HCJD/C-121

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

1. S.T.R. No.16 of 2017

Commissioner Inland Revenue
Versus
M/s Airblue Ltd., Islamabad

2. I.T.R. No.18 of 2017

Commissioner Inland Revenue
Versus
M/s Airblue Ltd., Islamabad

Applicant by	**:**	**Mr. Hassan Ali Khan, Advocate.**
Respondent by	**:**	**Mr. Shaheer Bin Tahir, Advocate.**
Date of Hearing	**:**	**02.10.2025**

Babar Sattar, J.:- Through this judgment we will decide the afore-titled references as they involve overlapping questions of law.

2. Through these references the tax department has impugned judgments of the Appellate Tribunal Inland Revenue **("Tribunal")** dated 09.03.2017 and 01.03.2017, respectively.

3. The two overlapping questions of law framed for our consideration are as follows:

i. *Whether under the facts and circumstances of the case, the learned ATIR was justified to hold that food & beverages from part of stock-in-trade of the registered person, which is contrary to the spirit of SRO.490(I)/2004, dated 12.06.2004?*

ii. *Whether on the facts and in the circumstances of the case, the Hon'ble ATIR, Islamabad, was justified in holding that claim of input tax adjustment on food, beverages and services rendered by hotels are*

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admissible expense contrary to the provisions of section 8(1)(a) & 8(1)(b) of the Sales Tax Act, 1990?

4. An additional question of law framed for our consideration in S.T.R. No.18 of 2017 is as follows:

Whether under the facts and circumstances of the case, the learned ATIR was justified to hold that for the purpose of issuance of show cause notice under section 14(1) of the Federal Excise Act, 2005, limitation will be calculated from the date of cause of action and not from the "relevant date" as given in the explanation to section 14 of the Act, ibid?

5. Learned counsel for the tax department submitted that excise duty under the Federal Excise Act, 2005 **("Excise Act")**, was to be collected in terms of provisions of the Sales Tax Act, 1990 **("STA")**, pursuant to SRO.550(I)/2006 dated 05.06.2006. He submitted that SRO.490(I)/2004 dated 12.06.2004 issued under section 8(1)(b) of the STA listed certain items in respect to which input tax could not be claimed, and included, inter alia, *"food, beverages, garments, fabrics etc. and consumption on entertainment"* except when such goods were acquired as stock-in-trade. He submitted that the respondent was not entitled to make adjustments for input tax paid in relation to food and beverages that were served during flights as well as services rendered by hotels to the staff of the respondent taxpayer. He further submitted that the Tribunal had erroneously held that for purposes of calculation of limitation period, the relevant date was the date on which the relevant transaction had taken place and not the date on which tax was payable under provisions of the STA.

6. Learned counsel for the taxpayer submitted that food and beverages in relation to which input tax adjustment had been

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made by the taxpayer had been acquired as stock-in-trade, as the cost of such goods was included in the cost of services provided by the airline to its customers. He further submitted that input tax adjustment claimed in relation to services rendered by hotels was for purposes of provision of lodging and related services to the crew of the respondent taxpayer, which by law, was required to remain on active duty for a certain number of hours, after which the airline was required to provide the crew with rest and related lodging facilities for safety of airline flight operations. Such expenditure was therefore incurred for purposes of provision of taxable supplies and not for entertainment. The respondent taxpayer was therefore allowed to adjust the input tax paid while procuring services rendered by hotels from the output tax payable by the respondent taxpayer in provision of services to its customers. He further submitted that the Tribunal had correctly determined that part of the period for which demand was sought to be generated was barred by limitation in terms of section 14 of the Excise Act.

