

IN THE LAHORE HIGH COURT, LAHORE

From

The Addl. Registrar (Judl)
Lahore High Court, Lahore.

To



1. **The Federal Board of Revenue**, through its Chairman, 5 - Constitution Avenue, Islamabad.
2. **The DG (Retail)/Chief(POS)**, Federal Board of Revenue, Operation Wing, 5 - Constitution Avenue, Islamabad.
3. **The Chief Commissioner Inland Revenue**, Corporate Tax Office, Syed Mauj Darya Road, Anarkali Bazaar, Lahore.
4. **The Commissioner Inland Revenue**, Corporate Tax Office, Enforcement 1, Tax House, Syed Mauj Darya Road, Anarkali Bazaar, Lahore.
5. **The Federation of Pakistan** through Secretary Revenue, Pak Secretariat, Islamabad.

30 JUN 2022

Chief (L-I)
S-Lit(SC)
S(A&A)
S(A)
Chief (L-III)
S-Lit(SC)
S(L-DT)
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Chief (L-III)
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S(TO-II)
PS

S. (He-lit)
Pl. endorse a copy to M/IR-ops and also place on website - report compliance.

SUBJECT: - WRIT PETITION NO:-

23132 22

Sir,

In continuation of this Court letter no _____ dated _____

I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 07-6-22 passed in the above noted case.

Your's faithfully

ASSISTANT REGISTRAR (WRIT)
FOR ADDL. REGISTRAR (JUDL.)

JCA already for 17/6/22

Scanned

Received in M(L) Office on 04 JUL 2022

Received in Chairman's Sectt. on 30 JUN 2022

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ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE.
JUDICIAL DEPARTMENT

W.P. No. 23132 of 2022

Hyundai Nishat Motor (Pvt.)
Ltd.

Versus

FBR etc.

Sr. No. of Order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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07. 07.06.2022. M/s. Imtiaz Rashid Siddiqui, Sheheryar Kasuri and Raza Imtiaz Siddiqui, Advocates for the petitioner
Mr. Zain ul Abideen Bukhari, Advocate for the respondent-FBR
Mr. Azmat Hayat Khan Lodhi, Assistant Attorney General for Pakistan

This writ petition calls into question clauses 3 and 6 of the clarification issued by the Board of Revenue on 15.03.2022 (the **Clarification**).

2. The name of the petitioner has been mentioned in Sales Tax General Order No.9 of 2022 dated 04.02.2022, which has been issued in respect of Tier-I retailers who are required to be registered as such with the Sales Tax Department in terms of section 3 (9A) of the Sales Tax Act, 1990 (the **Act**).

3. The petitioner is aggrieved by clauses 3 and 6 of the Clarification which reads as under:

3. If a taxpayer (T-IR) was to be integrated as a T-IR and its name got included in a STGO and got integrated after that, its 60% input tax previously disallowed (during the period/month its name was included in the STGO), will not be allowed reversal in any circumstances.

6. If a taxpayer is included in a STGO and is not issued an exclusion certificate for whatever reason, its 60% input tax disallowance / reduction will be permanent and it shall continue to be disallowed in each successive month.

4. Learned counsel submits that the clarification in so far as it attaches permanency to disallowance of 60% input tax is illegal and violative of the provisions

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contained in section 8B (6) of the Act. He also submits that input tax is an asset of the petitioner which can at best be carried forward enabling the petitioner to reclaim it in succeeding months. It is furthermore submitted that the Director General (Retail)/Chief (POS)/respondent No.2 had no authority under the law to issue the Clarification.

5. Report and parawise comments have been filed by respondents in which it is stated that the “.... taxpayer’s 60% disallowance of input tax will only be to the extent of the period it willingly did not integrate required as per the provisions of Clause 43A of Section 2 of Sales Tax Act, 1990 introduced vide Finance Act, 2017. The disallowance of input tax shall be restricted to 60% as per the provisions of sub section 6 of Section 8B of the Sales Tax Act, 1990.” Learned counsel for the respondents submits that clauses 3 and 6 of the Clarification are in conformity with the provisions of section 8B (6) of the Act.

6. Arguments heard, record perused.

7. Section 8B (6) of the Act reads as under:

In case a Tier-I retailer does not integrate his retail outlet in the manner as prescribed under sub-section (9A) of section 3, during a tax period or part thereof, the adjustable input tax for whole of that tax period shall be reduced by [60%].

