therefore, is repelled.

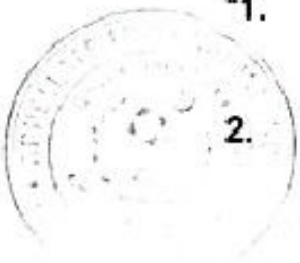
2. It is also an admitted position that several judgments including judgment in case titled as "HH Industries vs. Federation of Pakistan & Others" (ICA No. 813 of 2016), upheld by the Honourable Supreme Court of Pakistan vide order dated 03.02.2022 passed in Civil Petition No. 1401-L of 2019 etc., are not taken into account. Mr. Zahid Attique, learned counsel for the tax-payers (applicants in STR Nos. 81656 and 81660 of 2017) submits that in the given circumstances the *impugned order* should be set aside and order of remand should be passed with the direction to consider the points raised before the learned Tribunal and to decide the matter afresh. The objection raised by the learned counsel for the revenue has already been repelled, above.



3. In view of the above, we are inclined to set aside the *impugned order* passed by the learned Tribunal and remand all the three reference applications to the learned Tribunal with the direction to decide the same afresh keeping in view the above observations as well as the judgment(s) / order(s) being relied upon by the two sides, to the extent of their applicability. These reference-applications will be deemed to be fixed before the learned Tribunal on 07.04.2025. The parties or their authorized representatives shall appeal before the learned Tribunal on the date fixed above. The learned Tribunal to decide the appeals within three months from the date of receipt of certified copy of this order.

5. The taxpayer had earlier filed these two appeals before Tribunal on common grounds, which are reproduced as under;

- "1. That the order passed under section 11(2) and 11(3) of the Sales Tax Act, 1990 and partially confirmed by learned CIR (A) RTO Sargodha on the basis of legal infirmities is contrary to the law without lawful jurisdiction and void ab initio.
 2. That provision of section 8B(1) of the Act is not applicable on the distributor, hence the provision has wrongly and illegally been applied on the appellant.
 3. That the poof, facts, clarification, arguments and documents submitted by appellant have not been consulted fairly by learned CIR (A) and passed order on the basis of guess work and surmises, which is illegal and uncalled for.
 4. That the order passed and partially confirmed by CIR (A) by ignoring the principle of preference of substances over form.
 5. That order of CIR (A) confirming the default surcharge is illegal, void ab initio and merit deletion."
6. The department has also filed cross appeals on common grounds for both tax years as under:

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- "1. That the order of the learned CIR (Appeals) is bad in law and against the facts of the case.
 2. That the learned CIR (A) was not justified to allow 100% adjustment of input tax to a retailer. Retailers are not covered under SRO No. 647(1)/2007 dated 27.06.2007. Retailers are duly covered under section 8B of the Sales Tax Act, 1990.
 3. That the department reserves the right to add, alter / amend or withdraw any ground of appeal at the time of hearing of appeal.

7. In proceedings in remand, this case came up for hearing on 21.08.2025. Representatives of both parties reiterated the contentions contemplated in the grounds of appeal. .

8. We have heard both the parties and perused the relevant record. Facts of the case and law relevant thereto have also been considered.

We have observed that registered person is a petrol pump operator and in its Sales Tax Returns have claimed exclusion from purview of section 8B(1) of Sales Tax under SRO 647(1)/2007 dated 27.06.2007 and adjusted 100% Sales Tax as input tax, thus, department issued show cause notices, alleging registered person of making 100% input tax adjustment instead of 90% input tax adjustment and upheld the charges of show cause notices vide respective assessment orders, directing the registered person for payment of excess 10% input tax adjustment. Lateron, learned CIR(A) vide two separate orders deleted the demand a raised on account of alleged 10% excess input tax adjustment declaring it to be procedural violation, however, upheld the imposition of default surcharge and penalty. Registered person is aggrieved of the treatment for the reason that being distributor in terms of section 2(6) readwith serial No. 8 of SRO 647(1)/2007 dated 27.06.2007, it is entitled to 100% input tax adjustment, therefore, both default surcharge and penalty is liable to be deleted. On the other hand, Department wants restoration of demand raised on 10% excess input tax adjustment for the reason that registered person, being a petrol pump operator is retailer, thus, are not excluded from operation of section 8B of the Act. As the issue involves whether registered person is excluded from the operation of section 8B by virtue of exclusions mentioned in SRO 647(1)/2007 dated 27.06.2007, therefore, for the sake of ease relevant provisions of section 8B, sub-sections (7), (28) of section 2 and SRO 647(1)/2007 dated 27.06.2007 as were prevalent during the relevant period are reproduced as under:

Section 2(7):

"distributor" means a person appointed by a manufacturer, importer or any other person for a specified area to purchase goods from him for further supply and includes a person who in addition to being a distributor is also engaged in supply of goods as a wholesaler or a retailer;"

Section 2(28)

"retailer" means a person supplying goods to general public for the purpose of consumption.

