Form No: HCJD/C-121

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

S.T.R. No. 11 of 2007

Coca-Cola Beverages Pakistan Ltd.
v.
The Customs, Excise & Sales Tax Appellate Tribunal, etc.

JUDGMENT

DATE OF HEARING	**27.04.2017**
Applicant by:	**Mr. Jahanzeb Inam,** Advocate.
Respondents by:	**Mr. Sarfraz Ahmad Cheema,** Advocate with **Dr. Ishtiaq Ahmad Khan,** Director Law, FBR.

Tariq Saleem Sheikh, J:- By this single judgment we propose to decide STR No. 11/2007 and the Sales Tax References/Appeals mentioned in the Schedule-B attached hereto as they involve common questions of law. Although the facts in these cases are quite similar, we give their short *resume* for the sake of completeness.

2. In STR No. 11/2007 the Petitioner (Coca-Cola Beverages Pakistan Limited) is an unlisted public company. It is one of the leading manufacturers of aerated beverages, including Coca-Cola, Diet-Coke, Fanta, Sprite, Sprite-Zero, Sprite-3g, and bottled water namely Kinley, and has six bottling plants in Pakistan. During its audit for the year 2004-2005, the auditors

observed that the Petitioner purchased "Visi Coolers and Chest Coolers" (hereinafter referred to as the "Appliances") and claimed input tax adjustment but failed to charge and pay the sales tax leviable thereon at the time of supply to its customers which resulted in short realization of sales tax. On the basis of the said audit report the Petitioner was issued Show Cause Notice dated 06-11-2006 to explain as to why the short-paid sales tax alongwith additional tax under Section 34 (1) of the Sales Tax Act, 1990 (the "Act"), and penalty under Section 33 thereof may not be recovered from it. The Petitioner contested the show cause notice on the ground that there had been no "taxable supply" of the Appliances to the customers (who were all retailers) within the meaning of Section 2(41) of the Act and it had placed them at the retail outlets only to facilitate the sale of its products. The Adjudicating Officer rejected the stance of the Petitioner and ruled against it vide Order-in-Original dated 28-11-2006. The Petitioner assailed that order before the Collector (Appeals) and the erstwhile Customs, Excise & Sales Tax Appellate Tribunal (the "Tribunal") but remained unsuccessful. The Tribunal held that the supply of the Appliances was in furtherance of business and it was a taxable supply as contemplated by Section 2(41) and was thus chargeable to sales tax under Section 3(1) of the Act. It further held that input tax adjustment on the Appliances was not admissible as they neither directly contributed to nor had any proximity with the manufacturing of taxable supplies. The Petitioner then filed this reference by way of an application under Section 47 of the Act before this Court against the Tribunal's Order dated 15-05-2007.

3. In STR No. 12/2007 also the Petitioner is Coca-Cola Beverages Pakistan Limited and the period involved is the year 2004-2005 during which it provided the Appliances to the retailers. In this case too the Tribunal upheld the orders of the authorities below holding that the Petitioner had contravened the provisions of the Act and it was liable to pay the short paid sales tax alongwith

additional tax and penalty. The Tribunal advanced the same reasons in support of its order as in STR No. 11/2007.

4. In STR No. 53/2007 and STR No. 76/2007 the Petitioner [Riaz Bottlers (Private) Limited] is the manufacturer of beverages under the brand name "Pepsi Cola" and holds an exclusive franchise for its territory. The period involved is the year 1999-2000. The Revenue issued two separate show cause notices to the Petitioner for claiming inadmissible input tax adjustment against purchase of coolers and deep freezers respectively. These show cause notices were separately adjudicated and separate Orders-in-Original were passed. Resultantly, there were two appeals before the Collector and the Tribunal. In both these matters the Tribunal ruled against the Petitioner. On the issue of admissibility of input tax the Tribunal held that it could not be claimed in respect of the Appliances on two grounds. First, it was repugnant to the provisions of Section 8(1)(a) as the said goods neither directly contributed nor had close proximity to the production or manufacturing of taxable supplies, i.e. beverages and bottling products. Secondly, electric appliances were excluded from the purview of input tax adjustment vide SRO No. 578(1)/98 dated 12-06-1998 issued by the Federal Government in terms of Section 8(1)(b).

5. STR No. 45/2012 and STR No. 44/2012 pertain to the years 2005-2006 and 2006-2007 respectively. In these two cases the Tribunal agreed with the Petitioner, Coca-Cola Beverages Pakistan Limited, that the placement of the Appliances at retail outlets did not constitute a "supply" as movement of goods to another's premises without any element of "disposal or parting with ownership and associated risks and rewards" did not fall within the ambit of the term "disposition" used in Section 2(33) of the Act. On the question relating to the application of Section 8(1)(a), the Tribunal held that since the Appliances were used for the purpose of taxable supplies, input tax was admissible thereon. As the

Tribunal decided the issue against the Revenue, it is the Revenue which has filed reference applications STR No. 44/2012 and 45/2012 before this Court. In STR No. 44/2012 there is an additional issue as to whether the registered person was entitled to claim input adjustment on furniture, office equipment and other miscellaneous items mentioned in the Show Cause Notice dated 13-09-2008. On this question as well the Tribunal returned a finding in favour of the registered person vide Order dated 08-12-2011.

6. STA No. 130/2003 relates to the tax period 1998-1999. In this case the Petitioner, Riaz Bottlers (Private) Limited, claimed input tax adjustment on the Appliances as also spare parts of the vehicles of the company. On both the issues the Tribunal found against the Petitioner.

