

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
DIVISION BENCH-IV KARACHI

Present: MR. AIJAZ AHMED KHAN, MEMBER.
MR. SAJJAD AKBAR KHAN, MEMBER.

STA No. 385/KB/2024
(Tax Period Jan 2023 to June 2023)
Under Section 11(2)

STRN: 17-50-3200-005-19

M/s. Pakeezah Dyeing & Bleaching, Karachi.....Appellant

Versus

The Commissioner Inland Revenue,
Zone-I, CTO, Karachi.....Respondent

Appellant by : Mr. Irshad Alam, Advocate.
Respondent by : Malik Khan Khatak, DR.

Date of hearing : 03-10-2024
Date of order : 03-02-2025

ORDER

SAJJAD AKBAR KHAN, MEMBER: The captioned appeal has been filed by the appellant, registered person assailing the Assessment Order No. 22 of 2024, dated 09-04-2024 passed by the Assistant/Deputy Commissioner Inland Revenue, Zone-I, Unit-04, Range-B, CTO, Karachi on the following grounds:

1. That the Assessment Order No. 22 of 2024 dated 29.04.2024, passed by the Deputy Commissioner Inland Revenue, Unit-04, Zone-I, Corporate Tax Office, Karachi, under Section 11(2) of the Sales Tax Act, 1990, is flawed and invalid in both legal and factual aspects.

2. That the post-refund audit conducted by the DCIR for the tax period from 01/2023 to 06/2023, and the show cause notice issued by the assessing officer, constitute a clear violation of Rule 36 of the Sales Tax Rules 2006. The relevant portions of Rule 36, including the 1st and 2nd provisos, are reproduced below;

Provided that scrutiny of the refund claims processed or sanctioned after the 30th June, 2014, shall be carried out on the basis of risk-based selection through computerized Post Refund Scrutiny (PRS).

Provided further that where the Commissioner Inland Revenue has reason to believe, on the basis of some information, pre-determined criteria or otherwise, that a



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registered person, whose refund claim was processed or sanctioned after the 30th June, 2014, has been paid refund which was not admissible, he may direct through order in writing to conduct manual post-refund scrutiny of such claim.

3. That the proviso of Rule 36 directs that the post-refund audit may be selected either by the Board, according to the first proviso, or by the CIR based on the criteria mentioned in the second proviso. It appears that the entire proceeding by the learned DCIR is silent regarding the selection of the post-refund audit. There is no indication that the Commissioner issued a written order to conduct the post-refund audit, nor is there evidence that the Board selected the cases of the refund claimant through computerized risk-based selection under PRS. The initiation of a post-refund audit cannot be based on the whims of the Deputy Commissioner. Therefore, the assessment order arising from the post-refund audit is not maintainable.

Compliance of section- 73 of the Sales Tax Act 1990.

4. The appellant duly complied with Section 73, making payments to the supplier through banking channels for invoices with a value exceeding fifty thousand. A complete reconciliation in accordance with Section 73 was provided to the assessing officer through the TFD dated 18.03.2024. The learned officer declared that the documents produced by the counsel for the appellant are unsatisfactory without citing any specific transaction default by the appellant.

Stock Valuation.

5. The learned officer, based on assumptions and presumptions, stated that the consumption shown against the sales tax refund in Annexure-H was 26,850 kg in excess of the export goods weight (829,823 kg - 856,673 kg = -26,850 kg). It was thus presumed that this excess consumption was sold in the local market. As a result, sales tax of Rs. 8,274,096, further tax of Rs. 1,838,688, a penalty of Rs. 505,639, and default surcharge calculated at the time of recovery were charged.

6. The learned officer conducted an audit under Section 25 of the Sales Tax Act 1990, read in conjunction with Rule 36 of the Sales Tax Rules 2006. The proceedings were based on a post-refund audit as directed by the procedures outlined in Rule 36 of the Sales Tax Rules 2006. Specifically, Rule 36(1) emphasizes that "After disposing of the refund claim, the officer-in-charge shall forward the relevant file to the Post Refund Audit Division for post-refund sanction audit and scrutiny; which shall, inter alia include verification of input tax payment by respective suppliers and compliance of section 73 of the Act"

7. According to the nature and spirit of Rule 36(1) of the Sales Tax Rules 2006, the learned officer is authorized to examine only the admissibility of input tax payments and compliance with Section 73. The examination of stock and other related matters falls within the scope of a total audit. Therefore, the officer's

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proceedings regarding stock valuation exceed the authority conferred under Rule 36(1) of the Sales Tax Rules 2006.

