

Taxhelpline Case No. 169 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

S.T.A. No. 450/LB of 2012, decided on 5th March, 2013

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

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

**Messrs CH. AMIR GHAFUOR BROTHERS, LAHORE
Vs
C.I.R., ZONE-V, R.T.O., LAHORE**

ORDER

The titled sales tax appeal has been preferred at the instance of taxpayer, calling in question the impugned Order-in-Appeal No. 19-3-2012, dated 19-3-2012, 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 February, 2010 had claimed illegal input tax amounting to Rs.396,068 on invoices issued by one Messrs I.J. Traders, which was, allegedly, involved in issuing fake invoices. 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. Allegedly, no reply to show-cause notice was submitted by the taxpayer. Consequently, the assessing authority proceeded to pass ex parte order-in-original and directed the taxpayer to pay balance sales tax amounting to Rs.296,068 along with default surcharge and 100% penalty. The taxpayer preferred first appeal before the learned CIR(A) after

obtaining-certified copy of the impugned order-in-original as the same was not served upon the taxpayer. Being aggrieved, the taxpayer went in appeal before the learned CIR(A) and raised a number of objections to the proceedings initiated against the taxpayer as enumerated by the learned CIR(A) in the body of the impugned appellate order. The learned CIR(A) being convinced with the submissions made by the taxpayer, has held that "assessment has been framed without confronting the appellant and appreciating the true position. Such an order, therefore, is not sustainable and is accordingly set aside. However, the learned CIR(A) remanded the matter back to the adjudication officer with the direction to afford reasonable opportunity to the appellant and for passing fresh speaking order strictly in accordance with law. These findings of the learned CIR(A) are assailed by the taxpayer through second appeal filed before this forum.

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 as the learned CIR(A) in terms of section 45-B(3) of the Sales Tax Act, 1990, is not competent to provide another chance to the assessing officer to improve his case. It is submitted by the learned AR that the taxpayer paid input tax against purchases made from Messrs I.J. Traders, and has duly made compliance to the provisions of section 7 of the Act. It is asserted by the learned AR that status of the supplier unit was checked by the taxpayer at the time of transaction which was active. It is contended by the AR that the supplier status was suspended w.e.f. August 16, 2010, whereas the taxpayer made transaction with him in the month of February, 2010. It is submitted by the AR that the taxpayer had duly fulfilled all the condition laid down in the Sales Tax Act, 1990. On the contrary, learned DR supported the order passed by the learned CIR(A) and contended that no prejudice is caused to the taxpayer from the setting aside directions of the learned CIR(A).

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, we are convinced with the arguments made by the learned AR at the bar. From the perusal of record as well arguments made by the AR, we have come to inescapable conclusion that the learned CIR(A) should have cancelled the impugned order-in-original rather than remanding the matter back to the Assessing Officer. The learned CIR(A) has given a categorical finding that "from the above discussion, it is evident that assessment has been framed without confronting the appellant and appreciating the true position. Such an order therefore is not sustainable and is accordingly set aside". In the presence of such unequivocal observation/finding, the learned CIR(A) was not justified to remand the matter back to the Assessing Officer for fresh proceedings as such a direction is tantamount to give a chance to the department to fill in the lacuna to improve their case. Furthermore, the provisions of subsection (3) of section 45-B of the Sales Tax Act, 1990, does not empower the learned CIR(A) to remand back the case. For ease of ready reference, the said provision is reproduced here-under for facilitation:--

"In deciding an appeal, the Commissioner Inland Revenue (Appeals) may make such further inquiry as may be necessary provided that he shall not remand the case for de novo consideration"

5. From the perusal of available record, it is also clear that there was ample justification for the taxpayer to claim adjustment of input tax as at the time of transaction, the status of the supplier unit on FBR system was "active" and they were regularly submitting their returns and summary thereof. All the payments made were in accordance with law and the taxpayer did not have any prior knowledge about fakeness of the sales tax invoices issued by the supplier unit. No case of tax fraud was made out against the taxpayer. Having considering all aspects of the case in its entirety and after specifically following the ratio settled in the case reported as 2012 PTD (Trib.) 350, and S.T.A. No. 478/LB/2012, dated 5-6-2012, in re: Messrs Taj International (Pvt.) Limited, Lahore, we have no option but to reach the inescapable conclusion that the department has failed to prove the charge of tax fraud against the taxpayer. Furthermore, the learned CIR(A) also has erred in law in

remanding the case to the Assessing Officer for fresh proceedings.

6. 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 which is hereby annulled. Order of the learned CIR(A) is accordingly vacated.

Appeal of the taxpayer is accepted

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