APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE

S.T.A. NO. 1200/LB/2013

S.T.A. NO. 1201/LB/2013

S.T.A. NO. 1202/LB/2013

S.T.A. NO. 1249/LB/2013

S.T.A. NO. 1250/LB/2013

M/s Tribal Textile Mills Limited, Lahore. ....Appellant
M/S. Jamhoor Textile Mills Ltd., Lahore.
M/S. Lahore Textile & General Mills, Lahore.
M/S. Olympia Blended Fiber Mill, Lahore.
M/S. Rawal Textile Mills Ltd., Lahore.

Versus

Commissioner of Inland Revenue, , Lahore. .....Respondent

Appellant by: - Mr. Aamir Ali, Manager Sales Tax,

Respondent by: - Muhammad Tahir, DR

S.T.A. NO. 1204/LB/2013

S.T.A. NO. 1205/LB/2013

CIR. Zone-III & II, LTU., Lahore. ... Appellant

Versus

M/S. Qureshi Textile Mills Lahore. ... Respondent
M.S. Monnoowal Textile Mills, Lahore.

Appellant by:- Mr. Muhammad Tahir, D.R.

Respondent by:- Mr. Waseem Ahmad Malik, Advocate
Mr. Aamir Ali, Manager Sales Tax,

Date of hearing:-11-02-2014 Date of Order:-11-02-2014

ORDER

By this order, we will dispose off seven appeals bearing appeals No. 1200, 1201, 1202, 1204, 1205, 1249/ and 1250/2013 filed by the various titled taxpayers and STA NOS.1204 & 1205/LB/2013 filed by the

department against the order No. 09, 10 & 11 dated 14.10.2013, order No.01/13 dated 31.10.2013, order No.21/13 dated 31.10.2013, and order 04-A-II/13 and 05-A-II/13 both dated 28.10.2013 passed by the learned Commissioner of Inland Revenue (Appeals), Lahore All these appeals are involving identical facts and legal issues Among these two appeals are the counter appeals filed by the Commissioner Inland Revenue, LTU, Lahore which are against the above referred order No. 01 and 21 of 2013, dated 31.10.2013 and 1.11.2013 respectively through which the learned Commissioner IR Appeals has accepted two (2) appeals involving the facts and law points identical to the taxpayer appeals. However figures from order in original No. 06/2013 dated 29.06.2013 passed by the DCIR shall be adopted for reference which has been upheld by the learned CIR Appeals in his order No. 21 dated 31.10.2013.

2. The facts leading to the appeals involved are that the appellants are engaged in the manufacturing of textile products. It remained subjected to zero rating of sales tax from 06.06.2005 to 31.03.2011 through various notifications including SRO 535(I)/2005 dated 06.06.2005, SRO 621(I)/2005 dated 17.06.2005, SRO 525(I)/2006 dated 05.06.2006 and SRO 509(I)/2007 dated 09.06.2007. From 06.06.2005 to 31.03.2011, zero rating of sales tax remained available on textile, irrespective of the fact whether sold to persons registered or not registered under the Act.

Through SRO 283(I)/2011 dated 01.04.2011 the Federal Government restricted the regime of zero rating sales tax only when the goods of the above referred five sectors were sold to persons registered under the Sales Tax Act, 1990 whereas the goods sold to unregistered persons was subjected to sales tax at the reduced rate of 6% and 4% when sold to persons not registered under the Act. The benefit of zero

rating of sales tax and reduced rates of sales tax of 4% and 6% was granted subject to certain conditions inter alia including that the benefit of the said notification would be available only to persons if they were shown in the Active Taxpayers List [ATL] given on FBR website.

Through S.R.O. 283(I)/2011 dated 01.04.2011, S.R.O. 1012(I)/2011 dated 04.11.2011, S.R.O. 1058(I)/2011 dated 23.11.2011 and SRO 1125(I)/2011 dated 31.12.2011 the rates of sales tax on textile products remained the same i.e. zero percent when sold to registered persons and 6% when sold to unregistered persons subject to similar conditions as had been prescribed in SRO 283(I)/2011 dated 01.04.2011 subject to condition including that persons should be shown as active in ATL given on FBR website.

