

## **Taxhelpline Case No. 108 of 2013**

### **[INLAND REVENUE APPELLATE TRIBUNAL]**

**STA NO.121/LB/2009. Date of hearing : 23.01.2013**

**(Shahid Jamil Khan) Judicial Member ,(Muhammad Akram  
Tahir) Accountant Member**

**Appellant by : Mr. Nasar Ahmad, Advocate. Respondent by :  
Mr. Farrukh Majid , DR (RTO)**

**M/s. A Zee Textile, Lahore Appellant  
Vs  
The Collector Sales Tax, Lahore Respondent**

ORDER---This appeal is against Order-in-Appeal dated 20.04.2006 whereby an order of recovering refund was passed, against certain invoices issued by allegedly blacklisted suppliers.

2. Learned counsel at the very outset has referred to its ground No. (b), where it is contended that refund was allowed to the tune of Rs.3,396,156/-, therefore, the order of recovery of Rs.6,880,593/- was against the factual position. On merits he contends that proviso to sub-section (4) of Section 21 of Sales Tax Act, 1990 was not in existence at the relevant time, therefore, no question of blacklisting these suppliers could arise. Consequently, this ground could not have been made basis of the show cause notice. Lastly, he contends that the appellant/registered person was never confronted with the basic issue about genuineness of the transaction or veracity of the invoices issued by the alleged blacklisted suppliers. DR has opposed the arguments and has supported the order of Collector (Appeals). He contends that the findings of Collector (Appeals) are self-speaking, where all the objections were addressed.

3. Heard both the parties record perused. For convenience we deem it appropriate to reproduce para 6 of the impugned order:

"I have gone through the case record. The appellants were alleged for claiming and receiving refund against fake/flying invoices of suspicious unit namely M/s. Marshal Textile, M/s. Calderon Textile, M/s. Multinet Fabric, M/s. Zunehra Industries, M/s. Ahmad Textile and M/s. J.A. Textile. The appellants mainly contended that purchases were made against valid sales tax invoices after payment of sales tax. They stated that payment against the alleged purchases were also made in accordance with the provisions of section 73 of the Sales Tax Act, 1990. They agitated that the appellants cannot be held responsible for wrong doings of any other person. On the contrary, the departmental representative stated that only fake and flying invoices were purchased by the appellants without physical transfer of goods to claim and receive that refund which was inadmissible to them. The departmental representative also pointed out that the abnormal tax profile of the appellants as well as its suspicious suppliers clearly indicates that they were registered with the sales tax department with the sole intention of committing fraud and left their business premises after indulging in the fraudulent activity of issuance of fake/flying invoices. The appellants has also contended that section 21(4) confining powers of black listing, was added to the statute w.e.f. 01.07.2003 whereas their purchases relate to the period 2000-2001 which is without jurisdiction. In this regard, the departmental representative argued that the registered persons are blacklisted as a necessary safeguard of state revenue. Where the department detects misuse/breach of law, blacklisting is authorized to forestall further loss to the government and is an essential measure of check and balance. The contention of the appellants that the purchases were prior to blacklisting of units is untenable due to the fact that by virtue of blacklisting, the entire transactions of such units become suspicious. He added that the transactions have to be corroborated by physical evidences certifying actual supply of goods from the seller to the buyer which have not been proved in this case. Therefore, inclusion of negative units proved to be indulged in the issuance of fake/flying invoices is within the jurisdiction and is necessary to discourage the unscrupulous persons involved the defrauding the government revenue. He further added that it is also the prime responsibility of the Collectorates to check the activities of such persons with an iron hand. He also added the issue is not retrospective or prospective

application of blacklisting but rather having proven that the blacklisted units were causing damage to the state exchequer. The earlier transactions whereby undue benefits from the sales tax regime such as possible input tax adjustment/refunds etc. may have been drawn needed to be considered with extra vigil."

4. We agree with the findings of learned Collector (Appeals) that blacklisting was not a direct issue in this particular case. But we are constrained to observe that both the authorities below have relied only on the blacklisting of the suppliers and appellant was not confronted about the genuineness of the transaction. We have already held in number of cases that on mere allegation of blacklisting the invoices issued by a particular supplier could not be thrown away. The department is bound to confront the registered person with the particular invoice or transaction because the initial onus remains on the department for the purpose of issuing show cause notice.

5. On our suggestion, both the parties have not opposed the re-adjudication of this matter by the adjudicating officer, currently having jurisdiction of the case. Both the orders below are vacated. Case is remanded with direction that adjudicating officer shall re-adjudicate the matter within 90 days from receipt of this order and shall confront the registered person on the genuineness of particular transactions and shall provide opportunity of being heard to the appellant/registered person on the issues/grounds, if any, taken before him.

6. The appellant shall itself approach the concerned officer within 15 days after receiving attested copy of this order, without waiting for any notice.

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