

[Inland Revenue Appellate Tribunal]

*Before Ch. Anwaar ul Haq, Judicial Member and
Sohail Afzal, Accountant Member*

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

versus

**Messrs IHSAN YOUSAF TEXTILE
(PVT.) LTD., FAISALABAD**

S.T.A. No. 186/LB of 2010, decided on 23rd September, 2013.

Muhammad Asif, D.R. for Appellant.

Khubaib Ahmad Taunsvi 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 Revenue calling in question the impugned Order-in-Appeal No.60 of 2010, dated 17-6-2010, passed by the learned CIR (Appeals), Faisalabad.

2. The relevant facts in brief are that during the course of post audit of the taxpayer's refund claim for the period from August, 2002 to March 2003, it has been observed that the taxpayer has illegally claimed/received refund of input tax against invoices of Messrs Adeel Packages, Faisalabad, who has been declared blacklisted by the department. Accordingly, a show-cause notice confronting sales tax liability of Rs.304,121 was issued and the taxpayer was charged with contravention of sections 2(14), 2(37), 4, 7, 8, 8A, 10, 22, 26 and 73 of the Sales Tax Act, 1990, as to why refunded amount of sales tax may not be recovered under sections 11(2) and 36(1) along with default surcharge and penalty under sections 33 and 34 *ibid*. In response thereto, the respondent filed written submissions but did not find any favour and the adjudication proceedings were culminated against him. The respondent then filed the first appeal before the learned CIR(A) who accepted the appeal and vacated demand of sales tax. The department being dissatisfied with this treatment has now filed the appeal before this Tribunal.

3. The sole issue involved in this appeal is that the taxpayer has received refund of input tax against a blacklisted unit namely Messrs Adeel Packages, Faisalabad therefore, the department has held that the taxpayer was not legally entitled for refund of input tax against invoices issued by the alleged supplier. The learned AR for the respondent argued that Messrs Adeel Packages had challenged the blacklisting order before this Appellate Tribunal whereby Tribunal Inland Revenue, Lahore Bench, Lahore has set aside the Order-in-Original No. 01/2007 dated 29-12-2007 blacklisting Messrs Adeel Packages, Faisalabad through its Order bearing S.T.A. No. 2292/LB/2009 dated 6-5-2010. Since, the order of black-listing Messrs Adeel Packages, Faisalabad has been set aside not holding the field anymore therefore, recovery of already sanctioned amount of sales tax against his invoices is illegal, unlawful

and unjustified. It is contended by the AR that the blacklisting order of Messrs Adeel Packages ceases to have any legal effect and remained no more in the field and can not be pressed into service for disallowing the input tax against invoices issued by him. The learned AR also referred to judgments of this Appellate Tribunal reported as (2012 PTD (Trib.) 754), (2012 PTD (Trib.) 946) and (2012 PTD (Trib.) 1736) respectively wherein demand of sales against invoices of Messrs Adeel Packages was vacated and appeal filed by the taxpayer was accepted and departmental appeals were rejected. It is further submitted by the AR that a detailed audit of Messrs Adeel Packages was conducted and a report bearing C.No STA-I/04/05/33 dated 20-12-2005 was issued wherein the Assistant Collector (Audit-I) recommended for deletion of name of Messrs Adeel Packages from the list of registered persons whose tax profiles were found abnormal.

4. 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 CIR(A) which is found to be fair and reasonable in the ambient circumstances of the case. We must add here that the transactions of the taxpayer were took place during August, 2002 to March, 2003 when the alleged supplier was enjoying his status an 'operative person' and was not included in the list of black-listed units and his subsequent inclusion in that very list in the surpassing years i.e. 29-12-2007 cannot be made applicable retrospectively. Since at the time of business transactions, the status of the supplier unit was operative, its subsequent inclusion as black listed/suspected one through an executive order cannot be operated retrospectively. Reliance in this behalf is also placed on the judgment of the Hon'ble Supreme Court of Pakistan reported as 2005 SCMR 492, wherein it was held that "*executive orders or 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*". After relying on the above judgment, this Tribunal in a plethora of orders has accepted the appeals of the taxpayer including judgments reported as 2011 PTD (Trib.) 791 and 2010 PTD (Trib.) 1675.

5. In view of what has been stated hereinabove, we reached at the irresistible conclusion that the grounds of appeal agitated by the revenue-department against the impugned order of the learned CIR(A) are not tenable in the eye of law. Since, the order of the learned CIR(A) impugned before us does not suffer from any irregularity, illegality and infirmity which does not warrant any interference by this Tribunal and the same is accordingly confirmed and upheld.

6. Consequently, the titled appeal filed on behest of revenue-department being devoid of any merit is hereby rejected.