7. The facts in the instant matter are not in contention. It is acknowledged by both parties that in terms of SRO No.550(I)/2006, facilities for travel are a service in relation to which federal excise duty is to be collected as if it were a tax payable under section 3 of the STA. For purposes of input versus output tax adjustment under provisions of sections 7 and 8 of the STA, SRO 490(I)/2004 is then relevant, which has been issued by the Federal Government in exercise of authority under section 8(1)(b) of the STA. This notification lists certain goods in relation to which input tax adjustment has been disallowed, and includes food and beverages except when such goods have been

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acquired as stock-in-trade. The primary question that arises therefore is whether food and beverages acquired by the respondent taxpayer and utilized during provision of in-flight services to the passengers qualify as stock-in-trade, thereby entitling the respondent to adjust input tax paid in relation to purchase of such goods from the output tax payable in relation to the travel services it provides.

8. It was held by the Supreme Court in ***Attock Cement Pakistan Limited Vs. Collector of Customs (1999 PTD 1892)*** that the term stock-in-trade has not been defined by the legislature and consequently resort must be had to the dictionary meaning of such term. Amongst the definitions reproduced in ***Attock Cement*** was a definition from the Concise Oxford Dictionary, which defined the term to include*, "all the requisites of a trade or profession."* The Supreme Court also reproduced the definition of stock-in-trade from Webster's Third New international Dictionary, which included within such definition *"the aggregate of things necessary to carry on a business."*

9. For accounting purposes, the term inventory is sometimes used as an alternative to stock-in-trade. The assets acquired with the intention of resale at a profit are treated as the stock of a trade while preparing an inventory in accordance with international accounting standards. In determining what constitutes the stock of a trade a distinction is drawn between the stock that constitutes the circulating capital of a business against the stock that constitutes fixed capital of the business.

10. In ***John Smith & Son Vs. Moore [1921] 12 TC 266*** (a case often cited to draw distinction between fixed capital and

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circulating capital), ***Viscount Haldane*** noted that, *"fixed capital is what the owner turns to profit by keeping in his own possession, circulating capital is what he makes profit of by parting with it and letting it change masters."* In ***Vodafone Cellular Limited and others Vs. Shaw*** ***[1997] 69 TC 376,*** Millet LJ noted that, *"commodity which is turned over or exploited in the course of a trade at a comparatively early date"* has the characteristics of circulating capital as opposed to fixed capital. In making a determination whether the stock forms part of circulating capital the substance of the transaction and the nature of business need to be kept in mind. For example in a zoo the animals are not stock, as the business is such that the animals are meant for exhibition and not for sale. In a farm where sheep are bred for sale, the animals would constitute stock, as the nature of the trade would be to raise and keep them for sale.

11. The question before us is whether the food and beverages acquired by an airline constitute goods that the airline acquires with the primary intention of selling them in the ordinary course of its business. The first question to ask in our present context is whether the purpose of acquisition of such goods is sale, exchange, or any form of disposal as part of normal business operations, as opposed to such goods being acquired for the business's own consumption or use. The second related question would be whether the disposal of such goods is essential for the business activity being undertaken by the airline. The third possible question would be whether the goods have been acquired for long-term use in the business to generate income,

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or whether the goods are meant for disposal in the short-term to make a profit.

12. There is nothing to gainsay that food and beverages acquired by an airline to be disposed of as part of in-flight services would not constitute part of the fixed capital of the airline as such goods have no long-term use. Such goods are acquired for purposes of sale and disposal as part of in-flight catering. Nothing turns on the fact that the cost of food and beverage while being provided to passengers is built in the overall price of the ticket as part of the airline services being rendered to passengers. Whatever be the manner in which food and beverages are priced (i.e. whether on an itemized basis by budget airlines or as part of in-flight catering the cost of which is included in the cost of the ticket), the purpose of acquisition of such goods is its sale/disposal by providing such goods to passengers as part of in-flight service.

