

Taxhelpline Case No. 127 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

**(JAWAID MASOOD TAHIR BHATTI) JUDICIAL MEMBER,
(MUHAMMAD AKRAM TAHIR) ACCOUNTANT MEMBER**

**Mr. Muhammad Aamir Qadeer, Advocate. Mrs. Sadia Sadaf,
DR**

**M/s. Aftab Mohyuddin Hafiz, 15-Link Mcload Road, Patiala
Ground, Lahore....Appellant**

Vs

The CIR (Appeals-IV), Lahore.....Respondent

ORDER---The titled sales tax appeal has been filed by the Registered Person against order in appeal No.10/89/AIV dated 12.11.2012 passed by the learned CIR (Appeals-IV), Lahore.

2. Brief facts giving rise to the present appeal are that from the perusal of the record it was observed that the registered person during the tax period of January, 2011 claimed illegal input tax amounting to Rs.3,358,467 on invoices which were not declared/paid by their suppliers, hence the claim was not admissible under the law. Therefore, a show cause notice was issued to the registered person requiring him to explain as to why the aforesaid amount of sales Tax should not be recovered from him along with default surcharge and penalty. After considering the submissions made by the registered person to be unsatisfactory order in original was passed and the registered person was directed to pay sales tax amounting to Rs.3,358,467 alongwith default surcharge and 100% penalty. The registered person being aggrieved went in appeal original as the same was not served upon the taxpayer. Being aggrieved, the taxpayer went in appeal before the learned CIR (A) and raised a number of objections to the proceedings initiated against the taxpayer as enumerated by the learned CIR (A) in the body of the impugned appellate order. The learned CIR (A) being

convinced with the submissions made by the taxpayer before has held that "assessment has been framed without confronting the appellant and appreciating the true position. Such an order, therefore, is not sustainable and is accordingly set aside. However, the learned CIR (A) remand' the matter back to the adjudication officer with the direction to afford reasonable opportunity to the appellant and for passing fresh speaking order strictly in Accordance with law. These findings of the learned CIR (A) are assailed by the taxpayer through second appeal filed before this forum.

3. The learned AR on behalf of taxpayer assailed the orders of the authorities below as contrary to law and facts of the case. It is submitted by the learned AR that the learned CIR (A) was not justified to remand the case back to the assessing officer as the learned CIR (A) in terms of section 45-B (3) of the Sales Tax Act, 1990, is not competent to provide another chance to the assessing officer to improve his case. It is submitted by the learned AR that the taxpayer paid input tax against purchases made from M/s I.J. Traders, and has duly made compliance to the provisions of section 7 of the Act. It is asserted by the learned AR that status of the supplier unit was checked by the taxpayer at the time of transaction which was active. It is contended by the AR that the status was suspended w.e.f. August 16, 2010, whereas the taxpayer made transaction with him in the month of February 2010. It is submitted by the AR that the taxpayer had duly fulfilled all the conditions laid down in the Sales Tax Act, 1990. On the contrary, learned DR supported the order passed by the learned CIR (A) and contended that no prejudice is caused to the taxpayer from the setting aside directions of the learned CIR (A).

Also placed on record a copy of the letter bearing No.26(11)/GST/CRO/2005 dated 18.03.2008 issued by the CBR, .Islamabad whereby the change in particulars of Registration was acquired. The learned AR further stated that the appellant has not violated Section 8(1)(ca) of the Sales Tax Act which reads as under;

"[8. Tax Credit not allowed:- (1) notwithstanding anything contained in this Act, a registered person shall not be entitled to reclaim or deduct input tax paid on (ca) the goods or services in respect of which sales tax has not been deposited in the Government Treasury by the respective supplier:]"

The learned AR submitted that section 8(1)(ca) cannot be invoked as it deals with non-deposit of output tax and not non-declaration of output tax. The learned DR, on the other hand, has submitted that the appellant could not produce any documentary evidence in support of his contentions either before the assessing officer or during appeal proceedings, therefore, the treatment given by the authorities below is in order.

4. We have heard both the sides and perused the available records. The claim of input tax appears to be genuine as M/s. CBA International was owed by the appellant and was later merged with M/s Aftab Mohyuddin by Sales Tax Department vide letter C.NO.ST/LHR/REG/OL/2004 dated 18.10.2007. A copy of the letter has been placed on record. The learned AR has also furnished a copy of the letter bearing No.26(11)/GST/CRO/2005 dated 18.03.2008 issued by the CBR, Islamabad whereby the change in particulars of Registration accepting the name of M/s CBA International was accepted. The appellant is owner of "CBA International" and also authorized dealer of Dawlance (Pvt.) Ltd but the clerk of the appellant claimed the input tax adjustment of Dawlance (Pvt.) Ltd in M/s United Refrigeration Industries Limited instead of Dawlance (Pvt.) Ltd which is a matter of rectification only and an application for grant of permission to revise monthly sales tax return has already been filed. The liability to deposit the alleged sales tax amount was upon the supplier company as the appellant's company is only the authorized dealer of the supplier and sales tax amount involved in this case has already been deposited by the supplier company hence there was no loss of revenue involved in this case. The learned AR for the appellant has produced copies of letters/certificates issued by the Dawalance (Private) Limited dated 18.06.2012 and United Refrigeration Industries Limited dated 18.06.21012 whereby it was certified that sales tax has been charged on supplies made to M/s CBA International during

January,2011 for all the 25 invoices now under consideration. In view of this situation we are of the considered opinion that the order in original No.4199 dated 26.05.2011 passed by the ACIR audit unit-01 Zone-VI RTO Lahore and order in appeal No.10/ST/A-IV dated 12.11.2012 passed by the CIR (Appeals-IV) are void ab initio, illegal and unlawful and are hereby annulled. The appeal filed by the registered person is accepted.

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