7. STR No. 5/2007 pertains to the period 2003-2004. The Petitioner, Coca-Cola Beverages Pakistan Limited, has assailed the Tribunal's Order to the extent it has disallowed its input tax claim with respect to spare parts, tyres and batteries used in the company's delivery vans.

8. The following questions of law arise in the above-mentioned cases that require determination by this Court:

I. Whether placement of the Appliances, i.e. visi-coolers and chest-coolers, at retail outlets by the registered persons for the sale of their goods constitutes "supply" in terms of Section 2(33) of the Act?

II. Whether under the scheme of the Act input tax in relation to the Appliances is hit by the mischief of Section 8(1)(a) of the Act?

III. Whether the Tribunal was justified in disallowing the input tax claim of the registered person (in STA No. 130/2003) in respect of vehicle spare parts in view of the law laid down by the Hon'ble Supreme Court of Pakistan in "Attock Cement Pakistan Ltd. vs. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others" (1999 PTD 1892)?

IV. Whether the Tribunal was justified in law to deny the input tax claim of the registered person (in STR No.5/2007) in respect of spare parts, tyres and batteries

of delivery vans used for taxable supplies under SRO No.578(I)/98 and SRO No.490(I)/2004?

V. Whether the Tribunal was justified to allow input tax adjustment on furniture, office equipment and other miscellaneous items mentioned in the Show Cause Notice dated 13-9-2008 to the registered person in STR No.44/2012 in view of SRO No.490(I)/2004?

VI. Whether the registered persons in STR No.11/2007, 12/2007, 53/2007, 76/2007, 44/2012 and 45/2012 are liable to pay additional tax under Section 34(1) of the Act and penalty under Section 33 thereof ?

9. We take up these questions seriatim.

Question I

10. Mr. Jahanzeb Inam, Advocate, who represented the registered person in STR No.11/2007 & 12/2007 submitted that a combined reading of sub-sections (33), (35) and (41) of Section 2 shows that the charge for sales tax presupposes a 'supply of goods'. He contended that the registered person had placed the Appliances at its retail outlets to facilitate/promote the sale of its taxable goods, *viz.*, beverages and mineral water. Despite the said placement the Appliances were still in the ownership of the company and this fact could be established from the Chiller Licence Agreement that the company executed with every retailer. Learned counsel referred to Clause-3 of the said agreement (a copy whereof is available on the record) to substantiate his point. He further contended that the above fact could also be proved from the company's books wherein the Appliances were reflected as its assets. To support his arguments he placed reliance on "*Collector, Customs, Central Excise and Sales Tax Karachi (West) v. Novartis Pakistan Ltd."* **(2002 PTD 976),** *"Messrs Amie Investment (Pvt.) Ltd. through Director v. Additional Collector-II and 4 others"* **(2006 PTD 1459),** *"Messrs Sarwar & Co. (Pvt.) Ltd. v. Customs, Central Excise and Sales Tax, Appellate Tribunal, Lahore and another"* **(2006 PTD 162)** and "*Avery Scales (Private) Ltd., Karachi v. Additional Collector (Adjudication III) Karachi and another*" **(2006 PTD 2150)**.

11. Mr. Shoaib Rashid, Advocate, who appeared on behalf of the registered person in STR No.44/2012 and 45/2012 adopted the arguments of Mr. Jahanzeb Inam, Advocate. However, while referring to the definition of "supply" in Section 2(33) he emphasized that mere placement of the Appliances at retail outlets did not constitute "disposition of goods" as contemplated in the said sub-section and would not attract charge under Section 3.

12. On the other hand, learned counsel for the Revenue controverted the aforementioned contentions raised on behalf of the registered persons. Mr. Sarfraz Ahmad Cheema, Advocate, argued that under Section 3 of the Act sales tax is charged, levied and paid when taxable supply is made by a registered person in the course or furtherance of any taxable activity carried on by him. The registered persons made a supply of the Appliances to the retailers within the meaning of Section 2(33) in consequence whereof the transaction was chargeable to sales tax under Section 3. The supply of the Appliances was in the course or furtherance of business activity. It was not a mere placement of taxable goods at the retail outlets as the registered persons attempted to suggest. It was a "disposition of goods" as contemplated in Section 2(33) inasmuch as the registered persons received consideration from the retailers by way of security or otherwise.

13. The above controversy involves interpretation of Section 3 and sub-sections (33), (35) and (41) of Section 2. Since numerous amendments have been made in the Act over the years, it is necessary to know what was the applicable law during the relevant period, i.e. 1998 to 2007, before we consider the respective contentions of the parties.

14. Section 3 is the charging section. Originally when it was incorporated in the Act its sub-section (1) read as under:

> **3. Scope of tax** – (1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of twelve and half per cent of the value of—
>
> (a) taxable supplies made in Pakistan by a registered person in the course of furtherance of any business carried on by him; and
>
> (b) goods imported into Pakistan.

It was amended by the Finance Act, 1996 after which it read:

> **3. Scope of tax.** – (1) Subject to the provisions of this Act, there shall be charged, levied and paid a tax known as sales tax at the rate of sixteen percent of the value of—
>
> (a) taxable supplies made [***][1] by a registered person in the course or furtherance of any [taxable activity] carried on by him; and
>
> (b) goods imported into Pakistan.

