

2017 P T D 1036**[Peshawar High Court]****Before Muhammad Younis Thaheem, J****CHAIRMAN, CENTRAL BOARD OF REVENUE, ISLAMABAD and another****Versus****GENERAL MANAGER and 3 others**

Cr.A. No.74-M with Cr. M. No. 69-M of 2016, decided on 16th August, 2016.

Khyber Pakhtunkhwa Consumers Protection Act (VI of 1997)---

---Ss. 13 & 17---Sales Tax Act (VII of 1990), S.5---Constitution of Pakistan, Art. 247(3)---Sales tax, recovery of---Non-extension of law to certain area---Effect---Refund/adjustment of tax collected---Authorities were aggrieved of the judgment passed by Trial Court restraining them from recovery of General Sales Tax in supply of Sui Gas bills issued in the area of Swat---Validity---Consumer Court had jurisdiction to entertain and decide matter relating to General Sales Tax, being not a matter relating to tax only---General Sales Tax was included in Sui Gas utility bills of consumers, in the area where Sales Tax Act, 1990, was not extended by Parliament---Authorities were bound to return recovered General Sales Tax to domestic consumers or the same could be adjusted in their monthly gas utility bills---High Court declined to interfere in the judgment passed by Trial Court---Appeal was dismissed in circumstances.

Ishtiaq Ahmad for Appellants.

Syed Ali Haider and Usman Ali for Respondent No.2.

Date of hearing: 16th August, 2016.

JUDGMENT

MUHAMMAD YOUNIS THAHEEM, J.---The appellants had challenged the order/judgment dated 26.01.2016 passed by learned Judge of Consumers Protection Court/Zila Qazi/District and Sessions Judge, Swat with the following prayer:--

"On acceptance of this appeal, the impugned order of judge consumers protection Court/Zila Qazi/District and Sessions Judge, Swat dated 26.01.2016 may kindly be set aside and the order may be declared illegal, without lawful authority and of no legal effect while the application/complaint/execution application of the consumer/applicant respondent No. 4 may be dismissed with cost throughout or any other order deemed proper in the matter may also be passed."

2. Brief facts of the case are that respondents Nos.2 and 3, filed a complaint under section 13 of the Khyber Pakhtunkhwa Consumer Protection Act, 1997 against the Area Manager/General Manager S.N.G.P.L and 9 others to the effect that respondents shall not recover general sales tax through their monthly sui gas utility bills other than consumed units of gas and shall pay-back/return the already received G.S.T. to the consumers or adjust the same in their utility bills with other ancillary reliefs. The respondents submitted their replies to the complaint, after proceedings and hearing, the complaint was accepted vide order dated 17.07.2012 by the Judge of Consumers Protection Court, Swat and collection of General Sales Tax through sui gas utility bills from the consumers was declared against the law and appellants and respondent No. 1 were directed to not impose G.S.T on consumers in Swat and it was further held that already received G.S.T. from the consumers of S.N.G.P.L will not be paid-back or adjusted in their bills, as it would open a new Pandora-box.

3. The present appellants filed appeal by challenging the order dated 17.07.2012 of learned Judge of Consumers Protection Court Swat before this Court, which after hearing was also dismissed on 29.10.2013. The present appellants did not challenge the order of this Court dated 29.10.2013 and the same had attained finality.

4. The respondent No. 3, Ali Haider filed a miscellaneous application before the learned Judge of Consumers Protection Court, Swat on 06.6.2014 to the effect that the respondents are violating the order of learned Consumers Court, Swat dated 17.7.2012, so, be proceeded against and be punished with further prayer that the respondents after the order dated 17.7.2012 had imposed General Sales Tax (G.S.T.) three times, which shall be returned to the consumers or be adjusted in their utility bills.

5. The present appellants and other respondents filed their replies as well as objection petition dated 29.6.2015. Similarly, the respondent No.3, Ali Haider also filed an application to the effect that as the respondents have disobeyed and violated the order of Consumers Court, Swat dated 17.7.2012 and had received G.S.T., after order dated 17.7.2012 along with fine, so, proceedings be initiated against them and be punished in accordance with law. Likewise, received G.S.T., after order dated 17.7.2012 be paid-back or adjusted in the monthly sui gas bill of consumers, so, the present respondent No. 3 also filed other application dated 05.8.2015 to the effect that the amount in shape of G.S.T. and fine, which has been illegally imposed and received by the respondents be returned to the consumers or be deposited with the Court or be adjusted to their bills.

