

1

**APPELLATE TRIBUNAL INLAND REVENUE,**  
**LAHORE BENCH, LAHORE.**

FEA No. 20/LB/2013

M/s Huda Sugar Mills Limited, Faisalabad. ...Appellant

*Lahore* - Versus  
CIR, RTO, ~~Faisalabad~~ ...Respondent

Appellant by: Mr. Mudassar Shuja, Adv.

Respondent by: Mr. Muhammad Asif, DR

Date of hearing: 28-02-2014 Date of order: 28-02-2014

**ORDER**

**CH. ANWAAR UL HAQ (Judicial Member):** The captioned appeal has been preferred at the instant of taxpayer calling in question the impugned order-in-appeal No. 04/A-II/2013, dated 24.06.2013, passed by the learned CIR (Appeals-II), Lahore.

2. The facts leading to the filing of present appeal are that during the course of investigation, it was reported that the taxpayer has failed to file the monthly sales tax / federal excise returns for the tax periods July 2012 to November 2012 within due date. Therefore, in terms of section 14 (1) of the Federal Excise Act, 2005 and section 11 (6) of the Sales Tax Act, 1990, read with section 14 (2) of the Federal Excise Act and para (i), clause 21 (a) of the STGO No.03/2004 dated 12.04.2004, minimum tax liability in respect of the aforesaid tax periods was determined and confronted at Rs.50,515,925/- on the basis "**highest amount of tax paid in any of the previous twelve months**". On the basis of these irregularities, the proceedings were initiated under the provisions of Sales Tax Act and Federal Excise Act, and the taxpayer was charged with the violation of sections 3,6,7,22,23 & 26 of the Sales Tax Act, 1990. Show cause notice was issued wherein the taxpayer was

called upon to show cause as to why the proposed amount may not be recovered alongwith penalty. It was the contention of the AR before the assessing authority that the sales tax / FED returns for the periods under reference were submitted after paying the output tax due thereon and the late filing of the return was due to some technical problem at the FBR's e-portal. The reply was rejected by the assessing authority on the ground that the taxpayer has failed to furnish any plausible reason for late payment as well as late filing of returns. The adjudication proceedings were culminated in passing the impugned order-in-original, wherein the taxpayer was directed to pay default surcharge amounting to Rs.1,992,531/- under section 8 of the Federal Excise Act and a penalty of Rs.2,488,237/- being 5% of duty involved u/s 19 (1) of the Federal Excise Act, 2005.

3. Being aggrieved, the taxpayer went in appeal before the learned CIR(A) who vide impugned orders rejected the appeal of the taxpayer in the following manner: -

*"In my considered opinion, nobody can be allowed to hold the Government money for long on any excuse. Admittedly, tax was deposited after due dates; hence default surcharge and penalty shall stand recoverable. So far as the contention of the appellant regarding invoking irrelevant provisions, I am of view that the arguments advanced by the learned AR are of no help to him because in the instant case no prejudice has been caused to the appellant and the substantial compliance has been made by making reference of the relevant section. Here I would like to quote the judgment of "August Supreme Court of Pakistan reported as 2008 SCMR 615 wherein it is held that instead of taking into consideration technicalities, the court should look into matter with different angles as to whether substantial compliance had been made or if the compliance of any of the sub rule has been omitted. I therefore feel no need to interfere with the impugned judgment which is upheld and the appeal being devoid of merits is hereby rejected."*

4. The learned AR on behalf of taxpayer agitated the order passed by the learned CIR(A) being contrary to law and facts of the case. It is contended by the learned AR that the learned CIR(A) was not justified to observe that no prejudice has been caused if the anomalies have occurred in application of law as such observation is against the principle of legal norms and equity. It is contended by the

learned AR that the assessing authority has erred in law by simultaneously invoking the provisions of section 14 (1) of the Federal Excise Act, 2005 and provisions of section 11 (6) of the Sales Tax Act, 1990, for recovery of default surcharge and penalty. It is further submitted by the learned AR that delay in tax payments and late filing of returns was on account of circumstances beyond the control of the taxpayer. It is contended by the AR that the delay was to be viewed objectively for condonation provided under the law. On the contrary, the learned DR supported the orders passed by the authorities below.

5. We have heard the arguments put-forth by the learned representatives of both the sides and have carefully gone through the available record. After due consideration, we find that no exception can be taken to the treatment as accorded by the learned adjudicating officer who has rightly upheld the action of the assessing authority. Default on the part of taxpayer is patent as admittedly he has failed to pay the government taxes into government treasury within due date and has also failed to file the requisite returns within the time prescribed under the law. The returns were filed and taxes were paid belatedly after issuance of show cause notice and after fixation of minimum tax liability. Therefore, the assessing authority has rightly charged default surcharge and penalty which action was later on upheld by the learned CIR (A). The taxpayer has not denied the charges of late payment of due tax and late filing of returns rather they are seeking shelter through technicalities that the assessing officer has simultaneously invoked the provisions of two different Acts. In this regard, the learned CIR (A) has rightly observed that no prejudice has been caused to the taxpayer as substantial compliance has been made by making reference of the relevant sections. To support the above observation, the learned CIR (A) has relied upon the judgment of the Hon'ble Supreme Court of Pakistan reported as 2008 SCMR<sup>e15</sup> wherein it was held that instead of taking into consideration technicalities, the court should look into the matter with

different angles as to whether substantial compliance had been made or if the compliance of any of the sub-rule has been omitted. The said judgment of the Hon'ble Supreme Court of Pakistan is "on all fours" applicable in the instant case. Under such circumstances, we find no reason to disturb the order passed by the learned CIR (A) which is hereby maintained.

6. Appeal of the taxpayer being devoid of any merit is hereby rejected.

Sd/-  
**(SIKANDAR ASLAM)**  
Accountant Member

Sd/-  
**(CH. ANWAAR UL HAQ)**  
Judicial Member