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Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.21245/2014

Nishat Mills Limited
Versus
Federation of Pakistan etc.

J U D G M E N T


Date of Hearing	24.10.2019
Petitioners By the following Advocates:	Mr. Imtiaz Rashid Siddiqui, Mr. Shehryar Kasuri, Mr. Raza Imtiaz Siddiqui, Mr. Qadeer Kalyar, Mr. M. Hamza Sheikh and Mr. Jamshed Alam, Mr. Mansoor Usman Awan, Mr. Mehmood Ahmed, Rana Muhammad Afzal, Mr. Waseem Ahmad Malik, Mr. Tariq Rashid, Mr. Tariq Rashid, Advocate vice Mr. Shahbaz Butt, Mr. Abuzar Hussain, Mr. Asif Imran Awan, Mr. H.M. Majid Siddiqui, Mr. Muhammad Raza Qureshi, Mr. Mustafa Kamal, Mr. Khubaib Ahmad, Mr. Qadeer Kalyar, Mr. Habib ur Rehman, Mr. Khalil ur Rehman and Mr. Muhammad Asif.
Respondents By the following Advocates:	Chaudhary Ishtiaq Ahmad Khan, Additional Attorney General for Pakistan, Ms. Ambreen Moeen, DAG, Dr. Ishtiaq Ahmad Khan, Director (Law) Federal Board of Revenue, Mr. Sarfraz Ahmad Cheema, Mr. Shahzad Ahmad Cheema and Malik Abdullah Raza, Mr. Saad Amir, Mrs. Kausar Parveen, Mr. Shaigan Ijaz Chadhar, Mr. Mahmood Ahmad Chaudhary, Mr. Muhammad Anwar Khan,

	Syed Zain-ul-Abidien, Mr. Ijaz Mehmood Chaudhary, Mr. Falak Sher Khan, Mian Faisal Naseer and Mr. Farrukh Ilyas Cheema, Ms. Riaz Begum and Mr. Waseem Akbar Malik, Advocates vice Chaudhary Muhammad Zafar Iqbal, Mr. Zafar Iqbal Bhatti and Mr. Muhammad Saad Ghazi, Mr. Shahid Sarwar Chahil and Chaudhary Muhammad Saleem.
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Ayesha A. Malik J: This common judgment decides the instant petition as well as connected Petitions detailed in Schedule “A” appended with the judgment as all Petitions raise common questions of law and facts.

2. The Petitioners challenge the vires of Section 8(1)(h) and (i) of the Sales Tax Act, 1990 (“Act”) being ultra vires to the Constitution of Islamic Republic of Pakistan, 1973. The Petitioners contend that they are engaged in various different businesses, are taxpayers who are registered with the sales tax department and are entitled to input tax adjustment in terms of Section 7 of the Act. They are aggrieved by Section 8(1)(h) and (i) of the Act as input tax adjustment has been done away on goods having direct nexus with the taxable activity of the registered person. This is contrary to the provisions of the Act and the substantive right of input tax adjustment under Section 7 of the Act. It is also against the fundamental rights of the Petitioners to do their business and reduce investments.

3. Learned counsel for the Petitioners argued that the right to claim input tax adjustment from output tax of goods having a direct nexus with taxable supplies is a substantive right of a registered person and any deviation will enhance their liability and is also confiscatory in nature. The impugned provisions of the Act have denied adjustment on the goods mentioned in sub section 8(1)(h)



which are essential components of taxable activity. Learned counsel explained that input tax adjustment has been denied on goods used in, or permanently attached to, immovable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables which are directly involved in the taxable activity. The counsel explained that the upkeep and maintenance of their factories involve the use of construction material, paints electrical and sanitary fittings, pipes, wires and cables which should be allowed for the purposes of input tax adjustment as they have a direct nexus with the taxable activity. In terms of Section 8(1)(i) no input tax adjustment has been given against vehicles falling in Chapter 87 of the First Schedule to the Customs Act, 1969. Parts of such vehicles, electrical and gas appliances, furniture, furnishings, office equipment (excluding electronic cash registers) are used in the running of business thereby having a direct nexus with taxable activity. Learned counsel further argued that in the previous regime vide SRO No.450(1)/2013 dated 27.5.2013 input tax adjustment was allowed on these items and it is only by way of the impugned amendments brought in the year 2015 through the Finance Act, 2015 that input tax adjustment has been denied. It is the case of the Petitioners that this is against the mandate of the law and fundamental rights as enshrined in the Constitution of Islamic Republic of Pakistan, 1973 and that it discourages investment in the country and infringes upon their rights to do business. Learned counsel places reliance on M/s Ghandhara Nissan Diesel Ltd. v. Collector, Large Tax-Payers Unit and 2 others (PTCL 2006 CL 673), Collector of Customs Sales Tax and Central Excise, etc. v M/s Sanghar Sugar Mills Ltd., Karachi etc. (PTCL 2007 CL 565), Collector of Sales Tax v. M/s Dhan Fibre Limited (2005 PTD 2012), Treet Corporation Ltd. through Company Secretary and others v. Federation of Pakistan through Ministry of Finance and others (2014 PTD 1285) and Pakistan International

Airlines Corporation through Secretary PIA v. Pakistan through Secretary, Islamabad and 2 others (2015 PTD 245).

