APPELLATE TRIBUNAL INLAND REVENUE,

LAHORE BENCH, LAHORE

Appellant:		*Respondent:*
The Commissioner Inland Revenue, Faisalabad.	*Versus:*	**M/s. Chenab Board, Faisalabad.**

Present:

Mr. Jawaid Masood Tahir Bhatti, Chairperson and Mrs. Sabiha Mujahid, (Accountant Member).

S.T.A. No. 952/LB of 2012, decided on 29th August, 2013.

REPRESENTED:

Appellant by: Mr. Muhammad Jamil Bhatti, DR.

Respondent by: Mr. Khubaib Ahmad, Advocate.

ORDER:

MR. JAWAID MASOOD TAHIR BHATTI, (CHAIR PERSON).--(1). The instant appeal has been filed by the revenue-department under section 46 of the Act assailing the Order-in-Appeal No. 171/2012 dated 16-05-2012 passed by the learned CIR(A), Faisalabad whereby he accepted the appeal filed by the taxpayer against Order-in-Original No. 11/2012 dated 07-02-2012.

2. The pivotal facts as emanating from the case record are that the respondent received a summon/notice dated 22-06-2010 issued by an Assistant Director, Directorate of Intelligence and Investigation-FBR Range Office, Faisalabad to appear in person and to give certain evidences and documents under section 37 and 38 of the Act alleging that as a result of scrutiny of invoice summaries, tax profiles and other record as retrieved from Regional Tax Office, Faisalabad, it transpired that the respondent had illegally claimed/adjusted input tax worth Rs. 14,157,136/- during the period from July-2005 to March-2010 on the strength of fake/flying invoices of certain blacklisted and suspended suppliers and thus caused heavy loss to national exchequer. On the basis of above, an FIR No. 03/2011 dated 04-04-2011 was lodged against the respondent allegedly claiming illegal input tax adjustment/credit against invoices of those registered suppliers who have not been depositing due tax on supplies made to them. During the course of investigation, intelligence department purportedly; confirmed that the respondent has claimed and adjusted invalid input tax to the tune of Rs. 14.157 million during the period from July-2005 to June-2010 against invoices of alleged registered suppliers who were wholesalers and manufactures of paper cone, paper and paper board. It was also alleged that the suppliers units issued sales tax invoices facilitating the exporters and other registered person to claim input tax adjustment and this *prima facie* constitutes "tax fraud", as defined under section 2(37) of the Act. It was further alleged in the impugned show cause notice that the respondent has admitted the evasion of sales tax

amounting to Rs. 14,157,136/- for the period July-2005 to June-2010.

3. Resultantly, a show cause notice bearing C.No. 150 dated 13-08-2011 was issued by the Assistant Commissioner Inland Revenue creating tax liability of Rs. 26,218,930/- and Rs. 468,318/- on account of sales tax and special excise duty (SED) respectively for the period from July-2005 to December-2010. In this way, the respondent was also charged with violations of sections 2(37), 3, 6, 7, 8A, 8(1)(d), 8(1)(ca), 10, 11, 22, 23, 26 and 73 of the Act read with Sales Tax Rules, 2006 notified *vide* S.R.O 555(I)/2006 dated 05-06-2006 and as to why above-mentioned liabilities may not be recovered under section 36(1) of the Act and penalty may also not be imposed under section 33 *ibid* alongwith default surcharge Rs. 15,125,442/- (calculated upto 06/2011) under section 34. During adjudication, charges leveled in impugned show cause notice were vehemently contested by the respondent that tax liability by the learned detecting agency on the basis of record resumed is created without confronting him with that of information contained in resumed records and its contents altogether and as such demand is raised on the back of the respondent without making them party to examine the records/documents causing such huge liability. The learned detecting agency has also erred in maintaining huge tax liability by committing certain arithmetical and calculation mistakes as well which are conspicuous from bare reading of impugned show cause notice but the learned Adjudicating Authority without considering/addressing the facts and basic legal issues raised in the written submissions has passed the Order-in-Original No. 11/2012 dated 07-02-2012. The respondent being aggrieved by the order of the learned adjudicating authority, filed the first appeal before the Commissioner (Appeals) who *vide* his Order-in-Appeal No. 171/2012 dated 16-05-12 partially accepted the appeal and partially rejected the respondent's contentions on the issues of suppression of sales and illegal adjustment of input tax against invoices of blacklisted units without resolving certain other legal as well as factual aspects of controversy in its true perspective which resulted in serious miscarriage of justice. The respondent then preferred the second appeal before this ATIR whereby the impugned orders of