15. A bare reading of the above provision shows that sales tax under Section 3(1)(a) would be chargeable when (i) a registered person (ii) makes taxable supplies (iii) in the course or furtherance of (iv) a taxable activity. Therefore, amongst other things, twin conditions of making taxable supplies and taxable activity must exist simultaneously. In "*Salfi Textile Mills Ltd. v. Collector of Customs (Appraisement) Karachi*" **[(1993) 67 Tax 300 (H.C. Kar)]**, the Court observed:

> "The expression 'taxable supply' and 'taxable activity' both operate in their own fields. The quantum of tax liability is determined on the basis of the value of taxable supply, but the liability to pay tax under the charging section would arise only when such supply is made in furtherance of taxable activity. The taxable activity defined in the Act meant any activity involving in whole or in part, the supply of goods to any other person."

16. "Taxable supply" is defined in Section 2(41). It read as under during the relevant period:[1]

> "(41) "taxable supply" means a supply of taxable goods made [2][***] [by an importer, manufacturer, wholesaler (including dealer), distributor or retailer] other than a supply of goods which is exempt under section 13 and includes a supply of goods chargeable to tax at the rate of zero per cent under section 4;"

17. The term "taxable activity" during the period relevant for our present purposes was defined by Section 2(35) as:

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1. The words "in Pakistan" omitted by the Finance Act, 2003.
2. The words "in Pakistan" omitted by the Finance Act, 2003.

> "(35) "taxable activity" means any activity which is carried on by any person, whether or not for a pecuniary profit, and involves in whole or in part, the supply of goods [3][or rendering of services on which sales tax has been levied under the respective Ordinance and use of goods acquired for private purposes or for the manufacture of exempt goods without making supply] to any other person, whether for any consideration or otherwise, and includes any activity carried on in the form of a business, trade or manufacture;"

18. The Hon'ble Supreme Court of Pakistan explained the meaning of "in course of" and "in furtherance of" in the case reported as "*Collector of Customs, Sales Tax and Central Excise and others v. Messrs Sanghar Sugar Mills Ltd. Karachi and others*" **(PLD 2007 SC 517=PTCL 2007 CL 565)** as under:

> "15.The main thrust of the learned counsel for the respondents was on the interpretation of section 3(1)(a) and in their view the sales tax is to be imposed on the supply of the goods in which the assesse continuously, regularly deals with, i.e., the items produced or manufactured by them and not casually, occasionally, incidentally or sometimes. By contending so, they have lost sight of the fact that it is not only the business or the taxable activity which has been referred to or mentioned in the section but the important role is to be played by the words "in the course or furtherance of" which have prefixed the word business or taxable activity. The meaning of "in the course of" can be taken to mean as connected with, related to and having some nexus with the business/taxable activity and similarly "in furtherance of" is indicative of the fact that taxable supply had been made for the enhancement/further development of the business/taxable activity. The word furtherance has been defined in the advanced Law Lexicon, Third Edition, 2005, p.1953, as 'act of furthering, helping forward, promotion, advancement, or progress.' In furtherance of has been interpreted as in promoting or advancing in the Oxford English Dictionary, Volume IV, p.619. Furtherance has been defined as 'fact or state of being furthered or helped forward, the action of helping forward, advancement, aid, and assistance.' It is abundantly clear that the taxable supply has not been confined or limited to the one which is the product or the goods manufactured but also including those goods which involve in some way with the progress, promotion, advancement of business/activity/taxable activity."

19. The foremost question in the matters that we have before us is whether there was a "taxable supply". In order to constitute taxable supply the transaction must qualify to be a

3. The word inserted by the Finance Act, 2003.

"supply" as defined in Section 2 (33) which read as under at the relevant time:

> "(33) "supply" includes sale, lease [4][***] or other disposition of goods [5][***] carried out for consideration and also includes--
>
> (a) putting to private, business or non-business use of goods acquired, produced or manufactured in the course of business;
>
> (b) auction or disposal of goods to satisfy a debt owed by a person; [and]
>
> (c) possession of taxable goods held immediately before a person ceases to be a registered person [:]
>
> [6][(d) ***]
>
> [7][Provided that the Federal Government, may by notification in the official Gazette, specify such other transactions which shall or shall not constitute supply]"

20. While defining the term "supply" the Legislature has used the word "includes". In "*Malik Muhammad Inam and others v. Federation of Pakistan and others*" **[(2007) 95 Tax 3 (S.C.Pak.)]**, the Hon'ble Supreme Court of Pakistan explained that "where in defining anything, the Legislature uses the word 'included' or 'includes', the rule of interpretation is that it used a word of enlargement and it ordinarily implies that something else has been included, which falls outside the general meaning of the word. It also be used to give a comprehensive description that includes what is not obvious, what is uncertain and what is in the ordinary sense, not impossible." In "*Commissioner of Sales Tax, Rawalpindi Zone, Rawalpindi v. Abdul Razzaq Zia-ul-Qamar*" **[(1973) 27 Tax 99 (H.C. Lah.)]**, this Court found that the word "including" is used for "enlarging the scope and for bringing in species which would otherwise not be covered." In a nub, when the word "include" is used in a definition clause it is meant to enlarge and extend the scope of the term and there is an express indication that it is not restrictive.[3]

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4. The brackets and words [excluding financial (or operating) lease] omitted by the Finance Act, 2006.
5. The words "in furtherance of business" omitted by the Finance Act, 2003.
6. Sub-clause (d) omitted by the Finance Act, 2004.
7. Proviso added by the Finance Act, 2004.

