

APPELLATE TRIBUNAL INLAND REVENUE, LAHORE
BENCH, LAHORE.

M.A.(AG) No.11/LB/2014

STA No.128/LB/2012

M/s Anka Technical Services, Lahore. Appellant.
2nd Floor, Empress House, 28-Empress Road,
Lahore.

Versus

The CIR, Zone-XII, RTO-II, Lahore. Respondent.

Appellant by : Mr. Muhammad Farooq Sheikh, Advocate

Respondent by : Mr. Sajjad Tasleem, DR

Date of hearing : 26.06.2014

Date of order : 06.08.2014

ORDER

This appeal has been filed at the instance of ~~the~~ registered person against the impugned Order-in-Appeal No.63 dated 02.01.2012 passed by the learned CIR (A), Lahore.

2. Through this miscellaneous application the applicant/registered person sought permission to revise its grounds of appeal taken in STA No.128. Since the revised grounds taken by the applicant company raise vital issues which are necessary for consideration by this Tribunal for the dispensation of justice, the applicant is allowed to plead its case on the basis of revised grounds of appeal.

3. Brief facts of the case, are that as per information received, the department came to know that the registered person during the period from 11/2008 had

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claimed illegal input tax amounting to Rs.481,600/- on invoices issued by the M/s Haroon Enterprises which was, allegedly, involved in issuing fake invoices. Accordingly, a show cause notice was issued to the registered person u/s 11 of the Sales Tax Act, 1990, requiring the registered person to explain as to why the said amount of sales tax should not be recovered from him alongwith default surcharge and penalty. Allegedly, no reply to the show cause notice was submitted by the registered person. Consequently, the assessing authority proceeded to pass an ex parte order-in-original and directed the registered person to pay sales tax amounting to Rs.481,600/- alongwith default surcharge and 100% penalty. In appeal the learned CIR(Appeals) after obtaining certified copy of the impugned order-in-original as the same was not served upon the registered person and raised a number of objections to proceedings initiated against the registered person as enumerated by the learned CIR(Appeals) in the body of the impugned appellate order. The learned CIR(Appeals) being convinced with the submissions made by the registered person has held that "assessment has been framed without confronting the appellant and appreciating the true position. Such an order, therefore, is not sustainable and is accordingly set aside. However, the learned CIR(Appeals) remanded the matter back to the

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adjudication officer with the direction to afford reasonable opportunity to the appellant and for passing fresh speaking order strictly in accordance with law. These findings of the learned CIR(Appeals) are assailed by the registered person through second appeal filed before this forum.

4. The learned AR assailed the orders of the authorities below as contrary to law and facts of the case. It is submitted by the learned AR that remand back the appeal with the directions as:-

"In the light of foregoing discussion, the impugned order is set aside with the direction to verify the factual position from record of the supplier in the light of my observations and then pass a well reasoned, speaking order after providing a reasonable opportunity to the appellant".

5. That it is very outset the learned CIR(Appeals) has not powers as clearly stated in sub section 3 of section 45-B read as:-

(3) In deciding an appeal, the [Commissioner Inland Revenue] (Appeals) may make such further inquiry as may be necessary provided that he shall not remand the case for de novo consideration".

6. In the light of above submission the learned CIR(Appeals) passed an order against the substantive law was passed by the Parliament which have been endorsed by the Hon'ble Lahore High Court, Lahore Multan Bench, Multan in the Case No.STR No.12/2012 in the titled as The Commissioner Inland Revenue VS M/s

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Supreme Tech International with the question "Whether Collector (Appeals) [now Commissioner Inland Revenue, (Appeals)] enjoys the power of remand under section 45-B(2) of the Sales Tax Act, 1990 ("Act").

7. That the study of operative part of the judgment passed by Hon'ble Lahore High court, Multan Bench, Multan reveals that the appellate order is totally illegal and unlawful and liable to be struck down / annul because sub section 3 of section 45-B of the Sales Tax Act, 1990 has not conferred the powers to remand back.

It is another case law reported as **2013 PTD (Trib) 881** in which this Appellate Tribunal Inland Revenue also observed that:-

"First Appellate Authority should have cancelled the order-in-original rather, than remanding the matter back to the Assessing Officer – First Appellate Authority had given a categorical finding that "from the above discussion, it is evident that assessment had been framed without confronting the appellant and appreciating the true position. Such an order therefore is not sustainable. Such an order therefore is not sustainable and is accordingly set aside. In presence of such unequivocal observation, / finding, the First Appellate Authority was not justified to remand the matter back to Assessing Officer for fresh proceedings as such a direction was tantamount to give a change to the department to fill in the lacuna to improve their case. Provision of subsection (3) of section 45-B of the Sales Tax Act, 1990 did not empower the First Appellate Authority to remand the case".