the learned adjudicating authorities below were set aside and the basic adjudication order was also declared *null and void* having no legal consequences on the stance of lacking of pecuniary notified legal jurisdiction *vide* its judgment bearing STA No. 638/LB/2012 dated 12-10-2012. Since, the basic matter of issuing show cause notice and passing adjudication order beyond notified pecuniary jurisdiction has been declared *null and void* therefore; nothing remains tangible on account of impugned notice and order thereof in view of earlier clear-cut judgment of this Appellate Tribunal.

4. We have heard the arguments advanced by both the rival parties and also carefully gone through the relevant record available on the file as well as case law referred before us on behalf of the taxpayer.

5. The records/documents titled as "sales tax working for the month of July-2006 to December-2010" and "sales for July-2006 to December-2010" providing basis for creation of charge of suppression of sales appears to be self-fabricated and self-engineered. Both of these documents finds no place in resumption memo dated 20-04-2011. The records on the basis of which, charge of suppression of sales was created is not mentioned anywhere in resumption memo from its Sr. No. 1 to Sr. No. 256. Fabrication of alleged records/documents is established as both of these documents contain the similar hand-writing on its face and none of other sales documents in the resumption memo does contain any such hand-writing and that is why, it could not find any place or mention in the Resumption Memo dated 20-04-2011. *It is a well-settled principle of law that demand of sales tax cannot be created merely on the basis of any document which were altogether found missing in the very list of records resumed during the course of search from the respondent's factory premises as contained in the resumption memo have no legal foundation and the subterranean castle built thereon also remains in thin air.* In fact, both of these documents were never resumed from the respondent's business premises but subsequently fabricated to create the charge of suppression of sales that is how it could not find any place or mention in the resumption memo from its Sr. No. 1 to Sr. No. 256. The said resumption memo is duly signed by all the officials and

the business stakeholders. The respondent has been constrained to disown both of these documents and records as being not prepared, maintained or kept by them. Even otherwise, officials of directorate of intelligence and investigation has erred in fabricating and engineering of such documents and records while calculating sales tax liability which is manifest of simply a case of *"tax on tax and tax on duty, duty on duty and duty on tax"* and this phenomena of double taxation has nowhere denied by the detecting agency itself in its written comments nor during the course of adjudication before the learned CIR(A) which amounts to admission. In view of all above, this Tribunal cannot permit the tax authorities to impose a tax on tax and a duty on duty particularly in the cases, where double taxation has been established and can never allow the department to create any tax liability on any of record which was not a prescribed one in the Sales Tax Act, 1990 and were also not included in the list documents given in the resumption memo. Even otherwise, sales tax is on sale and supply of goods which necessarily entails delivery of goods and/or receipt of money consideration in this regard and no corroborating evidence for any clandestine removal of goods and for receipts of money consideration has been provided without which the charge of suppression of supply remains in thin air and thus of no legal effect. The whole exercise regarding recovery on the basis of suppression of sales is based merely on surmises and presumptions for which there is no room particularly in the fiscal matters as suppression of supply is not proved by any documentary corroborating evidence regarding clandestine removal of goods or receipts of money consideration hence, remains unsubstantiated without which the whole exercise is nullity in the eyes of law.

