

Taxhelpline Case No. 147 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No.297/LB of 2012, decided on 6th August, 2012. Date of hearing: 26th July, 2012

Before Shahid Jamil Khan, Judicial Member and Muhammad Zahir-ud-Din, Accountant Member

Khubaib Ahmad for Appellant. Mrs. Fiza Batool, DR for Respondent

**Messrs MAGNA TEXTILE INDUSTRIES (PVT.) LTD.,
FAISALABAD**

Vs

C.I.R. (APPEALS), R.T.O., FAISALABAD

ORDER

This appeal has been filed by Messrs Magna Textile Industries, (Pvt.) Ltd., Faisalabad against sales tax Order-in-Appeal No.64 of 2012 dated 23-2-2012 passed by learned Commissioner of Inland Revenue (Appeals), Regional Tax Office, Faisalabad.

2. Brief facts of the case are that during audit of refund claim No.T0811101000240 of Messrs Magna Textile Industries (Pvt.) Ltd., Faisalabad (bearing Sales Tax Registration No.04-04-5111-054-46) for the tax period 11/2010, following discrepancies were observed by DRAA:--

"According to Rule 33 of the Sales Tax Refund Rules, 2006, refund to the claimants under these rules shall be paid to the extent of input tax paid on purchase or imports that are actually consumed in the manufacture of goods which have been exported or supplied at the rate of zero per cent."

Scrutiny of the refund claim No.T0811101000240 sanctioned vide RPO No.50937/2011 dated 12-2-2011 in respect of Messrs Magna Textile Industries (Pvt.) Ltd., Faisalabad (STR No.0404511105446) for the month of 11/2010 revealed that refund was sanctioned on purchase/consumption of dyes and chemicals of Rs.649078 vide G.D. No.1-HC-1619351 dated 30-11-2010 which was cleared on 1-12-2010 but has shown closing stock of Rs.NIL (stock statement). It is pertinent to mention here that the registered person consumed quantity of chemicals in 11/2010 while the same were cleared in 12/2010 as evident from Goods Declaration (GD). At the time of processing of refund claim the Processing Officer left unattended the codal requirement and refund was sanctioned without verifying the consumption of stocks. The lapse resulted into inadmissible refunded of Rs.649078 as detailed below:--

Month
Item
Import date
Clearance date
Inadmissible (Rs.)
Remarks
11/2010
Chemicals
30-11-2010
1-12-2010
649078

The registered person consumed chemicals in 11/2010 while these were cleared in 12/2010.

3. Based on the above facts, Messrs Magna Textile Industries (Pvt.) Limited, Faisalabad were charged with the violation of provisions of sections 2(14), 4, 7, 8(1)(a), 10, 23, 26 of the Sales Tax Act, 1990 read with Refund Rules, 2006 notified vide S.R.O. 555(I)/2006 dated 5-6-2006 and were called upon to show cause as to why sales tax amount of Rs.649078 may not be recovered from them under section 36(1) along with default surcharge under section 34 of the

Sales Tax Act, 1990. Imposition of Penalty under section 33 of the Act ibid was also proposed. The adjudication proceedings culminated in passing of Sales Tax Order in Original No.3 of 2011 dated 18-10-2011 wherein the above mentioned amount was ordered to be recovered from the appellant along with default surcharge. A penalty equal to 3% of the amount involved was also imposed upon the appellant under section 33 of the Sales Tax Act, 1990.

