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APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH, LAHORE.

STA NO.70/LB/2014

M/s. Nishat Mills Ltd., Lahore.Appellant

Vs

The CIR, Zone-II (LTU), Lahore.Respondent


Appellant by:- Mr. Asim Zulfiqar, FCA

Respondent:- Mr. Tariq Javed, D.R.

Date of hearing:-12-06-2014

Date of Order:-12-06-2014

ORDER

 The subject appeal, preferred by a public limited listed company, engaged in the business of manufacture and sale, including exports, of textile products, impugns the appellate order dated 30-12-2013 passed by the learned first appellate authority in respect of taxpayer's appeal against Order-In-Original dated 18-09-2013 issued by the learned Deputy Commissioner Inland Revenue, Enforcement – 11, Zone – II, Large Taxpayers Unit, Lahore.

2. The facts in brief are that the appellant in this case operates in textile sector, regarding which concessionary sales tax regimes had remained in place since 1-04-2011 through various notifications issued by Federal Government. The first of such notification was SRO 283(I)/2011 dated 1-04-2011 the scheme where under has remained broadly unchanged and is currently operative in terms of SRO 1125(I)/2011 dated 31-12-2011. The broad scheme under these notifications remained such that, subject to fulfillment of certain conditions and restrictions, sale transactions between two registered persons were subject to sales tax @ zero percent, whereas

a sale to un-registered persons attracted rates at 4 % to 6%, as the case may be. In the backdrop of this legislation, the appellant was serviced with show cause notice which was based on discrepancies identified by Computerized Risk Based Evaluation of Sales Tax System. In the show cause notice, various points were raised, however, the present appeal relates to observations pertaining to sales to alleged black listed/suspended/inactive buyers and sales made by the appellant to buyers allegedly not operating in textile sector.



In the context of the issue relating to sales allegedly made to black listed/suspended/inactive buyers, in the show cause notice, the appellant was confronted that such buyers are deemed to be un-registered customers and accordingly, the appellant remained liable to charge 4% to 6% sales tax at the time of sales. In this regard, the assertion of the taxation officer remained that since at the time of issuance of show cause notice, these buyers had attained the status, as aforesaid, therefore, for all earlier and previous transactions, these would be deemed to be operating under same status. In response thereto, the appellant argued that these buyers were fully active at the web portal of FBR at the time of the transaction, therefore, any subsequent status, attained as a result of any future non-compliance would not affect the preceding transactions. In this regard, the appellant, before the taxation officer relied upon the decision of Honourable Lahore High Court in W.P No17185/13 dated 08-07-2013 wherein, by the consent of parties the Hon'able Lahore High Court settled the controversy by holding that the status of the buyer existing at the time of supply of the goods shall be considered and not the status attained by

the buyers subsequently. It was the contention of the appellant before the taxation officer that since the matter has already been decided by the Hon'able High Court, with consent, and since the facts of the case of the appellant were exactly the same as were in the case before the Hon'able High Court, therefore, propriety demanded that the case of the appellant was decided in terms of decision of the High Court.

4. In the Order-In-Original, the taxation officer, while taking into account, the aforesaid judgement of Hon'able Lahore High Court, Lahore referred to by the appellant before him, has recorded a finding on facts that in the appellant's case, all the transactions, as were the subject matter of dispute, were made with buyers who were fully active and compliant at the time of transaction, however, he proceeded to drop the proceedings on the grounds that since appellant had already deposited the amount under amnesty scheme issued by the Federal Government in terms of SRO 179(I)/2013 dated 7-3-2013, therefore, the appellant was no longer to liable to any further amount of sales tax as proposed in the show cause notice. In the order, the taxation officer has held that since the appellant had availed the amnesty scheme, therefore, the appellant did not qualify for treatment under the order of the Lahore High Court, cited supra. The taxation officer also observed that availing the benefit of an amnesty is an admission on part of the taxpayer.

5. No matter that no liability was adjudged against the appellant on this point, the matter was agitated in appeal before the learned first appellate authority. In the appeal, the appellant argued that the action of the taxation officer of not adjudging liability by reference to payment under amnesty

scheme and not on the basis of clear verdict of the Hon'ble Lahore High Court, the compliance to which was categorically conceded to by the taxation officer in the Order-In-Original, was unlawful as the taxation officer was duty bound to decide the matter in the light of the said judgement. It was further submitted that the taxation officer erred in law by dragging in the frame the payment under amnesty scheme which was not the subject matter before him. The learned first appellate authority partially accepted plea of the appellant and expunged the remarks "hence does not qualify for the treatment under the Honourable Lahore High Court, Lahore's aforesaid judgement".