8. The consumption declared in Annexure-H includes the wastage that occurred during the process of converting yarn to fabric, dyeing and bleaching, stitching and cutting and final packaging. The excess weight of consumption claimed by the appellant represents merely a 3.23% of the total export consumption quantity. It is widely understood that manufacturing industries, particularly in the textile sector, typically experience significant wastage, which is considered a general norm.

9. The board issued SRO 938 of 2020 dated 01.10.2020 inserted Chapter IV-A, Sales Tax (Imposition of restrictions) on wastage of input Rules, 2020, wherein Rule 25B(V) defined the Wastage as "Wastage" means part of any given quantity of any input or class of inputs, unfit or unable for use as such for the manufacturing or production of the corresponding output goods provided that extent of wastage in any case or class of cases may be determined either through the calculation of input-output ratios or through any other method or manner deemed proper under these rules.

10. The Board has not established specific wastage limits for different sectors through the aforementioned Rule 2020. It is pertinent to note that some level of wastage is inherent in the production of finished goods. The appellant has claimed a wastage ratio only 3.23% against the consumption for export.

2. Brief facts of the case as gathered from the available record are that the appellant/registered person was initiated for Post Refund Audit of the Sales Tax refund claims in terms of section 25 of the Sales Tax Act, 1990 read with Rule 36 of the Sales Tax rules, 2006 for the Tax Periods from January 2023 to June 2023. Accordingly, statutory notices under section 25 of the Sales Tax act, 1990 read with Rule 36 of the Sales Tax Rules, 2006 were issued for requisition of record to conduct the post refund audit. In response thereof, the registered person submitted the necessary detail/information. On examination of the said information, few patent abnormalities were observed and were confronted. The learned officer issued show cause notice under section 11(2) of the Sales Tax Act, 1990 followed by multiple reminders were issued by him but no reply was received from the appellant. Hence, the impugned order was passed ~~ex parte~~ under section 11(2) of the Sales Tax Act, 1990 by the ADCIR.

3. The Appellant/taxpayer being dissatisfied with the order of learned officer preferred titled appeal before this Tribunal.

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4. On the date of hearing, Mr. Irshad Alam, Advocate appeared on behalf of the appellant/registered person while Malik Khan Khatak, DR appeared on behalf of the Respondent/Department.

5. The learned AR contested appellant/registered person's appeal on the basis of the grounds of appeal mentioned above as well as verbal content arguments in favour of grounds of appeal. While the learned DR supported the order of learned officer.

6. We have considered the submissions made by the learned representatives and have also gone through the record as well as order passed under section 11(2) of the Sales Tax Act, 1990 and the treatment meted out by the learned officer in his impugned order which is the subject matter of this appeal. On the due date of hearing i.e. 27.06.2024, we have directed to the learned DR, Mr. Mamoon Moazam for compliance of section 73 of the Sales Tax Act, 1990 and file reconciliation report within a month and on 15.08.2024 again directed for submission of report. But subsequently, Mr. Zeeshan, DR, attended on 03.09.2024, Mr. Nasir Khan DR attended on 18.09.2024, finally, learned DR submitted written arguments, as under:

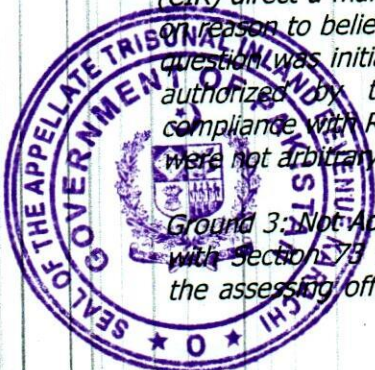
"WRITTEN ARGUMENTS ON BEHALF OF RESPONDENT"

Para-wise Comments:

Ground 1: Not Admitted: The Assessment Order No. 22 of 2024 dated 29.04.2024, issued by the Deputy Commissioner Inland Revenue (DCIR), is neither legally nor factually flawed. The DCIR adhered to the provisions of Section 11(2) of the Sales Tax Act, 1990, which authorizes the officer to assess and recover tax where there is a discrepancy or evasion. The assessment was based on a thorough examination of records and adherence to legal requirements.

Ground 2: Not Admitted: Rule 36 of the Sales Tax Rules 2006 mandates that post-sanction audits of refund claims processed or sanctioned based on risk-based selection through computerized Post Refund Scrutiny (PRS). The Commissioner Inland Revenue (CIR) direct a manual post-refund scrutiny through a written order or reason to believe that a refund was not admissible. The audit in question was initiated following these rules. Scrutiny was properly authorized by the CIR through a written order, ensuring compliance with Rule 36's provisions. Therefore, the DCIR's actions were not arbitrary but followed the prescribed legal procedures.