13. Section 7 of the Excise Act provides the following:

> ***7. Application of the provisions of the Sales Tax Act, 1990.***— *(1) In case of goods specified in the Second Schedule or such services as may be specified by the Board through a notification in the official Gazette the duty shall be payable in sales tax mode, whereby,—*
>
> > *(a) a registered person manufacturing or producing such goods or providing or rendering such services shall be entitled to deduct input tax paid during the tax period from the amount of duty of excise due from him on such goods or services in respect of that tax period;*
> >
> > *(b) a registered person shall be entitled to deduct the amount of duty of excise paid or payable by him on such goods or services as are acquired by him during a tax period from the output tax due from him in respect of that tax period;*

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(c) a registered person supplying such goods or providing or rendering such services shall be entitled to deduct duty of excise paid or payable on such goods or services as are acquired by him during the tax period from the amount of duty of excise due from him on such goods manufactured or produced or services as are provided or rendered by him during that period; and

(d) a person shall be entitled to deduct duty of excise paid or payable, on such goods or services as are acquired by him during a month, from the amount of duty of excise due from him on such goods manufactured or produced or services as are provided or rendered by him, during that month. Such services as are provided or rendered by him, during that month.

***Explanation**.— For the purposes of this section, the expressions "input tax", "output tax" and "tax period" shall have the same meanings as are assigned to them in the Sales Tax Act, 1990.*

(2) The Federal Government may, by notification in the official Gazette, declare that any of the provisions of the Sales Tax Act,1990, relating to the levy of and exemption from sales tax, registration, book keeping and invoicing requirements, returns, offences and penalties, appeals and recovery of arrears shall, with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duty leviable under this Act.

It is not disputed that federal excise duty in relation to facilities for travel are to be levied and collected "as if it were a tax payable under section 3 of the STA" in terms of SRO No.550(I)/2006.

14. The definition of section 7(1) of the Excise Act takes us to the definition of input tax and output tax within the STA. The definition of "input tax" provided under section 2(14) of the STA states the following as sub-clause (c):

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> *"in relation to goods or services acquired by the person, tax levied under the Federal Excise Act, 2005, in sales tax mode as a duty of excise on the manufacture or production of the goods, or the rendering or providing of the services."*

Likewise the definition of "output tax" under section 2(20) of the STA states the following as sub-clause (b):

> *"tax levied under the Federal Excise Act, 2005, in sales tax mode as a duty of excise on the manufacture or production of the goods, or the rendering or providing of the services, by the person."*

Both section 7 of the Excise Act as well as section 7 of the STA entitle a purchaser to adjust input tax paid while purchasing goods from the output tax payable while disposing of goods or in provision of services. It is not the case of the tax department that the disposal of food and beverages as part of in-flight catering does not constitute taxable supply for purposes of the STA. The only point that has been raised before us is that food and beverages were not acquired by the respondent airlines as stock-in-trade. Consequently, they are not goods in relation to which input tax adjustment can be sought in view of SRO No. 490(I)/2004.

15. The argument is misconceived. The food and beverages purchased by the airline in relation to which input tax has been paid by the airline are acquired for purposes of disposal as part of in-flight catering. Such goods constitute stock of the respondent's trade, which forms part of circulating capital and not fixed capital. The manner in which such goods are disposed of and/or priced does not change the nature of such stock or the purpose of its acquisition. Such goods are acquired for purposes

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of exploitation and disposal for a profit in the course of provision of airline services. Whether they are sold on an itemized basis during the course of a flight or the cost of such catering is included in the overall price of the ticket does not change the substance of the transaction between the airline and the passenger. Once such food and beverages are served by the airline to the passengers, the title in such goods transfers to the passenger and the passenger is free to consume the items during the flight or take them along with him/her while disembarking after the flight has landed. We therefore find that the food and beverages acquired by the airlines and served to the passengers constitute goods acquired as stock-in-trade for purposes of SRO No.490(I)/2004, as has correctly been held by the Tribunal. The question is accordingly answered in favor of the taxpayer and against the tax department.

16. The Tribunal has also correctly held that input tax paid in procuring services rendered by hotels to airline crew, that utilize such services as a mandatory requirement as part of the taxable activity undertaken by the airlines, is liable for adjustment against the output tax due to be paid by the airlines in undertaking such taxable activity. Learned counsel for the tax department has failed to identify any provision of the STA or the Excise Act in view of which input tax adjustment for tax paid in procuring for airline crew services from hotels ought not be adjustable in terms of section 7 of the Excise Act and section 7 of the STA. The services of boarding and lodging are procured for the airline crew for safe provision of airline flight services and not to afford entertainment to the flight crew as a

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perquisite. This question is accordingly answered in favor of the taxpayer and against the tax department.