4. Report and parwise comments have been filed by the Respondents. Learned Additional Attorney General for Pakistan argued that there is no unqualified right to input tax adjustment; that restrictions can be imposed provided that they are reasonable and fall within the mandate of the law. He argued that tax is imposed on the value added to the taxable supply, therefore if a Petitioner is spending money on renovation or construction of its building or premises and thereby using construction material, paints electrical and sanitary fittings, pipes, wires and cables that is not value addition of the taxable supply. Consequently it is not subject to input tax adjustment. In the same way if in the process of its business it is using vehicles, electrical and gas appliances, furniture, furnishings, office equipment, this is also not adding value to the taxable supply, hence no input tax adjustment is granted. Reliance is placed on Lahore Development Authority through D.G and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739) and Supreme Tube Industries (Pvt.) Limited v. Federation of Pakistan and others (2016 PTD 2058).

5. On behalf of the Respondent Federal Board of Revenue Dr. Ishtiaq Ahmad Khan, Director (Law) argued that the Petitioners are not entitled to the relief claimed. The basic spirit of Section 7 and 8 of the Act is to refund input tax for items which are part of the supply chain. No registered person has an unfettered claim to input tax adjustment which is recovered under Section 8 of the Act. He argued that since the intention of the legislature is to deny adjustment of input tax on certain goods, the Court should uphold the stance and the intent of the legislature and not replace it with the intent of the taxpayer. He also argued that the impugned sections are neither confiscatory nor against the spirit of the Act. It simply denies input tax adjustment against goods which do not have a direct nexus with the taxable

activity and are not part of the supply chain. He stated that it does not violate any fundamental right nor does it prejudice the right to do business as argued by the Petitioners. He argued that the goods listed in Section 8(1)(h) and (i) of the Act are not supplied further by the Petitioners. These items are used for their own consumption, hence the supply chain breaks, therefore they are not entitled to input tax adjustment. Reliance has been placed on Ittehad Chemicals Limited, Lahore v. Customs, Excise and Sales Tax Appellate Tribunal, Lahore through Chairman and another (2005 PTD 2067), Messrs AMZ Spinning and Weaving Mills (Pvt.) Ltd. through Manager v. Appellate Tribunal, Customs Sales Tax and Federal Excise, Karachi (2006 PTD 2821), Messrs Syntronics Limited, Industrial Estate, Hattar v. Additional Collector (ADJ) Customs, CE & Sales Tax Peshawar (2007 PTD 749) and Messrs Dewan Cement Ltd. through Authorized Representative v. Pakistan through Secretary Ministry of Finance, Revenue Division and Ex-officio Chairman, F.B.R., Islamabad and 2 others (2010 PTD 1717). Learned counsel for the Respondents adopts the arguments.

6. Heard and record perused. Since the vires of Section 8(1)(h) and (i) of the Act have been challenged, they are reproduced hereunder for ease of reference:

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 Board with the approval of the Federal Minister incharge may, by a notification in the official Gazette, specify
- (c) the goods under sub-section (5) of section 3
- (ca) the goods or services in respect of which sales tax has not been deposited in the Government treasury by the respective supplier
- (caa) purchases, in respect of which a discrepancy is indicated by CREST or input tax of which is not verifiable in the supply chain
- (d) fake invoices;



- (e) purchases made by such registered person, in case he fails to furnish the information required by the Board through a notification issued under sub-section (5) of section 26
- (f) goods and services not related to the taxable supplies made by the registered person
- (g) goods and services acquired for personal or non-business consumption
- (h) goods used in, or permanently attached to, immoveable property, such as building and construction materials, paints, electrical and sanitary fittings, pipes, wires and cables, but excluding [pre-fabricated buildings and] such goods acquired for sale or re-sale or for direct use in the production or manufacture of taxable goods
- (i) vehicles falling in Chapter 87 of the First Schedule to the Customs Act, 1969 (IV of 1969), parts of such vehicles, electrical and gas appliances, furniture, furnishings, office equipment (excluding electronic cash registers), but excluding such goods acquired for sale or re-sale.