6. The impugned recovery of adjusted amount of input tax on the charge of "registration suspended" is without any lawful ground as recovery against invoices of a person whose registration is suspended can be effected upon his ultimate blacklisting by the Commissioner IR after adhering due process of law under section 21(3) of the Act and the rules made thereunder and after due final order for such action as provided under law. Suspension of registration is an interim order of the Commissioner (IR) for the sake of conducting an inquiry and scrutiny of the matter where any

tax fraud or massive tax evasion is suspected and recovery proceedings from the stakeholders can be initiated after establishing the charges of tax evasion and incidences of tax fraud and upon ultimate black-listing of a registered person as provided under section 21(3) of the Act. When law specifies a particular manner and procedure then it is obligatory for the functionary of the state to adhere to the same and comply with it in all respects and any negligence, failure or omission to do so, invalidates the proceedings on account of which whole superstructure raised on such defective foundation automatically crumbles down. *A person cannot be penalized and impeded with undue and premature tax liability merely on the basis of an interim order like the suspension one until and unless, it is eventually acted upon in the form of final blacklisting and recovery of sales tax thereof is not properly adjudged through an appealable order, no recovery could be made.* The inadmissibility of input tax against invoices of suspended units whose ultimate fate in form of blacklisting or otherwise is yet to be determined is not justified under law therefore, recovery of adjusted amount of input tax upon suspension of registration is illegal and unwarranted and thus stands premature and invalid because no formal and final order of blacklisting under the law has been issued by the competent authority therefore; whole proceedings culminated in impugned show cause notice and adjudication order are nullity in the eye of law. In this regard, reliance is placed on the judgment of a Division Bench of Honourable Inland Revenue Appellate Tribunal, Lahore in case *"M/s. Shama Exports (Pvt.) Ltd. vs. Collector of Sales Tax, Faisalabad"* reposted at *(PTCL 2011 CL 785)*. It is very astonishing how a person can be penalized and impeded with undue and premature tax liability merely on the basis of an interim order like the suspension one until and unless it is eventually acted upon in form of final blacklisting, no recovery can be made. For ease of reference, provisions of section 21(3) of the Act are reproduced hereunder:--

> "During the period of suspension of registration, the invoices issued by such person shall not be entertained for the purpose of sales tax refund or input tax credit, **and once such person is blacklisted, the refund or input tax credit claims against the invoices issued by him,** whether

> prior or after such blacklisting, shall unless the registered buyer has fulfilled his responsibilities under section 73 **be rejected** through a self-speaking appealable order and after affording an opportunity of being heard to such person." *(Underlining for emphasis).*

The provisions of section 21(3) of the Act are very much clear in its original footings that sales tax refund or input tax credit can be recovered back against invoices of a person upon his blacklisting but no such provision exist therein providing such action upon suspension of registration therefore, the whole exercise of adjudication for demanding sales tax from the respondent against invoices of a person whose registration was suspended yet not finally blacklisted by the IR, Department therefore, it stands premature, unwarranted and nullity in the eyes of law.

7. In order to provide safe guard to the property and rights of a citizen as envisaged in the Constitution of Pakistan, 1973, the legislation has consciously made a registered person while receiving a taxable supply *obligatory to have knowledge or to have any reasonable grounds* to suspect at the time of making payment of sales tax to the supplier that in chain of supply, certain tax will go unpaid as envisaged under section 8A of the Sales Tax Act, 1990. The provisions of section 8A simply requires that the buyer should have the "knowledge" and "reasonable grounds" to suspect that the supplier will not eventually deposit the sales tax in the national exchequer paid by him and in order to attract the provisions of section 8A of the Act, initial burden lies on the department to establish that the taxpayer had prior "knowledge" and "reasonable grounds" to suspect the supplier that sales tax paid to him shall be remained unpaid in its eventuality and then proceed against the taxpayer. The respondent, in the present case, under the prescribed mechanism of value added tax (VAT), has made payment of input tax to his supplier and he had no access to confirm that the alleged supplier had made the payment in the Government treasury or not. The respondent receiving taxable supplies was legally obliged to check 'validity and veracity' of the supplying person through electronic verification which was obviously done at the time of transactions. This was the duty of the tax functionaries to check as to whether the supplier had made

