IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

CIVIL PETITIONS NO. 4700, 310-K TO 314-K, 423-K TO 426-K, 553-K & 493-K OF 2021

(Against the common judgment dated 24.12.2020, passed by High Court of Sindh at Karachi, in C.P.No.D-187/2017, C.P.No.D-5604/2016, C.P.No.D-2475/2017, C.P.No.D-4491/2018, C.P.No.D-2613/2019, C.P.No.D-6211/2016, C.P.No.D-272/2017, C.P.No.D-925/2017, C.P.No.D-7674/2017, C.P. No. D-3455/2019 & C.P.No.D-2713/2019)

1. M/s Rajby Industries Karachi **(CP.4700/2021)**
2. M/s Multinational Export **(CP.310-K/2021)**
3. M/s NFK Exports (Pvt.)Ltd. & others **(CP.311-K/2021)**
4. M/s International Textile Limited **(CP.312-K/2021)**
5. M/s Proline Private Limited **(CP.313-K/2021)**
6. M/s Mustaqim Dyeing & Printing **(CP.314-K/2021)**
7. M/s Liberty Mills Limited & others **(CP.423-K/2021)**
8. M/s Gatron Ind. Ltd. & another **(CP.424-K/2021)**
9. M/s Orient Textile Mills & others **(CP.425-K/2021)**
10. M/s Mima Knit (Pvt.) Limited **(CP.426-K/2021)**
11. M/s Adamjee Enterprises **(CP.553-K/2021)**
12. M/s Aferoz Textile Industries Pvt. Ltd. **(CP.493-K/2021)**

...Petitioners

VERSUS

(In all cases)

Federation of Pakistan and others ...Respondents

For the Petitioners: Mr. Arshad Shahzad, ASC
Mr. Nadeem Qureshi, ASC,
(Video link from Karachi)

For Respondent: Dr. Shah Nawaz, ASC
Irfan Mir Halepota, ASC
Mrs. Abida Parveen Channar, AOR
(Video link from Karachi)

Date of Hearing: 01.06.2022

JUDGMENT

MUHAMMAD ALI MAZHAR, J. These twelve Civil Petitions for leave to appeal are directed against the common Judgment dated 24.12.2020, passed by High Court of Sindh, Karachi, whereby the aforesaid Constitution Petitions were dismissed.

2. According to the petitioners' narrative, they are registered persons under the Sales Tax Act, 1990 ("**STA 1990**") and engaged in the

business of processing, manufacturing, weaving, packing and marketing of various textiles, apparel and terry towel products. Their claim of input tax was prohibited on packing material with effect from 1.7.2016, vide SRO 491(I)/2016, whereby condition (x) of SRO 1125(I)/2011 was amended to disallow the adjustment of Sales Tax on packing material as Input Tax. Being aggrieved by this amendment, the petitioners had challenged the vires of said Notification in the Sindh High Court. However, during the pendency of the aforesaid constitution petitions, the impugned proviso of condition (x) was withdrawn vide amending notification, S.R.O. 777(I)/2018 dated 21.6.2018. Thereafter, the petitioners took an additional plea that the amendment was curative and beneficial in nature which should be given retrospective effect but their constitution petitions were dismissed by the learned High Court.

3. The learned counsel for the petitioners argued the petitioners in the Sindh High Court challenged the vires of proviso attached to the condition (x) in SRO 491(I)/2016 as being unconstitutional insofar as it was related to the disallowance of Input Tax on packing material. It was further argued that the powers conferred in terms of Section 8 (b) of the STA 1990 are to be read with the provisions of Section 7 and overall theme of Section 8 of the STA 1990. It was further contended that the learned High Court has failed to appreciate the distinction between the zero-rating provided to exports under Section 4 (a) of the STA 1990 and zero-rating on local supplies under Section 4 (c), STA 1990. The restriction in terms of the first proviso of the condition (x) of the SRO 491(I)/2016 was related to zero-rating on local supplies governed by Section 4 (b) and (c) of the Act and not to exports covered under section 4 (a) of the STA 1990. It was further contended that the restriction placed through a notification could not prevail over the rights governed under the statute in terms of Sections 7 and 8 of the STA 1990, as sub-ordinate legislation cannot expand or restrict the substantive provisions contained in the Act. It was further argued that the act of withdrawal of the impugned proviso was curative and beneficial in nature so this should have been made applicable with retrospective effect but the learned High Court has failed to appreciate the combined effect of Section 7, 8 (1) a, 8 (1) f, 8(1) g, 8(2) and 8(3), in which the input adjustment against taxable supplies is a fundamental part of the scheme and the powers

given under section 8 (1) b are not unfettered but are to be governed keeping the provisions of the law in a harmonious manner.