21. In view of the foregoing, the term "supply" as used in Section 2(33) should be given an enlarged meaning which would be in addition to its ordinary dictionary meaning. Let us see how the dictionaries define it:

> Black's Law Dictionary (Tenth Edition):
>
> "The amount of goods produced or available at a price".
>
> Chambers Concise Dictionary.
>
> "To provide or furnish (something believed to be necessary)".
>
> P. Ramanatha Aiyar's Advance Law Lexicon (Fourth Edition):
>
> "Shorter Oxford English Dictionary gives a large number of definitions for the word 'supply' and they have a common feature, viz, that in the word 'supply' is inherent the furnishing or providing of something which is wanted R.V. Delgado, (1984) 1 All ER 449, 452".

In **2005 PTD (Trib) 1882**, it was pointed out that the concept of supply postulates furnishing or providing something on a demand by someone. As such, supply is connected with demand. Production of something or providing something without a demand or a counter purchase, therefore, is not a supply. According to one author, "supply involves a kind of continuity of relationship in which one person sells some items to other on an agreed rate on demand. It involves a kind of continuity or relationship in deal, i.e. purchase and sale. The most important factor in 'supply' is that the product is provided on demand and most of the time it is furnished at the place earmarked by the buyer". In our opinion, this interpretation/explanation comprehensively explains the term supply. There is little doubt that the disputed transaction does not fall within the ordinary meaning of the term. We now proceed to look at the inclusions made by the Legislature in Section 2(33) of the Act.

22. The term "sale" and "lease" are well understood and do not require deliberation, more particularly because the parties

did not dispute that the placement of the Appliances was neither a sale nor a lease. However, the controversy centered around the expression "other disposition" used in Section 2(33).

23. The term "disposition" came up for consideration before the Supreme Court of India in "*Goli Eswariah v. Commissioner of Glft Tax, Andhra*" **(AIR 1970 SC 1722)** and it was held that it was not a term of law and had no precise meaning and that its meaning had to be gathered from the context in which it was used. In that case the Supreme Court was considering Section 2 (xxiv) of the Indian Transfer of Property Act. The Court held that "the word 'disposition' is used alongwith words 'conveyance', assignment, settlement, delivery, payment or other alienation of property.' Hence it is clear from the context that the word 'disposition' therein refers to a bilateral or multilateral act. It does not refer to a unilateral act."

24. Reference is also invited to "*Messrs Amie Investment (Pvt.) Ltd. through Director v. Additional Collector-II and 4 others"* **(2006 PTD 1459)** wherein it was observed as under:

> "Since the word 'disposition' has not been defined in the Act, the ordinary meaning of the word which is of wide connotation is to be adopted. It is used only as an expression of transfer inter vivos or by operation of law and for such purpose an element of ownership must exist upon the goods/property under disposition or at least the person acquiring the goods must possess some right or title in the goods in order to dispose it of at his will."

25. If we look at the context in which the expression "disposition" has been used in Section 2(33) of the Act, we would find that it occurs after the words "sale" and "lease". As such, it should be construed in a manner that it should have the same attribute of transfer of right as those words have. In the cases before us, the registered persons placed the Appliances at the retail outlets by way of bailment under an express covenant that no interest whatsoever therein shall pass to the retailers. Therefore, we are inclined to agree with the learned counsel for the registered persons that such placement cannot be reckoned as a supply within the

meaning of Section 2(33). Inasmuch as the transaction does not qualify to be a supply, it does not come within the ambit of taxable supply and is not liable to the levy of sales tax. Accordingly, we answer the above question in the "**negative**".

Question II

26. Under the scheme of the Act, a registered person is entitled to deduct input tax paid for the purpose of its taxable supplies from the output tax subject to the conditions and restrictions set out in the Act. The issue is whether input tax was admissible on the Appliances. Mr. Jahanzeb Inam, Advocate, submitted that a combined reading of Section 7 and 8(1)(a) shows that claim for input tax is admissible only in respect of goods (or services) which are used or to be used for the purpose of taxable supplies. He contended that the term "purpose" had a wide connotation and could not be confined to the goods which are directly used for taxable supplies. Under these provisions, input tax adjustment on goods which related indirectly to the taxable supplies could not be disallowed. He argued that the Appliances actually contributed to the enhancement of the supplies made by the registered persons. As such, input tax in relation thereto was not hit by the mischief of Section 8(1)(a).

27. Mr. Shoaib Rashid, Advocate, contended that input tax could not be disallowed to the registered persons on the basis that no output tax was paid on the alleged supply. This was contrary to the scheme of law. He argued that under the Act the determinant for admissibility of input tax was whether the goods in respect of which it was claimed were related to the "purpose" of taxable supplies. He further contended that input tax and output tax operate in their own respective realms. As such, the adjustment of input tax could not be made subject to the supply of those particular goods in respect of which input tax was paid or claimed.

28. On the other hand, learned counsel for the Revenue contended that the registered persons could not claim input tax adjustment as the Appliances as they had no nexus with the taxable supplies. He argued that the Appliances contributed to the taxable activity of the retailer and not the registered persons.

