Waqar Usman Autos Eng.
STA No.734/LB/13

APPELATE TRIBUNAL INLAND REVENUE, LAHORE BENCH, LAHORE.

STA No. 734/LB/13

M/s. Waqar Usman Autos Engineering,
Mominpura Road, Daroghawala,Lahore. ...Appellant

Versus

CIR, ZONE-VIII, RTO-II, Lahore. ...Respondent

Appellant by: Kh. M. Riaz. Adv.
Respondent by: Mrs. Misbah Nawaz, DR

Date of hearing: **14-05-2014** Date of order: **14-05-2014**

ORDER

The titled appeal has been directed against the Order-in-Appeal No.528 dated 06-06-2013, passed by the learned Commissioner Inland Revenue (Appeals), Multan (camp at Lahore).

The facts leading to the filing of present appeal are that during the scrutiny of sales tax record of the appellant in respect of the tax periods February 2008 to January 2011, it was observed that the appellant had claimed illegal input tax of Rs.61,25,562/- on invoices issued by blacklisted units/suspended/blocked units and that said suppliers did not make any payments in the Government Treasury in violation of section 8(1) (ca) of the Sales Tax Act, 1990. The detail of alleged illegal input tax adjustment against following supplier units is given below: -

Sr No.	Sales tax amount	Seller Reg No	Seller Name	Tax Period
1	2,854,528	17507300014-37	GF Enterprises	Feb08 to Jan-11
2	1,190,574	17507300028-37	Orient Enterprises	Feb08 to Jan-11
3	1,113,840	17005900123-19	Certainteed Corporation	Feb08 to Jan-11
4	966,620	17039998345-28	KS Enterprises	Feb08 to Jan-11

3. On the basis of aforesaid facts, the appellant was called upon to show cause as to why input tax amounting to Rs.61,25.562/- alongwith default surcharge and penalties may not be recovered from them under section 11(2) and 36(1) of the Sales Tax Act, 1990. The adjudication proceedings culminated in passing an Assessment Order No.209/A-02, dated 26/08.2012, whereby the aforecited amount was ordered to be recovered alongwith default surcharge and penalty. The appellant preferred the appeal before the learned Commissioner Inland Revenue appeals who after considering the submission of the appellant rejected the appeal vide order dated 06-06-2013.

4. The appellant / taxpayer assailed the aforesaid impugned orders before us on a number of legal and factual grounds. The learned AR on behalf of taxpayer contended that the date of blacklisting of the alleged suppliers were neither confronted to the appellant nor mentioned in the show cause notice. He further submitted that at the time of transaction with the these supplier units they were operative at the FBR record and were filing their sales tax returns in accordance with the provisions of the Sales Tax Act. 1990. In support of the arguments the learned counsel submitted the copies of the sales tax returns of the suppliers in respect of the tax periods under consideration. While continuing with the arguments the learned A.R. put his emphasis on his second limb of argument that even for argument sake that subsequently the Commissioner had declared the units blacklisted even than the effect of executive order made by the Commissioner could not be made applicable retrospectively.

5. The learned AR on behalf of taxpayer submitted before us audit reported prepared by the department pertaining to the tax period July 2009 to June 2010, whereby the adjudged amount of sales tax of Rs.75,949/- and SED amount of Rs.4,747/- has already been deposited by the taxpayer. It is contended that in the

presence of said detailed audited conducted by the department, the belated action of the Officer regarding refusal input tax adjustment covering the period already audited by the department is unjustified and illegal. In this behalf, it is asserted by the AR that the DCIR on his own motion cannot disturb the audit observations / report already completed u/s 25 of the Sales Tax Act, 1990 and for any further inquiry or investigation the approval of the FBR is mandatory where sales tax audit has already been completed. Accordingly, it is contended by the AR that the trench on action of the DCIR is premature and illegal as the power of investigation audit by the FBR was assigned to the Intelligence Officer of Intelligence Directorate, therefore, an the impugned order which was passed without lawful jurisdiction is no order.

