

**APPELLATE TRIBUNAL INLAND REVENUE, LAHORE**

STA No.981/LB/2012

STA No.793/LB/2012

M/s. Islam Engg. (Pvt) Ltd., Lahore. ... Appellant

Versus

The CIR(A-II), RTO, Lahore ... Respondent

Appellant by : Mr. M. Aamir Qadeer, Advocate

Respondent by : Ms. Amna Naeem, DR

Date of hearing : 24.06.2014

Date of order : 02.07.2014

**ORDER**

The titled appeals have been filed by the appellant/registered person against Order-in-Appeal No. 03/A-II/2012 dated 24.07.2012 & No. 03/A-II/2012 dated 05.05.2012 passed by CIR(Appeals-II), Lahore.

During hearing proceedings the learned AR of the appellant has pressed the following grounds:-

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*"That the Commissioner (Appeals) Inland Revenue was not justified to uphold the charge regarding input tax adjustment of M/s. Kiran Steel amounting to Rs.547,963/- and Rs.5,124/- for SED as the payments were duly made through banking channels copy of cheques were already attached with this appeal."*

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*"That the Additional Commissioner (Appeals) Inland Revenue was not justified to uphold the charge regarding input tax adjustment of M/s. AW traders amounting to Rs.770,812/- for sales tax and Rs.41,666/- for SED as the payments were duly mad through banking channels copy of the bank statement is already attached with this appeal."*

Since the ground taken in both the appeals is more or less similar, therefore, the appeals are being disposed off through this consolidated order.

Facts briefly stated are that; as per available record it was observed that appellant claimed inadmissible input tax against fake invoices of suspended/blocked units. The registered person was

considered to be involved in claiming input tax against fake/flying invoices causing loss to the Government exchequer. Therefore, claim of input tax adjustment was rejected by both the below authorities. Hence the present appeal.

The learned counsel for the appellant contested that both the authorities below while passing the impugned orders were not justified to disallow the input tax adjustment merely on the ground that the status of the supplier at the active taxpayers list of official site of FBR is suspended/blocked. He vehemently contested that at the time of transaction/supply the status of both the suppliers; i.e. M/s. Kiran Steel and M/s. AW Traders, was active. He further contested that if a transaction is otherwise genuine, a genuine buyer cannot be dis-entitled to claim credit of input tax on account of mere non-adherence to the provisions of section 73 (ibid) has been made penal by section 33(16) of the Sales Tax Act, 1990. In support of his contention he placed reliance on various case law i.e. 2011 PTD (Trib.) 2679, 2010 PTD (Trib.) 2345 etc. He further argued that payments were duly made through banking channel. He also argued that in the case of M/s. Kiran Steel, Karachi the CIR, Zone-III, RTO-II, Lahore vide order C.No.Jud/CIR-III/RTO-II/Sus.Units/2012/3538 dated 09.06.2012 has de-blocked/restored registration. He furnished copy of the said order. In view of the foregoing arguments, the learned counsel prayed for setting aside of orders of both the below authorities. On the other hand, the DR has supported the impugned orders.

We have carefully considered the arguments of both the learned representatives and perused the case law cited at bar as well as gone through the record available before us. We are of the considered view that as per mechanism of FBR's automated system, no input on account of invoices issued by blacklisted taxpayers can be allowed. However, we agree with the argument of learned AR that if a transaction is otherwise genuine, a genuine buyer cannot be dis-entitled to claim credit of input tax on account of mere non-adherence to the provisions of section 73. Furthermore, the appellant's claim that at the time of transaction/supply the status of both the suppliers was active at

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the active taxpayers list of official site of FBR as well as payments were made through banking channel carries weight. Keeping in view the foregoing situation we, after vacating the impugned orders, remand the case to the officer concerned having jurisdiction of the case. The assessing officer shall pass a speaking order after considering/examining the claim of appellant regarding active status of suppliers at the time of transaction and payments made through banking channel and if proved genuine, allow input adjustment according to law.

Sdc  
(Nazir Ahmad)  
Judicial Member

SJK  
(Fiza Muzaffar)  
Accountant Member