

Taxhelpline Case No. 110 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

STA No. 308/IB/2012. Date of Hearing :14.02.2013

(FAHEEM-UL-HAQ KHAN)ACCOUNTANT MEMBER. (MUNSE KHAN MINHAS) JUDICIAL MEMBER

Appellant by :Mr. Fazul Butt, Advocate. Respondent by :Mr. Ehsanullah Khan, D.R

**M/s. M. Sadique Engineering Rawalpindi Appellant
Vs
The CIR (Appeals-IV), Islamabad & Others Respondents**

ORDER---This appeal has been filed by the taxpayer M/s. Sadique Engineering, Rawalpindi against the order of CIR (Appeals-IV), Islamabad. During the audit for the period July 2008 to June 2010 it was observed that the appellant claimed input adjustment of Rs. 297,333/- on the basis of fake invoices of M/s. Abbas Enterprises and have also claimed input adjustment of Rs. 6,288/- which has not been declared by the suppliers in his respective returns. The contravention proceedings initiated under Section 11(2) and 36(1) through a show cause notice, for violation of provisions of Section 8(1)(d), 8(1)(ca), culminated in passing of the impugned order for recovery of Rs. 297,333/- alongwith default surcharge and penalty of Rs. 14,866/-. Being aggrieved, taxpayer filed appeal before the CIR (A), who vide his impugned order-in-appeal upheld the order-in-original. Now the taxpayer came to this forum against the order-in-original as well as order-in-appeal for redressel of his grievances.

2. Mr. Fazul Butt, Advocate, appeared on behalf of the appellant/taxpayer and vehemently argued against the legality of order in the original by stating that the input tax was claimed with the permission of the web portals of Federal Board of Revenue at

the time of filing of Sales Tax Returns. The supplier from which input tax claimed was neither black listed at the time of filing of return. He further contended that the learned Commissioner has passed the orders dated 25.08.2011 allowed the input to the units which online status is blocked, suspended and black listed vide board letter dated 24.05.2011 and placed the same order for reference. Even otherwise, input claim from the unit M/s. Abbas Enterprises is not black listed, which fact was not appreciated by the assessing officer and passed the order-in-original and same was upheld by the CIR(A) without considering the facts, hence the order-in-original as well as order-in-appeal may be vacated.

3. On the other hand, the learned DR has supported the order-in-original as well as order-in-appeal and contended that the taxpayer has failed to defend the case before the adjudicating authority as well as Cir (A), therefore, claim of the taxpayer for further relief is not proper.

4. Now coming to other merits of the case it is an agreed position that at the time of transaction, the vender was appearing active on the FBR e-portal. Thus it would be fair if the assessing officer re-examine the transaction in terms of Section 73 of the Sales Tax Act, 1990 and re-ascertain the veracity of the transaction through corroborated evidence of purchasing system of the appellant.

5. In the context of above, order-in-original and order of Cir (Appeal) are vacated and officer is directed de-novo proceedings.

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