

**[Inland Revenue Appellate Tribunal]**

*Before Muhammad Waseem Ch., Judicial Member and  
Muhammad Akram Tahir, Accountant Member*

**Messrs MAGNA TEXTILE INDUSTRIES  
(PVT.) LTD., FAISALABAD**

versus

**C.I.R., R.T.O., FAISALABAD**

**S.T.A. No.298/LB of 2012, decided on 1st November, 2013.**

**Khubaib Ahmad for Appellant.**

**Mrs. Ghazala Hameed Razi, D.R. for Respondent.**

**Date of hearing: 30th September, 2013.**

**ORDER**

The titled appeal preferred by the registered person is directed

against the order of the learned Commissioner(Appeals), Faisalabad dated 29-2-2012.

2. Facts of the case, in brief, are that the department after having observed from scrutiny of record that the registered person had received refund of input tax for the period 2006-2007, the appellant was confronted through a show-cause notice against sales tax liability of Rs.1,922,458. During the adjudication proceedings the charges levelled in show-cause notice were contested but the adjudicating authority raised the demand of sales tax vide Order-in-Original No.16/2011 dated 1-10-2011. The appellant preferred appeal before the learned CIR(A) who upheld the treatment given by the adjudicating authority. Hence the instant appeal.

3. The learned AR submitted that the orders of the authorities below are void ab initio and ultra vires and against the facts of the case. The learned AR further submitted that the show-cause notice and consequent adjudication order lacked jurisdiction under Notification No.S.R.O. 555(I)/98 dated 1st July, 1996 as amended by a Notification No.S.R.O. 1318(I)98 dated 28th November, 1998 in respect of cases falling under sections 11(2) and 36(1) beyond pecuniary limit of one million rupees, therefore, the same being illegal may be set aside. He further submitted that provisions of section 73 of the Act for bank payments have duly been complied with, therefore, input tax credit against invoices of black listed/suspended suppliers cannot be denied after insertion of subsection (3) of section 21 of the Act through Finance Act, 2011. He further submitted that since purchases of the appellant pertained to the period when the alleged suppliers were not included in the list of black listed/registration suspended units, therefore, retrospective application of an order is illegal. In support of his contentions photo copies of black listed/suspended units were provided. He also submitted that penalty @ 100% of tax involved is very harsh and unjustified. The learned DR, on the other hand has supported the orders passed by the authorities below for the reasons stated therein.

4. We have heard both the sides and perused the available record, the perusal of which observed that the period of refund claim was 2006-2007 whereas the black listing/suspension was made at later dates i.e. after the period refund claimed/adjusted input tax. On the basis of suspension/blacklisting at later dates the refund claimed/adjusted input tax against the invoices issued by the units having blacklisted/blocked status cannot be disallowed. The status of the units against which the refund claimed/input tax was made at the relevant time was as under:--

- (1) A.A. Packages Blacklisted w.e.f. 9-4-2008
- (2) Messrs Ken Lubes International blocked w.e.f. 11-8-2010
- (3) Nafees Plastic Industries Operative
- (4) Messrs Haris Printers blocked w.e.f. 11-5-2010

5. In view of the foregoing, we are of the considered view that the arguments of the learned AR regarding retrospective application of the black-listing order/notification are quite convincing in the light of various judgments passed by the ATIR as well as the higher forums. Therefore we allow the refund claimed/adjusted input tax in respect of four units listed above. As regards the violation of section 8(1)(a) of the Act and non compliance of section 73 it would be in the propriety of justice and fair play if the case is remanded to the Taxation Officer for checking as to whether or not the application of section 73 has been affected properly. If the answer is in affirmative the registered person should be given effect accordingly. In case of non affirmative the registered person should be given an opportunity of hearing before passing the order. The appeal filed by the registered person is decided to the extent and in the manner indicated above.

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