4. The learned counsel for the respondent argued that the STA 1990 confers powers to the government to deny input tax adjustment and refund by notification. It was further contended that Section 8 of the STA 1990 has an overriding effect by means of a non-obstante clause. The Notification was amended subject to the thoughtful decision of the Government. He further argued that Section 4 of the STA 1990 is not unrestricted and the Government can place restrictions on any class of goods for denial of input tax claim or refund which cannot be claimed as a vested right.

5. Heard the arguments. According to Crawford's Statutory Construction, Interpretation of Laws, Chapter XXVIII, page 738-739, para-359, the laws which impose a tax on sales, being tax laws, are subject to a strict construction in accordance with the tax statutes generally. In other words, a sales tax statute must be strictly construed in considering its coverage and no strained construction may be indulged in against the taxpayer simply because of the apparent purpose to raise needed revenue, nor will such statutes be given a retroactive operation, unless such an effect is clearly intended by the lawmakers. In essence, the petitioners in the Sindh High Court challenged the proviso attached to condition (x) in SRO 491(I)/2016 as being unlawful and unconstitutional which as a matter of fact was related to the disallowance of Input Tax on packing material. A further declaration was sought that the restriction perpetrated through condition (x) of SRO 491(I)/2016 was not applicable to zero rated supplies in terms of Clause (a) of Section 4 of the STA 1990, hence disavowal of adjustment of Input Tax on packing material was ultra vires the provisions of the STA 1990 as well as against the fundamental rights enshrined under the Constitution of the Islamic Republic of Pakistan, 1973. In fact, the bone of contention is directly related to **S.R.O.1125(I)/ 2011, [C.No.1 (140)C(RGST)/2011(Pt-VI)]**, disseminated on 31.12.2011, whereby the Government of Pakistan, Ministry of Finance, Economic Affairs, Statistics & Revenue in supersession of S.R.O.1058(I)/2011, dated 23.11.2011 was pleased to notify the goods specified in column (2) of the Table under the PCT heading numbers mentioned in column (3) of the same Table, including the goods or class of

goods mentioned in the conditions stated in this notification, to be the goods on which sales tax shall, subject to the said conditions be charged at zero-rate or as the case may be at the rate of five per cent, wherever applicable to the extent and in the manner as specified in the conditions. In the Table incorporated in this S.R.O., the genre of at least 128 goods is mentioned and the Notification was made effective from 1.1.2012. As per Condition (i), the benefit was made available to every such person doing business in textile (including jute), carpets, leather, sports and surgical goods sectors, who is registered as (a) manufacturer; (b) importer; (c) exporter; and (d) wholesaler. Seemingly, the matter in issue has direct nexus with condition (x), which stipulates that "*a registered person who has consumed any other inputs acquired on payment of sales tax, whether covered under this notification or not, shall be entitled to input tax adjustment or, as the case may be, refund in respect of the supplies made by him either at the rate of zero per cent or five per cent or sixteen per cent ad val as the case may be.* While in condition (xiv), it is further explicated that the aforesaid notification shall apply to (a) ginning onwards in case of textile sector; (b) production PTA or MEG for synthetic sector; (c) regular manufacturing in case of carpets and jute products; (d) tannery in case of leather sector; and (e) organized manufacturing in case of surgical and sports goods.

6. Notwithstanding the above Notification, the Government of Pakistan, Ministry of Finance, Economic Affairs, Statistics & Revenue, on 30.6.2016, issued another Notification **S.R.O.491(I)/2016, [No.3(1)ST&FE/LP&E/2015]**, in exercise of the powers conferred by sub-section (1), clause (b) of sub-section (2) and sub-section (6) of the section 3 and clauses (c) and (d) of section 4 read with clause (b) of sub-section (1) of section 8 and section 71 of the STA 1990, whereby certain amendments were made in the S.R.O.1125(I)/2011, dated 31.12.2011 with effect from 1.7.2016. The relevant portion of the amended Notification is reproduced as under:-

> "(iii) for condition (x), the following shall be substituted, namely:-
>
> (x) a registered person who has consumed inputs acquired on payment of sales tax, shall be entitled to input tax adjustment, subject to the relevant provisions of the Sales Tax Act, 1990 and Rules made thereunder:

> **Provided that no input tax credit or refund shall be admissible on the packing material of all sorts: (Emphasis supplied)**
>
> Provided further that the post-refund audit and scrutiny shall be conducted and finalized in the manner as provided in the Sales Tax Rules, 2006".

