

APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE.

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STA No. 644/LB/2014

M/s Al-Barkat Traders, Lahore. Appellant

Versus

The CIR, Zone-X, RTO-II, Lahore. Respondent

Appellant by: Mr. Muhammad Farooq Sheikh, Advocate

Respondent by : Mr. Sajjad Tasleem, DR

Date of hearing : 26.06.2014

Date of order : 06.08.2014

ORDER

This appeal has been filed at the instance of registered person, calling in question the impugned Order-in-Appeal No.26/786 dated 30.05.2014 passed by the learned CIR(Appeals), Lahore.

2. Brief facts of the case are that as per information received, the department came to know that the registered person during the period from 06/2009 to 11/2009 had claimed illegal input tax amounting to Rs.2,220,775/- on invoices issued by the suppliers namely M/s Galaxy Traders, M/s Karvan Traders, M/s Murad Associates, M/s P.K Trading Co and M/s Swan's International which was, allegedly, involved in issuing fake invoices. Accordingly, a show cause notice was issued to the taxpayer u/s 11 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 alongwith default surcharge and penalty. Allegedly, no

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reply to the show cause notice was submitted by the registered person. Consequently, the assessing authority proceeded to pass an ex-parte order and directed the taxpayer to pay sales tax amounting to Rs.2,020,775/- alongwith default surcharge and 100% penalty. The registered person preferred first appeal before the learned CIR(Appeals) after obtaining certified copy of the impugned order as the same was not served upon the registered person. In appeal, the learned CIR (A) being convinced with the submissions made by the registered person has held that "Contentions of the appellant have been considered. It is observed that the impugned order dated 17.05.2011 appears to have been passed without service of mandatory show cause notice on the appellant. It is not understandable why order remained dormant for nearly three years without any follow up. This lends support to appellant's contention regarding non-receipt of notice". However, the learned CIR(Appeals) 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(Appeals) are assailed by the registered person through second appeal filed before this forum.

3. The learned AR on behalf of registered person assailed the orders of the authorities below as contrary to

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law and facts of the case. It is submitted by the learned AR that remand back the appeal with the directions as:-

"For the foregoing reasons, I find that the impugned order is not maintainable. The matter is remanded to the adjudicating officer for fresh proceedings in accordance with law and keeping in view the observation made supra".

4. That it is very outset the learned CIR(Appeals) has not powers to remand the case which as clearly stated in sub section 3 of section 45-B read as:-

(3) 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. .. In the light of above submission the learned CIR(Appeals) passed an order against the substantive law was passed by the Parliament which has been endorsed by the Hon'ble Lahore High Court, Lahore Multan Bench, Multan in the Case No.STR No.12/2012 "The Commissioner Inland Revenue VS M/s Supreme Tech International question *"Whether Collector (Appeals) [now Commissioner Inland Revenue, (Appeals)] enjoys the power of remand under section 45-B(2) of the Sales Tax Act, 1990 ("Act")*.

6. That the study of operative part of the judgment passed by Hon'ble Lahore High court, Multan Bench, Multan reveals that, the appellate order is totally illegal and unlawful and liable to be struck down/annul because

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Assessment Order as well as Appellate Order is likely to be struck down as passed illegal and unlawful.

8. That on the contrary, learned DR supported the order passed by the learned CIR(Appeals) and contended that no prejudice is caused to the registered person from the setting aside directions of the learned CIR(Appeals).

9. We have given due consideration to the rival arguments and also gone through the relevant record available on file. After due consideration, we are convinced with the assertions made by the learned AR. From the perusal of record as well arguments made by the learned AR, we have come to inescapable conclusion that the learned CIR(Appeals) should have cancelled the impugned order-in-original rather than remanding the matter back to the assessing officer. The learned CIR(Appeals) has given categorical findings 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(Appeals) was not justified to remand the matter back to the adjudicating officer for fresh proceedings as such a direction is tantamount to given a chance to the department to fill in the lacuna to improve their case. Furthermore, the following provision of sub-section (3) of

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section 45-B of the Sales Tax Act, 1990, does not empower the learned CIR(Appeals) to remand back the case.

"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".

10. From the perusal of available record, it is also clear that there was ample justification for the registered person 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 registered person 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 registered person. 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 STA No.478/LB/2012 , Lahore High Court Multan Bench, Multan. We have reached the inescapable conclusion that the department has failed to prove the charge of tax fraud against the registered person. Furthermore, the learned CIR(Appeals) also has erred in law in remanding the case to the adjudicating officer for fresh proceedings.

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11. In view of the above submission made by us, we are inclined to hold that the impugned order passed by the adjudicating officer is not maintainable in the eye of law which is hereby annulled. Order of the learned CIR(Appeals), being against the express provisions of law, is accordingly vacated.

12. Appeal of the registered person succeeds.

Sd/
(MUHAMMAD WASEEM CH.)
Judicial Member

Sd/
(ABDUL NASIR BUTT)
Accountant Member
Aug.14/7-13