payment of tax due to them especially when he was filing his monthly sales tax returns and summaries of sales and purchases with the department. The impugned show cause notice does not disclose that the respondents was in knowledge or had reasonable grounds to suspect that some or all of the tax payable in respect of supply or any previous or subsequent supply of the goods supplied would go unpaid, therefore, liability to pay tax jointly and severally under section 8A of the Act would come into play only when it is established with corroborating material evidences that where registered person receiving taxable supply from another registered person is in the knowledge or has reasonable grounds to suspect that some or all of the tax payable in respect of that supply would go unpaid. The position in the present case is very much different because the respondent, after verifying the status and genuineness of the supplier from e-portal of FBR, made the payments of input tax to them and fulfilled all the legal responsibilities on his part and after adopting of method for making payments as is prescribed by the law, has discharged his onus so no responsibilities lies on respondent's shoulders to haunt his suppliers depositing their liabilities in the Government exchequer or not. *Mere allegation that the alleged suppliers are blacklisted, suspended and fake is not enough and corroborating evidence for denying the lawful right of input tax of the buyer*. Therefore, the respondent cannot be evolved as a joint liable and induction of contravention does not qualify. Reliance is placed on the judgment of the Hon'ble Lahore High Court in case of *"M/s. D.G. Khan Cement Company Ltd. vs. The Federal of Pakistan, etc."* in W.P. No. 3515/2012 *(PTCL 2013 CL. 534)* wherein it was laid down as under:--

> "It is also important to refer to section 8A of the Act which deals with a complete new specie of violation of law i.e., non-deposit of tax in the government treasury by the supplier. This does not cast any allegation of collusion on the part of the buyer or supplier but simply requires that the buyer should have had "knowledge" that the supplier will not (eventually) deposit the sales tax in the exchequer. The department has to establish that the taxpayer had "knowledge" and, then proceed against the taxpayer. The impugned show cause notice does not, however, set up a case against the petitioner under this provision of law. Section 8-A is different from section 8(1)(ca) and is triggered by the requirement of "knowledge" of the past practice of the supplier."

8. As far as, violation of section 8(1)(d) of the Act is concerned, the provisions of section 8(1)(d) of the Act can only be invoked in cases where charge of "collusion" or "tax fraud" has been levelled and established by the department as the said provision disentitles a registered person from deducting or claiming input tax adjustment or credit made on the strength of a "fake invoice". The words "fake invoice" has neither collectively been defined in the Sales Tax Act, 1990 nor distinct and individual meanings of each word "fake" and "invoice" has been given therein nor any explanation has been enunciated in the rules made thereunder nor any definition of this expression is provided in defining clauses as given in Section 2 of the Act. In the absence of the general or technical definition by the legislature of any word or particular connotations appearing in the Act or the Rules framed thereunder or of any judicial interpretation of that word with reference to the same statute or any other statute in *pari materia*, one has to resort to the dictionary, meaning of that word because reference to standard dictionaries can be the sole assistance in assigning meaning of that word or words. The word "fake" has been defined by the Black's Law Dictionary, 8th Edition to be *"something that is not what it purports to be"* and *"to make or construct falsely"* at its page 635. Any invoice duly issued by a registered supplier cannot be purported to be a fake document, once it is established that the same is duly incorporated in sales shown by the supplier in his summary statement and also declared in his sales tax monthly return for the period in question particularly in the cases where its payment is also transacted through banking channel as prescribed under the Act. Conversely, if a registered person holds a tax invoice which is not incorporated in the supplier's records or in its respect payment is also made clandestinely, it can be said that such person is making a fake business transactions. Any invoice that evidences a fake, fraudulent or sham transaction is known as a "fake invoice" and any distortion in taxable supply tainted with "tax fraud" or "collusion" between buyer and seller renders the tax invoice defective and fake. *It is a well established principle of law that a party making an allegation must bring material evidences to prove the same but no evidence of tax evasion, issuing of fake invoices or any other commission of tax*

