

Taxhelpline Case No. 133 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No. 1517/LB/2009 Date of hearing 23.07.2013

Mr. Muhammad Akram Tahir, Accountant Member and Mr. Muhammad Waseem Ch., Judicial Member

Appellant by Mr. Iqtidar Alam, I.T.P. Respondent by Dr. Muhammad Idrees, D.R

**M/s. Shahzad Textile Traders, Lahore. Appellant
Vs
The C.I.R. (Legal Division), R.T.O., Lahore. Respondent**

ORDER--The titled appeal preferred at the instance of the registered person is directed against the order in original No.ST-156 to 158/2005 dated 01.06.2005 passed by the Collector Sales Tax & Central Excise (Adjudication), Lahore.

2. Facts of the case, in brief, are that during the audit of the appellant's company for the tax period 03/2002 to 12/2003 it was observed that the registration with the Sales Tax department was made with an opening capital of Rs.2,00,000/- but as per Sales Tax record huge sales of Rs.17,98,14,153/- had been shown. Accordingly, the business premises of the

appellant was visited and it was found that the appellant was not available at its given address. From these facts it was alleged that the registered person was not involved in any physical business of purchase and supply of goods but instead had got himself registered only for the purpose of issuance of fake/flying invoices to facilitate fraudulent refund claimed by other registered persons and had committed tax fraud as defined in Section 2(37) of the Sales Tax act, 1990. On the basis of these allegations, the appellant was called upon to show cause as to why Sales Tax amounting to Rs.2,69,72,906/- alongwith additional tax u/s 34(1) may not be

recovered and penal action may not be taken against him u/s 33(4)(f) of the Sales Tax Act, 1990. In reply, the appellant submitted that copies of the record on the basis of which the case was made out had not been provided to him, therefore, proper opportunity of hearing had not been afforded. However, the explanation tendered by the appellant was found unsatisfactory and consequently the order in original dated 01.06.2005 was passed.

3. The learned A.R, vehemently, challenged the impugned order as unjustified and arbitrary. He argued that neither the appellant had ever made any business as alleged in the show cause notice nor he had any concern with it. According to the learned A.R, probably the registration number of the appellant was misused by someone else and the appellant had been charged on the basis of facts which not related to the appellant. He further submitted that record on the basis of which the appellant was found guilty was never provided to the appellant for reconciliation.

4. The learned D.R, on the other hand, opposed the contentions by contending that the appellant was charged after providing proper interference to the impugned order is warranted.

5. After having heard the rival arguments and perusing the available record, we are of the considered opinion that the contentions of the learned A.R deserve consideration. Since the appellant had totally denied the allegations and submitted that the relevant record had not been provided to him for rebuttal/reconciliation we feel that the case needs further investigation. Accordingly, the impugned order is set aside and the case is remanded for denovo consideration with the directions that opportunity of hearing and rebuttal be provided to the appellant before passing the order.

Case remanded

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