29. Since the controversy the controversy involves the interpretation of Sections 7(1), 8(1)(a) and 8(1)(b), we reproduce them hereunder for ready reference:

> **7. Determination of tax liability**—(1) Subject to the provisions of Section 8B, for the purpose of determining his tax liability in respect of taxable supplies made during a tax period, a registered person shall, subject to the provisions of Section 73, be entitled to deduct input tax paid or payable during the tax period for the purpose of taxable supplies made, or to be made, by him from the output tax that is due from him in respect of that tax period and to make such other adjustments as are specified in Section 9.
>
> Provided that where a registered person did not deduct input tax within the relevant period, he may claim such tax in the return for any of the six succeeding tax periods.
>
> **8. Tax credit not allowed.**—(1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to reclaim or deduct input tax paid on:
>
> (a) the goods or services used or to be used for any purpose other than for taxable supplies made or to be made by him;
>
> (b) any other goods or services which the Federal Government may, by a notification in the official Gazette, specify…;

30. On reading of the above provisions, the legal position that emerges is that a registered person is entitled to deduct input tax paid or payable during the tax period on goods used for the purpose of taxable supplies made, or to be made, by him from the output tax that is due from him in respect of that period. However, this right is subject to the following conditions:

i) It is subject to the restrictions and limitations imposed under various provisions of the Act, including Sections 8, 8B and 73.

ii) A registered person is not entitled to reclaim or deduct input tax on those goods and services which are used for any purpose other than that of taxable supplies.

iii) The Federal Government may by notification in the official Gazette specify any goods or services in respect of which a registered person would not be entitled to reclaim or deduct input tax even though they may have been used for the purpose of taxable supplies.

31. It is important to note that chargeability of sales tax is provided in Section 3 of the Act. Sections 7 and 8 are not the charging sections and pertain to its payability. They are machinery provisions and help in determining the liability to pay the tax as contemplated in Section 3. Reference in this regard may be made to "*M/s Mayfair Spinning Mills Ltd., Lahore v. Customs, Excise and Sales Tax Appellate Tribunal, Lahore and two others*" **(PTCL 2002 CL 115).**

32. The keyword in Sections 7 and 8(1)(a) is "purpose". Input tax can be deducted only on goods used for the purpose of taxable supplies. The term "purpose" has not been defined in the Act. As such, it has to be taken in its ordinary plain meaning. According to the Oxford Advanced Learner's Dictionary (Eighth Edition), "purpose" means "the intention, aim or function of something, the thing that something is supposed to achieve."

33. In "*The Central Board of Revenue, Islamabad and others v. Sheikh Spinning Mills Limited, Lahore and others*" **(1999 SCMR 1442)**, SRO.1307(I)/97 was challenged before the Hon'ble Supreme Court of Pakistan through which, in exercise of its powers under Section 8(1)(b), the Federal Government directed that input tax would not be adjusted where it was paid on goods which were not an integral part of the production or supply of taxable goods. The Apex Court ruled that the controversy had to be decided with reference to the substantive provisions of the Act and the SRO in question and in case of any conflict between the two, the substantive provisions of the Act would prevail. In other words, the issue of adjustment of input tax was to be resolved with reference to the actual use of input in making of taxable supplies and the

criterion of integral part was not valid. In "*Ghandhara Nissan Diesel Ltd., through Sr. General Manager Finance, Karachi v. Collector, Large Tax Payers Unit, Government of Pakistan, Karachi and 2 others*" **(2006 PTD 2066)**, a learned Division Bench of the Karachi High Court observed:

> "If the word purpose is considered in ordinary plain meaning, it would appear that the intention of legislature, apparent from the language is that if any input tax is paid with the intention that the goods on which such input tax is paid shall be used in the end products or taxable supplies made or to be made, then the registered person shall be entitled to deduct the same from the output tax. It is nowhere provided that deduction of input tax on such goods only shall be allowed which are the direct constituent and integral part of taxable goods produced, manufactured or supplied."

34. From the above it follows that in order to determine whether input tax is admissible in a particular case it has to be seen whether the goods were used in relation to the taxable supplies. It is not necessary that they should be an integral part thereof. Once a registered person establishes that the goods in respect of which he claims input tax adjustment were used for the purpose of taxable supplies as aforesaid, he would be entitled to the adjustment unless the Federal Government has issued a notification under Section 8(1)(b) to disallow the same. In the present cases there is no denying the fact that the registered persons placed the Appliances with the retailers to facilitate the sale of their products being their taxable supplies. Keeping in view the principles discussed above, it is held that the Appliances were used for the purpose of taxable supplies. However, it is yet to be seen whether the claim of input tax is barred under any notification of the Federal Government under Section 8(1)(b).

35. The Federal Government has been exercising powers under clause (b) of Section 8(1) of the Act from time to time to disallow tax credit. It issued three notifications in this regard which have bearing on the present cases:

i) SRO No. 578(I)/98 dated 12-06-1998 whereby a list of goods was notified and it was stated that

unless those goods were acquired by a registered person as stock-in-trade, input tax in respect thereof shall not be claimed. Electric appliances were mentioned at Sr. No. 4 of this negative list. (For facility of reference SRO. No. 578(I)/98 dated 12-06-1998 is reproduced in Schedule-A).

ii) SRO No. 501(1)/2003 dated 07-06-2003 was issued to amend SRO No. 578(I)/98, *ibid.* Electrical appliances purchased for use in taxable activity were excluded from the operation of SRO No. 578(I)/98.

iii) SRO No. 490(I)/2004 dated 12-06-2004 was issued in suppression of SRO No. 578(I)/1998 through which a revised list was notified in respect of which claim for input tax was inadmissible. Electrical appliances were not mentioned in the said list.

36. From the above notifications it is evident that from 01-07-1998 to 06-06-2003 input tax in respect of electrical appliances was inadmissible unless they were acquired by a registered person as stock-in-trade. From 07-06-2003 to 11-06-2004 input tax could be claimed if the said equipment was purchased for use of taxable activity. From 12-06-2004 onwards electrical appliances do not fall in the negative list. The crucial question arising for determination is whether the Appliances were the stock-in-trade of the registered person concerned and would thus not be hit by the mischief of any SRO.

