2012 P T D (Trib.) 1287

[Inland Revenue Appellate Tribunal of Pakistan]

Before Javid Iqbal, Judicial Member and Muhammad Iftikhar Khan, Accountant Member

Messrs AGRO PAK (PVT.) LTD., PESHAWAR

versus

ASSISTANT COLLECTOR (REFUND), SALES TAX AND FEDERAL EXICSE, PESHAWAR and another

S.T. Nos.89-113/PB of 2008 and 157-181/IRAT of 2009, decided on 13th March, 2010.

Sales Tax Act (VII of 1990)---

----Ss.10, 4, 66 & 72---Customs Rules, 2001, Rr.253 & 247(c)---S.R.O. 536(I)/2005 dated 6-6-2005---S.R.O. 190/2002 dated 2-4-2002---S.R.O. 450(I)/2001 dated 18-6-2001---S.R.O. 555(I)/2006 dated 5-6-2006---Refund of input tax---Tax period 5/2005 to 5/2007---Claim of sales tax refund---Claim pertained to input tax paid on electricity charges and packing materials purchased locally and used for the export of goods manufactured---Show-cause notice in term of S.4 read with S.R.O. 190(I)/2002 dated 2-4-2002 of the Sales Tax Act, 1990 and prevailing export policy to Afghanistan and Central Asia were issued---Taxpayer contended that he was manufacturer of plastic shopping bags and was licensed under the Rules; that he was entitled to the claim of refund of input tax, the duty drawback and import of the goods without payment of duties and taxes subject to condition and limitation as prescribed; that electricity and packing material etc. could not be imported; that he was under obligation to purchase the said material against tax invoices which was refundable in terms of R.247(c) of the Customs Rules, 2001 (which was re-numbered as 352) and that show-cause notice was issued under the misconception of law---Validity---Taxpayer made claim under R.247(c) of the Customs Rules, 2001---Rule 247(c) Customs Rules, 2001 was issued vide S.R.O. No.450(I)/2001 dated 18-6-2001, while the S.R.O. No.190(I)/2002 was issued on 2-4-2002 which was subsequent in time---Authorities below recorded the fact that vide S.R.O. No.190(I)/2002 R.247(c) of the Customs Rules, 2001 was omitted on 6-6-2005 while taxpayer stated that the said rule was not omitted, but its sequence was changed and it was renumbered as R.352 of the Customs Rules, 2001 and the matter should be dealt with under the said Rule---Sub-rule (5) of R.352 of Customs Rules, 2001 which had escaped the intention of the authorities below as well as the authorized representative of the parties---Claim of the taxpayer was not admissible under said rule---Appeal instituted on behalf of the claimant was rejected by the Appellate Tribunal.

Appeal No.77/PB of 2006 **not relevant**.

Ishtiaq Ahmad for Appellant.

Muhammad Tariq Arbab and Shoaib Sultan, D.Rs. for Respondents.

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Office # 05, Ground Floor, Arshad Mansion, Near Chowk A.G Office,
Nabha Road Lahore.Ph. 042-37350473 Cell # 0300-8848226

ORDER

JAVID IQBAL, JUDICIAL MEMBER.---Through these sales tax appeals, assessee has contested the impugned order, dated 12-12-2007, recorded by Collector Sales Tax and Federal Excise Peshawar on the common grounds which are reproduced as under:--

(1) That the case of the appellant falls outside the purview of section 4 of the Sales Tax Act and Notifications issued there-under but the authority below have neither paid any heed to the submissions of the appellants nor could understand as to what was the main argument of the appellant for the reason that:--

(i) The adjudicating officer, notwithstanding the operation of S.R.O. 450(I)/2001, still considers that the exports made by the appellants shall be dealt with in accordance with the sales tax law.

(ii) The adjudicating officer has denied the refund facility holding that the appellant has not paid sales tax on exported goods whereas the claim has been filed on the basis of sales tax invoices issued by the sales tax registered persons.

(iii) The adjudicating officer has rejected the claims on the basis that the relevant rules has been omitted whereas the same has been re-numbered through another amending Notifications No. S.R.O. 563(I)/2005 dated 6-6-2005 placing it under Rule 253 of Chapter XV of the Customs Rules, 2001.