7. The Petitioners claim that they have a substantive right for input tax adjustment under Section 7 of the Act which is reproduced hereunder:

Determination of tax liability. (1) Subject to the provisions of sections 8 and 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, excluding the amount of further tax under sub-section (1A) of section 3, 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.

(2) A registered person shall not be entitled to deduct input tax from output tax unless,

- (i) in case of a claim for input tax in respect of a taxable supply made, he holds a tax invoice in his name and bearing his registration number, in respect of such supply for which a return is furnished

Provided that from the date to be notified by the Board in this respect, in addition to above, if the supplier has not declared such supply in his return or he has not paid amount of tax due as indicated in his return;

- (ii) in case of goods imported into Pakistan, he holds bill of entry or goods declaration in his name and showing his sales tax registration number, duly cleared by the customs under section 79, section 81 or section 104 of the Customs Act, 1969 (IV of 1969);

- (iii) in case of goods purchased in auction, he holds a treasury challan, in his name and bearing his registration number, showing payment of sales tax;

(3) Notwithstanding anything in sub-sections (1) and (2), the Board with the approval of the Federal Minister-in-charge may, by a special order, subject to such conditions, limitations or restrictions as may be specified therein allow a registered person to deduct input tax paid by him from the output tax determined or to be determined as due from him under this Act.

(4) Notwithstanding anything contained in this Act or rules made there under, the Board with the approval of the Federal Minister-in-charge may, by notification in the official gazette, subject to such conditions, limitations or restrictions as may be specified therein, allow a registered person or class of persons to deduct such amount of input tax from the output tax as may be specified in the said notification.

8. A bare reading of the Section 7 makes it clear that the said Section is subject to the provisions of Section 8 of the Act, therefore there is no unqualified right to claim input tax adjustment as all such adjustments are subject to the restrictions given in Section 8 of the Act. Section 7 requires that for the purposes of determining the tax liability with respect to taxable supplies made during a tax period, a registered person can deduct the sales tax paid at the time of sales (output tax) from the sales tax paid at the time of purchase (input tax) as this differential is the value added to the price of the goods. In this way taxable supplies are subject to sales tax, when bought and sold, in the supply chain through a series of different transactions. It is an ongoing process where each person in the supply chain pays sales tax. Section 3 is the charging section, which requires a registered person who makes taxable supplies, in the course of a taxable activity, to pay sales tax. So sales tax is paid when a taxable supply is made in furtherance of a taxable activity, meaning thereby that sales tax is to be paid where the transaction falls within the ambit of supply of goods in furtherance of its business.

9. The entire dispute revolves around the question whether the goods defined in Section 8(1)(h) and (i) are taxable supply such that it may be deemed as value addition for the purposes of collecting input

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the same. Since this issue stands decided, hence the Petitioners are entitled to the benefit of the said judgments. Therefore WP Nos.36780/15 and 36781/2015 are disposed of with the direction to Respondent No.2 for consideration of input tax adjustment for the relevant period.

13. Under the circumstances, no case for interference is made out. The petitions stand **dismissed**.

Sd/- (AYESHA A. MALIK)
JUDGE

Approved for Reporting

Sd/- AYESHA A. MALIK.

JUDGE

Blue slip added.

Allah Baksh*

18/11/15

TRUE COPY
In Case No.
Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

Schedule-A

Details of Writ Petitions mentioned in judgment
Dated 24.10.2019 passed in WP No.21245/2014

