

TaxHelpline Case No. 176 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**M.A. Stay No.935/LB of 2012 in S.T.A.No.960/LB of 2012.
Decided on 17th October, 2012**

C.I.R. (LEGAL DIVISION) R.T.O. FAISALABAD

VS.

Messrs IHSAN YOUSUF TEXTILES (PVT.) LTD., FAISALABAD

ORDER

This appeal preferred at the instance of the department is directed against the Order-in-Appeal No.63 of 2011 dated 19-4-2011 passed by Commissioner Inland Revenue (Appeals), Faisalabad.

2. Facts of the case in brief are that during the course of post refund audit for the tax period 7/2006 to 6/2007 of the registration person it was observed that the appellant had received inadmissible refund amounting to Rs.1,89,350 against the invoices of certain suppliers whose registrations were either suspended/cancelled or declared blacklisted. Therefore, a show cause notice was issued calling upon the appellant as to why sales tax amounting to Rs.1,89,350 may not be recovered from them under section 36(1) along with default surcharge under section 34 of the Sales Tax Act, 1990 and penalty under section 33 may not be imposed. Since the appellant could not furnish any satisfactory explanation, the adjudication proceedings were culminated in the shape of Order-in-Original No.42 of 2010 dated 15-1-2011 directing the appellant to pay the sales tax at Rs.1,89,350 along with default surcharge. A penalty, equal to 100% of the tax involved was also imposed under section 33(11) of the Sales Tax Act, 1990.

3. Being dis-satisfied with this treatment the appellant filed appeal

before the CIR(A). It was contended before the CIR(A) that the appellant has not committed any default in making the business transactions as the suppliers at the relevant time were active and alive. In support of his contention the AR of the appellant has also produced the purchase record to prove the physical transfer of goods and proof of payments. The learned AR of the appellant has also relied upon the following judgments:

(v) 2005 SCMR 492, (vi) S.T.A. No.1415/LB of 2008, (vii) S.T.A. No.1393/LB of 2008 (viii) S.T.A. No.1334/LB of 2009.

The learned CIR(A) following the ratio settled in the above referred judgments set aside the order in original which has brought the Revenue in appeal before this Tribunal.

4. The learned DR contended that the appellant has claimed refund against the invoices of the units which have been declared blacklisted, suspended or their registrations were cancelled and this position was clearly incorporated in the show-cause notice but the CIR(A) has ignored this aspect and allowed the refund which is contrary to the provisions of section 8(A) of the Sales Tax Act, 1990. Further argued that the appellant did not produce any record or documentary evidence to the effect that the goods were physically transferred from the suppliers to the premises of appellants. If no physical transfer of goods took place the so called supply is to be treated a mere paper work and the input tax adjustment is inadmissible. The learned AR, on the other hand supported the order of the CIR(A). He pleaded that status of the alleged suppliers at the relevant time was operative and the goods were procured under coverage of proper sales tax invoices issued in terms of section 23 of the Sales Tax Act, 1990 fully incorporating the supplier's sales tax registration and due tax was also paid in their monthly sales tax returns. Further the payments against the alleged transactions were made through banking channel as provided under section 73 of the Sales Tax Act, hence the refund thereon was admissible and has rightly been claimed/allowed. The learned AR apart from relying upon the case-law before the CIR(A) has also placed reliance on another judgment of the Tribunal reported as 2012 PTD (Trib.) 453 wherein it was held that after insertion of subsection (3) of section

21 by the Finance Act, 2011 input tax shall be allowed if payments were made through banking channel. The relevant portion of this judgment is reproduced as under:--

"Input tax credit against invoices of such blacklisted person cannot be denied and sales tax refunded thereon cannot be recovered after insertion of subsection (3) of section 21 to the Act wherein it has categorically been laid down that input tax shall be allowed if payments are made through banking channel irrespective of the fact that the suppliers units are either blacklisted or their registration have been suspended.

The amendment is made in Finance Act, 2011, whereas the instant refund claims pertain to the period from 2004-2005 to 2008-2009. However the said amendment of subsection (3) in section 21 of the act being beneficial remedial and curative legislative avengement is applicable in all pending cases and in the instant case as well. The only exception to the principle that curative and remedial legislature is retrospective is that the same applies only on the pending cases. Pending starting from Assessing Officer to the Supreme Court of Pakistan. This obviously means that it would not apply on the case wherein the concerned persons have not challenged the action of the revenue authorities before any higher forum and the same is not pending adjudication."

5. We have heard the parties and perused the orders of the authorities below as well as the case-law relied upon by the learned AR of the appellant. It has been observed that the CIR(A) has allowed the refund on the basis of judgments of the Tribunal and the learned DR has not been able to point out any legal flaw therein. In such circumstances, no interference in the impugned order is warranted.

The appeal filed by the department is rejected.

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