Ground 3: Not Admitted: Although the appellant claims compliance with Section 73 by making payments through banking channels, the assessing officer's determination of excess consumption being



sold in the local market was based on substantial evidence. Penalty, and default surcharge were levied in accordance with the findings of the audit, reflecting unaccounted local sales.

Ground 4: Not Admitted: The appellant asserts compliance with Section 73 of the Sales Tax Act, 1990, by making payments through banking channels for invoices exceeding fifty thousand rupees. However, the assessing officer identified significant discrepancies in the appellant's records. Despite the reconciliation statement provided on 18.03.2024, there were evident inconsistencies in the reported consumption and sales figures. The officer's conclusion that the excess consumption was sold in the local market is supported by substantial evidence. Consequently, the imposition of sales tax amounting to Rs. 8,274,096, further tax of Rs. 1,838,688, a penalty of Rs. 505,639, and the calculated default surcharge is justified and in accordance with the law. The appellant's documentation did not satisfactorily explain the excess consumption, leading to the appropriate tax assessment and penalties.

Ground 5: Not Admitted: The appellant's contention that the audit was improperly conducted is without merit, as the procedure followed was in strict compliance with Rule 36. The post-refund audit was conducted to ensure the correctness of the refund claims and the compliance with tax laws. The assessment resulting is therefore valid and enforceable.

Ground 6: Not Admitted: The appellant asserts that the officer's examination of stock and other related matters exceeded the authority conferred under Rule 36(1) of the Sales Tax Rules, 2006. Rule 36(1) stipulates that after disposing of the refund claim, the officer-in-charge shall forward the relevant file to the Post Refund Audit Division for post-sanction audit and scrutiny, which includes verification of input tax payments by respective suppliers and compliance with Section 73 of the Act. While the primary focus is on verifying input tax payments and compliance with Section 73, the officer is not precluded from examining other relevant aspects necessary to ascertain the validity of the refund claim. The examination of stock and related matters is a legitimate part of ensuring that the refund was not claimed based on inaccurate or incomplete information. Therefore, the officer acted within the scope of their authority, and the proceedings regarding stock valuation were justified and necessary to ensure compliance with tax laws.

Ground 7: Not Admitted: The appellant claims that the consumption declared in Annexure-H includes wastage during the process of converting yarn to fabric, dyeing and bleaching, stitching and cutting, and final packaging. with the excess weight of consumption representing merely 3.23% of the total export consumption quantity. The appellant further argues that significant wastage is a general norm in the textile sector. However, the officer's during examination found that the declared wastage was not adequately substantiated with documentary evidence. The lack of proper documentation and verification lack accuracy of the claimed wastage. The burden of proof lies with the appellant to demonstrate that the wastage claimed is reasonable and within

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industry norms. Therefore, the assessment made by the officer regarding the consumption and wastage is justified and necessary to ensure the accuracy and validity of the refund claim.

Ground 8: Not Admitted: The appellant argues that SRO 938 of 2020, which introduced Chapter IV-A on the imposition of restrictions on wastage of input rules, defines wastage as part of any quantity of inputs unfit or unable for use in manufacturing corresponding output goods. However, the appellant contends that the Board has not established specific wastage limits for different sectors under these rules. It is crucial to note that while some level of wastage is inherent in production processes, the appellant's claimed wastage ratio of 3.23% against the consumption for export needs to be substantiated with adequate proof. The absence of clear guidelines on wastage limits does not automatically validate the appellant's claimed percentage. Therefore, the appellant have to provide evidence to support their claim that the declared wastage falls within acceptable limits as per industry norms and the provisions of SRO 938 of 2020.

PRAYER

In view of the above submissions, the assessment order issued by the DCIR was based on a thorough and procedurally sound process. The appellant's grounds of appeal lack substantive evidence to invalidate the assessment or demonstrate procedural irregularities and Officer acted within legal remit to ensure compliance and accuracy. It is humbly prayed before the Appellate Tribunal Inland Revenue that the Quasi-Judicial proceedings have been culminated by passing order U/s.11(2) of the Sales Tax Act, 1990 and the instant Appeal may kindly be dismissed being devoid of merit."

7. The learned AR countered reply against para-wise comments submitted by the DR, as under:

"COUNTER REPLY AGAINST PARAWISE COMMENTS SUBMITTED BY THE DEPARTMENTAL REPRESENTATIVE.

Para -1. As per grounds of appeal, based on the facts and law the assessment is bad in law having flawed and invalid.

Para -2. As per second proviso of Rule 36 of the Sales Tax Rule 2006, The Commissioner Inland Revenue has reason to believe, on the basis of some information, pre-determined criteria or otherwise, that a registered person, whose refund claim was processed or sanctioned after the 30th June, 2014, has been paid refund which was not admissible, he may direct through order in writing to conduct manual post-refund scrutiny of such claim. The assessment order is silent regarding CIR order to conduct manual post refund scrutiny of such claim.