fraud is put forth on record to substantiate the allegations levelled against the respondent and in absence of which, impugned show cause notice as well as consequent orders stand illegal and void ab initio. For claiming adjustment of input tax by a taxpayer under clause (i) of sub-section (2) of section 7 of the Act, he should hold a taxable invoice duly issued by his supplier under section 23 of the Act and the claimant should have paid the amount of the goods including tax shown in the invoice through negotiable instrument as per expression of section 73 *ibid*, the respondent, is holding valid taxable invoices and payment against those to the supplier was also made strictly in terms of section 73 of the Act. The department has not been able to place on record any evidence by which it can be inferred that the invoices issued by the supplier were fake. *Any action which is based upon no evidence is not permitted by any law of the land.* The respondent has nothing to do with the act and commission of his suppliers under any provisions of the Act neither the respondent is obliged under any other law to defend the acts or omissions of his suppliers. *The respondent, who has admittedly paid the input tax covered by the invoices, cannot be denied the statutory right of claiming its adjustment.* In a nutshell, neither charge of 'tax fraud' was established against the respondent nor the charge of 'collusion' of the respondent with his suppliers to evade sales tax by way of fake invoices was levelled and established nor even the department could prove and bring on record any evidence for collusion of the respondent with his suppliers for the same without which the provisions of section 8(1)(d) are not attracted in the instant case and thus, the whole proceedings are infested with inherent legal infirmities and are liable to be set aside. Reliance is placed on the judgment of the Hon'ble Lahore High Court in case of *"M/s. D.G. Khan Cement Company Ltd vs. The Federal of Pakistan, etc."* W.P. No. 3515/2012 *(PTCL 2013 CL. 534)*. The *ratio decidendi* in the said judgment is reproduced hereunder:--

> "Infact, in case of "collusion" or "tax fraud" section 8 (1)(d) of the Act is attracted. The said provision disentitles a registered person from deducting or claiming input tax if there is a "fake invoice". The term "Fake invoices" has not been defined in the Act but has the potential of covering a wide range of irregular and fraudulent transactions. Any

> taxable supply that is sham, collusive, based on tax fraud will necessarily render the invoice *i.e.*, the material evidence documenting the transaction, to be false, collusive, and fraudulent. Fake invoice as a legal term includes the popular market terminology of "flying invoice". Hence, any invoice that evidences a fake, fraudulent or sham transaction is known as a "fake invoice". Any distortion in taxable supply tainted with "tax fraud" or "collision" between buyer and seller renders the tax invoice defective and fake. The concern of the FBR and the Federal Government, urged before the Court above, is fully addressed by section 8(1) (d) of the Act."

9. The department has also charged the respondent with violation of section 8(1)(ca) of the Act that his suppliers have not deposited the due tax in the national exchequer therefore, he is not entitled to claim the credit of input tax already paid by him. This *dictum* appears to be contradictory in its own, as on one hand, liability to pay sales tax is on the supplier under section 3(3)(a) of the Act and can only be extended to the buyer by a notification under section 3(A) *ibid* in case of supply of specific goods and on the other hand, the respondent has jointly and severally been held responsible for such liabilities without any such notification issued by the Federal Government as such defaulted amount has to be recovered from the defaulter supplier instead of the buyer. The instant legal and statutory contradiction would result into double taxation as under the charging provisions of section 3 of the Act, the supplier in case of local sales is held liable to pay sales tax by collecting the same from the buyer and under the machinery provisions of clause (ca) of section 8(1) *ibid*, the buyer is impeded with tax liabilities if the supplier fails to deposit the tax collected from the buyer who is not the one who can force the supplier for payment of tax so-collected. The demand of sales tax against the respondent is tantamount to double taxation which is not permissible under law because liability to pay sales tax is on the supplier under section 3(3)(a) of the Act and in this case, respondent has already discharged his sales tax liability by making its payment to the alleged supplier therefore; demanding the same amount from the respondent due to any default whatsoever on the part of his suppliers is clear example of 'double taxation' which is not only illegal and contrary to the provisions of Sales Tax Laws but also against norms of natural justice and as such the respondent

