

TaxHelpline Case No. 184 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**M.A(Rect) No. 71/KB/2011 In MA(Stay) No. 69/KB/2011,
decided on 21st June, 2011**

**Mr. Jawaid Masood Tahir Bhatti, Judicial Member and Ms.
Zarina N Zaidi, Accountant Member**

**Malik Waqas Nawaz, D.R. for Appellant. Muhammad Naseem
for Respondent**

C.I.R., ZONE-IV, L.T.U., KARACHI

VS

Messrs PAKISTAN STATE OIL LIMITED, KARACHI

ORDER

The Department through this appeal has requested for the rectification in the order passed by this Tribunal dated 7-6-2011 in MA(Stay) No.69/KB/2011 on the following grounds:-

"(1) That the above appeal was fixed for hearing on 7-6-2011 and the order was passed on 7-6-2011.

(2) That in its order, the learned Tribunal has directed the department that no coercive action be taken against the taxpayer on the grounds that the Tribunal has heard the parties and the opinion in this regard have already been rendered and that the matter is awaiting decision from the referee member.

That the learned Tribunal has granted stay against recovery of demand as per its following orders:-

S. No.

Order No

Date of hearing

Date of order

Stay granted for.

Expiry of stay

1.

M.A. (Stay) No.164/K of 2010

1-12-2010

1-12-2010

30 days

30-12-2010

2.

M.A. (Stay) Exh. No.180/KB of 2010 5-1-2011

5-1-2011

30 days

4-2-2011

3.

M.A. (Stay) Ext. No.14/KB of 2011 8-2-2011

8-2-2011

15

days

22-2-2011

4.

M.A. (Stay) Ext. No.25/KB of 2011

26-2-2011

28-2-2011

30 days

27-3-2011

5.

M.A. (Stay) Ext. No.33/KB of 2011
5-4-2011
5-4-2011
60 days
4-6-2011

6.
M.A. (Stay) No.69/KB of 2011
7-6-2011
7-6-2011
-

TOTAL STAY GRANTED UPTO 4-6-2011
165 days

(4) That as per subsection (2) of section 46 of Sales Tax Act, 1990 read with 2nd and 3rd proviso to subsection (5) of section 131 of Income Tax Ordinance, 2001 the Appellate Tribunal Inland Revenue can grant stay against recovery of tax demand for a period of one hundred and eighty days in aggregate (six months); whereas in the case of instant taxpayer stay of demand has already been granted by the learned Tribunal for one hundred & sixty five days in aggregate through its various orders mentioned supra.

(5) That the learned Tribunal is empowered to granted further stay of fifteen days whereas in its order in M.A. (Stay) No.69/KB of 2011 dated 7-6-2011 the learned Tribunal has not specified the exact period of stay against recovery of tax demand. As per above provisions of law further stay may be granted for another fifteen days. Therefore, the learned Tribunal is requested to rectify its above order to that extent accordingly."

2. In this case the appeal filed by the Taxpayer bearing S.T.A. No.50/K of 2010 which has already been heard however, due to the difference of opinion among the two members, matter is pending for appointing the referee member by the Honourable Chairperson. During the pendency of the appeal, stay for the recovery of the tax

demand subject matter of the above referred appeal was allowed time to time, the detail of which has already been mentioned in the above referred grounds of application by the department. The Division Bench of this Tribunal vide order dated 7-6-2011 in M.A (Stay) No.69/KB/2011 has passed the following order "heard the parties. The opinion in this regard have already been rendered. The matter is awaiting decision from the referee member. In the meantime no coercive action be taken against the applicant." The Applicant/Department against the above referred order has filed the instant rectification.

3. The learned departmental representative placing reliance on the proviso to subsection (5) of section 131 of the Income Tax Ordinance, 2001 has contended that this Tribunal can grant stay against recovery of tax demand for a period of one hundred and eighty days in aggregate, whereas in the instant case the said one hundred and eighty days have been expired and no further stay can be allowed. He has contended that this Tribunal in the above referred order has allowed stay without mentioning any period in this regard which is against the above referred provisions of law.

4. On the other hand the learned counsel representing the Taxpayer has contended that in this case the additions had been made by the adjudicating officer (i) in respect of short payment of Sales Tax or SHD supplied to fuel merchant, (ii) illegal discount allowed on SHD supplied to industrial customers resulting in short payment, (iii) discrepancy between the sale price and Sales Tax charged by the taxpayer to the dealers as compared to the selling price and Sales Tax printed on the products representing the transactions between the dealers and customers and (iv) non charging of Sales Tax on disposal of fixed assets. The Learned Counsel is of the view that in this case the Learned Accountant Member confirmed the order of the adjudicating authority on the first three issues while regarding the fourth issue the order in original has been set aside by way of the remand of the order. According to him in contrast the Learned Judicial Member was pleased to vacate the order of adjudication on the first three issues and regarding the fourth issue he has agreed with the Learned Accountant Member. The learned counsel has

contended that even if the order of the Accountant Member is taken, there can be no demand arising out of the adjudicating order since at least on one issue the order has been set aside by way of remand and in the light of the view of the Learned Judicial Member all of the issues involved have been proposed to be set aside. The Learned Counsel is therefore of the view that the instant rectification application is patently not maintainable as no demand in law exists which the department is now threatening to be recovered. According to the learned counsel of the taxpayer the impugned order passed by this Tribunal dated 7-6-2011 is an absolutely fair order since it clarifies the position which is to the fact that no recovery can be made. He has therefore requested for the rejection of application.

5. We have heard the learned representative from both the sides and have also perused the available record of the case. We are of the view that the case of the assessee is pending before this Tribunal for no fault of the taxpayer but due to the reason that the final order could not be passed due to the difference of opinion among the Learned Judicial and Accountant Member and the matter is still pending for appointing the referee member. This Tribunal through order dated 7-6-2011 has specifically mentioned that the opinion in this regard have already been rendered and to our view as per that opinion both of the Learned Members have set aside the matter for fresh consideration on the specific issues, meaning thereby that no demand in law exists being determined afresh and therefore, no recovery can be made by the department. This Tribunal has therefore, directed the department that no coercive action be taken against the Respondent/Taxpayer in this case. In view of the facts and circumstances of the case we find no warrant for interference in the order of this Tribunal dated 7-6-2011 which is upheld and the application filed by the department is dismissed.

Application dismissed

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