37. Mr. Khurram Shahbaz Butt, Advocate, who represented the registered person in STA No.130/2003, STR No.53/2007 and STR No.76/2007, contended that the Appliances were the stock-in-trade of the company as the same were used for promotion of its products. He submitted that they carried its logo (Pepsi) and were used to enhance its sales first as a medium of publicity and secondly acting as an incentive to the retailers to buy its products and also to showcase them. He argued that the Appliances had a direct nexus with the manufacturing of the company's products and their delivery process and were vital for its business. The Tribunal had misconstrued the law, including the

provisions of Section 8 of the Act and SRO No. 578(I)/1998 dated 12-6-1998, in holding that the company's claim of input tax adjustment was inadmissible.

38. Admittedly, the term "stock-in-trade" has not been defined in the Act. Therefore, in "*Attock Cement Pakistan Ltd. v. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others*" **(1999 PTD 1892)**, the Hon'ble Supreme Court of Pakistan held that "in the absence of a technical definition of 'stock-in-trade' by the Legislature in the Act or the Rules framed thereunder, one has to resort to the dictionary meanings." Thus, reference may be made to the following dictionaries:

> Black's Law Dictionary:
>
> The inventory carried by a retail business for sale in the ordinary course of business. Also, the tools and equipment owned and used by a tradesman.
>
> Chambers Concise Dictionary
>
> Something that is seen as fundamental to a particular trade or activity. (2) All the goods of shopkeeper for sale.
>
> Merriam-Webster's Dictionary of Law:
>
> The equipment, merchandise, or materials necessary to or used in a trade or business.
>
> P Ramantha Aiyar's Advanced Law Lexicon 4th Edition:
>
> The stock-in-trade of a company (synonymous with inventory) i.e. a collection of raw materials or goods held by a manufacturer, wholesale, retailer or end-user, or any collection of the company's assets.
>
> Webster's Third New International Dictionary:
>
> (1) The equipment necessary to or used in the conduct of a trade or business: as (a): the goods kept for sale by a shopkeeper (b): the fittings and appliances of a workman (c): the aggregate of things necessary to carry on a business (2) Something held to resemble the standard equipment of a tradesman or business.

39. In view of the dictionary meanings referred to above, "stock-in-trade" may be construed as equipment necessary to conduct one's business. We find that the Appliances were indeed necessary for the business of the registered persons. Therefore, they constituted their stock-in-trade and did not fall within the mischief of SRO No. 578(I)/1998.

40. The learned counsel for the Revenue argued that if this Court concluded that the Appliances did not constitute a taxable supply and were not chargeable to sales tax under Section 3 (as we have already held), input tax adjustment would still not be admissible thereon on the ground that no output tax was paid. We are afraid, this argument is misconceived as there is no legal authority for the proposition that where no output tax was paid, the underlying input tax was not allowable. In its order dated 08-12-2011 passed in STA No. 2125/LB/09 and STA No. 2127/LB/09 (which have been impugned before this Court in STR No. 44/2012 & 45/2012 *supra*) the Tribunal reasoned that the aforesaid argument could not be accepted even on the basis of the ratio of the case reported as "*M/s. Mayfair Spinning Mills Ltd., Lahore v. Customs, Excise and Sales Tax Appellate Tribunal, Lahore and two others*" **(PTCL 2002 CL 115)**. In the said case, the registered person claimed input tax on goods that were destroyed in a fire. The Revenue contended that the same could not be allowed as the goods were not eventually consumed in manufacturing the taxable supplies and thus did not form a part thereof. This Court rejected the contention observing that since the goods were acquired for the purpose of taxable supplies they qualified for input tax adjustment. We see no reason to differ with the Tribunal on this finding.

41. For the above reasons, we hold that the registered persons were entitled to claim input tax in respect of the Appliances and the claim was not barred under Section 8(1)(a) or 8(1)(b). Accordingly, we answer the above question in the "**negative**".

Questions III & IV

42. Since these questions involve a common legal issue we take them up together.

43. In STA No. 130/2003, the registered person contests rejection of its claim in respect of vehicle spare parts. Learned

counsel contends that under SRO No. 578(I)/98 input tax claim is barred only in respect of vehicles. Accessories and spare parts of vehicles are not included therein. Acquisition of vehicle spare parts is distinct from the purchase of vehicle on which input tax cannot be claimed. Unless the Federal Government makes a specific exclusion by way of a notification under Section 8(1)(b), the registered person is entitled to make adjustment of input tax on purchases of these spare parts.

44. In STR No. 5/2007, input tax adjustment is claimed in respect of spare parts, tyres and batteries of delivery vans used for taxable supplies. It is contended that there is no bar to the admissibility of the said claim under SRO No. 578(I)/98 and SRO No. 490(I)/2004.

45. The learned counsel for the Revenue has vehemently opposed the aforementioned contentions raised by the learned counsel for the registered persons.

46. Section 2(12) of the Act defines "goods" as under:

> "(12) "goods" includes every kind of movable property other than actionable claim, money, stock, share and security."