Provided that any person, who combines the business of import and retail or manufacture or production with retail, shall notify and advertise wholesale prices and retail prices separately, and declare the address of retail outlets and his total turnover per annum shall be taken into account for the purpose of registration under section 14 of the Act.

"8B. Adjustable Input tax. (1) Notwithstanding anything contained in this Act, in relation to a tax period, a registered person shall not be allowed to adjust input tax in excess of ninety per cent of the output tax for that tax period:

Provided that the restriction on the adjustment of input tax in excess of ninety percent of the output tax, shall not apply in case of fixed assets or Capital goods:

Provided further that the Board may by notification in the official Gazette, exclude any person or class of persons from the purview of sub-section (1).

- (2)
(3)
(4)
(5)"

**"GOVERNMENT OF PAKISTAN
REVENUE DIVISION
CENTRAL BOARD OF REVENUE**

Islamabad, the 27th June, 2007

**NOTIFICATION
(SALES TAX)**

S.R.O. 647(I)/2007.— In exercise of the powers conferred by the second proviso to sub-section (1) of section 8B of the Sales Tax Act, 1990, the Central Board of Revenue is pleased to direct that the registered persons specified in

column (2) of Table below shall be excluded from the purview of the said sub-section:-

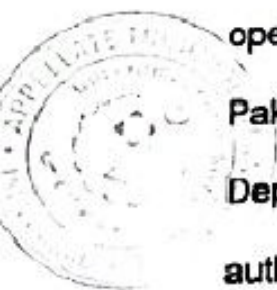
TABLE

S. No.	Sectors
(1)	(2)
1.	Persons registered in electrical energy sector.
2.	Oil marketing companies and petroleum refineries.
3.	Fertilizers manufacturers.
4.	Manufacturers consuming raw materials chargeable to sales tax at the rate of 18.5% or 21% provided value of such raw materials exceeds 50% of value of all taxable purchases in a tax period.
5.	Wholesalers-cum-retailers operating in Chapter XII of the Sales Tax Special Procedures Rules, 2007.
6.	Commercial importers provided the value of imports subjected to 2% value addition tax under Chapter X of the Sales Tax Special Procedures Rules, 2007, exceeds 50% of value of all taxable purchases in a tax period.
7.	Person making zero-rated supplies provided value of such supplies exceeds 50% of value of all taxable supplies in a tax period.
8.	Distributor
9.	Gas distribution companies
10.	Solvent extracting units of edible oils
11.	Telecommunication Services
12.	Paksitan Steel, Bin Qasim, Karachi

2. This notification shall take effect from 1st July, 2007"

From plain reading of sub-section (1) of section 8, it is clear that a registered person would be entitled to claim 90% of input tax adjustment for a tax period, however, under second proviso to sub-section (1) of section 8B of the Act, Board may in the official gazette exclude person or class of persons from the operation of aforesaid sub-section (1) and on this much, there is no dispute between the parties. In terms of second

proviso to sub-section (1), FBR issued a notification SRO 647(I)/2007 dated 27.06.2007, whereby certain persons / class of persons were excluded from purview of sub-section 8B(1) of the Act and vide SRO 713(I)/2017 dated 03.07.2008 serial No. 8 to 10 were added to Table to SRO 647(I)/2013. By virtue of said serial No. 8 Distributor and wholesalers were excluded from restriction of 90% input tax adjustment, however, subsequently the words "and wholesalers" were omitted from entry No. 8 through SRO 564(I)/2012 dated 26.05.2012. Upto this point, both the parties agree, however, while registered person claims to be a distributor of Pakistan State Oil Company Limited, Department dispute the said claim for the reason that during the relevant time, taxpayer was registered with department as "Retailer" and its principal activity was "Retail sale of automotive fuel in specialized stores", thus, falls within the purview of section 8B(1) *ibid*, as retailers were not excluded from the operation of said provision of law. We have examined the certificate of Pakistan State Oil Company, whose contents are not disputed by the Department. In the said certificate, it is stated that registered person is its authorized distributor, therefore, even if taxpayer was erroneously registered in the wrong category of retailer, it would still remain a distributor due to its appointment as distributor by Pakistan State Oil Company and would be entitled to be treated like a retailer, besides, as per definition of distributor, provided in section 2(7) of the Act, a distributor also includes wholesaler and retailer, thus, there is no bar on a distributor to engage in wholesale or retail side of business as well, hence, registered person rightly made 100% input tax adjustment in terms of exclusion mentioned at serial No. 8 of the Table to SRO



647(I)/2007 dated 27.06.2007, which excluded distributors from restriction of 90% input tax adjustment under provisions section 8B of the Act.

9. In view of the foregoing, orders of the CIR(A) are modified. Both appeals of the registered person are accepted and demand raised on account of 10% excess input tax adjustment are ordered to be deleted alongwith default surcharge and penalty. In consequence thereof, respective cross appeals of the Department are hereby dismissed.

10. This order consists of Ten (10) pages, and I have affixed my signature on each page.

(DANISH ALI QAZI)
Member

(M.M.AKRAM)
Judicial Member