

## **Taxhelpline Case No. 121 of 2013**

**[INLAND REVENUE APPELLATE TRIBUNAL]**

**STA No. 156/LB/2011, Date of Hearing : 31.05.2012. Date of  
Order : 27.06.2012**

**(CH. MUNIR SADIQ), JUDICIAL MEMBER, (KHALID AZIZ  
BANTH), ACCOUNTANT MEMBER**

**Appellant by : Miss Naureen Yaqoob. DR. Respondent by : Mr.  
Basir Solatch, Advocate**

**The CIR, RTO 1, Lahore --Appellant  
Vs  
M/S Heaven Engineering Lahore--Respondent**

ORDER---The titled sales tax appeal has been filed by the Revenue against order dated 20.12.2010 passed by the learned CIR (Appeals-III), Lahore.

2. Brief facts giving rise to the present appeal are an information was received from additional Director, Directorate of Intelligence and Investigation-FBR, Lahore about M/s Asif Hanif, Muhammad Azam Khan, Mirza Arif Baig and others that they were operating a gang to defraud the national exchequer by committing tax fraud by way of issuing fake sales tax invoices. On the basis of this information criminal cases were got registered against two accused persons namely Muhammad Azam Khan and Mirza Arif Baig were arrested during the month of October, 2009 and they are still behind the bar. On the basis of approval given by the FBR proceedings were initiated against the registered person. The registered furnished the requisitioned record but failed to give any plausible reason of the illegal purchases shown to have been made from the suppliers as against the amount shown against each unit. However, the registered person deposited the principal amount of sales tax of Rs.80,000 out of total principal amount of Rs.205,138 with balance

sales tax of Rs.125,138 and SED of Rs. 11.089 still to be paid. On this basis the registered person was directed to pay balance sales tax amounting to Rs. 125,138, special excise duty at Rs.11,089 alongwith default surcharge. A penalty equal to 100% of the amount of tax involved was also imposed u/s 33(13). Penalties wherever applicable were also imposed u/s 33(4), 33(5), 33(6), 33(8) and 33(16) of the Sales Tax Act, 1990. A penalty u/s 19(3) of the Federal Excise Act, 2005 was also imposed. The registered person being aggrieved went in appeal before the learned CIR(A) who amended the impugned order upto the extent to pay sales tax amounting to Rs.45,912 and special excise duty amounting to Rs. 6,266 along with default surcharge to be calculated u/s 34(1) of the sales Tax Act, 1990 and amount of SED along with default surcharge u/s 8 & 14(2) of the Federal Excise Act, 2005. Penalty imposed u/s 33(13) of the Sales Tax Act, 1990 and penalty u/s 19(3)(b) & 19(3)(c) of the Federal Excise Act, 2005 were also remitted being harsh. Rest of the penalties were upheld. The registered person being dis-satisfied has come up in appeal before the ATIR.

3. The learned DR has contended that the relief allowed by the learned CIT(A) is not justified keeping in view the facts and circumstances of the case. On the other hand, the learned AR has supported the order of the learned CIR (A) for the reasons stated therein and submitted that the respondent person has paid the total principal amount of tax which proves the bonafide conduct of the registered person.

4. Arguments heard and record perused.

5. The order by the learned CIR (A) is well reasoned, he has come to the conclusion that only 2.40% of the total income tax claim involves alleged fake invoices. Therefore, he had remitted the penalty 33(1) of the Sales Tax Act, 1990 and penalty u/s 19(3) (b) and (c) of the Federal Excise Act, 2005 being harsh keeping in view the facts and circumstances of the case. The relief allowed in sales tax and special excise duty also appears to be in order. Therefore, is no illegality or perversity in the impugned order, therefore, it is hereby affirmed and the appeal filed by the revenue is dismissed

being devoid of any merits.

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