

**APPELLATE TRIBUNAL INLAND REVENUE GOVERNMENT
OF PAKISTAN DIVISION BENCH, MULTAN**

STA No.65/MB/2023

**M/s. S.T. International, Industrial Estates
Mehdi PurMultan. ...Appellant
STR No. 0407870400273**

Versus

The CIR, RTO-Multan. ...Respondent

**Appellant by:Mr. Imran Ghazi, Advocate.
Respondent by:Mr. Rab Nawaz, DR.**

Date of Hearing: 08.05.2023

Date of Order: 12.06.2023

O R D E R

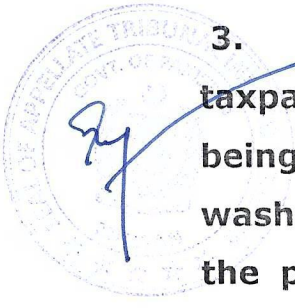
CH. MUHAMMAD AZAM (JUDICIAL MEMBER): By this order, we intend to dispose of above titled appeal filed by the appellant against the impugned order dated 01-06-2022 passed by the Commissioner Inland Revenue (Appeals) Multan on the grounds available in file 1st appeal was dismissed.

BRIEF FACTS OF THE CASE

2. The brief facts in brief leading to the instant appeal are that the registered person supplying house hold appliances namely refrigerators, deep freezers and washing machines. The registered person understated the value of sales in sales tax returns for the financial year 2020-21 to avoid the sales tax. This resulted into evasion of sales tax due to under valuation amounting of Rs.8,661,831/- during the financial year 2020-21. Feeling aggrieved, the taxpayer preferred appeal before CIR(Appeals-I), Multan, who vide appellate order dated

01.06.2022 upheld the treatment meted out by the assessing officer, against which the taxpayer has come up in further appeal before this Tribunal.

ARGUMENTS OF AR



3. The learned counsel appearing on behalf of the taxpayer has apprised the court that registered person being manufacturer of refrigerators, deep freezers and washing machines also sold out spare parts in market for the purpose of maintenance of final products. The A.R. contended that registered person is manufacturer of body of refrigerator and deep freezer whereas washing machine is manufactured in fully operational state. Hence, the approach of learned DCIR to determine the value of different items on uniform average value is in total against the scheme of sales tax law. It is a settled principle of law there is no presumption as to tax particularly in fiscal matters. Nobody could be made liable to pay tax on the basis of presumption, intendment, except on the basis of explicit provisions of law. Guidance is sought from principles laid down by the superior courts in judgments reported as 2022 PTD 683 & 2013 PTD (Trib) 2268, PTCL 2012 CL 210.

ARGUMENTS OF DR.

4. On the other hand, the learned DR defended the impugned actions by the Department. He contended that there is no infirmity in the impugned order and the same may be upheld by dismissing the appeal.

FINDINGS

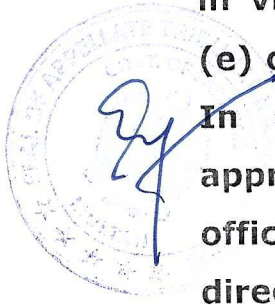
5. We have heard the contentions of both the parties and perused the appeal file available before us. Insofar as the fact that the tax in question was determined on the basis of assumption and conjectures. The learned DCIR

given following note in his order which makes all the process fishy:

- i) Retail price declared by the R/P from RS.27,770/- to Rs.56,670/- per Refrigerator and Average Price calculated of Rs.42,220/-
- ii) Retail price declared by the R/P from Rs.38,880/- to Rs.60,560/- per Deep Freezer and Average Price calculated of Rs.49,720/-.
- iii) Retail Price declared by the R/P from Rs.9,700 per Washing Machine and Average Price calculated of Rs.17,755/-.

The authorities cannot be allowed to exercise discretion at their whims, sweet will or in an arbitrary manner; rather they are bound to act fairly, evenly and justly. Relied Cases of Abid Hussain v. PIAC [2005 PLC (CS) 1117], Abu Bakar Siddique v. Collector of Customs (2006 SCMR 705), Walayat Ali v. PIAC (1995 SCMR 650). In the case of Sharp v. Wakefield [1891 AC 173]. It is to be, not arbitrary, vague, and fanciful, but legal and regular. And it must be exercised within the limit, to which an honest man competent to discharge of his office ought to confine himself. The said case was relied upon by Indian Supreme Court in the case of Union of India v. Kuldeep Singh [2004(2) SCC 590]. In the cases of State of U.P. v. Mohammad Noah (AIR 1958 SC 86), Pratap Singh v. State of Punjab (AIR 1964 SC 72) and Fashih Chaudhary v. D.G. Doordarshan [(1989) I SCC 189]. We have gone through the above mentioned grounds, the extract of which is that learned CIR (Appeals) was not justified reject the stance of the registered person on the issues mentioned in the above mentioned grounds of appeal. We have observed

that the Assessing Officer adopted the prices of products in violation of the Procedure given under section 2(46) (e) of Sales Tax Act 1990 and matter needs further probe. In view of the foregoing discussion, we deem it appropriate to remand the case back to the taxation officer on the issues under consideration with the direction to decide the matter afresh after affording an adequate opportunity of being heard to the taxpayer. The registered person is also directed to make sure his presence before the taxation officer alongwith complete documentary evidence. We order accordingly.



-sd-
DR. MUHAMMAD NAEEM
 Accountant Member

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CH. MUHAMMAD AZAM
 Judicial Member

Copy of the bench order forwarded to
 1. The Appellant... M/s. S.T. International, Industrial, MN
 2. The Respondent... " "
 7/08/23
 ASSISTANT MEMBER
 Appellate Tribunal (Income Tax) Revenue
 Section