The Taxation Officer/DCIR issued a show cause notice dated 29.05.2013 through which it was alleged that on analysis of data provided by Computerized Risk-based Evaluation of Sales Tax [CREST], system it was found that the appellant has contravened section 3, 4, 6, 7, 8, 11, 22, 23 and 26 of the Sales Tax Act, 1990 read with SRO 283(I)/2011 dated 01.04.2011, SRO 1012(I)/2011 dated 04.11.2011, SRO 1058(I)/2011 dated 23.11.2011 and SRO 1125(I)/2011 dated 31.12.2011 and it was further alleged that the appellant failed to avail the amnesty scheme issued vide SRO 179(1)/2013 dated 7th March, 2013 wherein the registered person was given option to pay sales tax at the rate of 2% of the value of the supplies who claimed zero rating on supplies made by him in violation of the above referred SROs during the period from July

2011 to February 2013. The appellants were called upon to show cause as to why sales tax due should not be recovered them under Section 11(2) of the Sales Tax Act, 1990.

The said show cause notice was duly replied by the taxpayers however, the adjudicating authority vide its orders dated 29.06.2013 vacated the show cause notices partially and enforced the show cause notices to the extent of payments made under amnesty SRO 179(1)/2013 dated 07.03.2013. Against the orders-in-original, the taxpayer filed first appeals before the learned CIR (Appeals) Lahore. The learned first appellate authority upheld the orders passed by the adjudicating authority hence the Registered persons titled above have filed the instant appeals whereas the department is in appeals in the matters of two registered persons because in their cases appeals filed by the registered persons are allowed.

3. During the course of hearing, the learned AR not only reiterated the arguments taken in the memo of appeals, he has laid special emphasis in the following contentions and argued that the fundamental rights of the registered person guaranteed by the constitution of the Islamic Republic of Pakistan, 1973 have been violated. The appellant has been discriminated for no apparent reasons and the vested rights have been infringed. In this respect he has made reference to recently inserted provisions of Article 10-A of the constitution of the Islamic Republic of Pakistan, 1973 titled " Right to fair trial".

It is contended that availing the concession, exemption under the amnesty SRO do not preclude the registered person from agitating its

rights and prosecuting of cases/appeals respectively before the available/provided forums. That the said rights are duly available to the registered persons to the extent that if adjudged taxes are paid under some relief granting amnesty scheme or exempting SRO even then the right of appeal etc. is still available to the taxpayer within the parameters of law. He relied upon the judgments reported as 2006 PTD 120 wherein it has been held that:-

> "From the above provisions it is clear that availing the concession under the S.R.O. would neither affect the adjudication proceedings nor any appeal filed from the order of the adjudicating officer and the same shall still have to be decided on merits. Should it be determined that the dues were not payable, the same are to be refunded. Availing concession under the S.R.O. No. 1349(I)/99, therefore, did not preclude the appellant from pressing the appeal before the Tribunal on merits. The Tribunal therefore, ought to have decided the appellant's case on merits".

The learned AR for the appellant in this respect has also relied upon the judgment reported as and 2005 PTD 2377 wherein it has been held that:-

> "We are thus of the opinion that despite payments of the amount of the claimed sales tax by the appellant under the amnesty scheme, it was entitled to a decision on legality, payability and validity of the claimed sales tax. The learned Tribunal and the adjudicating authority thus failed to exercise jurisdiction vesting in them. The question should have been decided as to whether the amount of the sales of Rs. 964,159 was due from and payable by the appellant or not and as to whether the appellant was entitled to the refund of the sales tax amount paid under the Amnesty Scheme".

He has contended that the refund of the amount should not be disallowed due to technical reasons. He has in this respect relied upon the judgment of Hon'able Supreme Court of Pakistan reported as PTCL 1998 CL 354 wherein it has been held that:-

> "If one party under a mistake, whether of fact or law, paid some money to another party (which include a Government department), which was not due by law or contract or otherwise, that must be repaid in view of section 72 of the Contract Act, 1872...".
> "where some money is received by the Government not lawfully due, the plea of limitation by its departments was violative of the principles of morality and justice....".

> "The money paid by a citizen to a public authority in the form of taxes or other levies paid pursuant to an ultra vires demand by the authority was prime facie recoverable by a citizen as right. The retention of moneys known to have been paid under mistake at law although it was a course permitted to an ordinary litigant was not regarded as a high-minded thing, to do, but rather as a shabby thing, or a dirty trick ...".

It is argued that the executive order or notifications which confer rights and are beneficial would be given retrospective effect and those which adversely affect or invade upon the vested right cannot be applied with retrospective effect. He relied upon the judgments reported as 2005 SCMR 492, 2012 SCMR 864, PTCL 2001 CL. 277, 2013 PTD 581, 2004 PTD 819 and 2006 PTD 1375.