7. Last but not least, one more Notification was issued by Government of Pakistan, Federal Board of Revenue on 21.6.2018 i.e. **S.R.O.777(I)/2018, [C.No.5/93-STB/2018],** by means of which further amendments were made in the Notification No. S.R.O.1125(I)/2011, dated 31.12.2011, effective from 1.7.2018. The relevant portion of the amendment is reproduced as under:-

> "(B) after Table-II, amended as aforesaid, in the conditions,-
>
> **(i) in condition (x), the first proviso shall be omitted" [Emphasis supplied]**

8. Indeed, the petitioners in the High Court only challenged the vires of the proviso of an amended S.R.O. but not the S.R.O. as a whole, nor the provisions of the STA 1990 which conferred certain powers to lay down conditions to grant exemptions, adjustments, restrictions or withdrawal of exemptions etc. The sales tax law is designed for the levy of tax which includes the sale, production, manufacture or consumption of goods. According to Clause (35), of Section 2 of the STA 1990, "taxable activity", *inter alia*, encompasses an activity carried on in the form of business, trade or manufacture; or involves the supply of goods, the rendering or providing of services, or both to another person with certain exclusions. In unison, the definition of input tax is provided in Clause (14) of Section 2 of the STA 1990. The provision for zero rating is provided in tandem under Section 4 of the STA 1990 with the following description of goods:-

> *"(a) goods exported, or the goods specified in the Fifth Schedule;]*
>
> *(b) supply of stores and provisions for consumption abroad a conveyance proceeding to a destination outside Pakistan as specified in Section 24 of the Customs Act, 1969 (IV of 1969);*
>
> *(c) such other goods, as the Federal Government may specify by notification in the official Gazette, whenever circumstances exist to take immediate action for the purposes of national security, natural disaster, national food security in emergency situations and implementation of bilateral and multilateral agreements:]"*

9. The first proviso appended to Section 4 expounds that it shall not apply in respect of supply of goods mentioned in clauses (i), (ii) and

(iii) which are not relevant to the circumstances of the case in hand, however, it is significant to note that by means of the second proviso, ample powers have been conferred upon the Federal Government which may by Notification in the official Gazette restrict the amount of credit for input tax actually paid and claimed by a person making a zero rated supply of goods otherwise chargeable to sales tax.

10. It is worth mentioning that Section 8 triggers and stems from a "non-obstante" clause which accentuates that notwithstanding anything contained in this Act, (STA 1990) a registered person shall not be entitled to reclaim or deduct input tax paid on the goods or services which are more particularly jotted down in clause (a) to (m). In the present case, clause (b) is quite relevant which is reproduced as under:-

> ***"(b) any other goods [or services] which the [Federal Government] may, by a notification in the official Gazette, specify." [Emphasis supplied]***

11. The aforementioned section spotlights the mandate conferred upon the Federal Government to decide the entitlement or disentitlement with regard to reclamation or deduction of input tax by a notification in the official Gazette. It is clearly resonating that restrictions imposed for reclaiming input tax on packing material by way of the impugned S.R.O. was not illegal, unlawful or without jurisdiction but it was within the realm and domain of powers vested in the Federal Government under Section 8 of the Sale Tax Act, 1990. The dominant rationale of interpretation of any legislative instrument is to bring to light the intention of the legislature and the foremost sense of duty of the Courts is to catch on the same by reference to the language used. The expression "Non-obstante" is a Latin terminology which connotes 'notwithstanding anything contained'. This turn of phrase, for all intents and purposes invests powers in the legislature to set down any provision which may have an overriding effect on any other legal provision under the same law or any other laws, being a legislative apparatus and method of conferring overriding effect over the law or provisions that qualifies such clause or section of law. A non-obstante clause is commonly put into operation to signify that the provision should outweigh regardless of anything to the contrary. It is a well settled elucidation of law that a taxing statute should be construed strictly, even if the literal interpretation results in some hardship or inconvenience. The

Courts cannot put in words to broaden the scope and sphere of law to such an extent that is not covered under the statute. The conspectus of the numerous dictums laid down by the superior Courts demonstrates that the non-obstante clause is appended to a provision with a view to give the enacting part of the provision an overriding effect.

