

[Inland Revenue Appellate Tribunal]

*Before Sohail Afzal Accountant Member and
Ch. Anwaarul Haq Judicial Member*

Messrs RAZA APPARELS, FAISALABAD

versus

CIR, RTO, FAISALABAD

S.T.A. No.1127/LB of 2009, decided on 25th September, 2013.

1987 SCMR 1840 ref.

Khubaib Ahmad Taunsvi for Appellant.

Muhammad Arif, D.R. for Respondent

Date of hearing: 19th September, 2013

ORDER

CH. ANWAAR UL HAQ (JUDICIAL MEMBER).---The titled sales tax appeal has been preferred at the instance of taxpayer calling in question the impugned Order-in-Appeal No. 54 of 2008, dated 31-1-2008, passed by the learned CIR (Appeals), Faisalabad.

2. The relevant facts if brief are that the registered person claimed refund of sales tax amounting to Rs.417,137 incurred in connection with zero-rated supplies for April-2005 whereupon a show-cause notice dated 14-11-2006 was issued to him as to why his refund claim may not be rejected under sections 10(4) and 11(2) and was also charged with the contravention of sections 7, 8, 26 and 73 of the Sales Tax Act, 1990 read with Refund Rules, 2002 notified vide S.R.O. 575(I)/2002 dated 31-8-2002. Upon culmination of adjudication proceedings, charges levelled in the subject show-cause notice were vehemently confronted but the Assistant Collector (Refund), Faisalabad partly accepted and partly rejected the taxpayer refund claim of Rs. 133,298. The registered person filed the first appeal before the learned CIR(A) who also rejected the appeal and upheld the treatment meted out at adjudication stage. Now the registered person has come up into the second appeal before this Appellate Tribunal praying for vacation of orders of authorities below.

3. The learned AR for the registered person has vehemently contented that the impugned adjudication order as well as first appellate authority order are illegal and void as both the learned adjudicating authority and the CIR(A) has travelled beyond the show-cause notice and in his support of his contention, he also referred to judgments of superior courts reported as (2011 PTD (Trib.) 2124), (2010 PTD (Trib.) 451) and (1987 SCMR 1840). On the contrary, the learned DR appearing on behalf of revenue department has opposed the contentions of learned counsel for the appellant and supported the orders of authorities below for the reasons recorded therein.

4. The arguments of the learned representatives of both the rival parties have been heard, the orders of the authorities below as well as case-laws cited by the learned AR of the taxpayer have also been perused carefully. There is no doubt that the registered person was primarily confronted with the allegation of "invoice summary not submitted" in the

impugned show-cause notice against invoices of Messrs Badar Dying and Messrs Auma Apparels whereas orders of learned adjudicating authority as well as first appellate authority provide rejection of refund on the charge of "scrutiny for verification of input tax" which is not only illegal but also beyond the scope, stance and contents of show-cause notice.

5. The facts of the case clearly reveal that the allegation against the registered person was invoice summary not submitted which primarily levelled in the show-cause notice while at the time of passing the impugned orders, the Asst. Collector as well as CIR(A) deviated from the aforesaid allegation and rejected the refund of the registered person on the ground of scrutiny for verification of input tax which is not only illegal and unlawful but also beyond the scope, stance and contents of the show-cause notice. It is a wholesome principle of law that a charge which was neither framed in show-cause notice nor confronted during the course of adjudication proceedings cannot be adjudged through an adjudication order.

6. The impugned orders are not sustainable as charge or controversy of scrutiny for verification of input tax was not part of the show-cause notice. The adjudicating authority as well as first appellate authority neither ascertained the facts nor made any inquiry or issued a show-cause notice in order to adjudicate an issue which was not sub-judice before them as a part of the show-cause notice. It is a well established principle of law that no body should be a judge in his own cause, thus in absence of any notice regarding a disputed issue, the authorities below were not legally competent to pass an order. If one needed, reference can also be made to the judgment of the August Supreme Court of Pakistan in case of "New Jubilee Insurance Company Ltd., Karachi v. National Bank of Pakistan, Karachi" reported as (PLD 1999 SC 1126) wherein it was laid down as under:-