47. We have already discussed that a registered person is entitled to deduct input tax paid or payable during the tax period on goods used for the purpose of taxable supplies made, or to be made, by him from the output tax that is due from him in respect of that period. This right is, however, subject to certain conditions one of them being that the Federal Government has not put them in a negative list through a notification under Section 8(1)(b). We have adumbrated to the three notifications that have bearing on the above-noted reference applications, *viz,* SRO No.578(I)/98 dated 12-06-1998, SRO No. 501(I)/2003 dated 07-06-2003 and SRO No. 490(I)/2004 dated 12-06-2004. It is observed that vehicles falling in Chapter 87 of the First Schedule to the Customs Act, 1969, are mentioned at Serial No. 1 of all these notifications. The registered person in STR No. 130/2003 and STR No. 5/2007 seeks input tax

adjustment in respect of accessories, spare parts, tyres and batteries of delivery vans. Admittedly these vehicles were used for the purpose of taxable supplies. The question that arises for determination is whether these goods would also be covered under Item No. 1 of SRO. No. 578(I)/98 referred to above. In order to answer this question we seek guidance from the case reported as "*Attock Cement Pakistan Ltd. v. Collector of Customs, Collectorate of Customs and Central Excise, Quetta and 4 others*" **(1999 PTD 1892)** decided by the Hon'ble Supreme Court. Relevant excerpt is reproduced hereunder:

> "The crucial question arising for determination is whether the accessories and parts, which are required by the Appellant for efficient and smooth running of its plant or its upkeep and maintenance fall within the definition of goods or can they be treated as acquisition of plant and machinery. The answer to this question is very simple. Under the notification referred to above, parts and accessories are not included. Even otherwise, by no stretch of imagination, the accessories or spare parts for the running and maintenance of the plant can be equated with the acquisition of machinery and plant. Such accessories and spare parts are imported under Section 79 or Section 104 of the Customs Act and, therefore, not being the plant and machinery itself but being spare parts, under Section 7(2)(ii) of the Act the Appellants are entitled to deduct the input tax from the output tax."

48. In the above judgment, the Apex Court ruled that acquisition of parts and accessories was not the same thing as plant and machinery. On the same analogy we hold that acquisition of accessories, spare parts, tyres and batteries of delivery vans which are used for the purpose of taxable supplies is different from the vehicles themselves. Therefore, they would not fall within the exclusions made by SRO No. 578(I)/98. Accordingly, we hold that they would be eligible for the benefit of input tax adjustment. Questions III & IV are answered in the "**negative**".

Question V

49. In STR No. 44/2012 the Revenue has also laid challenge to the Tribunal's holding that input tax adjustment was admissible to the registered person on vehicle batteries, furniture,

office equipment and other miscellaneous items. Learned counsel for the Revenue contended that these goods were not used for taxable supplies. As such, input tax could not be claimed with respect to them under Section 8(1)(a) read with SRO No. 480(I)/2004.

50. On the other hand, learned counsel for the registered person controverted the aforementioned contention on the ground that it was premised on a misconstruction of law.

51. We have already discussed Section 7 and 8(1)(a) and 8(1)(b) in detail. We have held that the term "purpose" used in Section 8(1)(a) has a wide connotation and would extend to all goods directly or indirectly contributing to the manufacture or production of taxable goods or taxable supplies. It would, therefore, always be a question of fact whether these goods were used as such. Neither the Tribunal nor the authorities below have recorded any finding against the registered person on this regard. In the circumstances, the input tax credit cannot be disallowed by invoking Section 8(1)(a) so far as STR No. 44/2012 is concerned.

52. As regards the application of SRO No. 490(I)/2004 it is observed that STR No. 44/2012 relates to the period 2006-2007. The said SRO which took effect from 01-07-2004 and the negative list does not include the goods that form the subject-matter of this reference application. As such, input tax cannot be disallowed thereunder.

53. For the above reasons, we answer this question in the "**affirmative**".

Question VI

54. Section 33 criminalizes various acts and omissions and makes them punishable with fine or with imprisonment or with both. On the other hand, Section 34 ordains that if a registered person does not pay the tax due or claims a tax credit or makes an adjustment which is not admissible to him under the law he shall pay additional tax on that amount at the stipulated rate.

Jurisprudence that has evolved over the years is that penalty can only be imposed where there is willful evasion of duties and taxes. In "*Pakistan, through the Secretary, Ministry of Finance, Rawalpindi etc. v. Hardcastle Waud (Pakistan) Ltd., Karachi*" **(PLD 1967 SC 1)**, while dilating on Item 3-B of Section 167 of the Sea Customs Act, 1878, the Hon'ble Supreme Court held that it was incorrect to say that the said Item created an offence of absolute liability and was an exception to the general rule that *mens rea* was an essential element in the commission of a criminal offence. It ruled that "even in the case of a statutory offence the presumption is that *mens rea* is an essential ingredient unless the statute creating the offence by express terms or by necessary implication rules it out." In "*M/s D.G. Khan Cement Company Ltd., etc. v. The Federation of Pakistan, etc*." **(PTCL 2004 CL 224)**, the Apex Court held that in order to impose additional tax it should be seen whether the evasion or non-payment of tax was willful or *malafide*. Therefore, every case should be decided on its own merits. Every default on the part of the registered person would not *ipso facto* make him liable for penalty or additional tax/default surcharge. The Revenue must establish that it was dishonest, willful or *malafide*.

55. So far as the present cases are concerned, the question of imposition of penalty under Section 33 and additional tax/default surcharge under Section 34 would not arise inasmuch as we are minded to allow the appeal and the reference applications filed by the registered persons.

Conclusion

56. For the reasons stated hereinabove, we **allow** STR No. 11/2007, STR No. 12/2007, STR No. 53/2007, STR No. 76/2007, STA No. 130/2003, and STR No. 5/2007 filed by the registered persons and **dismiss** STR No. 44/2012 and STR No. 45/2012 instituted by the Revenue.