8. That as regard the plea taken by the adjudicating officer in his show cause the rest of purchases which are mentioned in the page 17 & 18 of the appeal memo from

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the status mentioned as suspended, black listed. Now, it would not be justified to demand the tax on assumption and presumption based because the transactions took with the supplier as mentioned at the page 17 & 18 of the appeal memo. They were very much alive the appellant made purchases bonafidely of the registered person. At the time of purchases they was active taxpayer and was filing sales tax return and summaries regularly as is evident from the relevant copy thereof which is enclosed. It is well preposition of the law "no one is punished for the crime OR **"wrong of another"** reliance is placed on 2001 SCMR 1959, 2011 PTD 2822, 2011 PTD (Trib) 866, 2010 PTD (Trib) 1631. In this regard, the appellant have also filed an writ petition vide WP No.29575/2012 against invoking of section 8(1)(ca) of the Sales Tax Act 1990 in the impugned show cause notice dated 23.04.2011, as well as order dated 11.06.2011 passed by the respondent No.3 Audit Unit-02, Zone-XII, RTO-II, Lahore which has already become unconstitutional by the Hon'ble Lahore High Court, Lahore in connected matter with W.P No.3515/2002 titled as M/s D.G Khan Cement Co LTD VS FOP and others which is reported as **PLD 2013 Lahore 693**.

9. It is further submitted by the learned AR that the registered person paid input tax against purchases made from the supplier cited above and has duly made

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compliance to the provision of section 7 read with section 73 of the Sales Tax Act, 1990. So, the Appellant cannot be burdened with the offence committed by the supplier. It is further argue of the AR a principle of law that nobody can be responsible for the acts and omissions of other person. Reliance is placed on 2001 SCMR 1959, 2012 PTD (Trib) 350, STA No.55/LB/2012, STA No.478/LB/2012 and STA No.477/LB/2012. Therefore, the impugned Assessment Orders as well as Appellate Orders are likely to be struck down as passed illegal and unlawful.

10. That on the contrary, learned DR supported the order passed by the learned CIR(Appeals) and contended that no prejudice is caused to the registered person from the setting aside directions of the learned CIR(Appeals).

11. We have given due consideration to the rival arguments and also gone through the relevant record available on file. After due consideration, we are inclined to convince with the assertions made by the learned AR. From the perusal of record as well arguments made by AR, we have come to inescapable conclusion that the learned CIR(Appeals) should have cancelled the impugned order-in-original rather than remanding the matter back to the adjudicating officer. The learned CIR(Appeals) has given categorical findings that "In the light of foregoing discussion, the impugned order is set

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aside with the direction to verify the factual position from record of the supplier in the light of my observations and then pass a well reasoned, speaking order after providing a reasonable opportunity to the appellant". In the presence of such unequivocal observation/finding, the learned CIR(Appeals) was not justified to remand the matter back to the adjudicating officer for fresh proceedings as such a direction is tantamount to given a chance to the department to fill in the lacuna to improve their case. Furthermore, the provisions of sub-section (3) of section 45-B of the Sales Tax Act, 1990, does not empower the learned CIR(Appeals) to remand back the case. For case of ready reference, the said provision is reproduced here-under for facilitation:-

"In deciding an appeal, the Commissioner Inland Revenue (Appeals) may make such further inquiry as may be necessary provided that he shall not remand the case for de novo consideration".

12. From the perusal of available record, it is also clear that there was ample justification for the registered person to claim adjustment of input tax as at the time of transaction, the status of the supplier unit on FBR System was "Active" and they were regularly submitting their returns and summary thereof. All the payments made were in accordance with law and the registered person did not have any prior knowledge about fakeness of the sales tax invoices issued by the supplier unit. No case of

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tax fraud was made out against the taxpayer. Having considering all aspects of the case in its entirety and after specifically following the ratio settled in the case reported as 2012 PTD (Trib.) 350 and STA No.478/LB/2012. We have no option but to reach the inescapable conclusion that the department has failed to prove the charge of tax fraud against the registered person. Furthermore, the learned CIR(Appeals) also has erred in law in remanding the case to the assessing officer for fresh proceedings.

13. In view of the foregoing reasons as well as the judgments as supra, we are inclined to agree with the submissions made by the learned AR and hold that the impugned Show Cause Notices as well as Assessment Order and Appellate Order are passed by the adjudicating officer are not maintainable in the eye of law which is hereby annulled.

13. Appeal of the registered person succeeds.

Sd/
(MUHAMMAD WASEEM CH.)
Judicial Member

Sd/
(ABDUL NASIR BUTT)
Accountant Member

Aug. 14/27-34