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**Judgment Sheet**

**IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

Case No: **W.P. 27097/2013**

**M/s Zia Brothers** **Versus** **Federation of Pakistan, etc.**

**JUDGMENT**

Dates of hearing	05.05.2014
Petitioners by	Mr. Khurram Shahbaz Butt, Advocate in Writ Petitions No. 27097/2013, 27099/2013, 27100/2013, 27104/2013, 27130/2013, 27309/2013 and 29352/2013. Mr. Maqbool Ahmed Cheema, Advocate in Writ Petitions No.7691/2014 and 4556/2014. Mr. Muhammad Ajmal Khan, Advocate in Writ Petition No. 7112/2014. Mr. Jan Muhammad Ch., Advocate in W.P. No.7100/2014. Mr. Umer Farooq, Advocate in W.P. No.7100/2014.
Respondents by:	Mr. Muhammad Mehmood Khan, Deputy Attorney General for Pakistan. Mr. Muhammad Ilyas Khan, Advocate in Writ Petitions No.27099/2013, 29352/2013 and 27309/2013. Mr. Muhammad Yahya Johar, Advocate in Writ Petitions No.27097/2013, 27099/2013, 27100/2013, 27104/2013, 27130/2013, 27309/2013, 29352/2013, 33162/2013, 7100/2014, 7691/2014, 4556/2014 and 7112/2014. Mr. Liaqat Ali Chaudhry, Advocate in W.P. No.7691/2014 Mr. Shahid Sarwar Chahil, Advocate in Writ Petitions No.7100/2014, 7112/2014, 1772/2014 and 4070/2014. Irshad Hussain, Additional Commissioner Inland Revenue, Zone IV, RTO-II, Lahore.

**Syed Mansoor Ali Shah, J:-** This judgment will decide the instant petition, as well as, connected writ petitions mentioned in **Schedule “A”** as all these cases raise common questions of law and facts.

2. Petitioners, who are manufacturers and sellers of flour (products of milling industry) and admittedly stand exempted under section 13 read with item No.19 of the 6<sup>th</sup> Schedule to the Sales Tax Act, 1990 (“Act”) have challenged the applicability of *further tax* under Section 3 (1A) to their case. It is submitted that as the petitioners do not make any *taxable supplies* under section 2(41) of the Act, they are not bound to obtain Sales Tax registration under the Act, as a consequence, they are under no obligation to pay “further tax” and section 3(1A) has no application to their case.

3. Supporting their argument, learned counsel for the petitioners, referred to section 14 of the Act read with rule 4 of Chapter 1 of the Sales Tax Rules, 2006 (“Rules”) which provides that only persons engaged in making taxable supplies are required to be registered under the Act. It is clarified that the petitioners are paying sales tax on the taxable supplies purchased by them but are not liable to pay the additional amount of further tax on account of non-registration.

4. Learned counsel for the respondent department submits that Section 3 (1A) of the Act does not provide any concession or margin for persons who are not making taxable supplies and, therefore, the petitioners are bound to obtain registration or else pay “further tax”. It is further submitted that exemption to Section 3 (1A) is covered by its proviso and has referred to SRO No.648 (I)/2013 dated 09.07.2013 issued under the said proviso. He submits that the taxable supplies made by the petitioners do not fall within the said notification, therefore, section 3(1A) is applicable

to the petitioners. Learned counsel further submits that the petitioners had an option to make a representation before the respondent department and, therefore, instant petitions are not maintainable. Learned counsel for the respondent department for the above submissions placed reliance on Messrs Riaz Bottlers (Pvt.) Ltd. v. Federation of Pakistan through Ministry of Finance, Revenue & Economic Affairs, Islamabad and 3 others (2000 PTD 485), Tandlianwala Sugar Mills Ltd and others v. Federation of Pakistan through Secretary, Ministry of Finance, Revenue and Economic Affairs, Islamabad and others (2001 PTD 2094) and The Central Board of Revenue, Islamabad and others v. Sheikh Spinning Mills Limited, Lahore and others (1999 PTD 2174).

5. Learned Deputy Attorney General for Pakistan, appearing in response to the notice under Order XXVII-A of CPC adopts the arguments of the learned counsel for the respondent department.

6. In order to appreciate the contention of the parties, it is important to examine the relevant provisions of the Act and the Rules. Section 3 (1A) of the Act states as under:-

“3. (1A) Subject to the provision of sub-section (6) of section 8 or any notification issued thereunder, where taxable supplies are made to a person who has not obtained registration number, there shall be charged, levied and paid a further tax at the rate of one per cent of the value in addition to the rate specified in sub-sections (1), (1B), (2), (5) and (6):

Provided that the Federal Government may, by notification in the official Gazette, specify the taxable supplies in respect of which the further tax shall not be charged, levied and paid.” (*emphasis supplied*)

The scope and purpose of the above sub-section is to broaden the tax net by incentivizing registration under the Act. Legislature has achieved this by building a disincentive for persons who have not obtained registration number under the Act by enhancing and loading the price of the taxable supplies made to them with

“further tax” at the rate of *one per cent of the value of taxable supplies*.

