

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Yahya Afridi
Mr. Justice Muhammad Ali Mazhar

Civil Petitions No. 3134 and 3135 of 2022

*(Against the judgment dated 22.06.2022 of the High Court of
Blochistan, Quetta passed in Sales Tax Reference Applications
No. 03 and 04 of 2021)*

*The Commissioner Inland Revenue Zone-I,
Regional Tax Office, Quetta. ... (in both cases)
Petitioner*

Versus

*M/s Hajvairy Steel Industries (Pvt.) Limited, Quetta. (in CP. 3134/22)
M/s Ghazi Steel Industries (Pvt.) Limited, Quetta. (in CP. 3135/22)
... Respondents*

For the Petitioner:
(In both cases)

Mr. Ahsan Ahmad Khokhar, ASC.
Khalid Aziz, Assistant Director, RTO, Quetta.

For the Respondent:
(In CP. 3134/22)

Mr. Tariq Mahmood, Sr. ASC.
(has filed caveat)

For the Respondent:
(In CP. 3135/22)

Not represented.

Date of Hearing:

30.01.2023.

ORDER

Qazi Faez Isa, J. The Commissioner Inland Revenue Zone-I, Regional Tax Office, Quetta has filed these two petitions for leave to appeal against three concurrent decisions, of the Commissioner Inland Revenue (Appeals), of the Appellate Tribunal Inland Revenue, Karachi Bench, and of the learned Division Bench of the High Court (**'the Commissioner'**, **'the Tribunal'** and **'the High Court'** respectively).

2. The learned Mr. Ahsan Ahmad Khokhar represents the petitioner. He states that the applicable sale tax years in these petitions are 1 July 2013 to 30 June 2014, 1 July 2014 to 30 June 2015 and 1 July 2015 to

30 June 2016, that is, a period of three years. He submits that the impugned judgments of the High Court, the Tribunal and of the Commissioner had disregarded a charging provision, that is, section 3(1A) of the Sales Tax Act, 1990 (**'the Act'**), and since the amendments therein were subsequently made the same will prevail over the preexisting section 71 of the Act, resultantly sales tax pursuant thereto had to be paid. He further submits that SRO No. 585(I)/2017 dated 1 July 2017 had to be given prospective effect but instead was construed retrospectively. The decision in the case of *Zak Re-Rolling Mills*¹ is relied upon by the learned counsel who states that the very points urged in the instant petitions had already been decided in favour of the petitioner in that case.

3. The learned senior counsel Mr. Tariq Mahmood represents the respondent in one of the petitions.² He submits that pursuant to section 71 of the Act a special procedure with regard to the *scope and payment of tax* may be prescribed, and this was done by enacting the Sales Tax Special Procedure Rules, 2007³ (**'the Special Procedure'**), amongst others, for steel re-rolling mills. The Special Procedure, he submits, contains an overriding, *non obstante*, clause which prevails over the general charging sections of the Act, including section 3(1A) of the Act. The respondents, he says, admittedly are re-rolling mills, therefore, their sales tax liability as stipulated in the Special Procedure '*will be considered as their final discharge of sales tax liability*'⁴ as stated therein. He states that where the legislature intended for section 3(1A) to be read independently of section 3 (*scope of tax*) and construed as a separate charging section the Act specifically stated this, as in section 4 and Chapter XVI of the Act. As regards the *Zak Re-Rolling Mills* case (relied upon by the petitioner) learned counsel submits that it does not

¹*Zak Re-Rolling Mills (Pvt.) Ltd. v Appellate Tribunal Inland Revenue*, 2020 SCMR 131.

²Civil Petition for Leave to Appeal No. 3134 of 2022.

³S.R.O. 480(I)/2007 dated 9 June 2007, Gazette of Pakistan, Extraordinary, Part II, 9 June 2007, PLJ 2008 Federal Statutes 442.

⁴*Ibid.*, rule 58H(1).

constitute precedent because in that case leave to appeal against concurrent decisions was declined; reference is made to Article 189 of the Constitution of the Islamic Republic of Pakistan ('**the Constitution**') to contend that only a decision of this Court which '*decides a question of law or is based upon or enunciates a principle of law*' constitutes precedent, as was also held by this Court in the cases of *Muhammad Asif*⁵ and of *Muhammad Tayyab Bukhari*.⁶

4. We have heard the submissions of the learned counsel, examined the documents on record, and considered the cited precedents and the law. The applicable provisions (as they existed at the relevant time) need consideration. Therefore, it would be appropriate to reproduce section 71 of the Act hereunder:

'71. Special procedure.- (1) Notwithstanding anything contained in this Act, the Federal Government may, by notification in the official Gazette, prescribe special procedure for scope and payment of tax, registration, book keeping and invoicing requirements and returns, etc; in respect of such supplies as may be specified therein.