(iv) That the allegation levelled in the show-cause notice mainly pertains to Notification No. S.R.O. 190/2002 dated 2-4-2002 of the Sales Tax Act, 1990. The said notification has been issued by the Federal Government in exercise of its powers conferred by clause (iii) of the first proviso to section 4 of the Sales Tax Act, 1990 whereas the show-cause notice has been issued to the respondents by ignoring the facts that exports made by the respondents were under the provisions of Notification No.S.R.O. 450(I)/2001 dated 18-6-2001 and not under section 4 of the Act.

(v) That the show-cause notice has been served upon the respondent under Rule 37 of S.R.O. 555(I)/2006 dated 5-6-2006. Without prejudice to the above, the aforesaid rules are applicable only to the following registered persons:--

(a) Registered manufacturer-cum-exporter and commercial exporter who zero rate there supplies under Section 4 of the Act.

(b) Registered persons making local zero rated supplies under any notification.

(c) Registered persons claiming refund of excess amount of input tax which could not be consumed within three months.

(d) Registered persons who acquire tax paid inputs in the export of goods, local supply of which is exempt under the act or any notification.

(e) Persons claiming refund of Sales Tax under section 66 of the Act. The above application of Refund Rules 2006 clearly reveals that the Sales Tax Refund Rules are not applicable to the case of the respondent. Therefore, the show-cause notice has been illegally issued and liable to be vacated.

(vi) That Notification No. S.R.O. 450(I)/2001 dated 18-6-2001 has been issued under

the provisions of Customs Act, 1969 and since the respondent is operating his business under the said S.R.O., therefore, the department shall act in accordance with the provisions of the notification. The notification is comprehensive in nature giving an explicit entitlement for refund of tax paid on input goods used in the goods exported under the said notification. Naming the said exports as zero-rated under section 4 of the Sales Tax Act, 1990, is misconception of the department. The show-cause notice is, therefore, liable to be vacated.

(vii) That the department is under obligation to process the refund claim of the respondent under the express provision of the relevant notification and must not be resorted to any other notification not being relevant for the reason that when specific notification namely S.R.O. 450(I)/2001 prescribe a procedure, no provision of any other notification can be attracted to deny the legitimate refund of the respondents. Therefore, the show-cause notice is liable to be vacated.

(viii) That the C.B.R. has allowed the input tax paid on goods exported under manufacturing in bond rules, the department/ officer of Sales Tax being subordinate to C.B.R. are duty bound to follow the instructions and directions as contained in S.R.O. 450(I)/2001 issued by the Board. It is worth mentioning that section 72 of the Sales Tax Act makes the officer of Sales Tax under obligation to follow the instructions and directions of the C.B.R. The show-cause notice has, therefore, been illegally issued and liable to be vacated.

(x) That it is a settled principle of interpretation of statutes, that general provisions cannot be resorted to when there exists specific provisions. The S.R.O. 450(I)/2001 being specific to the case of respondent, therefore, the general provisions regarding refunds cannot be made applicable to the refund claim of the respondent.

(x) To support of his arguments the L/AR referred the judgment of Sales Tax Appellate Tribunal Appeal No. 77/PB of 2006.

The notification referred to has been issued under the provisions of section 4 of the Act, clearly stating its inapplicability to the goods manufactured in the manufacturing bonds. The relevant notification has been misinterpreted by both the learned adjudicating officers. The term "inapplicable" cannot be interchanged with the word "inadmissible". The appellants are found to be operating their business in terms S.R.O. 450(I)/ 2001, therefore, they are entitled to receive such concessions as are enumerated in the aforesaid notification. The appellant's entire imports are free of duties and taxes. Duty free procurement of input goods produced and manufactured locally and duty drawback on goods procured from local market is also admissible. Therefore, any denial of refund of tax paid on input goods shall be unjustified. In view of the above discussion, I accept the appeal and set aside both the impugned orders.

From the above it is abundantly clear that the honourable Tribunal has interpreted the entire situation in accordance with law and this honourable forum is under obligation to decide the issue as it was earlier decided in the aforesaid appeal because the entire issue a similar and identical by vacating the show-cause notice.