57. Office shall send a copy of this judgment under the Seal of the Court to the Appellate Tribunal Inland Revenue, Lahore, as required by Section 47(5) of the Act.

(SHAHID KARIM)
JUDGE

(TARIQ SALEEM SHEIKH)
JUDGE

Announced in open Court on _____.

Approved for Reporting

JUDGE **JUDGE**

Schedule-B

Sr. No.	Case No.	Title	Name of Counsel
1.	S.T.A. No. 130/2003	Riaz Bottlers (Private) Limited Vs. Customs, Central Excise & Sales Tax Appellate Tribunal, Lahore etc.	1. Mr. Khurram Shahbaz Butt, Advocate, for the Appellant. 2. Mr. Sarfraz Ahmad Cheema, Advocate, for the Respondents alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR.
2.	S.T.R. No. 05/2007	Coca-Cola Beverages Pakistan Limited Vs. The Customs, Excise & Sales Tax, Appellate Tribunal etc.	1. Mr. Jahanzeb Inam, Advocate, for the Petitioner. 2. Mr. Sarfraz Ahmad Cheema, Advocate. Fpr the Respondents alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR.
3.	S.T.R. No. 12/2007	Coca-Cola Beverages Pakistan Limited Vs. The Customs, Excise & Sales Tax, Appellate Tribunal etc.	1. Mr. Jahanzeb Inam, Advocate, for the Petitioner. 2. Mr. Sarfraz Ahmad Cheema, Advocate, for the Respondents, alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR.
4.	S.T.R. No. 53/2007	Riaz Bottlers (Private) Limited Vs. Customs, Central Excise & Sales Tax Appellate Tribunal, Lahore etc.	1. Mr. Khurram Shahbaz Butt, Advocate, for the Petitioner. 2. Mr. Sarfraz Ahmad Cheema, Advocate, for the Respondents alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR.
5.	S.T.R. No. 76/2007	Riaz Bottlers (Private) Limited Vs. Customs, Central Excise & Sales Tax Appellate Tribunal, Lahore etc.	1. Mr. Khurram Shahbaz Butt, Advocate, for the Petitioner. 2. Mr. Sarfraz Ahmad Cheema, Advocate, for the Respondents alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR.
6.	S.T.R. No. 44/2012	Commissioner Inland Revenue Zone-II, Large Taxpayers Unit (LTU) Vs. Coca-Cola Beverages Pakistan Limited etc.	1. Mr. Sarfraz Ahmad Cheema, Advocate, for the Petitioner alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR. 2. Mr. Jahanzeb Inam, Advocate, for the Respondents.
7.	S.T.R. No.45/2012	Commissioner Inland Revenue Zone-II, Large Taxpayers Unit (LTU) Vs. Coca-Cola Beverages Pakistan Limited etc.	1. Mr. Sarfraz Ahmad Cheema, Advocate, for the Petitioner alongwith Dr. Ishtiaq Ahmad Khan, Director Law, FBR. 2. Mr. Jahanzeb Inam, Advocate, for the Respondents.

(SHAHID KARIM)
JUDGE

(TARIQ SALEEM SHEIKH)
JUDGE

*Shafqat Toor/**

Schedule-A

Dated: 12 June 1998

Notification
Sales Tax

S.R.O.578(i)/98. In exercise of the powers conferred by clause (b) of sub-section(1) of Section 8 of the Sales Tax Act, 1990, and in suppression of Ministry of Finance and Economic Affairs Notification No. S.R.O. 1307(I)/97 dated the 20th December, 1997, the Federal Government is pleased to specify that the following goods acquired otherwise than as stock in trade by a registered persons to be the goods in respect of which input tax shall not be claimed, namely:-

(1)	Vehicles falling in Chapter 87 of the First Schedule to the Customs Act, 1969 (IV of 1969).
(2)	Building materials.
(3)	Office equipment (excluding electronic [1][fiscal] cash registers), furniture, fixture and furnishings.
(4)	Electrical and gas appliances [2][excluding those purchased for use in taxable activity].
(5)	Telecommunication equipments.
[3][(6)	Generators and generating sets, excluding generators and generating sets of 250KVA of above, acquired by a registered manufacturer for use in manufacturer of taxable supplies.]
(7)	Wires and cables and ordinary electrical fittings. [4][excluding those used for industrial purposes].
(8)	Crockery, cutlery and utensils, etcetera, [5][excluding those purchased for providing taxable services.]
(9)	Supply of food, beverages, garments, fabrics, etcetera and consumption on entertainments.
(10)	Gifts and give-aways.
[6][(11)	P.O.L. products other than JP-1 purchased by [7](PIA and other domestic airlines) furnace oil, lubricants and greases.]
2.	This Notification shall take effect from the 1st day of July, 1998. [4]

(1) Inserted by SRO 794(1)/99 dated 30-6-1999.
(2) Inserted by SRO 501(1)/2003 dated 7-6-2003.
(3) Substituted by SRO 677(1)/2000 dated 28-9-2000.
(4) Inserted by SRO 501(1)/2003 dated 7-6-2003.
(5) Inserted by SRO 638(1)/2002 dated 19-9-2002 as amended by SRO 5011)/2003 dated 7-6-2003.
(6) Inserted by SRO 926(1)/99 dated 16-8-1999.
(7) Inserted by SRO 501(1)/2003 dated 7-6-2003.