

**APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE**

**STA No.340/LB/2014**

M/s Graphic Media Corporation, Lahore.

Appellant

Versus

The CIR Zone-III, RTO, Lahore.

Respondent

Appellant by : Mr. Tanveer Aslam, Advocate.

Respondent by : Mr. Muhammad Taqi Qureshi, D.R.

Date of hearing : 23.05.2014

Date of order : 23.05.2014

**ORDER**

**CH. SHAHID IQBAL DHILLON (JUDICIAL MEMBER),**

The titled appeal preferred at the instance of the registered person is directed against the order dated 31.01.2014 passed by the learned Commissioner Inland Revenue(Appeals-III), Lahore.

2. Facts of the case as per the impugned order, in brief, are that on the basis of information received from the Directorate General of Intelligence and Investigation, it was observed by the Adjudicating Officer that during the tax periods from September, 2008 to April, 2010 the appellant had claimed inadmissible input tax amounting to Rs.34,64,347/- and SED of Rs.33,117/- on the strength of fake invoices issued by suspended/blacklisted/inactive suppliers. On the basis of said allegation a show cause notice was issued calling upon the appellant to show cause as to why sales tax amounting to Rs.34,64,347/- and SED Rs.33,117/- may not be recovered from him along with default surcharge u/s 34 and penalty u/s 33 of the Sales Tax Act, 1990. The reply furnished by the appellant did not find favour and consequently the adjudication

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proceedings were culminated in the shape of order in original No.229/2012 dated 29.05.2013. Being dissatisfied with this treatment, the appellant preferred appeal before the learned CIR(A) who vide order dated 31.01.2014 upheld the order in original. Hence, this appeal.

3. The learned A.R appearing on behalf of the appellant has vehemently assailed the orders of the authorities below as illegal and unjustified. Firstly, he submitted that at the material time the suppliers were active and alive and were regularly filing their sales tax returns with the department. Further the purchases were made after fulfilling all the legal requirements and after checking the active profile of the suppliers with the FBR. The learned A.R pointed out that the supplies were of the prior dates and the suppliers were blacklisted on the subsequent dates. He submitted that in a number of cases this issue has been resolved in favour of the taxpayers by the Superior Courts. Reliance in this regard was placed on the judgments reported as 2010 PTD (Trib) 2406, 2011 PTD (Trib) 633, 2011 PTD (Trib) 773, 2010 PTD (Trib) 1631 and 2011 PTD (Trib) 866.

4. The next contention of the learned A.R was that the proceedings taken against the appellant by the Directorate of Intelligence and Investigation are void ab-initio. To elaborate this contention, he submitted that the FBR granted approval vide letters No.4(14)/STM/2009-PT/186947-R dated 02.12.2009 and No.4(4)STM/2005 dated 26.03.2010 for investigation against Mr. Asif Hanif, Muhammad Azam Khan and Mirza Arif but the order in original

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revolves against one Mr. Ejaz Latif against whom neither any permission was granted by the FBR nor his name was appearing in the FIR. Therefore, the very initiation of proceedings were illegal and have no legal sanctity. The learned A.R continued that it is settled principle that when the very initiation of proceedings are void the whole superstructure built thereafter is illegal and void ab-initio.

5. Similarly, the learned A.R also submitted that compliance of Section 73 of the Sales Tax Act, 1990 was fully adhered to and all the payments were made through banking channels. He stated that complete record was submitted before the Adjudicating Officer and he himself had admitted this fact at page 2 and 3 of his order. The learned A.R also pointed out that the FIR registered by the Directorate of Intelligence and Investigation Customs is also quashed by the Honourable Lahore High Court, therefore, the order in original was not sustainable and the learned CIR(A) has erred in law to uphold the same.

6. The learned D.R, on the other hand, opposed the contentions by supporting the reasons assigned by the authorities below. He submitted that the appellant had failed to substantiate his submissions through any documentary evidence, therefore, no interference is required.

7. After having heard the rival parties and perusing the available record, we are in consonance with the line of arguments advanced by the learned A.R. Perusal of the record reveals that at the material time when the transactions took place the suppliers were active and

live and regularly filing their sales tax returns and they were black-listed subsequently on much later date. Therefore, we are of the opinion that the appellant was charged to sales tax without any justification and orders of the authorities below are not sustainable in the eyes of law. It is settled principle that notifications which confer right and are beneficial would have retrospective effect and those effect or invade upon the vested right cannot be applied with retrospective effect. Reliance in this regard can be placed on the judgment of the Honourable Supreme Court of Pakistan reported as PTCL 2005 CL 18, the operative part of which reads as under:-

"It is well settled principle of law that the executive orders of notifications, which confer right and are beneficial, would be given retrospective effect and those which adversely effect or invade upon vested right cannot be applied with representative effect".

8. Further on going through the various judgments relied upon by the learned A.R also substantiates the view point urged by the appellant. Reliance in this behalf can safely be placed on the reported judgment of the Honourable Supreme Court of Pakistan cited as 2005 SCMR 492 wherein it was held that:-

*"Retrospectively -----requirement --- Executive orders of notifications, which confer right and are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested right cannot be applied with retrospective effect ----"*

We have also observed that in the facts and circumstances narrated above, the ratio decided in the judgment cited as 2011 PTD (Trib) 866 is fully attracted. The relevant head notes of this judgment is reproduced as under:-

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"De-registration blacklisting and suspension of registration-subsequent blacklisting of a supplier could not be made a tool to deprive the registered person of the valuable right accrued in his favour for purposes or transaction made prior to the suspension of registration of such supplier;"

"Blacklisting and suspension of registration \_ Refund – Term used "where prior – such blacklisting" meant the invoices during the period of suspension of registration prior of blacklisting – Admittedly, when refund was sanctioned the statue of supplies units was neither "registration suspended". R.12(5) of Sales Tax Rules, 2006 was not applicable at that point, otherwise the refund claim must have been refused straight away".

"Tax fraud ---- burden of proof --- Initial burden to prove, that the provisions of tax fraud were attracted, lay on the department but it had failed to discharge onus and for that reasons charge of tax fraud had no legal consequence".

9. For the reasons recorded above, we are of the considered opinion that the action of the Adjudicating Officer was not sustainable in the eyes of law and the learned CIR(A) has erred in law to uphold the same. As such the order in original is vacated and the impugned order is annulled. The appeal is allowed accordingly.

  
(Muhammad Akram Tahir)  
Accountant Member

  
(Ch. Shahid Iqbal Dhillon)  
Judicial Member