2. After having heard the arguments of the parties and from the perusal of the relevant orders and other materials made available before us. It reveals that the registered person Messrs Agro Pak (Pvt.) Ltd., situated at Gadoon Amazai, (hereinafter called as

"The Claimant") having Sales Tax Registration No. 05-06-3900-011-19 filed sales tax refund claims for the tax period May, 2005 to May, 2007 under section 10 of the Sales Tax Act, 1990. The claim pertains to input tax paid by the Claimant on electricity charges and packing materials purchased locally and used for the export of goods manufactured in manufacturing in bond for the above mentioned tax period. On examination of claim of refund, show-cause notices in term of section 4 read with S.R.O. 190(I)/2002 dated 2-4-2002 of the Sales Tax Act, 1990 and prevailing export policy to Afghanistan and Central Asia in each of case under appeal were issued to the Claimant. The show-cause notices were replied in which it was contested that the appellant/Claimant is manufacturer of plastic shopping bags, the appellant is licensed under the manufacturing in bond Rules issued under S.R.O. 450(I)/2001 dated 18-6-2001 by the Collector Customs Peshawar. Being so the appellant under the aforementioned rule is entitled to the claim of refund of input tax, the duty drawback and import goods without payment of duties and taxes subject to condition and limitation as prescribed therein. The electricity and packing material etc. cannot be imported therefore the appellant is under obligation to purchase the said material against tax invoices which is refundable in terms of Rule 247(c) of Custom Rules, 2001. The said rules were amended and sub-chapter-4 of the said rule was brought to the warehousing chapter indicated as chapter-XV of the said rules meaning thereby Rule 247(c) was renumbered as Rule 352 of the said rules. The appellant thus filed his refund claim for the period mentioned supra, hence in the light of above it was pleaded that show cause to the appellant has been issued under the miscomputation of law. The other arguments and objections have already been incorporated in the order-in-original and order in appeal which has been impugned before us. While L/DR on behalf of department defended the impugned orders with the contention that authorities below have rightly coped with the situation in accordance to law.

3. We are not persuaded with the arguments on behalf of the appellant. Appellant has made his claim under Rule 247(c) of Custom Rules, 2001. The said rule was issued vide S.R.O. 450(I)/2001 dated 18-6-2001. For the sake of convenience the relevant portion is reproduced as under:--

"(i) the taxable goods meant for further processing shall be supplied to the licensee of the manufacturing bond against tax invoice after payment of sales tax, and licensee shall be entitled for refund of input tax credit in accordance with Sales Tax Refund Rules, 1996."

4. The above rule has been issued under the Customs Act, 1969 is meant for to facilitate the taxpayer from hardships faced during the refund of sales tax. S.R.O. No. 190(I)/2002 dated 2-4-2002 read with section 4 of Sales Tax Act, 1990 was issued under Sales Tax Act, 1990 and it reads as under:--

"S.R.O. 190(I)/2002.---In exercise of the powers conferred by clause (iii) of the first proviso to section 4 of the Sales Tax Act, 1990 and in supersession of its Notification No. S.R.O. 751(I)/99 dated 15th June, 1999, the Federal Government is pleased to direct that the provisions of the said section shall not apply in respect of the provisions of the said section shall not apply in respect of the following categories of goods, exported by air or via land route to Afghanistan and to Afghanistan to Central Asian Republics."

5. From the above quotation it is evident that the Rule 247(c) under Customs Act was

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issued vide S.R.O. No.450(I)/2001 dated 18-6-2001, while the S.R.O. No. 190(I)/2002 was issued on 2-4-2002 which is subsequent in time, while it is specific to the issue under appeal.

6. While it is pertinent to mention here, that the authorities, below in their conclusion has recorded the fact that vide S.R.O. No. 190(I)/ 2002 the Rule 247(c) of the Customs Rules, 2001 was omitted vide dated 6-6-2005. The L/AR on this point stated that the said rule was not omitted, but its sequence was changed and it was renumbered as Rule 352 of Customs Rules, 2001 and the matter should be dealt under the said rule. However sub-rule (5) of this Rule has escaped the intention of the authorities below as well as the authorized representative of the parties which is reproduced as under:--

> "**Rule-352.---**Procurement, manufacture, export and removal of goods by a licensee of a manufacturing bond.--(l) The input goods for production of finished goods according to the specification approved in the Analysis Certificate shall be procured by the licensee of a manufacturing bond in any of the following manners, namely:--

(i) ....

....

(ii) ....

....

(iii) ....

....

(iv) ....

....

(2) ....

....

(3) ....

....

(4) ....

....

(5) Export of goods manufactured under this chapter shall not be permissible to any country by land routes."

7. The above sub-rule is very clear, as per this rule the claim of appellant is not admissible, while in such an unambiguous and clear intention, the judgment referred by

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the L/AR of appellant is of no help to appellant, hence we feel no harry to reject the appeals instituted on behalf of the Claimant. Thus these stand rejected accordingly.

C.M.A./59/Tax(Trib.) Appeal rejected.