

Taxhelpline Case No. 136 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

STA NO.493/LB/2012 Date of hearing 21.05.2012

Appellant by Mr. Maqsood Ahmad, FCA Respondent by None

**M/s. Nestle Pakistan Ltd., Lahore. Appellant
Vs
CIR, Zone-II, LTU, Lahore. Respondent**

The above titled appeal has been filed at the instance of the registered person against the order-in-appeal No.30-324 dated 14.05.2012 recorded by CIR(Appeals-I), Lahore, whereby the refusal of stay against recovery of tax, demand has been agitated.

2. The facts in brief leading to the instant appeal are that the registered person derives income from manufacturing processing and sale of food products (dairy, confectionery, culinary, coffee, beverages, infant nutrition and drinking water). An application for grant of stay against the demand of sales tax amounting to Rs.305.04 Million was filed on 11.05.2012, which was dismissed by CIR(Appeals-I) Lahore as per finding given below:-

"The appellant has not filed any evidence regarding any coercive measure taken by the department. Therefore, the balance of convenience does not lie in its favour. In the absence thereof application is premature and thus rejected."

--- Feeling aggrieved, the taxpayer has come up in appeal before this Tribunal.

3. The learned AR has termed the action of first appellate authority to be arbitrary. He has elaborated his view point by maintaining that while rejecting the stay application filed by the registered person, the learned CIR(A) has not recorded any cogent reason in the body

of impugned order. He has stressed that if the department is not restrained from recovery of the disputed tax demand against which the registered person is in appeal before the first appellate authority, it will cause irreparable loss. In the circumstances, he prays for grant of stay.

4. On the other hand, none has appeared on behalf of the department.

5. We have heard the arguments advanced by rival parties and also carefully gone through the relevant record. We do not find ourselves in agreement with the assertions made by learned AR being not supported by plausible reasons. The perusal of the impugned order transpires that stay application preferred by the registered person was rejected by learned CIR(Appeals-I) Lahore for the reason that registered person had failed to prove that coercive measures for recovery of impugned tax demand had been taken by the department on the strength evidence. Before us too, the learned AR has failed to produce such evidence as wanted by learned CIR(A). In such like situation, in our considered opinion, the registered person deserves no relief regarding grant of stay. However, learned CIR(Appeals-I), Lahore, is directed to decide the appeal pending before him within one month from the receipt of this order.

We order accordingly

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