Para -3. The department contention that the assessing officer's determination of excess consumption being sold in the local market was based on substantial evidence is not maintainable, no any substantial evidence for transfer of physical goods or supplies was

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produced and confront in show cause notice except hypothetical work of stock consumption.

Para -4. The comments of the Departmental representative not maintainable in the light explanation provided hereinabove at para 2 & 3.

Para -5. The assessing officer was conducted post refund audit under section 25 of the Sales tax Act 1990, read with Rule 36 of the Sales Tax Rule 36, post-sanction audit and scrutiny inter alia include verification of input tax payment by respective suppliers and compliance of section 73 of the Act, the scrutiny of stock consumption and other allied application of law only questioned where total sales tax audit select by the FBR or Commissioner under section 25 of the Sales Tax Act 1990.

Para -6. The comments of the Departmental representative not maintainable in the light of explanation provided hereinabove at para 2, 3 & 5, further stated that the officer D/R ensure in his comments that the officer is not precluded from examining other relevant aspect necessary to ascertain the validity of the refund claim is sheer violation of section 72 of the Sales Tax Act 1990, the officer travelled beyond the scope mentioned in rule 36 of the Sales Tax Rule 2006.

Para -7. The Assessing officer failed to highlight the percentage of wastage occurred during the process of yarn to fabric including dyeing, bleaching, finishing and stitching, it is pertinent to mentioned that substantial volume of wastage is drain out not visible during the processing, over all wastage which is pertains to 3.23% was assessed as supplies made to un-registered person and charged sales tax along with further tax, penalty and default surcharge.

Para -8. The comments of the Departmental representative not maintainable in the light explanation provided hereinabove at para 7.

Prayer.

It is, therefore, humbly prayed that this Honourable Appellate Tribunal may kindly be declared that orders passed by the DCIR is beyond the law in the light of appellant ground of appeal and counter comments, the assessment order is illegal, null and void."

8. The learned DR, Mr. Zeeshan Nazir Khan, ACIR written a letter dated 03.09.2024 to the ACIR (HQs), CTO, Karachi for compliance, as under:



"OFFICE OF THE
ADDITIONAL COMMISSIONER INLAND REVENUE
RANGE-III, CORPORATE TAX OFFICE
KARACHI

No.AD-CIR-R-III/CTO/KHI/2024/137

dated: 03-09-2024

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The Additional Commissioner-IR (HQs.)
Corporate Tax Office,
Karachi

Subject: PROVISION OF REPLY/DOCUMENTS PROVIDED BY A.R OF THE
M/S. PAKEEZA DYEING & BLEACHING STRN: 1750320000519.
INSTRUCTIONS OF ATIR BENCH-IV REGARDING.

Sir,

Please refer to the subject cited above.

The undersigned attended hearing in the case of STA No.385/KB/2024 today on 03-09-2024 before the Honourable ATIR. Next date of hearing in the case is on 18-09-2024. The A.R of the appellant informed the Bench that he has submitted a written reply along with supporting documents on 18-03-2024 to the Deputy Commissioner-IR, Zone-I, CTO Karachi. A copy of the said reply was also submitted to the undersigned along with instruction of the Bench-IV for transmission of the same to the concerned Zone and relevant officer for finalization & reconciliation of data and also to submit a report to Bench-IV. The Honourable ATIR also desired that a copy be sent along with report to CTO's D.R appearing before the ATIR on 18-09-2024 Submitted for your kind perusal and onward transmission to the relevant jurisdiction.

Encl: As above

(ZEESHAN NAZIR KHAN)
ADDITIONAL COMMISSIONER-IR

Copy to:

Member Bench-IV, Appellate Tribunal Inland Revenue, Karachi for information."

9. But even then no compliance was made by the departmental representatives. It amply reflects that there is no justification available with the department for the action taken in the impugned order. Even otherwise on the basis of record submitted by the appellant, we are inclined to accept the stance of the appellant/taxpayer. Therefore, we are constrained to annul such order having no basis. The impugned order is therefore annulled and the appeal filed by the appellant is allowed.

10. The appeal is disposed of in the manner as indicated above.

— S.d —

(SAJJAD AKBAR KHAN)
MEMBER

— S.d —

(AIJAZ AHMED KHAN)
MEMBER



Appeal No. STA 385/24
Date of order: 03/2/25
TRUE COPY OF ORDER FORWARDED TO
1. APPELLANT: Pakeezah Dyeing
2. RESPONDENT: C-70
[Signature]
ASSISTANT REGISTRAR
APPELLATE TRIBUNAL INLAND REVENUE
KARACHI

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—b.2—

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