

Taxhelpline Case No. 119 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

STA No.79/LB/2011, Date of hearing 23-5-2012

**Mr. Asad Ali Jan, Accountant Member and Mr. Munsif Khan
Minjias, Judicial Member**

**Taxpayer by S. Shehzad Mehmood, Advocate. Department by
Mr. Zia Ullah, DR**

**M/s. Adil Traders, Rawalpindi Appellant
Vs
CIR, LTU. Rawalpindi Respondent**

ORDER --- I. By this order the above titled appeal shall be disposed off.

II. Brief facts leading to the appeal are that the appellant is a sales tax registered person, and was disallowed input tax adjustment on account of fake and flying invoices issued by suppliers who were blocked and black listed and original assessment order No. 175/2011 was issued by the adjudicating authority vide C.No.ST/Audit-II/Zone-I/915 dated 27.6.2011. Against this order the appellant filed appeal before the CIR (A) who vide order No. 219/2012 dated 08.01.2012, held that invoices of some suppliers were to be treated as real and genuine, because they were issued in the active period and verification was possible and because sales tax returns were filed which supported the position. Also the transactions were cross verifiable through FBR web portal, however, the an amount of Rs.379,340/- was disallowed and held recoverable along with default surcharge and penalty, from black listed unit i.e M/s B.K International and Mexico enterprises .

III. Against this decision the appellant has come before the Tribunal

in appeal on the following grounds of appeal.

1. That the impugned contravention order in appeal No. 219/2012 dated 8.1.2012 passed by the Commissioner Inland Revenue (Appeals-III), Islamabad is so bad in law and also against the facts of the case.

2. That the Commissioner Inland Revenue (Appeals) Islamabad has declared the taxpayer input inadmissible of Rs.379,340/- on the basis that the taxpayer violated section 7, 8(1)(ca), of the sales tax Act 1990 read with rules 12(5), chapter I, of sales tax rules 2006 which is illegal and against the facts of the case.

3. That M/s B.K International tax payer on line verification status is black listed and blocked with effect from 8 June 2009 & 11 August 2010 whereas the goods purchased in June, 2009 May 2009 April 2009, Mar 2009, Feb 2009 and Dec 2008 at that time the status of tax payer was alive and doing business. The compliance level of the unit is showing 100% active taxpayer list. But unfortunately on ATL the unit has shown in record as black listed and blocked taxpayer:

4. That the Annexure A&C of the taxpayer for the tax period June, 2009 May, 2009 April, 2009, March 2009, Feb, 2009 and Dec, 2008 is attached which clearly shows that the tax payer has paid his respective sales tax.

5. That M/s Mexico Enterprises tax payer on line verification status is black listed and blocked with effect from 1 June 2010 and 11 August 2010 whereas the goods purchased in June 2009, April 2009, January, 2009, December, 2008, Nov, 2008 and October 2008 at that time the status of taxpayer was alive and doing business. The compliance level of the unit is showing 100% active taxpayer list. But unfortunately on ATL the unit has shown in record as black listed and blocked taxpayer.

6. That the Annexure A&C of the taxpayer for the tax period June, 2009 , April 2009, January, 2009, Dec 2008 , Nov, 2008 October,

2008 is attached which clearly shows that the taxpayer has paid his respective sales tax.

7. That the Commissioner IR (A-III) Islamabad has passed the order without completion of exercise laid down in the SRO 555(I)/2006 dated 5.6.2006, therefore, input disallowed u/s 11(2) & 36(1) of the sales tax Act 1990 along with default surcharge under section 34 of the sales tax Act 1990 and penalty of 5% on principal amount under section 33(5) of the sales tax Act 1990 is illegal against the facts of the case.

8. That the appellant begs to alter or more at the time of hearing.

It is prayed that the impugned order in appeal No. 219/2012 dated 8.1.2012 may please be modified or any other relief deemed proper be granted.

IV. On due date of hearing, the counsels of both the parties were heard and the decision of the Tribunal appears below:

JUDGMENT

* The CIR (A) has upheld inadmissibility of Rs.379,340/- in respect of suppliers mentioned above. The appellant has objected to this treatment on the grounds that even this amount should be adjustable because the invoices are genuine and suppliers were active during the period when supplies were made and not blocked or black listed. The DR argued that the same should be held inadmissible being fake and flying invoices.

* In our opinion another chance should be given to the appellant to plead his stance before the Inland Revenue department, which will ensure the necessary verification of invoices and whether transactions took place during active period and that black listing does not cast shadow over the impugned transactions also it should be seen that tangible supplies took place against the invoices. Otherwise the amount will be held inadmissible for this reason,

therefore, the case is remanded back to the IRS department.

* The appeal is decided accordingly.

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