APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE

STA No.888/LB/2013

M/s. Teknica Data System, Lahore. — Appellant

Versus

Commissioner of Inland Revenue, Zone-II, RTO, Lahore. — Respondent

Appellant by : Mr. Abdul Qaddus, Advocate alongwith Rana Muhammad Jehangir, Advocate.

Respondent by : Mr. Sajjad Tasleem, D.R.

Date of hearing : 28.05.2014
Date of order : 20.06.2014

O R D E R

CH. SHAHID IQBAL DHILLON (JUDICIAL MEMBER)

The titled appeal preferred at the instance of the registered person is directed against the order-in-appeal bearing No.01dated 15.07.2013 passed by the learned Commissioner Inland Revenue(Appeals-III), Lahore.

2. Brief facts of the case are that on receipt of an information from the Directorate General of Intelligence & Investigation, the Adjudicating Officer observed that Asif Hanif, Muhammad Azam Khan, Mirza Arif Baig and other were operating a gang to defraud national exchequer by committing tax fraud to indulge into the business of fake and flying invoices. They besides getting registered fictitious companies also used some dormant companies registration alongwith their users IDs and pin codes etc. for the purpose of employed FBR web porter. The fraudster gangs were caught by the Director Intelligence and different FIRs were registered against them including the persons who used the invoices issued by these gangs.

The registered person / appellant before us is alleged to have used invoices by the fraudster gang during the periods from February, 2007 to January, 2009 and had claimed inadmissible input tax amounting to Rs.90,62,671/- on the strength of fake invoices issued by suspended/blacklisted/inactive suppliers. On the basis of said allegation, show cause notice was issued calling upon the appellant to show cause as to why sales tax amounting to Rs.90,62,671/- u/s 11(2) alongwith penalty u/s 33(1)(c) at Rs.90.62,671/- (equal to the amount of tax evaded) and penalty u/s 33(16) at Rs.2,71,880/- for default of section 73 of the Sales Tax Act, 1990 may not be recovered from him. The reply furnished by the appellant did not find favour and consequently the adjudication proceedings were culminated in the shape of order-in-original dated 24.04.2013. Being dissatisfied with this treatment, the appellant preferred appeal before the learned CIR(A) who vide order dated 15.07.2013 upheld the order-in-original. Hence, this appeal.

3. The learned A.R appearing on behalf of the appellant / registered person has vehemently assailed the orders of the authorities below as illegal and unjustified. He contended that the learned CIR(A) has erred in law while upholding the order of DCIR as the show cause notice is barred by time. It has been contested that the appellant / registered person is neither involved in the business of fake invoices nor he has made such act as alleged by the both authorities below. He further stated that the orders passed by the authorities below are arbitrary and against the facts of the case,

the payments to the suppliers were made in accordance with the provisions of law and action of the both authorities below to reject the input tax adjustment is not sustainable in the eye of law. It has further been argued that if any default was committed that was by the suppliers and not by the appellant. The department should have required to take action against the suppliers and not to deprive the lawful business right of the appellant from the input tax adjustment. 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 all the relevant record was submitted before the adjudicating officer but both the authorities below failed to appreciate this fact. He pleaded that the learned first appellate authority has erred in law while upholding the order of the assessing officer as the registered person / appellant is neither involved in tax fraud nor any irregularity was committed by the appellant. The learned AR submitted that the charge of tax fraud has no legal consequences in the light of the judgment of the honourable High Court reported as 2004 PTD 868. Finally, 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 registered person / appellant by the Superior Courts. Reliance in this regard was placed on the judgments reported as 2010 PTD (Trib) 2406, 2010 PTD (Trib) 1631, 2011 PTD (Trib) 633, 2011 PTD (Trib) 773, 2011 PTD (Trib) 866, PTCL 2004 CL. 1, 2012 PTD (Trib) 619, 2012 PTD(Trib) 350 and 2012 PTD(Trib) 885. 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. The learned AR also contended that penalty imposed by the authorities below is illegal and unjustified hence liable to be cancelled.