cannot be burdened with the liability of double taxation, hence, recoveries adjudged by the department are illegal and uncalled for. *It is now well-settled proposition of law that no tax could be levied twice on the same goods as per golden rule of Interpretation of Fiscal Statute.* It is also worth mentioning here that the whole case was made out against the respondent on the charge that due tax has not been deposited by the suppliers of the respondent therefore, the respondent is not entitled to take adjustment or refund of input tax on the strength of invoices issued by the said suppliers under section 8(1)(ca) of the Act. Every person has a separate legal character enjoying distinct rights and liabilities under the law and to impose the liability of one over the other is opposed to the basic fundamentals of law and offends due process, logic and rationality. The provisions of section 8(1)(ca) axes an innocent person for the wrong of the other. The edifice of the instant case has broadly been built up under provisions of section 8(1)(ca) of the Act has inwardly been collapsed to its bottom as the provisions of section 8(1)(ca) of the Act have been declared unconstitutional being illogical and absurd, offending Articles 23 and 24 of the Constitution, 1973 and therefore are not attracted in the instant case as the Hon'ble Lahore High Court in case of *"M/s. D.G. Khan Cement Company Ltd. vs. The Federal of Pakistan, etc."* in W.P. No. 3515/2012 *(PTCL 2013 CL. 534)* has struck down its provisions. The *ratio decidendi* in the said judgment is reproduced hereunder:--

> "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 6-01-2012 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. Not superfluously but additionally, it has become clear from the definition of "tax fraud" as given under section 2(37) of the Act 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 any

iota of evidence whatsoever wherefrom, it could be deduced that the respondent has knowingly or dishonestly or fraudulently committed any tax fraud by claiming adjustment of input tax against tax invoices issued by the alleged suppliers. *If at all a supplier has committed any tax fraud, it has been done on account of department's negligence and the buyer cannot be held responsible for slackness of the tax functionaries.* The impugned show cause notice and even impugned orders could not establish with any concrete and solid evidences that the respondent was involved in tax fraud by claiming illegal input tax violating the provisions of section 2(37) of the Act. *The provisions relating to tax fraud cannot be invoked without first proving that the accused person has committed such act knowingly dishonestly or fraudulently and without lawful excuse.* In fact, department has miserably failed to fasten blame at the respondent's door and the entire edifice has been built, to hold the respondent as fraudulent, on conjectures and surmises and whimsical inference has been drawn against the respondent on so-called set of facts. On the other hand, the record proves that there was an ample justification with the respondent to claim adjustment of input tax or as the case may be of refund, because the supplier was a registered person and his status was operative/active on FBR Website and was also regularly filing his sales tax returns and summaries thereof at that juncture of time. In order to attract the provisions of section 2(37) of the Act, initial burden lies on the department to show that the taxpayer, knowingly, dishonestly or fraudulently and without any lawful excuse had done any act or caused any act to be done or has omitted to take any action or has caused the omission to take any action in contravention of duties or obligations imposed under this Act or rules or instructions issued thereunder with the intention of understating the tax liability or underpaying the tax. *The initial burden to prove that the provisions of tax fraud were attracted, lied on the department and not on the taxpayer and in the instant case, the department has miserably failed to discharge his onus and for this reason, charge of tax fraud has no legal consequences and the department has been failed to establish any such act against the respondent.*