6. It is also submitted by the learned AR that the taxpayer is a bona fide buyer and has acted legally having a valid sales tax invoices, therefore, it was justified to claim input tax credit at the time of transaction of purchases. It is also submitted that the taxpayer made the total payments to its suppliers through crossed cheques in compliance to the provisions of section 73 of the Sales Tax Act, 1990 and the bona fide of the taxpayer is proved as the whole of the exercise of the DCIR is based on surmises and conjectures only. It is submitted by the AR that the department has failed to bring home the fate of the alleged blocked, suspended parties in terms of section 21 of the Act, and enquiries against the alleged parties are still under way.

7. It is further stated by the AR that the whole case was made out by the department on non observation of the provisions of section 8(1) (ca) but the Hon.ble High Court in the case M/s D G Khan Cement Ltd Vs Federation of Pakistan etc, has declared the provision of section 8(1)(ca) illegal and ulra vires to the Constitution, therefore, the impugned order merits straightway cancellation. To concluded his arguments, the learned AR stated

that the authorities below have miserably failed to establish that the taxpayer knowingly, dishonestly, fraudulently and having no excuse was involved in tax fraud and even a piece of evidence has been tendered and the whole case was made out on surmises and conjectures only without paying any head in the circumstances of the case.

8. The learned D.R. has opposed the arguments advanced by the learned A.R. It was submitted by the learned D.R. that show-cause notice was issued in accordance with law. On the issue of retrospective application of the executive order whereby the suppliers were declared blacklisted, it was argued that the said suppliers were declared blacklisted on account of past activities since audit is always conducted with regard to past business/transactions of the unit. The suppliers were only declared blacklisted after conducting thorough audit, hence it would have a retrospective effect.

9. We have heard the learned counsel for both the parties and have also gone through relevant order and case-law cited at the Bar. Perusal of the impugned orders passed by the authorities below was that the suppliers of the appellant were declared blacklisted and they did not deposit the tax into the government treasury and thus, the appellant was not entitled to claim input in terms of section 8(1)(ca). The learned AR relied upon the recent judgment of the high court mentioned supra whereby the honourable high court held in paras 34 & 35 that:

> ***34.*** *I have gone through the case law relied upon by the learned Standing Counsel from the Indian and foreign jurisdictions. They have little relevance with the case in hand, therefore, require no further consideration.*
>
> ***35.*** *For the reasons elaborated above, section 8(1)(ca) of the Sales Tax Act, 1990 besides being illogical and absurd, offends articles 23 and 24 of the Constitution and is hereby declared to be unconstitutional and, therefore, struck down. As a consequence impugned Show Cause Notice dated 20.10.2011 and Order-in-Original dated 06.01.2012 arising out of section 8(1)(ca) of the Act are also set aside. For the above reasons, this petition is allowed with no order as to costs.*

10. Following the ratio settled in the above mentioned judgments, we are of the view that the department was not within the ambit of law while passing the order against the appellant for the reason that the suppliers in question were operative during the period under consideration when the business/transaction took place. We must further add that if it is allowed to happen then the engine of business would come to grinding halt because nobody would know with regard to fate of its business concern if the subsequent events like declaring a business blacklisted are allowed to cover the period when the other business concern with whom it was dealing with, was operative and the registered person who has been called upon to show cause entered into business transaction with the subsequently blacklisted business in good faith and as per prevailing conditions at that time.

11. It is the appellant's contention before us that they have in their possession valid sales tax invoices, summaries, valid purchase invoices and that they had abided the provision of section 73 of the Sales Tax Act, 1990, and that the payment of the amounts for a transaction exceeding value of fifty thousand rupees was made through a crossed cheque showing transfer of amount of sales tax invoice in favour of supplier from the business account of the buyer. To verify the genuineness of all these facts and documentary evidences available with the taxpayer, we are of the view that the assessing officer is best placed for the purpose. We, therefore, deem it appropriate to remand the matter back to the assessing officer to look into the matter afresh and verify that the documentary evidences available with the taxpayer are in accordance with law and compliance to the provisions of section 73 was duly made by the taxpayer, if these found in order then obviously no action can be taken against the taxpayer and the claim of input tax adjustment be allowed accordingly.

12. For the foregoing discussion, we vacate the orders passed by the authorities below and remand the matter to the assessing officer for denovo decision. Order accordingly.

13. Appeal of the taxpayer disposed of in the above manner.

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

Sd/-
(MOHAMMAD RAZA BAQIR)
Accountant Member