7. The proviso to the above sub-section provides that the Federal Government is empowered to exclude certain *taxable supplies* from the scope of Section 3 (1A). A notification (SRO No.648 (I)/2013 dated 09.07.2013) has already been issued in this regard. The said notification exempts the charge of further tax from the following taxable supplies:

<b>S.No.</b>	<b>Description of goods.</b>
<b>(1)</b>	<b>(2)</b>
1.	Electrical energy supplied to domestic and agricultural consumers
2.	Natural gas supplied to domestic consumers
3.	Motor spirit, diesel oil, jet fuel, kerosene oil and fuel oil.
4.	Goods sold by retailers to the end consumers
5.	Supply of goods directly to the end consumers including food and beverages, fertilizers and vehicles
6.	Items falling in the Third Schedule to the Sales Tax Act, 1990.

8. The question that requires determination is whether a person, who is not under a legal obligation under the Act to obtain registration number can be burdened with *further tax* for not obtaining the registration number? Admittedly the petitioners, who are manufacturers and sellers of flour (product of milling industry) stand exempt from payment of sales tax under section 13 read with item No.19 of the 6<sup>th</sup> Schedule of the Act. By virtue of the above exemption the petitioners fall outside the scope and meaning of “*taxable supplies*” under Section 2 (41) of the Act. As the petitioners don’t make any “*taxable supplies*” they are not bound to register under the Act. Section 14 of the Act provides that registration is required of such persons and regulated in such a manner as is prescribed under the Rules. Chapter-I of the Rules, *inter alia*, deals with Registration. Rule 3 explaining the applicability of the Chapter states that it is applicable on persons

liable to be registered under the Act. Rule 4 provides that only persons making “taxable supplies” are under an obligation to register. Rule 4 states as under:-

“4. Requirement of registration.—The following persons engaged in making of taxable supplies in Pakistan (including zero-rated supplies) in the course or furtherance of any taxable activity carried on by them, if not already registered, are required to be registered in the manner specified in this chapter, namely:--

- (a) a manufacturer not being a cottage industry;
- (b) a retailer whose value of supplies, in any period during the last twelve months exceeds five million rupees;
- (c) an importer;
- (d) a wholesaler (including dealer) and distributor;
- (e) a person required, under any other Federal law or Provincial law, to be registered for the purpose of any duty or tax collected or paid as if it were a levy of sales tax to be collected under the Act; and
- (f) a commercial exporter, who intends to obtain sales tax refund against his zero-rated supplies.” (*emphasis supplied*).

Under section 2(41) of the Act “taxable supply” means supply of taxable goods other than a supply of goods which is exempt under section 13 of the Act, which is the case of the petitioners.

9. The purpose of Section 3 (1A) imposing *further tax* on a person who fails to obtain registration number is to incentivize such a person to register and implies that the person is under a lawful obligation to obtain registration number and has for some reason failed to do so. This carrot and stick policy is to induce a person to register and also to enforce the legislative intent of registering persons making taxable supplies. On a policy level, the wisdom behind this is to move towards a more documented economy and help expand the tax base. Petitioners, who do not make taxable supplies under the law are under no legal obligation

to register and, therefore, section 3(1A) does not relate to them. The petitioners cannot be burdened with the charge of *further tax* for not doing an act they are, under the law, not supposed to do. Unless, ofcourse, the law undergoes an amendment to this effect. The case law relied upon by the learned counsel for the respondent department is not relevant to the present controversy.

10. For the above reasons, it is declared that Section 3 (1A) of the Act has no applicability to the case of the petitioners who enjoy exemption under the Act and are not making any “taxable supplies” in terms of section 2(41) of the Act.

11. This Court is also aware that a duty cannot be cast upon a supplier to verify the antecedents of a buyer or confirm whether the buyer enjoys an exemption under the Act before making a transaction. It is, therefore, pointed out that the petitioners have paid “further tax” during the pendency of these petitions and claim refund /adjustment of the said amount. After the above declaration that further tax is not applicable to the case of the petitioners who enjoy an exemption under the Act, the procedure and functionality of this principle can best be left to the FBR who shall devise a mechanism to provide relief to the Petitioners who do not fall within the ambit of section 3 (1A) of the Act. Petitioners shall make an application to the FBR in this regard which shall be decided within two months from the receipt of this judgment.

12. This petition alongwith connected writ petitions are allowed in the above terms.

(Syed Mansoor Ali Shah)  
Judge

M. Tahir\*

**APPROVED FOR REPORTING**

**SCHEDULE-A**

<b>Sr. No.</b>	<b>Writ Petition No.</b>
1.	W.P. No.27104/2013
2.	W.P. No.27099/2013
3.	W.P. No.27100/2013
4.	W.P. No.27130/2013
5.	W.P. No.27309/2013
6.	W.P. No.29352/2013
7.	W.P. No.33162/2013
8.	W.P. No.7100/2014
9.	W.P. No.7691/2014
10.	W.P. No.4556/2014
11.	W.P. No.7112/2014

**(Syed Mansoor Ali Shah)**  
Judge

*M. Tahir\**