6. The learned counsel for the appellants argued that S.N.G.P.L. had deposited the already collected/received G.S.T with Federal Board of Revenue, hereinafter called F.B.R. (previously Central Board of Revenue, C.B.R.), so, requested for the dismissal of the application filed by Ali Haider (consumer), in whose favour the order dated 17.7.2012 has been passed. Learned counsel further added that the complainant has no 'locus standi' and 'cause of action' to file the present execution petition or application dated 05.08.2015, as he for his redressal had not approached the Federal Board of Revenue (F.B.R) directly, instead had filed the said complaint in the Consumers Court, who has got no jurisdiction about the tax matter. He further argued that there are no provisions under the law about re-fund or exemption of G.S.T, therefore, the execution petition was not maintainable, however, he admitted this fact categorically that General Sales Act, 1990 has not been extended to Provincially Administered Tribal Areas (PATA) including District Swat. He also contended that as gas is not local product of the area and its supply is made from other area, which is not part and parcel of PATA, so, S.N.G.P.L levied G.S.T. and afterward had deposited it to the F.B.R so it had correctly included G.S.T. in the gas utility bills of the consumers. Learned counsel added that however, G.S.T w.e.f. 31.3.2014 has not been levied on or collected though the Sui Gas bills from the consumers of PATA area by S.N.G. P.L. He argued that the matters of G.S.T. and its collection etc are clearly barred in any Court other than the forum provided in the General Sales Tax, 1990. Lastly prayed for the annulment of order/judgment dated 17.7.2012 and setting aside of impugned order dated 26.01.2016.

7. The learned counsel for the S.N.G.P.L. supported the arguments of learned counsel for the appellants and further added that the previous gas bills from the date of installations including G.S.T were levied and onward paid to the F.B.R, so that was the reason GST was included in the bills and were recovered from consumers, but after 31.3.2014 S.N.G.P.L. is not including G.S.T in the monthly bills of the consumers, however, he added that so far as the matter of re-fund of previous paid and received G.S.T or its adjustment after order dated 17.7.2012 till 30.3.2014 in the coming bills is concerned, whenever it would be received back by S.N.G.P.L from the F.B.R., they will adjust it in the bills of consumers relating to PATA area.

8. The respondent No. 3, Ali Haider on his behalf and as an Advocate for the respondent No. 2 while arguing his case, submitted that Sales Tax Act, 1990 is admittedly not extended to PATA including District Swat and the imposition of G.S.T. in the utility bills of domestic gas consumers is against the law, ultra vires and against constitution and in this respect they being consumers had filed a complaint in the Court of competent jurisdiction i.e. consumers court, which after proceedings was allowed vide order dated 17.7.2012 and against the same order/judgment of learned Consumers Court, the present appellants, filed appeal under section 17 of Khyber Pakhtunkhwa Consumers Protection Act, 1997 before this Hon'ble Court, which was dismissed on 29.10.2013, while criminal appeal, under section 17 of Act ibid bearing No.68/2012 filed by S.N.G.P.L is still pending adjudication before this Court, which is fixed today for arguments along with instant appeal. He further added that the arguments advanced by learned counsel for the appellants are without force as they have not raised such

like objections before the learned Consumers Court as well as before this Hon'ble Court during the hearing of Criminal Appeal No. 165-M of 2012 which has been dismissed by this Court vide order/judgment dated 29.10.2013 and same has not been challenged further. He further contended that the respondent No. 1 i.e. S.N.G.P.L. had not properly assisted this Court and had concealed the pendency of his Cr.A. No.68-M of 2012 before this Court, which could have been decided along with Criminal Appeal No. 165-M of 2012, however, he referred the judgment of this Court dated 29.10.2013, which has binding effect and prayed for dismissal of the instant criminal appeal.

