

Taxhelpline Case No. 139 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No. 2312/LB/2009 Date of hearing 05/03/2013

Mian Masood Ahmad, Accountant Member and Mr. Nazir Ahmad, Judicial Member

**Appellant by Mr. Saood Nasrullah Cheema, Advocate.
Respondent by Mrs. Fouzia Fakhar, D.R**

**M/s. Standard Petroleum (Pvt.) Ltd., Sheikhpura. Appellant
Vs
Commissioner Inland Revenue, RTO, Lahore. Respondent**

ORDER

The titled sales tax appeal has been preferred at the instant of taxpayer calling in question the impugned order dated 06-10-2007, passed by the learned Collector (Appeals), Lahore.

2. The relevant facts in brief are that a show cause notice dated 18-07-2003, was issued to the taxpayer wherein it was alleged that on scrutiny of Central Excise record of the taxpayer relevant to the tax periods from 05-07-2001 to 26-09-2001, reveals that the taxpayer had cleared 123,192 liters of various brands of industrial lubricating oils in bulk condition without payment of Central Excise Duty to several trades and consumers while the complete addresses of the traders were not mentioned on the prescribed central excise gate passes. It was also confronted that the taxpayer had cleared huge quantity of lubricant in bulk condition under the garb of exemption from payment of central excise duty and subsequently the same were sold after repacking the same from their sales point without payment of central excise duty. The matter was reported for adjudication wherein order-in-original was passed and the taxpayer was directed to payment central excise duty amounting to

Rs.589003/- and sales tax amounting to Rs.88350/- alongwith additional duty and default surcharge. A penalty u/s 33 (2) (cc) of the Act was also imposed upon the taxpayer. Being aggrieved, the taxpayer preferred first appeal before the learned first appellate authority, who vide impugned order upheld the order-in-original.

3. The learned AR for the appellant submits that the orders passed by the authorities below are not maintainable in the eye of law since lubricating oil supplies in bulk by the taxpayer are exempt from central excise duty and the only dispute between the department and the taxpayer is that whether the taxpayer had made supplies in bulk or not. It is contended by the learned AR that the detecting staff failed to substantiate their alleged stance with any concrete evidence that the taxpayer did not make the bulk supplies but the supplies were made by repacking the same. It is asserted by the learned AR that the reporting agency did not give any proof about receipt of excisable goods from any registered person for retail packing of lubricating oil and its further sale. It is contended by the learned AR that such a huge quantity of raw material received and used for retail packing by the taxpayer without payment of leviable taxes from its manufacturer has not been proved rather the case was made out on presumptions and surmises. On the contrary, the learned DR supports the order passed by the authorities below.

4. We have heard the arguments put fort by the learned representatives of both the sides and have carefully gone through the available record. After due consideration, we find that the taxpayer is correct in its assertion that the whole case was made out by the department on conjectures and surmises and no concrete effort was made out by the detecting staff to made out a case that the taxpayer has not supplied the lubricating oil in bulk. On the contrary, the taxpayer has produced sufficient material on record before the authorities below as well as before us to prove their stance that they had supplied lubricating oil in bulk which is exempt from central excise duty as provided in several SROs duly mentioned in the body of the impugned orders of the authorities below. The department has also failed to prove their stance with the help of concrete evidences that some of the gate passes provided by the

taxpayer are fake. The whole case was made out by the department on presumptions and no evidence was brought on record that the supplies were made in packs and not in bulk, therefore, the demand of tax on presumption without any evidence of physical transaction and supply of goods in packs is unjustified and illegal. We are, therefore, inclined to hold that the proceedings in the case initiated on presumptions are not sustainable in the eye of law. Therefore, the impugned order-in-original is hereby annulled. Order of the learned Collector (Appeals) is accordingly vacated.

5. Appeal of the taxpayer succeeds in the above manner.

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