4. 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.

5. 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. We find that the registered person / appellant under the prescribed mechanism of VAT, made payment of the input tax to the suppliers and the registered person / appellant has no access to confirm that the suppliers have made the payment in the Government exchequer or not? Therefore, the whole case of the department falls *under section 8(1)(ca) of the Sales Tax Act, 1990* which has been

Court in judgment passed in Writ Petition No.3515/ 2012. In support of above contention, the appellant/registered person also produced before this forum the copies of online verification of suppliers' status.

6. It is abundantly clear from reading of the provisions of law that the mandatory condition put forth for committing tax fraud is that the alleged person should have done any act knowingly, dishonestly or fraudulently and without any lawful excuse. Reverting to the facts of the instant case, there is not an iota of evidence what so ever wherefrom it could be deduced that the appellant/registered person has knowingly or dishonestly committed tax fraud by claiming input tax adjustment against the sales tax invoices issued by the alleged suppliers. Even the department could not establish with any concrete reasoning that the appellant/registered person was involved inadmissible input tax adjustment. Perusal of the record reveals that at the material time when the transactions took place, the suppliers were active and alive and regularly filing their sales tax returns and they were black-listed subsequently on much later date. 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.

which adversely effect or invade upon vested right cannot be applied with representative effect".

7. 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:-

"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

8. We further find that the learned DR has also opted not to give comments on the issue of limitations u/s 11 & 36 whereby the tax period falling in the previous five years prior to the show cause notice dated 28.02.2013 have been hit by limitation by reckoning the period back from 28.02.2008, so the period till 28.02.2008 is hit by limitation debarring the department to initiate any proceedings and or recover any amount for this period. We are also of the considered opinion that liability to pay sales tax lies on the suppliers under section 3(3)(a) of the Sales Tax Act, 1990 and the department should have proceeded against the suppliers and not against the purchasers. Reliance can be placed on the reported judgment cited as 2004 PTD (Trib)1893 and it could be extended to buyer only by a notification under the Sales Tax Act, 1990 wherein shifting of tax liability to the person receiving the supply of specific goods is provided. It is also found that in taxpayer's case no such notification was issued by the Federal Government nor it is brought to our knowledge by the D.R. Therefore, we hold that such defaulted amount should have been recovered from defaulter supplier instead of buyer. Reliance is placed on reported case 2011 PTD (Trib.) 2090 and 2000 PTD (Trib) 399. It is also trite law that the Revenue cannot recover the tax twice against single transaction. Since the registered person has paid the amount of supplies, wherever applicable through crossed cheque as required u/s. 73 of the Sales Tax Act, 1990. Therefore, it is held that the registered person has fulfilled his obligation under the law and he cannot be penalized for the default of other person who has allegedly not paid the tax into Government exchequer honestly.

9. The upshot of the above discussion is that having taken regard to the facts of the case in its entirety and after respectfully following the ratio decided in referred judgments supra, we have no option except to reach the conclusion that proper show cause notice as envisaged under section 11 read with section 36 has not been issued by the assessing authority, consequently, the proceedings conducted in pursuance thereof could not have any legal consequences in the eye of law. It is also held that the Revenue has failed to prove the charges leveled in the show cause notice and learned CIR(A) has upheld the order of the assessing officer without appreciating the facts and judgments of the superior courts cited supra on the issues in hand. Therefore, we are of the considered opinion that the appellant was charged to sales tax without any justification and orders of the both authorities below are not sustainable in the eye of law. The order of the learned CIR(A) is illegal and against the judgments of the higher appellate fora. Consequently, the impugned show cause notice, the order-in-original and order of the learned CIR(A) are vacated.

10. The appeal of the appellant / registered person stands accepted.

Sd/-
(Ch. Shahid Iqbal Dhillon)
Judicial Member

Sd/-
(Sikandar Aslam)
Accountant Member