12. The doctrine of ultra vires envisages that an authority can exercise only so much power as is conferred on it by law. An action of the authority is intra vires when it falls within the limits of the power conferred on it but ultra vires if it goes outside this limit. To a large extent the courts have developed the subject by extending and refining this principle. If an act entails legal authority and it is done with such authority, it is symbolized as intra vires (within the precincts of powers) but if it is carried out shorn of authority, it is ultra vires. The law can be struck down if it is found to be offending against the Constitution for absenteeism of lawmaking and jurisdictive competence or found in violation of fundamental rights. It is also a well-known exposition that the law should be saved rather than be destroyed and the court must lean in favour of upholding the constitutionality of legislation unless *ex facie* violative of a Constitutional provision. The words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary. The petitioners had only challenged the constitutionality of proviso, which debarred them from lodging the claim on packing material. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein. If the enacting portion of a section is not clear a proviso appended to it may give an indication as to its true meaning. In our view, the challenge to the legitimacy of proviso was based on misconceived notion which was intra vires and could not be construed as ultra vires to any provision of STA 1990 or the Constitution.

13. What is more, the challenge to the vires of the proviso of the impugned S.R.O had subsided when vide S.R.O. 777(I)/2018 dated 21.06.2018, the impugned proviso was omitted. Though the learned

counsel for the petitioners started off with the original plea set forth for impugning the vires of proviso which was incongruous and unwarranted but subsequent to the withdrawal of impugned proviso, the learned counsel as a fall back, set the limits of arguments to the extent that since the impugned proviso was withdrawn therefore, it should be treated at par with curative and beneficial legislation and be made effective with retrospective effect, meaning thereby from the date of S.R.O.491(I)/2016 dated 30.06.2016 which amounts to obliterating and annihilating the impact of proviso as if it never existed or was in field. Although the proviso was withdrawn on 21.06.2018, but in clause (2) of the said S.R.O., the withdrawal was made effective from 01.07.2018 without any express or seeming intention or language to construe that it was promulgated with retrospective effect, nor was it deemed to be a declaratory statute which came into field for rectifying any defect, omission and/or oversight in the original S.R.O.1125(I)/2011 or S.R.O.491(I)/2016, whereby the proviso was added and input tax credit or refund was made inadmissible on packing material of all sorts.

14. It is well settled that the curative statute is meant for lawmakers to recuperate the prior enactment for rectifying the defect or omission. In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. For sure, its scope is clarificatory in nature but if it has no such character or essence, it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation. The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature. It is by and large passed to supply a conspicuous omission or to elucidate misgivings as to the meaning of the previous law. A number of annotations from law lexicons and rules of statutory interpretation for remedial and curative statutes and its prospective and retrospective interpretation are reproduced as under:

1. **Words and Phrases -Permanent Edition, Volume 36-A**

Remedial (At page 526, 537 to 539 & 547)

"Legislation which has been regarded as "remedial" in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, or mischiefs thereof, implying an intention to reform or extend existing rights, and having for their purpose the promotion of justice and the advancement of public welfare and of important and beneficial public objects, such as the protection of the health, morals, and safety of society, or of the pubic generally. In re Brown's Estate, 215 P.2d 203, 207, 208, 168 Kan. 612. Statutes are "remedial" and "retrospective", in absence of directions to the contrary, when they create new remedies for existing rights, remove penalties or forfeitures, extenuate or mitigate offenses, supply evidence, make that evidence which was not so before, abolish imprisonment for debt, enlarge exemption laws, enlarge the rights of persons under disability, and the like, unless in so construing the statutes some contract obligation is violated or some vested right divested. Byrd v. Johnson, 16 S.E.2d) 843, 846, 220 N.C.184, B-C Remedy Co. v. Unemployment Compensation Commission of N. C., 36 S.E.2d 733, 737, 226 N.C. 52, 163 A.L.R. 773. "Remedial statute" is one which supplies defects, and abridges superfluities in former law. Falls v. Key, Tex. Civ. App., 278 S.W.893, 896. A remedial statute is one designed to cure or discharge or remedy a defect in existing laws, common or statutory, however arising. City of Montpeller v. Senter, 47 A. 392, 393, 72 Vt. 112. Statutes designed to correct imperfections in prior law or which provide remedy for a wrong where none previously existed. Shielcrawt v. Moffett, 49 N.Y.S. 2d 64, 78. A "remedial statute" is one which cures defects in, or enlarges or abridges scope of, former law, such as statute granting a theretofore nonexistent remedy for wrong inflicted. State, to Use of Rogers v. Newton, 3 So.2d 816, 818, 191 Miss, 611. Revenue laws are not "remedial statutes" and are not to be liberally construed. Forrester v. Interstate Hosiery Mills, 23 S. E.2d 78, 81, 194 Ga.863. Statutes fixing prescriptive periods are "remedial statutes" within meaning of the rule that remedial statutes are to be given retrospective effect unless the language used indicates that the lawmakers did not so intend. State of Louisiana v. Alden Mills, La. App., 8 So.2d 98, 103".

