

Taxhelpline Case No. 115 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

STA No. 230/IB/2012 (Tax Year 2006-07), STA No. 231/IB/2012 (Tax Year 2007-08), STA No. 232/IB/2012 (Tax Year 2008-09), STA No. 233/IB/2012 (Tax Year 2009-10) Date of Hearing 01.11.2012

Mr. Ikramullah Ghauri, Accountant Member and Mr. Munsif Khan Minhas, Judicial Member

Applicant by Mr. Shabir Ahmad, ITP. Respondent by Mr. Sajid Raza Mirza, DR

**M/s. Unique Plastic, Rawalpindi. Appellant
Vs
CIR, RTO, Rawalpindi. Respondent**

JUDGMENT---1. These appeals have been filed by the Registered Person against the consolidated order in appeal no. 344-347/2011 passed by the learned CIR (A-III), Islamabad, dated 12-06-2011 for the Tax years 2006-07 up to Tax years 2009-10 on the following common grounds:-

Grounds

1. The Audit Officer had not fulfilled the requirement of Rule 6 chapter I. As per rule, the Audit Officer was required to make such enquiry as deemed appropriate, and issue to such person in the form set-out in the form STR-6. In the appellant case, neither any such notice was issued nor served any registration certificate. The order passed by the CIR (A-III) on this score is also without justification.

2. That the appellant himself applied for registration on 5.4.2011 whereas the local Registration Office issued letter for compulsory registration on 25.4.2011. After due verification, the appellant effect

got registration on GST on 11.6.2011 and certificate to this effect was served on the appellant from whom the GST returns are regularly being filed.

3. That as per GST certificate issued, the appellant got registration on 11.6.2011. The Officer Inland Revenue vides order No.66/2011 dated 18.10.2011 decided, "it has been clarified that the registration person is required to pay sales tax from the date of knowledge of STR". Thus the decision of both the authorities i.e Audit Officer as well as CIR (A-III) are without any basis and solid reasons.

4. That the appellant was totally unaware of already compulsory registration as the department neither served any registration certificate not communicated to the appellant in the last 10 years and never ever asked for filing of Sales Tax return.

5. That the Audit Officer was also not justified to cancel the new STR number as per law. The date of registration on GST still shown as 11.6.2011 and not 4.6.2001. Thus the CIR (A-III) was not also justified to confirm the order of the Audit Officer on this score.

6. That the Audit Officer was also not justified to impose Special Excise Duty at Rs. 143,627/- for the period July 2008 to June 2010 along with default surcharge is also illegal as the appellant got registration on 11.6.2011.

Facts

2. The hearing of the case was held on 19.9.12, 12.10.12, 24.10.12 & 1.11.12. The learned AR & DR pleaded that the case as stated in grounds of appeal and the judgment of the two forums below respectively during the hearing on 1.11.12. The appellant moved in additional grounds claiming amnesty from Registration for the Tax years prior to 2009 on the basis of the RTO, Rawalpindi Order in Original No. 66/2011 dated 18.10.11. In this case the RTO entered into an agreement with the plastic shoes manufacturers extending the later a concession that they were liable to pay Sales tax from the date of Registration as per Rule (6) of Sales Tax Act, 1990.

3. The controversy in this case is the appellant's date of compulsory Registration based on appellant Income Tax Returns. The appellant insists that he was not liable to registered because his unit was in Cottage Industry having annual turnover was less than 5 millions during 2006-07, 2007-08 and 2008-2009. In the year 2009-2010 the appellant's turn over exceeded Rs. 5 millions. Hence he was liable to registered with effect from Tax year 2009-10. The revenue contention is that the appellant was compulsory registered in 2009-10, hence liable to the payment of Sales Tax from the date of its compulsory registration. Throughout the proceedings of case the revenue neither produces any convincing evidence of the appellant's registration nor any utility bill exceeding the threshold of Rs. 700,000/-fixed for characterization of cottage industry.

Findings

4. The appellant claims that he was never liable to be registered as his turn over never exceeded Rs.5 million. The Revenue's stance is that the appellant was compulsorily registered since 2001. The Revenue did not produce any evidence to support its contention that the appellant's turn over during any year from 2001 to 2009 was more than Rs.5 million. Even if the appellant is deemed to be registered compulsorily, he was liable to be deregistered if his turnover was less than Rs.5 million.

5. Absent any conclusive evidence of the appellant's annual turnover of more than 5 million or the utility bills in excess of Rs. 0.7 million. We do not find ourselves in agreement with the appellant's contention that Sales tax be charged from the date of its new registration i.e. 11.6.2011. He was liable to be registered with effect from the date when its turnover exceeded 5 million in year 2009-10 because taxpayer has declared the sales of 9.6 million on his own in this year, which is obviously in excess of minimum threshold of Rs. 5 million. In the light of this finding, the appellant shall be deemed to be liable to be registered from the date when its turnover exceeded five millions in 2009-10. We do not want to go into details of specific date because turnover declared by the manufacturer is 9.6 million.

Quantum of sales of 3.6 million exceeding five millions is liable to undergo Sale Tax in year 2009-10. He will pay Sales Tax from 1.7.2010, onwards regularly in addition to payment of Sales Tax on sales of 3.6 million in year 2009-10.

6. The second issue in this appeal related to the penalty of Rs. 15,000/- imposed on account of appellant's failure to produce record for audit. We have looked into this issue in juxtaposition with the stance of both the parties and find that the appellant failed to produce records for audit demanded by the recovery notices vide C. No. 1069 dated 4.05.2010 and C. No. 1160 dated 21.05.2010. Therefore, the imposition of penalty on account of non production of records is upheld.

7. Nutshell of the above discussion is that demands raised in the years 2006-07, 2007-08 & 2008-09 stand deleted while demand raised in the year 2009-10 is modified as per findings recorded above.

Order accordingly

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