Sr.No.	WP Nos.	Parties Name
1	21245/14	Nishat Mills Limited v. Federation of Pakistan etc
2	107636/14	Sitara Fabrics Limited v. Federation of Pakistan etc
3	9552/15	Maple Leaf Cement Factory etc v. Federation of Pakistan etc
4	14882/17	Amer Cotton Mills etc vs. Federation of Pakistan etc
5	14507/17	Diamond Farbics Limited etc v. Oil and Gas Regulatory Authority etc
6	14505/17	Reliance Cotton Spinning Mills Ltd etc v. Federation of Pakistan etc.
7	14496/17	Saphire Textile Mills Ltd etc v. Federation of Pakistan etc
8	14490/17	Saphire Finishing Mills Ltd etc v. Federation of Pakistan etc
9	14437/17	Saphire Fibres Ltd etc v. Federation of Pakistan etc
10	36394/17	Feroze 1888 Mills Limited v. Federation of Pakistan etc
11	10450/17	Ellcot Spinning Mills Ltd v. Federation of Pakistan etc
12	21537/14	DG Khan Cement Company Limited v. Federation of Pakistan etc
13	80530/17	Riaz Textiles Mills (Private) Limited v. Federation of Pakistan etc
14	216703/18	Loft Commercials Ltd v. Federation of Pakistan etc
15	235688/18	Ahmad Fine Textile Mills Ltd. etc v. Federation of Pakistan etc
16	237162/18	Lalpir Power Ltd etc v. Federation of Pakistan etc
17	202513/18	Prosperity Weaving Mills Ltd etc v. Federation of Pakistan etc
18	439/19	Nishat Linen Pvt. Ltd v. Federation of Pakistan etc
19	34689/18	Shahtaj Textile Limited v. Federation of Pakistan etc
20	218496/18	Ultra Pack (Pvt.) Ltd v. Federation of Pakistan etc
21	224459/18	Al Rahim Textile Industries v. Federation of Pakistan etc
22	226520/18	SM Food Makers Pvt. Limited v. Federation of Pakistan etc
23	227035/18	Outfitters Stores v. Federation of Pakistan etc
24	230643/18	Nishat Chunian Limited v. Federation of Pakistan etc

25	239525/18	The Crescent Textile Mills Mills Limited v. Federation of Pakistan etc
26	245304/18	Etihad Power Generation Limited v. Federation of Pakistan etc
27	245652/18	Ellcot Spinning Mills Ltd etc v. Federation of Pakistan etc
28	247480/18	Nagina Cotton Mills Ltd v. Federation of Pakistan etc
29	250426/18	Rupafil Ltd etc v. Federation of Pakistan etc
30	250996/18	Art Vision Pvt. Ltd v. Federation of Pakistan etc
31	255905/18	Arshad Textile Mills Ltd v. Federation of Pakistan etc
32	255906/18	Arshad Corporation (Pvt.) Ltd v. Federation of Pakistan etc
33	256685/18	Mayfair Ltd v. Federation of Pakistan etc
34	257094/18	Zephyr Textile Limited v. Federation of Pakistan etc
35	151007/18	Alhamd Corporation (Pvt.) Ltd v. Federation of Pakistan etc
36	3642/15	Fatima Sugar Mills Limited v. Federation of Pakistan etc
37	36780/15	Coca Cola Beverages Pakistan Limited v. Federation of Pakistan etc
38	36781/15	Coca Cola Beverages Pakistan Limited v. Federation of Pakistan etc
39	31045/19	Masood Textile Mills Ltd v. Federation of Pakistan etc
40	2084/15	Fazal Cloth Mills Ltd v. Federation of Pakistan etc
41	5728/15	Fazal Cloth Mills Ltd v. Federation of Pakistan etc
42	18789/19	Kamal Limited v. Federation of Pakistan etc
43	30605/19	Ahmed Fine Weaving Ltd v. Federation of Pakistan etc
44	206152/18	Ashraf Sugar Mills v. Federation of Pakistan etc


(Ayesha A. Malik)
Judge

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IN THE LAHORE HIGH COURT, LAHORE

21245
Writ Petition No. _____/2014

Nishat Mills Limited, through its Chief Financial Officer Mr. Badar-ul-Hassan, Nishat House 53-A, Lawrence Road, Lahore.

.....Petitioner

Versus

- DAG
- R
1. The Federation of Pakistan, through Secretary Ministry of Finance, Economic Affairs, Statistics and Revenue (Revenue Division), Federal Secretariat, Islamabad.
 2. The Federal Board of Revenue, through its Chairman, 5-Constitutional Avenue, Islamabad.
 3. The Member Inland Revenue, Federal Board of Revenue, 5-Constitutional Avenue, Islamabad.
 4. The Chief Commissioner Inland Revenue, Large Taxpayers Unit (LTU), Tax House, Nabha Road, Lahore.

.....Respondents

CONSTITUTIONAL PETITION under Article 199 of the
Constitution of the Islamic Republic of Pakistan, 1973.

Respectfully Sheweth:

The following questions of immense public importance arise in this petition:

*Whether clauses "(h)" and "(i)" incorporated in section 8 subsection 1 of the Sales Tax Act 1990 ("Act"), by section 4 of the Finance Act 2014 ("**Impugned Legislation**") is ultra vires the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**").*

- A) *Whether section 8 (1) (h) and (i) of the Act are against the fundamental rights as contained under the Constitution?*
- B) *Whether the denial to allow an adjustment of input tax, under the Impugned Legislation, on items used in the establishment/operation of the facility/premises of the registered person is confiscatory in nature and thus ultra-vires the fundamental rights enshrined under the Constitution?*