8. The text of section 8B (6), on the face of it, simply directs that the adjustable input tax of a Tier-I retailer who has not integrated its retail outlet in the prescribed manner shall be reduced by 60% for the tax period or part thereof it remains in default. Does this provision stipulate that the Tier-I retailer shall not be entitled to such reduced input tax in perpetuity? The

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answer is in negative. In somewhat similar circumstances, section 8B(1) also placed a restriction on the registered person by disallowing input tax adjustment in excess of ninety per cent of the output tax for that tax period. The 10% input tax, by virtue of this provision, simply carries forward and can be claimed by the taxpayer in the next tax period as was held by this Court in the case of Supreme Tube Industries (Pvt.) Limited. Versus Federation of Pakistan etc. (2016 PTD 2058) in which the vires of section 8B was under challenge. This Court while repelling the said challenge made the following observations.

The right to claim adjustment under Section 7 has been made subject to Section 8B of the Act. This means that any entitlement under section 7 will be refunded up to 90% and 10% of the adjustable amount will be carried forward into the next month.

9. On plain construction, section 8B(6) simply delays the input tax adjustment up to 60% for the tax period the Tier-I retailer remained in default in integrating its retail outlet(s) with the computerized system of the Federal Board of Revenue. The only logical outcome of this construction is that such reduced input tax shall be carried forward enabling the Tier-I retailer to claim it subsequently in the next tax period. On this interpretation, the Clarification to the extent it disallows permanently the input tax adjustment of a Tier-I retailer for the period it did not integrate its retail outlet(s) with the computerized system of Federal Board of Revenue is violative of section 8B(6) of the Act.
10. Needless to point out that where the Act prohibited a taxpayer from claiming input tax, it stated so in express words. Section 8(1) is one such provision

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where the Act provided the eventualities in which a registered person is not entitled to reclaim or deduct input tax. Similarly, in circumstances provided for in section 73(2), a buyer is not entitled to claim input tax credit, adjustment or deduction, or refund, repayment or draw-back or zero-rating of tax under the Act.

11. It is an admitted fact that the petitioner's name was included in Sales Tax General Order No.9 of 2022 dated 04.02.2022 and it integrated its outlets with the system of Federal Board of Revenue in March 2022. The petitioner thus remained in default for the months of February and March, 2022 and thus will not be allowed to claim adjustment of input tax up to 60% for that period. This input tax shall, however, be carried forward enabling the petitioner to claim it in the subsequent tax period.

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12. For the reasons stated above, this writ petition is **allowed** and the Clarification insofar as it permanently clogs the right of the Tier-I retailer to claim input adjustment up to 60% for the period it remains in default in integrating its outlet(s) with the computerized system of Federal Board of Revenue is declared to be illegal and ultra vires to section 8B(6) of the Act.

sd/
(Shams Mehmood Mirza)
Judge

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TRUE COPY
17/06/22
Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 23132/2022

Hyundai Nishat Motor (Pvt.) Limited, 1 - B Aziz Avenue, Canal Bank, Gulberg V, Lahore through its duly authorised officer Mr. Norez Abdullah, Chief Financial Officer.

..... Petitioner

Versus

1. **The Federal Board of Revenue**, through its Chairman, 5 - Constitution Avenue, Islamabad.
2. **The DG (Retail)/Chief(POS)**, Federal Board of Revenue, Operation Wing, 5 - Constitution Avenue, Islamabad.
3. **The Chief Commissioner Inland Revenue**, Corporate Tax Office, Syed Mauj Darya Road, Anarkali Bazaar, Lahore.
4. **The Commissioner Inland Revenue**, Corporate Tax Office, Enforcement 1, Tax House, Syed Mauj Darya Road, Anarkali Bazaar, Lahore.
5. **The Federation of Pakistan** through Secretary Revenue, Pak Secretariat, Islamabad.

..... Respondents

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

Respectfully submitted:

1. The Petitioner, a manufacturer/producer of vehicles under the brand name of 'Hyundai', is tax compliant and registered as a manufacturer with the Respondent Department with STRN 3277876137634.
2. In the course of its business operations, the input tax paid by the Petitioner vis-à-vis the imported and/or local parts used as inputs for the production of the vehicles, undergoes input-output equation and is duly reported on the computerized system installed and regulated by the Respondent Federal Board of Revenue ("Board").