

APPELLATE TRIBUNAL INLAND REVENUE LAHORE
BENCH, LAHORE

STA No.423/LB/2013

M/s Fuelers Corporation, Gulberg-II, Lahore. .. Appellant
Versus

CIR, Zone-XII, RTO-II, Lahore. ..Respondent

Appellant by: Ch. Usman Khalil Kamboh, Adv.
Respondent by: Mrs. Misbah Nawaz, DR

Date of hearing: 05.05.2014 Date of order: 05.05.2014

ORDER

CH. ANWAAR UL HAQ (Judicial Member): The titled appeal has been preferred at the instance of taxpayer calling in question the impugned order, dated 19.03.2013, passed by the learned CIR(Appeals), Multan (camp at Multan).

2. Briefly stated, the relevant facts are that the department has received information from I & I authorities that M/s Asif Hanif, Muhammad Azam Khan, Mirza Arif Baig and some other persons were operating a gang to defraud national exchequer by committing tax fraud by way of issuing fake sales tax invoices. The instant taxpayer was approached by the department to provide sales tax record for the period relevant to July-2006 to June 2011 to join in the investigation. The taxpayer provide the requisite record but, allegedly, failed to provide the record / proof regarding compliance to the provisions of section 73 of the Sales Tax Act, 1990. It was observed that the taxpayer's had claimed input tax adjustment on supplies made by M/s N.M. Petroleum, Karachi, amounting to Rs.3,767,841/- but during investigation, the said supplier unit was found non-existent from the date of their registration and were found got registered by the fraudsters by misusing CNIC of different persons. On the basis of above irregularity, it was found by the department that the taxpayer had claimed illegal input tax amounting to Rs.3,767,841/- and thus have

violated the provisions of sections 3, 6, 7, 8, 8A, 14, 22, 23, 26 and 73 read with section 2 (37) of the Sales Tax Act, 1990. Accordingly, a show cause notice was issued wherein the taxpayer was called upon to show cause as to why the sales tax amount of Rs.3,767,841/- may not be recovered alongwith default surcharge and penalty. The adjudication proceedings were culminated in passing the impugned order-in-original, whereby it was ordered to the taxpayer to pay principal sales tax amount of Rs. 3,767,841/- alongwith 100% penalty of Rs.3,767,841/- u/s 33 (13) and default surcharge u/s 34 (*to be calculated at the time of deposit*). Being aggrieved, the taxpayer went in appeal before the learned CIR(A) who vide impugned order rejected the appeal of the taxpayer.

3. The learned AR on behalf of taxpayer agitated the order passed by the learned CIR(A) being contrary to law and facts of the case. It is contended by the learned AR that the learned CIR(A) was not justified to confirm the illegal order passed by the assessing authority. It is contended by the learned for the appellant that the taxpayer has rightly claimed input tax adjustment against the valid sales tax invoices issued by M/s N.M. Petroleum, but the claim of the taxpayer was unjustifiably and illegally rejected by the assessing authority. It is contended by the AR that the taxpayer was saddled with payment of principal amount of sales tax at Rs.3,767,841/- and also illegally and unjustifiably held liable to penal action u/s 33 and default surcharge u/s 34 of the Sales Tax Act, 1990. It is asserted by the learned AR that the taxpayer has claimed amnesty in terms of SRO 606(I)/2012 and requested the department for waiver of the default surcharge and penalty but the said claim was unjustifiably and illegally denied by the authorities below. On the contrary, the learned DR supported the orders passed by the authorities below and requested for confirmation of the same.

4. We have heard the arguments of the learned representatives of both the sides and have carefully gone through the available record. After due consideration, we find that no exception can be

taken to the treatment as accorded by the authorities below which is found to be fair and reasonable in the ambient circumstances of the case. A bare perusal of record shows that during the course of investigation, at the stage of assessment and even before this Tribunal, the taxpayer has failed to provide a single supporting document which could prove that the taxpayer was not involved in tax fraud as the taxpayer knowingly, dishonestly and fraudulently committed tax fraud in terms of section 2(37) of the Sales Tax Act, 1990. The taxpayer could not provide a single document before authorities below and even before this Tribunal regarding compliance of section 73 of the Sales Tax Act, 1990 showing transfer of payment from the business account of buyer to the business account of supplier. This position clearly shows that the taxpayer intentionally committed tax fraud in terms of section 2(37) of the Act, 1990. Under such circumstances, we find that the taxpayer was rightly held liable for payment of principal amount of sales tax at Rs.3,767,841/-. As regard taxpayer's contention regarding waiver of penalty and default surcharge in view of amnesty announced through SRO 606(I)/2012, we are of the view that the said amnesty is not available to the taxpayer and has rightly been denied by the authorities below as the taxpayer is involved in tax fraud and claimed illegal input tax adjustment against fake / flying invoices issued by dummy supplier unit. Furthermore, the taxpayer has failed to pay principal sales tax amount in the government exchequer during the tax period relevant to June 2012, therefore, the said amnesty is not available to the taxpayer.

5. In view of the above, we are inclined to maintain the order passed by the learned CIR (A) and dismiss the taxpayer's appeal which is filed without any merit or substance. Order accordingly.

Sd/-
(MOHAMMAD RAZA BAQIR)
Accountant Member

Sd/-
(CH. ANWAAR UL HAQ)
Judicial Member