

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Reference No.01/2010.*

*Date of institution 15.01.2010.*

*Date of decision 12.11.2022.*

Raja Auto-cars Ltd. having its registered office at Tariqabad Bhimber Road, through Muhammad Fazil Mirza Finance Manager Tariqabad Complex, Mirpur.

*....Petitioner*

*Versus*

1. Collector Sales Tax, Azad Jammu and Kashmir Council, Mirpur.
2. Sales Tax Appellate Tribunal, Muzaffarabad.
3. AJK Council through its Chairman Sector F-5/2, Islamabad.
4. Azad Govt. of the State of Jammu & Kashmir through its Chief Secretary, Muzaffarabad.

*.... Respondents*

*REFERENCE APPLICATION U/S 47 OF SALES TAX ACT, 1990.*

***Before:-***

***Justice Mian Arif Hussain, J.***  
***Justice Syed Shahid Bahar, J.***  
**(DB)**

**PRESENT:**

Mian Sultan Mahmood, Advocate for the petitioner.  
Hajid Muhammad Afzal, Advocate for respondents.

**Judgment:**

***(Justice Syed Shahid Bahar, J.)*** Through the instant reference filed under Section 47 of Sales Tax Act, 1990, the impugned order dated 20.10.2009 passed by Sales Tax Appellate Muzaffarabad, has been assailed by formulating some questions of law.

Precise facts of the case are that the company of the applicant is registered under the Sales Tax Act. Audit Team of the Department of Central Excise & Sales Tax Azad Jammu & Kashmir

Council conducted audit of Applicant/petitioner' company for the period of 1996 to 2000 and submitted the Report on 11.01.2001 to the department, whereupon the respondent No.1-Collector of Sales Tax, on 01.01.2004 issued a show cause notice in exercise of powers conferred on him under Section 11 of the Sales Tax Act, 1990 read with Section 45 thereof for rebuttal of the allegations contained therein. It is contended that the applicant's company duly submitted its representation by way of parawise written reply of the show cause notice. It is averred that the provisions of Section 11 of the Act (existing on the relevant time) required that the order under this Section shall be made within ninety days of the issuance of Show Cause Notice or within such extended period as the Collector or as the case may be, the Collector (Adjudication) may for reasons to be recorded in writing, fix, provided that such extended period shall in no case exceed one hundred and twenty days, hence, the respondent No.1-Collector of Sales Tax was bound to adjudicate the matter, consequent to the show cause notice within limitation period in the Section and, in case of extension of limitation, to give reasons in writing for such extension. But the respondent No.1 on 24.06.2004, illegally and without any lawful authority or jurisdictional competence passed order against the applicant/petitioner/company partly rejecting the representations made by it on the issue of adjustment of input tax and thereby created huge demand on account of principal amount, Additional Tax and Penalties total Rs.70,963,557/-. The order of Collector was

challenged before the learned Tribunal, who after hearing the case, set-aside the adjudication order dated 24.06.2004 and case was remanded to the Collector Central Excise and Sales Tax (Adjudication Authority) by providing an opportunity of being heard to the applicant, vide impugned order dated 20.10.2009.

The following question of law has been raised and emphasized by the learned counsel for the petitioner:-

Whether in view of the facts, the law and circumstances of the case, the honorable Sales Tax Appellate Tribunal, after having held that the order under appeal (Order No.CE&ST/ADJ/C-5/2004 dated 12.01.2004) was not passed within limitation and no proper and sound reasons was recorded by the adjudication authority for extended period, was justified in framing issues on merits and remanding the case to the Adjudication Authority for passing a fresh order on merits, particularly when the Adjudication Authority has already lost the powers/ jurisdiction in the matter under provisions of the Act?

Mian Sultan Mahmood, the learned counsel for the petitioner contended that the applicant's company is aggrieved by the judgment dated 20.10.2009 passed by the Sale Tax Appellate Tribunal of Azad Jammu & Kashmir Council, wherein the learned Tribunal by accepting the appeal filed by the applicant/petitioner remanded the mater back to the Sales Tax Authorities for its adjudication afresh. The learned counsel prayed that by accepting this reference application, the question of law mentioned above may be answered and the judgment dated 20.10.2009 passed by the Sales Tax Appellate Tribunal Azad Jammu & Kashmir Council may be modified.

Haji Muhammad Afzal, the learned counsel appearing on behalf of respondents defended the impugned judgments on all counts and further contended that the learned lower fora have rightly adjudicated the matter and arrived at just conclusion. He lastly prayed for dismissal of the reference with costs.

Arguments heard. Record perused.

Be that as it may it is incumbent upon the relevant authorities at the eve of initiating any sort of proceedings quo levies of sales tax, particularly while creating additional tax, to mull over the matter and to ascertain that prior to Finance Act, 1998 what was the position to claim the adjustment of income tax in relevant period as envisaged in the Sales Tax Act, 1990 and thereafter ascertain and fix the current liabilities in accordance with law by explicitly exposing cogent reasons leaving no iota of discrimination or pick and choose, in order to ensure the imposition of additional tax completely in line with the scheme of section 34 and other enabling sections of the Sales Tax Act.

The Tribunal has rightly dealt with the matter in accordance with law by addressing all the points agitated in the memo of the appeal. No question of law arises out of the decision of the Tribunal and in our estimation the reference application in hand is without substance, thus, the question of law is answered in negative manner.

Before parting with the decision it is noteworthy that denovo proceedings quo additional tax or for that matter any charge

can be initiated only in line with the scheme of law and keeping in view the findings of the Tribunal (exposed in the instant matter).

Nub of the above discussion is that the instant reference application stands dismissed. Copy of this decision be sent to Registrar Sales Tax Appellate Tribunal, Muzaffarabad.

Muzaffarabad,  
12.11.2022.

-Sd-  
**JUDGE**  
(A)

-Sd-  
**JUDGE**  
(S)

Note:-

Judgment is written and duly signed. Office is directed to send this file to Circuit Mirpur, forthwith and Deputy Registrar Circuit Mirpur is directed to intimate the parties or their counsel, after due notices.

-Sd-  
**JUDGE**  
(A)

-Sd-  
**JUDGE**  
(S)