He has also referred the judgment reported as and 2012 SCMR 864 wherein it has been held that:-

> "Notification and/or executive order could operate prospectively and not retrospectively and the same principle was equally applicable to a statute in the absence of any express or implied intendment contrary to *it* ."

The other judgments reported as 2005 SCMR 492 has been referred wherein it has been held that:-

> "Executive orders or notification which confer rights and are beneficial, would be given retrospective effect and those which adversely affect or invade upon vested right cannot *be applied with retrospective effect.*"

It is argued that the appellant cannot be penalized for fault on the part of the buyers, if any, who have not shown purchases made from the registered persons or have not declared the correct quantity/value of goods purchased from the Registered Persons. According to him, it is a settled law that no one would suffer for the act of another. That if at all, the buyers had failed to declare correct quantity/value of goods purchased from the Registered persons in their record, it does not

impose any liability on the Registered persons. He relied upon the judgments reported as 2003 YLR 1130 and judgement of the Honourable Lahore High Court passed in W.P. No. 3515/2012 the relevant portion in this respect is reproduced hereunder:-

> "It is assumed, unless proven otherwise, that there is free competition in the market. Buyers and sellers in a market are separate, unrelated and independent players, transacting with each other at arm-length. The buyer has no control over the supplier. Once the payments is made to the supplier through proper banking channel, as provided under the Act, the buyer has no control over the supplier. Buyer has no means to police the supplier to ensure that the payment made is also duly deposited in the government exchequer. Supplier is not a puppet of the buyer and does not dance to his tune. Any such expectation or obligation cast upon the buyer in a market where there is free and fair competition defies reasonability and logic ".

It is contended that the status of the buyer existing at the time of supply of the goods by the Registered persons shall be considered while deciding the case of the Registered person and not the status attained by the buyer subsequently. In this regard he relied upon the judgement of the Honourable Lahore High Court, passed in Writ Petition No. 17237/2013 dated 12.07.2013 in the case titled M/s Nimra Textile Mills Limited Vs. Federation of Pakistan the relevant portion in this respect is reproduced hereunder:-

> (i) "An opportunity will be given to the petitioner to lead evidence in support of supply of goods made by the petitioner and thereafter the overall evidence brought on the record shall be weighed and evaluated strictly in accordance with law.
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> (ii) The status of the buyer existing at the time of supply of the goods by the petitioner shall be considered while deciding the show cause notice and not the status attained by *the buyer subsequently*."

According to the learned counsel the Registered person had supplied goods to the persons who were registered under the Act and were shown as active on ATL as was available on FBR website at the time

when supplies were made to them. All the buyers were holding valid National Tax Numbers and Sales Tax Registration Numbers as were allotted to them by the Federal Board of Revenue itself. None of the buyers were either non active, nil filer or null filer at the time when the appellant supplied goods to them. No discrepancy whatsoever was available against any of the buyers at the particular time when supplies were made to them by the Registered person. He has, therefore, requested to allow the appeals filed by the Registered Persons and to dismiss the appeals filed by the Department.

4. On his turn, learned DR has supported the impugned orders of the learned CIR (Appeals) in their cases wherein the appeals were filed by the Registered Persons and argued that the Registered persons cannot be allowed to contest the amount paid under the amnesty scheme. He has argued that the learned CIR (appeals) has no jurisdiction to remand the case back and prayed for dismissal of appeals filed by the Registered persons and to accept the appeals filed by the department against impugned order of the CIR Appeals.

5. We have heard the learned counsel appearing on behalf of the Registered persons as well as the learned DR and have also taken into account the impugned orders of the learned CIR(A), the orders in original, the relevant provisions of law the relevant orders as well as case laws quoted in the memo of appeal and referred to during the arguments.

We have found that in this case the Registered persons company had deposited the partial amount under the concessionary S.R.O. 179(I)/2013 dated 07.03.2013 before the issuance of the show cause

notice. The learned AR appearing for the taxpayer submitted that availing concession under S.R.O. 179(I)/2013 dated 07.03.2013 does not bar the taxpayer from contesting the liability on merits. According to him availing of the amnesty scheme by the taxpayer meant that on an adverse decision in the adjudication proceedings and/or the appeals arising therefrom, the Registered person would not be subjected to the additional tax and penalties. He is of the view that the taxpayer presumed that its defence against the show cause notice would neither be compromised nor be given up on payment of the sales tax under the amnesty scheme. He has also pointed out that the learned Adjudicating officer vacated the show cause notice to the extent of the other charges levelled in the show cause notice but the amount paid under the amnesty scheme has not been decided on merits and he has held the said amount payable only for the reason that the said amount has been paid under amnesty scheme. He has in this respect referred to the cases decided by the Honourable High Courts which have been discussed in the above *paras* of the order. After considering these judgements we find force in the contention of the learned AR that availing the concession under the S.R.O. 179(I)/2013 dated 07.03.2013 would neither affect the adjudication proceedings nor any appeal filed from the order of the adjudicating officer and the taxpayers still have a right that their cases shall be decided on merits. Respectfully following the ratio laid down by superior courts, in the case reported as 2006 PTD 120 and 2005 PTD 2377, we are of the view that despite the payment of the amount under the amnesty S.R.O. 179(I)/2013 dated 07.03.2013, the taxpayer was entitled to a