(2) The Board may allow a manufacturer or producer or a retailer, liable to turnover tax under section 3A to pay any amount on any basis for any period as it may, by notification in the official Gazette, specify.

(3) Notwithstanding anything contained in this Act or any other law for the time being in force or any decision of any court the trade enrolment Certificate Schemes immediately in force before the commencement of the Finance Act, 1999, shall be deemed to be validly made under this Act.'

Pursuant to section 71 of the Act the Special Procedure was enacted, and the relevant/applicable parts of rule 58H of the Special Procedure are reproduced hereunder:

⁵*Muhammad Asif v Dawood Khan*, 2021 SCMR 1270.

⁶*Muhammad Tayyab Bukhari v Anees-ur-Rehman*, 2022 SCMR 1913.

'58H. Payment of tax.--(1) Every steel-melter, steel re-roller and composite unit of steel melting and re-rolling (having a single electricity meter), shall pay sales tax at the rate of eight rupees per unit of electricity consumed for the production of steel billets, ingots and mild steel (MS) products excluding stainless steel, which will be considered as their final discharge of sales tax liability.

(2) Payment of tax by steel melters, re-rollers and composite units of melting and re-rolling shall be made through electricity bills alongwith electricity charges:

Provided that in case the due amount of sales tax mentioned in sub-rule (1) is not mentioned in the electricity bill issued to any steel melter or re-roller or composite unit of melting and re-rolling, the said melter or re-roller or composite unit shall deposit the due amount of tax for the relevant tax period at the rate of eight rupees per unit of electricity consumed excluding the amount of sales tax already paid on the electricity bill related to the said tax period through his monthly sales tax return.

(3) In case of default in payment of sales tax by the due date mentioned on the electricity bill, besides other legal action by the concerned RTO or LTU, the concerned electric supply company shall disconnect the electricity connection of the unit.'

'(7) Steel melters and re-rollers except Pakistan Steel Mills, Heavy Mechanical Complex and Peoples Steel Mills, paying sales tax on fixed rates through electricity bills shall not be entitled to any input tax adjustment.'

5. The matter is one of interpretation of the legal provisions (reproduced hereinabove). The petitioner contends that since the Special Procedure is applicable, the respondents are not liable under section 3, but they will still be liable under section 3(1A) of the Act because amendments therein were made subsequently, that is, during the subsistence of section 71 of the Act. We asked the learned counsel representing the petitioner to support his contention with reference to any principle of statutory interpretation and/or cite precedent supporting it, but he did not do so. Section 71 enables *special procedure*

to be made with regard to the *scope and payment of tax* to be made and the said Special Procedure was made pursuant thereto, which contained an overriding, *non obstante*, clause, which uses categorical and clear language and must be given effect to, and the respondents were entitled to be treated in accordance therewith. A particular rate and mechanism for the imposition of sales tax on steel re-rollers was prescribed and it was stipulated that it '*will be considered as their final discharge of tax liability*', which the respondents had discharged in accordance therewith.

6. For the decision of these petitions it is not necessary to comment upon the petitioner's counsel's contention regarding the prospective application of SRO No. 585(I)/2017 dated 1 July 2017.

7. That as regards the case of *Zak Re-Rolling Mills* this Court had observed that it was not deciding '*points which were not raised in the Reference application before the High Court nor are noted in the impugned judgment.*'⁷In that particular case, the tax years under consideration were not mentioned, therefore, it cannot be stated with any certainty what the applicable law was then, and then to consider whether the decision therein is applicable hereto. The petitioner's counsel also did not bring forth the facts of that case. If reliance is placed upon an earlier decision, it must first be established that the same provisions of the law were under consideration.

8. Tax laws in Pakistan are subject to extensive changes almost every year, and at times more than once in a year. Therefore, we have repeatedly observed that in tax cases the relevant provisions of the law as at the relevant time must be reproduced or attached with the appeal/petition filed in this Court, but more often than not, as in the instant cases, this is still not done. Resultantly considerable court-time

⁷*Zak Re-Rolling Mills (Pvt.) Ltd. v Appellate Tribunal Inland Revenue*, 2020 SCMR 131, p. 132, para. 2.

is unnecessarily wasted in just trying to ascertain the law at the relevant time. To constitute precedent the law which was interpreted must be the same or similar to the case in hand.

9. Therefore, for the reasons mentioned above, we are not persuaded to grant leave to appeal in these petitions, and all the more so when they are filed against three concurrent decisions, which have not been shown to be contrary to the law. Consequently, these petitions are dismissed.

Judge

Judge

Judge

Islamabad:
30.01.2023
(M. Tauseef)

Approved for Reporting