11. The vital fact in the instant case cannot be ignored that at the time of making transactions, the alleged suppliers were enjoying their status as an "operative persons" having normal behavior and upon their subsequent inclusion in the list of suspended and blacklisted units in the surpassing years cannot be made effective retrospectively. Since, all the stakeholders were very much operative at e-portal of FBR showing hundred percent compliance level at the time of transactions and upon subsequent default of the suppliers, if it is allowed to department to recover the amount of input tax paid by the buyer then endless litigation will start and crush the weakened wheel of economy of the country already running in fits and starts. *It is a well-settled principle of law that if blacklisting or suspension of registration of a supplier is effected subsequent to a period in which purchases and bank payments were transacted could not be made a tool to deprive of the buyer of a valuable right accrued in his favour prior to such blacklisting or suspension of registration of any supplier due to subsequent default whatsoever on his part.* In this regard, we also gain support from the landmark judgment of August Supreme Court of Pakistan in case of *"Government of Pakistan vs. M/s. Village Development Organization"* reported as *(PTCL 2005 CL 138)* wherein it has been laid down that; *it is a well-settled principle of law that the executive orders or notifications, which confer right and are beneficial, would be given retrospective effect and those which adversely effect or invade upon vested right cannot be applied with retrospective effect".* Relying upon the above-referred judgment of Honourable Supreme Court of Pakistan, the learned ATIR has also vacated demand of sales tax on the same allegation of 'suspended and blacklisted suppliers' in case of *"M/s. Usman Fabrics Pakistan, Faisalabad vs. Collector of Sales Tax, Faisalabad"* reported as *(PTCL 2013 CL. 229)* where against a reference was filed by the Regional Tax Office, Faisalabad but his Lordship Mr. Justice Mansoor Ali Shah of Lahore High Court rejected the Sales Tax Reference Application *vide* S.T.R. No. 24/2010 dated 06-06-2010 by holding that the department has miserably failed to establish that questions of law as farmed in this petition arises out of the impugned order of the Appellate Tribunal or the proceedings thereunder.

12. The officers of Directorate General of Intelligence and Investigation-CBR was assigned jurisdiction of sales tax matters in Finance Act, 2007 wherein in cases of tax evasion and tax fraud in sphere of value added General Sales Tax (VA-GST) were also made cognizable by the said agency conversely prior to July-2007, its officers were empowered only to take cognizance of "Customs and Excise matters" as such investigative audit of appellant's sales tax record for July-2005 upto June-2007 has not been conducted lawfully. Brief history of this legal issue is that the scope of jurisdiction of Directorate of Intelligence and Investigation was limited to the cases of 'Customs and Central Excise' only having no jurisdiction to sales tax matters because the words, *"The Directorate General of (Intelligence and Investigation)* ***Customs and Excise****"* were substituted for the words, *"The Directorate General of (Intelligence and Investigation)* ***C.B.R****"* in Finance Act, 2007 and a Notification No. S.R.O. 471(I)/2007 dated 09-06-2007 for their jurisdiction was also issued accordingly. By virtue of this amendment, the said Directorate of Intelligence and Investigation assumed the jurisdiction of sales tax cases as well hence, any case or class of cases involving any evasion or avoidance of sales tax prior to 1st July-2007 were not subject to any investigation or inquiry by the said agency. Thus, the act on the part of Officers of Directorate General of Intelligence and Investigation-FBR for resumption of sales tax records and conducting audit thereof for the period prior to July-2007 is illegal and without any lawful jurisdiction. It is a settled proposition of law that if something is stated to be done in a particular manner it has to be done in that manner only, otherwise, any deviation in this regard would vitiate the whole proceedings. There is a plethora of judgments in this regard and reference can be made to the decision of August Court of Pakistan in case of *"Khalid Saeed vs. Shamim Rizwan and others"* reported as *(2003 SCMR 1505)*, the Honourable Court while considering the impact of violation of non-observance of the method prescribed by law for doing an act in a particular manner or mode observed that if the law had prescribed method for doing of a thing in a particular manner, such provision of law is to be followed in letter and spirit and achieving or attaining the objective of performing or doing of a thing in a manner other than provided

by law would not be permitted.