2. **Words And Phrases – Permanent Edition, Volume 10-A**

Curative Act- Cross References- Healing Act (at page 418)

"A curative act contemplates that Legislature has been advised of nature of the matters done and performed which it purports to validate, ratify, or confirm".

3. **Black's Law Dictionary-Ninth Edition**

Remedial law. (At page 1407)

"(17c) 1. A law providing a means to enforce rights or redress injuries. 2. A law that corrects or modifies an existing law; esp., a law providing a new or different remedy when the existing remedy, if any, is inadequate. [Cases: Statutes- 236.]"

Curative Statute. (At page 1543)

1. An act that corrects an error in a statute's original enactment, usually, an error that interferes with interpreting or applying the statute. Cases: Statutes C-236, 278.11.]

4. **Crawford's Statutory Construction-** (At page 105)

"73. Curative, Remedial and Penal Acts. Curative statutes are those which attempt to cure or correct errors and irregularities in judicial or administrative proceedings, and which seek to give effect to contracts and other transactions between private persons which otherwise would fail to

produce their intended consequences on account of some statutory disability or a failure to comply with some technical requirement. Remedial acts are those enacted in order to improve and facilitate remedies already existing for the enforcement of rights and for the redress of wrongs or injuries as well as to correct defects, mistakes and omissions in a former law'.

Prospective and Retrospective Operation (At page 562-563)

"277. In General. Retroactive legislation is looked upon with disfavor, as a general rule, and properly so because of its tendency to be unjust and oppressive. This disfavor is so great that some of our state constitutions contain provisions which expressly prohibit the enactment of retrospective legislation. Nevertheless, even in the absence of constitutional provisions of this character, statutes, with but few exceptions, should, if possible, be construed so that they will have only prospective operation. Indeed, there is a presumption that the legislature intended its enactments to have this effect to be effective only in futuro. This is true because of the basic presumption that the legislature does not intend to enact legislation which operates oppressively and unreasonably; and retrospective laws will generally have such operation. Consequently, in the absence of any indication in the statute that the legislature intended for it to operate retroactively, it must not be given retrospective effect. If perchance any reasonable doubt exists, it should be resolved in favour of prospective operation. In other words, before a law will be construed as retrospective, its language must imperatively and clearly require such construction. Moreover, in this connection, as a general rule, a statute expressed in general terms and in the present tense will be given prospective effect, and considered applicable to conditions coming into existence subsequent to its enactment, even though they were not actually known at the time of the enactment".

The Constructions of Statutes (At Page 566)

"If a general rule is desired, perhaps no announcement is more appropriate than that made by the court in People v Dilliard (298 N.Y.S. 296, 302, 252 Ap. Div.125:

It is chiefly where the enactment would prejudicially affect vested rights, or the legal character of past transactions that the rule in question applies. Every statute, it has been said, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions or considerations already past, must be presumed, out of respect to the Legislature, to be intended not to have a retrospective operation."

306. Retroactive Construction (At page 622)

"Amendatory statutes are subject to the general principles discussed elsewhere herein relative to retroactive operation. Like original statutes, they will not be given retroactive construction, unless the language clearly makes such construction necessary. In other words, the amendment will usually take effect only from the date of its enactment and will have no application to prior transactions, in the absence of an expressed intent or an intent clearly implied to the contrary. Indeed, there is a presumption that an amendment shall operate prospectively. But in accord with the rules applicable to original enactments and equally applicable to amendments or amendatory statutes, amendments relating to remedies or procedure may operate retroactively, provided, of course, vested rights and contractual obligations are not impaired or destroyed".

