IN THE APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE

STA No.384/LB/2012

STA No.855/LB/2012

M/s. Shahzad Siddique (Pvt.) Ltd., Faisalabad. — Appellant

Versus

The CIR, Faisalabad. — Respondent

Appellant by : Mr. Aqeel Abbas, I.T.P
Mr. Ehtisham Zahid, F.C.C.A

Respondent by : Mr. Muhammad Jamil Bhatti, D.R

STA No.914/LB/2012

The CIR, Zone-I, RTO, Faisalabad. — Appellant

Versus

M/s. Shahzad Siddique (Pvt.) Ltd., Faisalabad. — Respondent

Appellant by : Mr. Muhammad Jamil Bhatti, D.R

Respondent by : Mr. Aqeel Abbas, I.T.P
Mr. Ehtisham Zahid, F.C.C.A

Date of hearing : 12.12.2013
Date of order : 24.05.2014

ORDER

These are three sets of appeals, out of which cross appeals filed by the registered person and revenue are directed against the impugned order-in-appeal No.215/2012, dated 20.06.2012 whereas the other appeal is filed by the registered person against the impugned order-in-appeal No.358/2011 dated 13.12.2011. All these appeals are disposed of in the following manner:

[STA No. 384/LB/2012, Registered Person's Appeal]

2. Relevant facts in brief are that during the course of scrutiny of refund claim of the registered person pertaining to the period up to June 2005, it was transpired that stocks against which refund of sales tax amounting to Rs.6,422,075/- had been claimed remained un-consumed up to 31.12.2005 and, allegedly, the registered person had failed to produce relevant record as requisitioned vide letter dated 22.02.2007 for processing of their refund claim. On the basis of this irregularity, the registered person was charged with the violation of Section 7, 8(1)(a) and 10(4) of the Sales Tax Act, 1990 read with Refund Rules. Show cause notice was issued that input tax/refund amounting to Rs.6,422,075/- may not be rejected under section 11(2) of the Sales Tax Act, 1990. The adjudication proceedings were culminated in passing order-in-original No.404/2007, dated 12.07.2007, wherein the registered person's refund claim of sales tax amounting to Rs.2,815,693/- in total against stocks remaining unconsumed up to 31.12.2005 and excess consumption shown amounting to Rs.26,82,360/- and Rs.133,333/- was rejected u/s 11(2) of the Sales Tax Act, 1990. Being aggrieved, the registered person went in appeal before the learned CIR(Appeals) and assailed the treatment meted out at assessment stage. However, the learned CIR(Appeals) dismissed the

appeal of the registered person being barred by time. Hence this appeal.

3. The learned AR for the appellant assailed the action of the authorities below as contrary to law and facts of the case. It is contended by the learned AR that the learned CIR(Appeals) was not justified to dismiss the appeal of the registered person as the circumstances in filing the appeal were beyond the control of the appellant. It is contended by the learned AR that the manufacturing unit of the registered person was sealed / closed down by the banking authority and the appellant was not allowed to enter the business premises, therefore, the impugned order-in-original could not be served upon the registered person. It is contended by the learned AR that it is established principle of law that limitation in filing of appeal runs from the date of communication of the order whereas the learned CIR(Appeals) has reckoned the date of filing of appeal from the dispatch of the impugned order and not from the date of communication of order. It is further submitted by the learned AR that it is also trite law that liberal approach should be adopted while dealing the issue of delay in filing the appeal.

4. On merits, it is asserted by the learned AR that the assessing authority has acted in flagrant violation in law in rejecting and deferring the sales tax refund amounting to

