Taxhelpline Case No. 137 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No.120/IB/2012 July, 2010 to March, 2011 Date of hearing 15/07/2013

Mr. Muhammad Riaz, Accountant Member and Mr. Muhammad Jahandar, Judicial Member

Appellant by Mr. Atif Mahmood, AR Respondent by Mr. Imran Shah, DR

M/s. MIA Corporation (Pvt.) Ltd. No.384 Street No. 16, Industrial Area I-9/3 Islamabad. Appellant
Vs
Commissioner Inland Revenue, LTU, G-9/1 Islamabad. Respondent

ORDER

The present appeal has been filed by M/s MIA Corporation (Pvt) Islamabad against Order No. 35/2012 dated 09.02.2012 passed by the Commissioner Inland Revenue (Appeals-I) Islamabad.

The appellant has pressed the following grounds of appeal:

1. The learned CIR (A) was not justified to pass ex-parte order by rejecting the request for adjournment which was only seeked for the second time.

2. That the learned officer issued show cause notice u/s 11(2) and decide the case u/s 36(1) of the Sales Tax Act 1990 which is not warranted under the law as the proceedings have culminated into an invalid order.

3. The learned officer was not justified to ignore the written reply filed by the appellant the contents of which have neither been reproduced nor have been considered in the body of impugned order. The impugned order is non-speaking in this context.

4. The learned officer was not justified to ignore the documentary evidence produced regarding two vendors i.e Hill View hotel and Islamabad hotel which is a perfunctory act.

5. That the learned officer was not justified to push the appellant/purchaser for reproduction of suppliers record (i.e sales ledger and sales summaries) during the proceedings when the only obligation of the appellant under the circumstances is to produce such documents which are in its possession and control as obtained in the provisions of section 25 of the Sales Tax Act 1990.

6. That the learned Assistant Commissioner was not justified to disallow input to the appellant on the grounds that suppliers have failed to deposit the tax charged from the appellant when no loss has been caused to the ex-chequer and the tax has actually been deposited by the vendors but in unregistered category.

7. That it was categorically explained that suppliers (namely Islamabad Hotel, Hill view Hotel, and Hilti Pakistan (pvt) Ltd have included the name of appellant in the category of un-registered buyer while preparing and filing their Sales tax returns for different periods. In order to prove further, the sales tax returns, sale summaries and letters from the said suppliers were also provided but the learned officer in total disregard of these facts decided the case against the appellant.

8. That the learned order was not justified to decide the case against the appellant simply due to lack of proper reconciliation as far as the vendor M/s Hilti Pakistan (Pvt) Ltd is concerned. It is actually the vendor who had charged excess output tax in its Sales tax returns and not he appellant who had claimed excess input. Input cannot be disallowed simply on the basis that the return of buyer and supplier is mismatched as there is no such provision in law.

9. That the tax had been duly deposited by the suppliers and there is no loss caused to ex-chequer therefore the only matter left for determination was of reconciliation. The appellant requested the officer in this regard through the letter dated: 22-06-20101 for issuance of notice to suppliers in order to obtain necessary reconciliation / clarification but the learned officer was only inclined to put the entire burned on appellant for production of each and every such record which is neither maintained by the appellant nor was possessed by it.

Brief facts of the case are that it was observed during desk audit, of the appellant that he had claimed unlawful adjustment of input tax in violation of Section 8(1)(ca) of the Sales Tax Act, 1990. Accordingly they were issued a show cause notice, reply of the appellant thereto was partially accepted and an order was passed for the recovery of above stated amount of un-lawful adjustment of input tax, however, demand of Rs.9,552/- was vacated as the same was shown by the supplier in his return.

Being dissatisfied with the treatment given by the ACIR the taxpayer preferred appeal before learned CIR (appeals-I) who after considering the facts, annulled the order passed by Assistant Commissioner Inland Revenue with following observation : -

"I have perused the case record and considered the submissions of the AR tendered in the grounds of appeal. In this case the appellants have claimed input adjustment of Rs. 294,905/- on the strength of purchase in voices of different units which on online verification have not been proved from the summary of sale invoices of the supplier filed for the tax periods July, 2010 to November, 2010. Moreover, the AR of the appellants has not provided any records which prove that tax had been deposited by the supplier. Input adjustment is not admissible under section 8(1)(ca) unless and until the sale/ supply is also reflected in the summary of the relevant return of the supplier. The appeal is accordingly rejected and the order passed by the Adjudication Officer is upheld."

We have heard the appellant and the DR and also perused the record. It is observed that the Sales Tax Invoices and the relevant record has not been properly examined by both the authorities below. Under the circumstances, we, therefore, deem it appropriate to remand the case back to the Assistant Commissioner Audit Inland Revenue, Islamabad with the directions to examine all the documents/ Sales Tax Invoices and to decide the case on merits after affording proper opportunity to the taxpayer to explain his case.

The appeal succeeds in the manner and to the extent indicated above.