

**IN THE APPELLATE TRIBUNAL INLAND REVENUE LAHORE
BENCH, LAHORE**

M.A No.121/LB/2014

In

STA No. 191/LB/2014

M/s N.R. Traders Pakistan (Pvt) Ltd, Lahore.

Applicant

Versus

The CIR Zone-VII, R.T.O-II, Lahore.

... Respondent

Applicant by : Mr. M. Imran Rashid, Advocate.
Respondent by : Ch. Jaffar Nawaz, D.R.
Date of hearing : 20.08.2014
Date of order : 20.08.2014

ORDER

Through this miscellaneous application the applicant/registered person has sought recalling/rectification of the Tribunal's order passed in STA No.191/LB/2014 on 12.05.2014.

2. The learned A.R stated that the ATIR was not justified in dismissing the appeal in limine without appreciating the facts of the case. He submitted that appeal before the learned CIR(A) was preferred after getting certified copy of the order in original, therefore, the same was neither barred by time nor late. Explaining this contention he stated that the adjudication proceedings as well as the appeal filed before the learned CIR(A) had been disposed of ex-parte without serving any notice on the appellant. Had any opportunity of hearing been provided the applicant could very easily explain the situation. Anyhow, he contended that tax liability was created by issuing the notice u/s 8(1)(ca) of the Sales Tax Act, 1990 which has already been declared unconstitutional by the Honourable Lahore High Court in the judgment reported as (2013) 108 Tax 226. Therefore, the order passed by the Adjudicating Officer is ab-initio void

and the Superior Courts have already held that no limitation runs against the illegal order. Reliance in this regard was placed on the judgment of the Honourable Lahore High Court cited as (2000) 82 Tax 135. Moreover, it is settled principle that adjudication of the case should be on merits and technical knockout is not encouraged. The learned A.R, therefore, prayed that passing of order without considering the settled principle of justice is a mistake apparent on record and should have been rectified. The learned D.R, on the other hand, opposed the contention while supporting the reasons assigned in the impugned order.

3. After having heard the rival arguments and perusing the available record, we tend to agree with the contentions advanced by the learned A.R. Therefore, the order dated 12.05.2014 passed in STA No.191/LB/2014 is recalled and the appeal is restored to its original number. The A.R (Roster) is directed to re-fix the same as per the Roster arrangements.

Sdc
(CH. SHAHID IQBAL DHILLON)
JUDICIAL MEMBER

Sdc
(MUHAMMAD AKRAM TAHIR)
ACCOUNTANT MEMBER