Rs.26,82,160/- against unconsumed stocks held on 31.12.2005, especially in view of the judgment rendered by the Hon'ble Sind High Court in Civil Peition No.1684/-2007 dated 18.03.2009. It is contended by the learned AR for the appellant that rejection of claim of refund amounting to Rs.28,15,693/- in total against unconsumed stock upto 31.12.2005 and excess consumption amounting to Rs.26,82,360/- and Rs.133,333/-, was unwarranted in the facts and circumstances of the case. It is contended by the AR that the department was not vested with the powers to reject the claim of refund in particular when the FBR vide its circular instructions contained in C.No.3(10)STM/2007 dated 13.01.2010, addressed to all its field formations to process all the pending refund claims where export took place after 31.12.2012 but raw material was purchased up to 05.06.2005. It is asserted by the learned AR that all the documents requisitioned by the assessing officer were duly submitted by the appellant during the course of process of refund claim such as; copies of consolidated stocks statements for the period from October 2005 to December 2005, copies of shipping bills, copies of consolidated stocks statements showing un-consumed stocks up to 30.09.2005, copies of exports register and sales tax returns for the period under consideration. At this juncture, it is contended by the learned DR that such

documents were never produced by the AR at the time of processing of refund claims, therefore, the adjudicating officer has rightly rejected the taxpayer's claim. At this stage, it is urged by the learned AR that he is ready to produce all the relevant documentary evidences before the assessing authority, if the learned Tribunal permitted to do so.

5. In view of the above position, we deem it necessary to remand the matter back to the assessing authority for de-novo decision. The learned AR is directed to produce all the relevant documentary evidences available with him before the assessing authority to substantiate his claim. If the taxpayer proves his stance with the help of documentary evidences, then no adverse inference be taken against the taxpayer. The assessing authority is also directed to decide the matter after proper scrutiny/verification of the documents/evidence in accordance with law. Orders of the authorities below are accordingly vacated and matter remanded to the assessing officer for de novo decision.

[STA Nos. 914 & 855/LB/12, Cross Appeals]

6. Relevant facts in brief are that during the course of post refund audit pertaining to the period July 2006 to June 2007, it was transpired that the taxpayer claimed

against the suspended registered persons and inadmissible input tax at Rs.287,254/- against black-listed units and registered person failed to make compliance to the provisions of section 73 of the Sales Tax Act, 1990, while making payments to the extent of Rs.19,93,650/- (input tax at Rs.261,997). On the basis of these irregularities, the proceedings were initiated under the provisions of section 11(2) of the Sales Tax Act, 1990, and the taxpayer was charged with the violation of sections 3, 6, 7, 22, 23, 26 and 73 of the Sales Tax Act, 1990. A notice was issued wherein the taxpayer was called upon to show cause as to why input tax referred above may not be recovered u/s section 36 and penal action may not be taken u/s 33 of the Sales Tax Act, 1990. The adjudication proceedings were culminated in passing order-in-original No.03/2012, dated 10.01.2012, wherein the taxpayer's claim of refund amounting to Rs.202,112/- and Rs.287,254/- against blacklisted and registration suspended units was held inadmissible and the same was accordingly held recoverable alongwith default surcharge u/s 36 (1) and 34 of the Act. A penalty equal to the principal amount was also imposed u/s 33 (11) of the Sales Tax Act, 1990. The taxpayer was also held responsible for violation of the provisions of section 73, hence, the sales tax amount under this head also held recoverable u/s 36 (1) alongwith default surcharge and

penalty equal to 3% of the principal amount was also imposed u/s 33 of the Sales Tax Act, 1990. Being aggrieved, the taxpayer went in appeal before the learned CIR(Appeals) who vide impugned order accorded partial relief to the taxpayer and modified the order-in-original to the extent of recovery of sales tax amounting to Rs.261,997/- against allegation of non-compliance of the provisions of section 73 and input tax adjustment claimed against invoices of registration suspended units amounting to Rs.202,112/- was also allowed. Both the parties being not satisfied with the order of the learned CIR(Appeals) filed the instant cross appeals.

