

Taxhelpline Case No. 167 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No. 515/LB of 2012, decided on 5th March, 2013

Before Jawaid Masaod Tahir Bhatti, Chairman and Muhammad Akram Tahir, Accountant Member

Mrs. Sadia Sadaf, DR for Appellant. M. Farooq Sh., for Respondent

Messrs SHAHID CABLE INDUSTRIES, LAHORE

Vs

C.I.R., ZONE-VIII, R.T.O.-II, LAHORE

ORDER

The titled cross sales tax appeals have been preferred at the instance of taxpayer and Revenue, calling in question the impugned Order-in-Appeal No.110, dated 17-2-2012, passed by the learned CIR(A), Lahore.

2. Briefly stated, the relevant facts are that as per information received, the department came to know that the taxpayer during tax period March, 2010 had claimed illegal input tax amounting to Rs.345,870 on invoices issued by one Messrs S.A. Traders, which was, allegedly, declared blacklisted/blocked/inactive unit. Accordingly, a show cause notice was issued to the taxpayer under sections 11(2) and 36(1) of the Sales Tax Act, 1990, requiring the taxpayer to explain as to why the said amount of sales tax should, not be recovered from him along with default surcharge and penalty. The reply submitted by the taxpayer to the allegations levelled in the show cause notice, however, did not find favour of the adjudication officer. Consequently, the assessing authority proceeded to pass impugned order-in-original and directed the taxpayer to pay sales tax amounting to Rs.345,870 along with default surcharge and 100% penalty. The taxpayer preferred first appeal before the learned CIR(A) and assailed the treatment meted out at adjudication

stage. The taxpayer challenged the rejection of input tax claim as against the law and facts of the case and also assailed the time limitation of order-in-original which, according to him, was passed beyond the time limitation provided under the law. The learned CIR(A) rejected the taxpayer's stance of claim of input tax adjustment, however, the learned CIR(A) remanded the matter regarding time limitation of order-in-original to the adjudication officer with the direction to communicate the taxpayer evidence regarding extension of time by the concerned Commissioner. Both the parties being not convinced with the, action of the learned CIR (A), has come up in second appeal before this Tribunal.

3. The learned AR on behalf of taxpayer assailed the orders of the authorities below as contrary to law and facts of the case. It is submitted by the learned AR that the learned CIR(A) was not justified to remand the case back to the Assessing Officer with regard to legal objection raised by the appellant regarding passing of the order-in-original beyond the time limitation as prescribed under section 36(3) of the Sales Tax Act, 1990. It is contended by the learned AR for the taxpayer that impugned order is barred by limitation of time of 120 days as specified under 1st proviso to section 111(4) of the Sales Tax Act, 1990. It is explained by the AR that admittedly show cause notice in the case was issued on 3-2-2011 whereas the impugned order was passed on 28-7-2011 which is, thus, clearly time barred. At this juncture, it is pointed out by the learned DR on behalf of Revenue that the concerned Commissioner vide letter dated 9-6-2011, has specifically extended the time period for passing the adjudication order up to 31-7-2011, hence, the same is within the time limitation as the order was passed on 28-7-2011. In this regard, the learned AR submitted that time limitation in the case was expired on 3-6-2011, whereas the extension in time was allowed on 9-6-2011 which is obviously allowed after expiry of time limitation, hence, the same has not sanctity in the eye of law. In this behalf, the learned AR relied upon the judgment of the Hon'ble Lahore High Court cited as 2009 PTD 762.

4. We have heard the arguments put forth by the learned

representatives of both the sides and have carefully gone through the available record. After due consideration of the submission made at the bar and carefully gone through the available record as well as case-law cited at the bar, we are in agreement with the submissions made by the learned AR that the impugned order-in-original is clearly time barred as the same was passed beyond the limitation provided under the law. Under the law, the adjudication officer is under legal obligation to pass the order within the specified period of 120 days. The show cause notice in the instant case was issued on 3-2-2011 and the adjudication officer was under legal obligation to pass the order up to 3-6-2011 which he had failed to do as the order in the case was passed on 28-7-2011 which is clearly beyond the time limitation provided under section 36 (3) of the Sales Tax Act, 1990. The letter dated 9-6-2011, regarding extension of time for passing the order has no sanctity in the eye of law as the extension was allowed by the concerned Commissioner after lapse of statutory time limitation. In this behalf, reliance is placed on the reported judgment of the Hon'ble Lahore High Court cited as 2009 PTD 762 which is "on all fours" applicable in the instant case. The departmental contention that the learned CIR(A) has not taken into consideration the fact of taxpayer's request for adjournment to suspend the proceedings which should be taken into consideration while calculating the time limitation, is without any basis and justification. The assessing authority on the face of impugned order-in-original has mentioned that no adjournment was sought by the taxpayer. Here, we deem it necessary to reproduce the said portion appearing on the first page of the impugned order-in-original:--

"6.

Date of adjournments on the request of the respondent"
NIL

5. In view of the above submissions made by us, we are inclined to hold that the impugned order passed by the Assessing Officer is not maintainable in the eye of law being barred by time which is hereby annulled. Order of the learned CIR(A) is accordingly vacated. This will also dispose of the departmental appeal which is hereby rejected.

6. Appeal of the taxpayer is accepted.

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