17. The third question that has been framed for our consideration is what constitutes the "relevant date" for purposes of section 14(1) of the Excise Act. Section 14(1) of the Excise Act states the following:

> ***14. Recovery of unpaid duty or of erroneously refunded duty or arrears of duty, etc.—****(1) Where any person has not levied or paid any duty or has short levied or short paid such duty or where any amount of duty has been refunded erroneously, such person shall be serviced with notice requiring him to show cause for payment of such duty provided that such notice shall be issued within five years from the relevant date.*
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> *(2) The officer of Inland Revenue empowered in this behalf, shall after considering the objections of the person served with a notice to show cause under sub-section (1), determine the amount of duty payable by him and such person shall pay the amount so determined along with default surcharge and penalty as specified by such officer under the provisions of this Act*
>
> *Provided that an order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix, provided that such extended period shall in no case exceed sixty days:*
>
> *Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding thirty days shall be excluded from the computation of the periods specified in the first proviso.*
>
> *(3) Where any amount of duty levied and penalty imposed or any other amount payable under this Act is due from any person, such amount or sum shall be recovered in such*

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manner as is prescribed under this Act or rules made there under.

(4) Notwithstanding anything contained under any other law for the time being in force, where any business or activity involving liability to charge, levy and pay duty under this Act is sold, discontinued or liquidated, the amount of unpaid or recoverable duty shall be the first charge on the assets of the business.

***Explanation.**—For the purpose of this section, refund includes drawback of duty and the expression "relevant date" means the date on which the payment of duty was due under sub-section (3) and in case where any amount of duty has been erroneously refunded, the date of its refund.*

The explanation to section 14 of the Excise Act provides that, *"the expression "relevant date" means the date on which the payment of duty was due under subsection (3)…"*. The date on which payment of duty is due for purposes of the Excise Act is the due date as defined under provisions of the STA. Section 2(9) of the STA defines due date in relation to furnishing of a sales tax return as, *"the 15th day of the month following the end of the tax period…"*. Section 2(43) of the STA then defines tax period to mean *"a period of one month or such other period as the Federal Government may, by notification in the official gazette, specify".* In other words, the due date for payment of federal excise duty in sales tax mode is the 15th day after the expiry of the tax period for which such duty is due (i.e. 15th day after the end of the month). The relevant date for purpose of section 7(1) of the Excise Act would therefore be the 15th day following the month for which the duty is payable. We find that the Tribunal misapplied its mind when it held that the relevant date is the date of the transaction-in-question in relation to which duty is chargeable. The Tribunal accordingly held that if a

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show-cause notice was issued on 16.09.2015, the five-year limitation period would be calculated up to such date. The correct answer in view of the provisions discussed above would be that the limitation period for a certain tax period (i.e. a certain month) would expire on the 15th day of the month following the month in which the five-year limitation period for purpose of section 7(1) stood expired. In the facts of the present case, the limitation period expired on 15.10.2015 and not 16.09.2015, as was mistakenly held by the Tribunal. We, however, note that nothing turns on this misapplication by the Tribunal, as the Tribunal held that the demand generated in relation to penalty and surcharge for the period for which limitation had not run was also not sustainable in view of the merits of the case. This aspect of the Tribunal's judgment has not been impugned before us. Consequently, the adjudication of question No.3 for purposes of the instant matter is more of an academic exercise. However, for purposes of clarification of the law, we answer the question as discussed above in favor of the tax department.

18. A copy of this judgment is directed to be sent to the Registrar of the Tribunal under the seal of this Court.

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(SARDAR EJAZ ISHAQ KHAN)
JUDGE

(BABAR SATTAR)
JUDGE

Announced in the open Court on 12.12.2025.

JUDGE **JUDGE**

Approved for reporting.

M.A. Raza