TaxHelpline Case No. 182 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No.241/IB of 2012, decided 17th April, 2013

Before Munsif Khan Minhas; Judicial Member and Ikramullah Ghauri, Accountant Member

Tariq Mehmood for Appellant. Syed Imran Shah, FCA, D.R. for Respondent

Messrs UNIQUE ENTERPRISES, RAWALPINDI
Vs
COMMISSIONER INLAND REVENUE, ISLAMABAD

ORDER

The appellant has filed appeal before this Tribunal against Order-in-Appeal No.ST-346 of 2012 dated 5-7-2012 passed by the Commissioner Inland Revenue (Appeals-II), Islamabad on the following grounds:--

(1) The impugned order raises the objection of wastes not allowed as claimed by respondent registered person. The verdict doesn't provide any documentary evidence or definite information as envisaged under section 122(5) of Income Tax Ordinance, 2001. It is submitted that facts are not established as the Hon'ble Commissioner Appeal vide his Order No. ST-242-2011 dated 14-12-2011 has already allowed wastage up to 1.4 %, to the respondents (copy enclosed for ready reference). The fact is that the product is left un-used inside of carriers in addition to it the aspect of evaporation may please also be kept in mind. Therefore, wastage factor is actually more than anticipated in impugned order: Hence, this needs to be dropped.

(2) The second issue raised is stock held in form of drums of lubricants and valued as suppressed sales is malicious and of sheer ulterior motives without basic understanding of actual business. The factual position is that such lubricant is purchased and used in our own 41 trailers which carry lubricants. They are purchased and used in owned vehicles and ownership proofs are also submitted for kind perusal and record. Hence in presence of such evidence the impugned order becomes void ab initio. It is pertinent to mention that the DCIR while establishing the said recovery himself accepted the said lubricant can be used in our own vehicles. Therefore, it becomes irrelevant that the quantity purchased is much lower than the actual need of our vehicles, if we had used extra quantity of the lubricant and claimed input tax adjustment thereof than there that would have been unjust. The matter can not be settled on the mere assumptions of the learned DCIR. Hence, this needs to be dropped.

(3) The issue raised is no sales shown in return summary by a supplier namely Messrs Aslam Oil Traders. The respondent is a registered person, who holds valid input tax invoices. The matter involved herein was due to our clerical mistake in the monthly sales tax return .The mistake was notified and request for revision of the return was submitted (copy attached for ready reference) The matter is pending at FBR portal since we have not evaded any tax amount hence such charge must not be levied upon us. We hereby requested to withdraw the same.

2. Brief facts of the case are that during course of audit various discrepancies were noted regarding which the registered person was confronted and after considering reply DCIR passed order in original for recovery of principal amount along with default surcharge and penalty.

3. This appeal came up for hearing on 17-4-2013. With regard to Ground No.1, the learned AR argued that the appellant was entitled to wastage upto 1% in terms of S.R.O. 697(I)/2008 dated 9-9-2008 which was denied to him by the assessing officer. The assessing officer erred in applying the wastage rate of 0.05% under S.R.O.

943(I)/2001 dated 14-9-2007 since the tax year 2010 is involved. The learned DR on the other hand, contended that the wastage allowance of 0.05% in terms of S.R.O. 943(I)/2001 dated 14-9-2007 has been rightly applied by the assessing officer.

4. We have heard rival arguments with regard to the ground No.1. We find that S.R.O. 943(I)/2001 as well as S.R.O. 967(I)/2008 have been issued under Custom's Act 1969, recognizing wastage in respect of storage, transit and handling of oil for export to Afghanistan. These S.R.Os. have nothing to do with wastage during storage and transit/ handling of oil within the territory of Pakistan. No such S.R.O. exist, under the Sales Tax Act, 1990. We find hard to understand why the assessing officer or the learned CIR(A) considered it appropriate to give the appellant on inadmissible benefit of wastage in terms of an SRO which does not even apply to a supply governed by the Sales Tax Act, 1990. Clearly, there is no statutory or quasi statutory authority under which the benefit of wastage could have been extended to the appellant's goods. We have noticed mal-administration at the level of assessing officer while concluding the audit proceedings and applying irrelevant law to wastage during storage/transit or handling of oil cargo since no law has vested him with such power or jurisdiction. Therefore, the assessing officer is ordered to recover the lost amount of sales tax remitted him on the wastage of oil. The appellant's appeal on this ground fails.

5. With regard to the Ground No.2, the AR argued that the respondent charged excessive output tax in respect of 44 drums of lubricants supplied by him partly to Messrs Kohinoor Textiles (Pvt.) Ltd. and partly for the purpose of self consumption in 41 trailers owned by him. The AR contested the valuation of lubricant claiming that the base line or bench mark for valuation should be the value of supply for which the lubricants were actually sold to an independent purchaser i.e. Messrs Kohinoor Textiles (Pvt.) Ltd. with whom the appellant had an arms length business. The learned DR contended that the appellant used 39 drums of lubricants out of 44 drums for self consumption which is a taxable supply and liable to output tax. With regard to the appellant's contention of over valuation he

defended the value applied by the assessing officer in terms of section 2(46) of the Sales Tax Act, 1990, as that value represented the fair open market value.

Having heard the rival arguments on this ground of appeal, we conclude that the appellant's supplied 5 drums to Messrs Kohinoor Textiles (Pvt.) Ltd. and 39 drums for self consumption. Both supplies constitute taxable activity and sales tax was rightly charged on these supply transactions. With regard to valuation, we accept the AR's contention that the value evidenced by invoices issued by the appellant to the Messrs Kohinoor Textiles (Pvt.) Ltd. provide a credible value standard for calculation of the incidence of the sales tax on the supply for self consumption. The assessing officer therefore, is ordered to give the appellant the benefit of valuation for self supply based on the value of the supply made to Messrs Kohinoor Textiles (Pvt.) Ltd

Order accordingly