15. In the case of Fawad Ahmad Mukhtar and others Vs. Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another **(2022 SCMR 426),** this Court held that simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. If this were so, then that would be true for all exemptions, i.e., any exemption added to or inserted in any of the parts of the Second Schedule could be claimed to have retrospective effect more or less automatically. This can hardly be the correct position in law. Especially in the context of income tax law, it would tend to run counter to the fundamental principle already noted, that each tax year is a separate unit of account and taxation. Of course, the principle is not sacrosanct. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively. There is nothing in either Clause 103B or the Finance Act, 2010 that expressly gave it retrospective effect. Therefore the taxpayer-appellants have to show that the clause was necessarily intended to have retrospective effect. Whereas in the case of Zila Council Jehlum through District Coordination Officer Vs. Messrs Pakistan Tobacco Company Ltd. and others **(PLD 2016 SC 398)**, it was held by this Court that in order to answer this question, we find it necessary to elucidate the law regarding interpretation of fiscal statutes and retrospective operation of laws. Although the Legislature can legislate prospectively and retrospectively, such power is subject to certain constitutional and judicially recognized restrictions. According to the canons of construction, every statute including amendatory statutes is prima facie prospective, based on the principle of nova constitutio futuris formam imponere debet, non praeteritis (which means 'a new law ought to regulate what is to follow, not the past' as per Osborn: Concise Law Dictionary); unless it is given retrospective effect either expressly or by necessary implication. In other words, a statute is not to be applied retrospectively in the absence of express enactment or necessary intendment, especially where the statute is to affect vested rights, past and closed transactions or facts or events that have already occurred. This principle(s) is attracted to fiscal statutes which have to be construed strictly, for they tend to impose liability and are therefore burdensome (as opposed to beneficial legislation).

Furthermore, it is not only the wording/text of the statute which is to be considered in isolation; we are not to examine simpliciter whether such law has a retrospective effect or not, rather it has to be examined holistically by considering several factors such as, the dominant intention of the legislature which is to be gathered from the language used, the object indicated or the mischief meant to be cured, the nature of rights affected, and the circumstances under which the statute is passed. While this Court in the case of Member (Taxes) Board of Revenue Punjab, Lahore and others Vs. Qaisar Abbas and others (**2019 SCMR 446),** reiterated a cardinal principle of interpretation of statutes, particularly tax statutes and held that tax statutes operate prospectively and not retrospectively unless clearly indicated by the legislature. In this regard, reference may be made to the judgments of this Court reported as Zila Council Jhelum through District Coordination Officer v. Messrs.' Pakistan Tobacco Company Ltd. and others (PLD 2016 SC 398) and Commissioner of Income Tax v. Messrs.' Eli Lilly Pakistan (Pvt.) Ltd. (2009 SCMR 1279). Retrospectivity can only be attributed to a statute where it is made explicit or can be inferred by necessary implication; it cannot be presumed. In the impugned judgment, the learned division bench of the Sindh High Court relied upon the dictum laid down in the case of Messrs. AMZ Spinning and Weaving Mills (Pvt.) Ltd. through Manager Vs. Appellate Tribunal, Customs Sales Tax and Federal Excise, Karachi (**2006 PTD 2821),** wherein it was justly held by the learned Sindh High Court that under section 8(1)(b), (of Sales Tax Act) the legislature has specifically empowered the Federal Government to deny adjustment of input tax on any item which may have been used by a taxpayer for the manufacture or production of taxable goods or supplies. It was further held that the very purpose of enacting section 8 (1) (b) was to deny adjustment of input tax also on such items which though are used in the manufacture and production of taxable goods or supplies but the Federal Government in its discretion denies to extend such benefit to the taxpayer. In the case of Collector of Sales Tax and Central Excise, LTU, Karachi Vs.Messrs Pak Suzuki Co.Ltd., Karachi **(2016 PTD 867),** this Court while dilating upon the rule of interpretation of Remedial and Curative enactments, also quoted an excerpt from Corpus Juris Secundum, Vol. 82, as follows:-

> *"In construing remedial statutes, regard should be had to the former law, the defects or evils to be cured or abolished, or the mischief to be remedied, and the remedy provided; and they should be interpreted liberally to embrace all cases fairly within their scope, so as to accomplish the object of the legislature, and to effectuate the purpose of the statute; by suppressing the mischief and advancing the remedy, provided it can be done by reasonable construction in furtherance of the object."*

16. In the wake of above discussion, the articulation of the learned counsel for the petitioners that withdrawal of the impugned proviso should be made applicable with retrospective effect is a misconstrued and ill-thought-out notion. We do not find any irregularity or perversity in the impugned judgment passed by the learned Sindh High Court. Accordingly, these petitions are dismissed and leave is refused.

Chief Justice

Judge

Judge

Islamabad the
1st June, 2022
Khalid
Approved for reporting