decision on legality, playability and validity of the amount paid under the said SRO.

It has also been contended by the learned AR that the SRO 283(I)/2011 dated 01.04.2011 was superseded through SRO 1012(I)/2011 dated 04.11.2011 which was again superseded through 1058(I)/2011 dated 23.11.2011 however, the rates of sales tax on textile products remained the same i.e. zero percent when sold to registered persons subject to condition and that person should be available as active in ATL given on FBR website. He has argued that the taxpayers in the instant cases had supplied goods to the persons who were registered under the Act and were shown as active on ATL as was available on FBR website at the time when supplies were made to them and the taxpayers cannot be penalized for fault on the part of the buyers, if any, who have not shown purchases made from the taxpayers or have not declared the correct quantity/value of goods purchased from the taxpayers. He further argued that if at all, the buyers had failed to declare correct quantity/value of goods purchased or services obtained from the taxpayers in their record, it does not impose any liability on the taxpayers. It is a settled law that no one would suffer for the act of another. In this respect has referred to the cases decided by the Hon'able superior courts of the country have been referred which have been discussed in the above paras of the order. We are of the view that it is settled principle of law as pronounced by the Honourable Supreme Court of Pakistan in its judgement reported at 2005 SCMR 492 that executive orders or

notifications, which confer rights 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 further noted that in identical case including one of the taxpayer in the above referred appeals the Honourable Lahore High Court in writ petition No. 17237/2013 dated 12.07.2013 titled M/s Nimra Textile Mills Limited Vs. Federation of Pakistan has held that the status of the buyer existing at the time of supply of the goods by the petitioner shall be considered while deciding the show cause notice and not the status attained by the buyer subsequently. Keeping in view the above facts and the judgements of the Hon'able Superior Courts the appeals filed by the taxpayers are hereby accepted with the direction to the learned adjudicating authority check the zero rated supplied made by the taxpayers under the S.R.O. 283(I)/2011 dated 01.04.2011, S.R.O. 1012(I)/2011 dated 04.11.2011, S.R.O. 1058(I)/2011 dated 23.11.2011 and 1125(I)/2011 dated 31.12.2011 to the extent of the disputed in the above referred appeals and if found that the conditions for zero rating i.e. the supplied made to the persons who were registered under the Act and were shown as active on ATL as was available on FBR website at the time when supplies were made to them than he shall refund the amount paid under the concessionary S.R.O. 179(I)/2013 dated 07.03.2013.

6. Now, coming to the departmental appeals, wherein the learned D.R has strongly contested that the learned CIR (appeals) has no

jurisdiction to remand the case back as per Section 45B of the Sales Tax Act, 1990 therefore, the order passed by the learned CIR (appeals) may kindly be cancelled whereas on the other hand, learned counsel appearing on behalf of the taxpayer argued that as per provisions of sub-section 3 of section 45B of the Sales Tax Act, 1990 CIR (appeals) shall not remand the case for de novo consideration but in the instant appeals he has not remanded the case for de novo consideration. The learned counsel in this regard relied upon the judgment of this Tribunal in STA No.284/IB/2012. We have observed that the learned CIR (appeals) has applied his judicious mind while disposing off the appeals of the taxpayers and has obtained strength from the judgement of the Hon'able Lahore High court and the order passed by this Tribunal in the above referred appeal. We have found that in the appeals in hand the learned CIR (appeals) has not remanded the case back for de novo consideration but he has only remanded the case back for verification of the status of the buyers of the taxpayers at the time of supplies in the light of the order passed by the Honourable Lahore High in the appeals in hand. We are of the considered view that the departmental appeals have no legs to stand at this forum which are hereby dismissed.

7. All the appeals stands disposed off in the manner as indicated above.

sd/-

(JAWAID MASOOD TAHIR BHATTI)
CHAIRMAN

sd/-

(FIZA MUZAFFAR)
ACCOUNTANT MEMBER