

## **Taxhelpline Case No. 131 of 2013**

### **[INLAND REVENUE APPELLATE TRIBUNAL]**

**STA No. 180/IB/2012 Date of hearing 08-05-2013. Date of order 07-06-2013**

**Mr. Muhammad Jahandar, Judicial Member and Mr. Haroon Muhammad Khan Tareen, Accountant Member**

**Appellant by Syed Tauqeer Bokhari, Advocate. Respondent by Mr. Naveed Hassan & Mr. Hameed Ullah Shah, D.R**

**M/s. Agha Jee Printers, 12-D, Bewal Plaza, Fazle Haq Road, Blue Area, Islamabad Appellant**

**Vs**

**Commissioner Inland Revenue, R.T.O., Islamabad Respondent**

ORDER---1. This appeal filed by registered person is directed against an Order-in-Appeal dated 13.03.2012 passed by learned Commissioner Inland Revenue (Appeals-III) Islamabad.

2. Brief facts are that it was observed during audit of the registered person/appellant that for the period June, 2009 to May, 2010 that he had short paid Special Excise Duty amounting to Rs.241,523/- in violation of Section 3(a) of the Federal Excise Act, 2005 read with SRO 655(I)/2007 dated 29.06.2007 whereon a show cause notice was issued for 06.06.2011. However neither reply was received nor any body was attended the hearing and resultantly an ex-parte order was passed for the recovery of SED along with default surcharge and penalty.

3. Aggrieved of this treatment, the registered person went in appeal but to no avail. Now this is the second appeal before this Tribunal on the following grounds:

1. That the impugned order is illegal, incorrect, without jurisdiction, unwarranted and against the Article 77 of the Constitution of Islamic Republic of Pakistan.
  
2. That the officer of DGGRRA Lahore was not justified to conduct the audit of the Federal Excise registered person.
  
3. That the Appellant is in the business of Printing of books and periodicals which are exempt under SRO 830(I)/2007 dated 18/08/2007, so the imposition of Special Excise duty to the Appellant is also against the said SRO.
  
4. That respondent No.2 also imposed default surcharge and penalty which is also against the law. It is a fundamental principle of law no penalty and default surcharge should be imposed without establishing the willful default of taxpayers.
  
5. Arguments have been heard. An ex-parte Order-in-Original was passed but there is no detailed discussion. However learned Appeal Commissioner while disposing of the appeal found that the process of printing is covered under the definition of manufacture as defined under section 2(16) of the Sales Tax Act, 1990 read with section 2(16) of the Federal Excise Act, 2005 and printing is not exempt from the levy of SED under SRO 655(I)/2007 dated 29.06.2007. Before this Tribunal the arguments of the learned A.R remained that the record has not been examines to conclude as to what work has been done by the registered person attracting the definition of manufacture as defined under section 2(16) of Sales Tax Act, 1990 read with section 2(16) of the Federal Excise Act, 2005. Learned D.R did not contest this contention of the learned A.R. It seems that a thorough inquiry is imperative. Thus both the orders passed by the forums below are vacated and case remanded to Officer Inland Revenue for passing afresh order after providing an opportunity to the registered person for production of the record and after examination as to the what is the work done by the registered person that fall within the mischief of manufacturing.

With these observations the appeal is disposed of.

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