13. It was further alleged that the respondent is not entitled to claim input tax adjustment or credit on furnace oil which is not directly related to manufacturing of finished goods under section 8(1)(a) of the Act. Conversely, provisions of section 8(1)(a) of the Act are very clear whereunder, a registered person is not entitled to reclaim or deduct input tax paid on the goods or services used or to be used for any purpose other than for taxable supplies made or to be made by him and no such condition of direct relationship of input goods with that of manufacturing of finished goods is specified therein. The respondent has claimed and adjusted input tax credit on purchase of furnace oil which is being used in boiler as a fuel as no connection of natural gas is available for this purpose and this cannot be termed as being used for any purpose other than for making of taxable supplies as neither any exempt supply is made nor its allegation is leveled in the impugned show cause notice without which denial of input tax on alleged goods wholly used for the purpose of taxable supplies is highly illegal and unjustified. The legislation has consciously limited scope of section 7(1) of the Act for input tax adjustment or credit thereof through provisions of section 8(1)(a) of the Act if the same is paid on goods or services used or to be used for any purpose other than taxable supplies and on the other hand, has also given powers to Federal Government to debar input tax on goods or services even if the same is used for the purpose of taxable supplies through a Statutory Regulatory Order under section 8(1)(b) *ibid*. The alleged goods were not used for any purpose other than taxable supplies and provisions of section 8(1)(a) of the Act are not attracted nor the entitlement of input tax thereon is precluded by a notification under section 8(l)(b) of the Act therefore, denial from input tax adjustment or the case may be credit paid on such goods is illegal and unlawful and utter violation of mandatory provisions of law. It is not out of question to mention here that no condition of direct relationship of input goods to manufacturing of finished goods is provided in section 8(1)(a) of the Act however, condition of its use for the purpose of making of taxable supplies is specified therein and the respondent do qualify for entitlement of input tax credit on the goods in question as the same are not used for any purpose

other than for taxable supplies because all of supplies made by the respondent is restricted to taxable supplies only. The learned officers of intelligence and investigation were not well-versed with the use of kerosene oil which is used in the purposes of making pulp from raw materials like straw, husk and raddi, *etc.* which is used of making of paper and paper board products. Since, kerosene is wholly used for the purpose of taxable supplies only therefore; no recovery can be made from the respondent.

14. The bank payments under section 73 of the Act is just a mode of payment embodied in the Act, for the purpose of documentation of the economy and if the same is not complied with due to some ignorance and inadvertence, it does not provide for recovery of amount of tax already paid by the suppliers and taxpayers in their monthly sales tax returns and thus, in the absence of which it stands merely a technical and procedural violation of statutory provisions of law for which a punitive action can be taken against the person not complying with the same in letter and spirit. That is why, non-compliance of section 73 of the Act is a technical nature and attracts penalty only under law and the respondent is liable to pay only a penalty of 3% of the amount of tax adjustment involved under section 33(1), item No. 16 of the Sales Tax Act, 1990. Reliance is placed on the judgment of the Customs, Excise and Sales Tax Appellate Tribunal, Lahore in case of *"AGECO (Pvt.) Ltd., Islamabad vs. The Collector Customs, Excise and Sales Tax (Appeals), Islamabad and others"* reported as *(PTCL 2009 CL 803)*.

15. In view of what has been discussed hereinabove and on a careful consideration of the *pros and cons* of the Controversy between the parties and in-depth consideration of the submissions, particularly in the light of law and judgments quoted *supra,* the instant appeal filed on behest of revenue-department being devoid of merits is hereby rejected.

***