4. Being aggrieved, the taxpayer filed appeal before learned CIR(A), Faisalabad who dismissed the appeal. Relevant portion of CIR(A) orders are reproduced below:--

"After due consideration, I find that the appellant/registered person imported chemical (Butyle Acrylate) involving sales tax amount of Rs.649078 vide G.D. No.I-HC-1619351 dated 30-11-2010 which was cleared on 1-12-2010. The appellant claimed input tax/refund of sales tax for the tax period 11/2010 showing consumption of imported chemicals involving sales tax of Rs.649078 for the zero rated supplies. Thus the appellant/ registered person claimed/ received refund against the express provisions of Refund Rules which clearly states that refund of input tax shall be admissible against the actual consumption of raw material for the respective tax period, however, in this case the appellant has no stock for consumption in the tax period in question against which the input tax was claimed and received. Hence, input tax claimed/received was inadmissible as per law accordingly, I find that the issue involved in this case is totally different from the cases relied upon the judgments quoted by the learned AR of the appellant as 'each and every case has to be decided on its own merits as to whether the evasion of payment of tax wilful or mala fide....' as held by the Honorable Supreme Court of Pakistan reported in 2004 SCMR 456 = 2004 PTD 1179.

In view of the above, I find no merit in the appeal which is rejected and the impugned order is upheld accordingly.

The appeal is disposed of as above."

5. During hearing proceedings before us, the learned Advocate for the taxpayer vehemently argued that section 7 and section 10 of

Sales Tax Act, 1990 allow adjustment of input tax/payment of refund just after satisfying payment of input tax has been paid, there is no bar and no restriction of utilization/consumption of the goods prior to availing input tax adjustment/refund, however, Revenue is misinterpreting Rule 33 of Sales Tax Rules, 2006 and want to put a restriction that goods are actually consumed in manufacture of goods which are to be exported or supplied at rate of zero percent. The learned Advocate for taxpayer pleads that the interpretation is misconcerned and even otherwise rules are subservient to Act and in case of conflict between rules and any provision of Act, the later will prevail. The learned Advocate also referred to following judgments in his support:--

(1) GST 2003 CL 598

(2) 2012 PTD (Trib.) 453

6. DR opposes the arguments and refers to restricting provision of section 10 of Sales Tax Act, 1990 wherein it has been clearly mentioned that Board may impose conditions/restrictions for regulating refund mechanism.

7. We have gone through the case record and heard the rival arguments and reached to the conclusion that both section 7 and section 10 of Sales Tax Act, 1990 allow input tax adjustment/ refund simply on payment of input tax. There is no condition of consumption of the goods before taking input adjustment or availing refund. The Rule 33 of Sales Tax Rules, 2006 referred to by the learned DR has to be read/ interpreted in harmony with the provision of section 7 and section 10 of Sales Tax Act, 1990

7. Identical issue has already been decided by ATIR in S.T.A. No.543/LB of 2011, CIR Zone-III, RTO, Faisalabad v. Messrs Kamal Fabrics, Faisalabad, decided on 1-11-2011 wherein it has been held as under:--

"That even if, the goods manufactured therefrom, the alleged goods were meant for export in subsequent tax periods but before

sanctioning of refund then input tax paid thereon was admissible to be refunded on that very point of time and once, it is established that export of alleged goods is made, the denial from refund of input tax incurred thereon would tantamount to tax exported goods which are otherwise chargeable to sale tax at zero-percent. Reliance is placed on the judgment of the Hon'ble Customs, Excise and Sales Tax Appellate Tribunal, Lahore Bench Camp at Islamabad in case of "Messrs Blue Horizon (Pvt.) Ltd., Sialkot v. The Collector (Appeals) Northern Zone and others" as reported at (PTCL 1999 CL 162) in which the similar proposition has been settled and under the law of precedence, the said judgment is also applicable in the instant case. The ratio decidendi in the said judgment is as under:--

"In a way in legal semantics, the term zero-rated provided in section 4 means a nil liability created by the legislature itself in the shape of this statutory provision. It is something stronger than the exemption awarded either by the Central Board of Revenue or the Federal Government under section 13.---The goods exported are totally immune from the Sales Tax, and once it is established that the goods were exported, there is no question of taking any proceedings against the appellants."

8. We, therefore, respectfully following the ratio decided in the above judgments, accept the appeal of registered person.

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