"There are certain basic norms of justice. One of the cardinal principles of such basic norms is that one cannot be a judge in his own cause. The breach of the said cardinal principle of jurisprudence will infact be violative of the right of access to justice to all which is a well-recognized inviolable right enshrined in Article 4 of the Constitution. This right is equally founded in the doctrine of "due process of law". The right of access to justice includes the right to be treated according to law, the right to have a fair and proper trial and the right to have an impartial Court or Tribunal. The term 'due process of law' can be summarised as follows:--

- (1) A person shall have notice of proceedings which affect his rights.

- (2) *He shall be given reasonable opportunity to defend.*
- (3) *That the Tribunal or Court before which his rights are adjudicated is so constituted as to give reasonable assurance of its honesty and impartiality, and*
- (4) *That it is a Court of competent jurisdiction. Above are the basic requirements of the doctrine 'due process of law' which is enshrined, inter alia, in Article 4 of the Constitution. It is intrinsically linked with the right to have access to justice which is a fundamental right. This right, inter alia, includes the right to have a fair and proper trial and a right to have an impartial Court or Tribunal. A person cannot be said to have been given a fair and proper trial, unless he is provided a reasonable opportunity to defend the allegation made against him."*

7. In somewhat similar situation, the Appellate Tribunal Inland Revenue and Customs, Excise and Sales Tax Appellate Tribunal in cases reported as (2011 PTD (Trib.) 2124) and (2010 PTD (Trib.) 451) has held as under:--

(2011) PTD (Trib.) 2124)

"From bare perusal of the above extract, an inference can easily be drawn that if an order has been passed on the ground other than the grounds confronted to the taxpayer by way of issuance of show-cause notice has no legal sanctity. Since, the issue under consideration already stands resolved by Apex court of Pakistan and the learned first appellate authority has rightly held the order-in-original to be illegal and void and set-aside the same by following the ratio settled therein. In view of the foregoing, the learned DR has not been able to make out a case for our interference in the order-in-appeal and the same is upheld, I order accordingly".

(2010) PTD (Trib.) 451)

"I find that the charge of non-filer against invoices of Messrs D.S. International (Pvt.) Ltd., was levelled in the impugned show-cause notice however, impugned adjudication order provides for rejection of refund on the charge of abnormal tax profile hence; rejection of refund is beyond scope, stance and contents of impugned show-cause notice. No such charge as adjudged in impugned adjudication order was primarily levelled in show-cause notice which renders it null and void in eye of law. It is trite law that a charge which was not framed in show-cause notice cannot be adjudged through an adjudication

order. I am also fortified in my views on the basis of settled law by the Hon'ble Supreme Court of Pakistan in case of Collector Central Excise and Land Customs v. Rahim Din reported as (1987 SCMR 1840) wherein it was laid down; "The order of adjudication being ultimately passed on a ground which was not mentioned in the show-cause notice was palpably illegal and void on the face of it" relying thereon, the Division Bench of the Appellate Tribunal (Bench-II), Lahore has also vacated a case of Messrs Aftab Industries Oil Mills, Kehror Pacca v. The Collector Sales Tax Multan reported as (GST 2002 CL 210) on same cause of action. This verdict of Hon'ble Supreme Court of Pakistan has also been followed by a Division Bench of the Hon'ble Sindh High Court, Karachi in case of Messrs Excide Pakistan v. the Deputy Collector reported as (2004 PTD 1449). The dictum laid down by the Customs, Excise and Sales Tax Appellate Tribunal (Bench-III), Karachi in case of Messrs B.P. Industries, Karachi v. the Additional Collector of Customs, Sales Tax and Central Excise (Adjudication) and another reported as 2008 PTD (Trib.) 36 is also attracted in circumstances of the instant case that; "One cannot go beyond the allegations mentioned in the show-cause notice "

8. In view of the foregoing facts and in the light of judgments quoted above, the orders of both the authorities below being illegal and void ab initio are hereby cancelled. This being so, appeal filed by the registered person is accepted as prayed for.