7. The learned DR terming the order passed by the learned CIR(A) as contrary to law submitted that input tax refund cannot be claimed/issued against the invoices of the suspended/blacklisted units and this position was clearly incorporated in the show cause notice issued to the taxpayer but the learned CIR(Appeals) has completely ignored this fact and illegally set aside the impugned order-in-original. It is contended by the learned DR that the taxpayer had not produced any record to the effect that physical transfer of goods were actually made, therefore, the alleged transaction is a paper transaction. It is further asserted by the learned DR that the learned CIR(Appeals) had

completely ignored the fact that the taxpayer being refund claimant had the responsibility u/s 7 and 8 of the Act, to prove that input tax has been claimed in respect of supplies actually received for use in the manufacturing or production of taxable supplies. It is further submitted by the learned DR that the taxpayer has failed to make compliance to the provisions of section 73 and the evidence produced before the learned CIR (Appeals) were never produced by the AR at assessment stage. therefore, the learned CIR(Appeals) has unjustifiably accepted the appeal of the taxpayer on this point. On the contrary, the learned AR of the taxpayer reiterated the submissions as made before the learned CIR(Appeals) and supported the order passed by him.

8. We have given due consideration to the rival arguments and also gone through the relevant record available on file. We find that no exception can be taken to the treatment as accorded by the learned CIR(Appeals) with regard to objections regarding input adjustment made against suspended units and non-compliance of the provision of section 73. The taxpayer duly produced before the CIR(Appeals) relevant documentary proofs regarding payments through banking channel in accordance with the provisions of section 73 and CIR (Appeals) after perusal of the same has rightly directed to

drop the proceedings in this regard and deleted the demand of Rs.261,997/-. Furthermore, the learned CIR(Appeals) has rightly deleted the demand of Rs.202,112/- created against the invoices issued by suspended units as at the relevant time when the transactions made these units were operative. It is also noted by us that during the hearing of appeal the learned CIR(Appeals) made effort to check the status and that time the status of these units were still suspended and not blacklisted by the department. The taxpayer also produced before the CIR(Appeals) relevant documents regarding receipt of supplies and consumption of these in taxable activity. Under such circumstances, we find no reason to disturb the order of the learned CIR(APPEALS) which is hereby maintained on this score as well. Resultantly, the appeal filed by the department is rejected.

9. As far as the taxpayer's appeal with regard to claim/refund of input tax amounting to Rs.287,257/- against invoices issued by blacklisted units, it is submitted by the learned AR for the appellant that at the time of business with the supplier units, these were neither defaulter nor any fake transaction was made during the period in question. It is submitted by the learned AR for the appellant that during the period under consideration

the status of the supplier units were "operative". It is also submitted by the learned AR that the taxpayer procured the alleged goods under the coverage of proper sales tax invoices issued in terms of section 23 of the Sales Tax Act, 1990, and duly incorporated in their sales tax registers, summary statements and due tax was also paid in their monthly sales tax return for the period in question, therefore, the taxpayer was eligible for input tax adjustment / refund of sales tax under section 10 of the Act. It is submitted by the learned AR that the department has failed to establish that the invoices issued were fake and there was no physical transfer of goods from supplier to buyer. It is asserted by the learned AR that all the required documentary evidences are available with the taxpayer to substantiate their legitimate refund claim. At this point, it is submitted by the learned DR that the taxpayer has failed to provide the necessary documents at adjudication stage. At this juncture, it is submitted by the learned AR that he is ready to produce all the relevant documentary evidences before the assessing authority, if the learned Tribunal permitted to do so.

10. In view of the above submission of the learned AR, we deem it expedient to remand the matter back to the assessing authority for de novo decision. The learned AR

is directed to produce all the relevant documentary evidences available with him before the assessing authority to substantiate taxpayer's claim. If the taxpayer proves his stance that the supplies made to the alleged blacklisted unit were in order and shows the documentary evidences regarding physical transfer of goods such as gate passes and cross cheques duly reflected in the bank statement, then no adverse inference be taken against the taxpayer. The adjudicating officer is also directed to decide the matter after proper scrutiny/verification and strictly in accordance with law. Orders of the authorities below are accordingly vacated and matter remanded to the adjudicating officer for de novo decision with regard to input adjustment of Rs.287,257/-.

11. Appeal filed by the registered person and cross appeals are disposed of as above.

Sd/
(MUHAMMAD WASEEM CH.)
Judicial Member

Sd/
(MUHAMMAD AKRAM TAHIR)
Accountant Member

May.14/115-125