6. Before us, the learned counsel submitted that even after the modification of the Order-In-Original, the remarks that "M/s Nishat Mills Limited has already deposited the amount in amnesty, before the Honourable Lahore High Court, Lahore's above mentioned orders. Availing the benefit of amnesty is an admission of default of the company" and "as Nishat Mills Limited has deposited the amount against the black listed units; therefore, no amount is required to be recovered in this regard" do not change the substance of the Order-In-Original as even the modified order decides the issue on the basis of payment under amnesty scheme and not on the basis of ratio of the order of Lahore High Court, the principles settled whereof are adequately met in the appellant's case. It was thus prayed that these remarks are also expunged and the appellant is held entitled to claim the refund under the law, if it so desires. The learned DR on the other hand argued that no cause of action arises against the appellant to pursue this matter in this appeal as it has already been allowed

relief in a way that no liability was adjudged against the appellant in the Order-In-Original.

7. We have heard the rival submissions, minutely gone through the orders of the authorities below and have given earnest consideration to the material relied upon before us. There is a great deal of substance, in the submissions tendered on behalf of the appellant. Indeed, once the taxation officer, in the Order-In-Original, categorically conceded to the fact that "the evidence produced by M/s Nishat Mills Limited relating to the following buyers which shows that these buyers were active at the time of supplies" there was no lawful justification for him not to decide the matter on the basis of verdict of the Lahore High Court from where alone this criterion had emanated. After recording this factual finding, it was incumbent upon the taxation officer to record the consequential finding on the basis of the same which of course was to file the proceedings on the basis of the same. The taxation officer unlawfully unauthorized and unnecessarily referred to payment under amnesty scheme which had no relevance in the matter. Accordingly, we have no hesitation in expunging the two remarks noted above and holding that appellant is entitled to claim the refund of the amount paid under protest in accordance with relevant provisions of law. The orders of the authorities below are modified to this extent.

8. The other issue agitated in appeal pertains to liability adjudged at Rs.2,402,021/-, the basis adopted whereof by the taxation officer remained that since the sales, in these cases, were made to buyers who were not registered particularly in textile sector, the same did not qualify for zero percent sales tax under the respective notifications. It was the contention of

the taxation officer that no matter sales were made to registered buyers, however, still zero percent tax was wrongly charged as the buyers remained outside the purview of concessionary regimes.

9. It was submitted by the learned counsel for the appellant that understanding developed by the taxation officer that zero-rating was limited in relation to buyers registered in textile sector was not only self conceived but also erroneous. The notifications/scheme was applicable, without exception, where the transaction remained between two registered persons. The legal position that where a buyer was a registered person, according to learned counsel, it qualified to procure goods at zero-percent sales tax as was itself clarified by FBR through clarification dated May 6, 2011 confirming that registered wholesalers-cum-retailers were entitled to purchase goods covered under the notifications, without payment of sales tax. The learned counsel added that in the clarification it was further confirmed that "supplies made by one registered wholesaler to another registered wholesaler shall be zero-rated and traders shall be included in the category of 'wholesaler'".

10. The learned DR, on the other hand supported the orders of the authorities below and argued that the benefit of zero percent sales tax remained exclusively available to buyers registered in the textile sector and where the buyer was operative outside textile sector the benefit could not be extended. On our specific query that (yarn being product not meant for general consumption) if the buyers were not operating in the textile sector what was the objective for them to buy this product, the learned DR could not tender any plausible explanation.

11. Upon considering the rival averments, it does not take long for us to resolve the issue in the favour of the appellant/taxpayer particularly by reference to clarification itself issued by FBR on the proposition which carries binding status on the subordinate officials. This principle finds support from decisions in [(2007) 95 TAX 360 (LHC)] and [(2013) 107 TAX 80]. The clarification itself issued by FBR is unequivocal and unambiguous. The subject sales having admittedly been made to registered buyers, the appellant rightly and lawfully subjected these sales to zero percent sales tax and the authorities below erred in law in rejecting the stance of taxpayer and subjecting these transactions to rates applicable to un-registered persons. Accordingly, orders of the authorities below on this point are also vacated and tax charged by the taxation officer and its confirmation by the first appellate authority is held to be illegal and unlawful.

12. The subject appeal stands decided in the manner and to the extent discussed above.



(FIZA MUZAFFAR)
ACCOUNTANT MEMBER


(JAWAID MASOOD TAHIR BHATTI)
CHAIRMAN

Aftab