9. Arguments of learned counsel for the parties heard and record perused with their able assistance.

10. From the perusal of the record, it reveals that initially the areas now called PATA were in form of Princely States of Swat Dir, Chitral and Malakand Agency, after merger into Federation of Pakistan were managed and administered by provincial government of Khyber Pakhtunkhwa, so, were named as Provincially Administrated Tribal Areas (PATA). The policy of government remained such either to give benefits or incentives to the people of the areas or due to some other reason like earthquake, flood and war on terrorism, so many laws like Custom Act, sale tax Act had deliberately were not extended to this area of Pakistan in view of Article 247 (3) of the Constitution of Islamic Republic of Pakistan, 1973 by the legislature due to its worst economic conditions, so, Sales Tax Act, 1990, Custom Act along with so many other laws were not extended to PATA and FATA, therefore, the levy and receiving of G.S.T. from the consumers of Natural gas through their utility bills was rightly declared illegal by the learned Consumers Court concerned. It further reveals from the perusal of record that the complainant had filed a complaint under section 13 of the Consumers Protection Act, 1997 as a 'Consumer' by challenging the imposition/ inclusion of G.S.T in their gas utility bills and consumers of the area, which was duly contested by the present appellants and order dated 17.7.2012 of learned Consumers Court, Swat was challenged before this Court, which was maintained and appeal filed by the present appellants was dismissed vide order dated 29.10.2013 and the said order was not further challenged, thus, it has attained finality.

11. Now the questions for determination before this Court is as to whether through objection petition, the present appellants can seek the remedy by declaring the impugned order dated 26.01.2016 as null and void or can raise any objection about jurisdiction of the Consumers Court by attacking order dated 17.7.2012 with the contention that the consumer i.e. the complainant has not invoked the forum provided by the Sales Tax Act, 1990. The other question which need to be dealt with by this Court is that as to whether the recovered G.S.T., after order dated 17.7.2012 is refundable or re-adjusted in the bills of the consumers of the area or not.

12. So far as the question of the legality of order dated 17.7.2012 is concerned, suffice it to say, that the present appellants contested the complaint before the learned Consumers Court and had challenged the order of said Court by way of appeal before this Court, which has been dismissed on 29.10.2013. As per Khyber Pakhtunkhwa (NWFP) Consumers Protection Act, 1997, the definitions of complainant, consumer and service are reproduced as under:--

S. 2: In this Act, unless there is anything repugnant in the subject or context,

(a) ..

(b) "Complainant" means

(i) a consumer;

(ii) a voluntary consumer's association subject to such restrictions as may be prescribed and

(iii)

(C) "Consumer" means any person who:---

(i) buys goods for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purposes; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.

..

(n) "Service" includes services of any description which made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy, [including gas and petrol, water telephone] boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services;

(underlining to emphasis).

13. So, in view of the definition of the Act ibid gas utility bills pertaining to services comes within the ambit of Khyber Pakhtunkhwa Consumers Protection Act, 1997, so, the arguments of learned counsel for the appellants especially when the judgment of this Court dated 29.10.2013 has attained finality has no force that Consumers Court had got no jurisdiction to entertain and decide the matter relating to GST, as it is not a matter relating tax only but GST is included in the sui gas utility bills of Consumers, in the area where Sale Tax Act, 1990 has not been extended up till now by the Parliament.

14. The other question for determination before this Court to the effect that as to whether the previous recovered G.S.T. from the consumers of Swat can be refunded by the S.N.G.P.L to its consumers and S.N.G.P.L. from F.B.R, so, under the law when Sales Tax Act is not extended, in that eventuality, S.N.G.P.L. is bound to return the recovered GST after order dated 17.7.2012 to the domestic natural gas consumers or the same be adjusted in their monthly gas utility bills. It is admitted by both the parties that w.e.f. 31.3.2014, S.N.G.P.L. is not including G.S.T in the monthly gas utility bills of domestic consumers of the area PATA and is not realized by the F.B.R from S.N.G.P.L. thus, the application for implementation of order dated 17.07.2012 for return or adjustment of received G.S.T. by the S.N.G.P.L, after order dated 17.7.2012 up to 31.3.2014 is a justifiable application, which is a liability on the appellant as well as respondent No.1 however, vide order/judgment dated 17.7.2012, the consumers/respondents Nos. 2 and 3 cannot claim the return of GST from the date of installation of their connections till 17.7.2012, as they have not challenged the findings about it and it had also attained finality for the consumers/respondents. So, this Court is of the view that no illegality or jurisdictional error has been committed by the learned Consumers Court while passing the impugned order dated 26.01.2016.

15. Thus, in view of what has been discussed above, the order passed by Consumers Court dated 26.01.2016 is well-reasoned, thus, the same is maintained, the instant criminal appeal is hereby dismissed and learned consumers Court is directed to proceed further for the implementation of order dated 17.7.2012 in view of order dated 26.01.2016 in accordance with law.

MH/3/P Appeal dismissed.

;