

APPELATE TRIBUNAL INLAND REVENUE, LAHORE
BENCH, LAHORE.

STA No. 583/LB/2011

The CIR RTO, Lahore.

...Applicant

Versus

M/s Noor Sons, Daroghawala, Bund Road,
Lahore.

... Respondent

Appellant by: Mrs. Bushra Fatima, DR

Respondent by: None

Date of hearing: **05-05-2016** Date of order: **05-05-2016**

ORDER

CH. ANWAAR UL HAQ (Judicial Member): The instant appeal has been preferred by the department against Order-in-Appeal No.1 dated 16-061 passed by the Commissioner (Appeals-III), Inland Revenue, Lahore.

2. Brief facts leading to the instant appeal are that department has learnt that the registered person had claimed input tax adjustment amounting to Rs.853,883/- against the invoices issued by the various suspended/blacklisted/blocked/inactive units. On the basis of said information, the registered person was called upon to show cause as to why the alleged amount of sales tax may not be recovered u/s 11(2) and 36(1) of the Sales Tax Act 1990 along with default surcharge u/s 34 and penalty u/s 33 (1 1)(c) and 33 (13) read with section 2 (37) of the Sales Tax Act, 1990. In compliance, the registered person filed reply which was no considered satisfactory and resultantly, the adjudication officer passed order vide assessment order dated 24-04-2011, directing the registered person to pay sales tax of Rs.8.53.883/- along with default surcharge (to be calculated at the time of deposit.) Moreover, a penalty equal to the 100/- of the amount involved was also imposed.

3. Being aggrieved, the registered person preferred appeal before the learned CIR (A), who after considering the arguments of learned AR of the registered person adjudicated the appeal in the following manner: -

"The issue of the principal amount has been settled as the same had duly been deposited by the appellant as confirmed by the department in its parawise comments. It was agitated by the appellant that the simultaneous levy of default surcharge and harsh penalty would be an additional burden upon them especially when the principal demand against the alleged fake invoices have voluntarily been deposited by it. The contention of appellant deserves consideration. The imposition of penalty equal to hundred percent of the amount involved appears to be harsh, hence reduced to twenty five percent keeping in view the circumstances of the case. The appellant is therefore held liable to pay the default surcharge (to be calculated at the time of deposit). The impugned judgment is modified accordingly."

4. Being aggrieved, the department filed appeal before this forum. The learned DR on behalf of Revenue argued that the learned CIR (A) was not justified to reduce the penalty from 100% to 25% whereas it was established that the registered person evaded sales tax fraudulently which comes under the definition of tax fraud u/s 2 (37) and penalty is mandatory under the Sales Tax Act, 1990. On the contrary, no one appeared on behalf of the registered person.

5. I have heard the arguments of learned DR and also gone through the relevant record. It is observed that the registered person has already deposited the principal amount voluntarily; hence any harsh penalty would be an additional burden upon the registered person. I observed that learned first appellate authority has rightly reduced the penalty to 25% hence no exception can be taken to the treatment accorded by him. I find no reason to disturb the order passed by the learned CIR (A) which is hereby maintained.

6. Appeal of the department is dismissed being filed without any merit or substance.

(CH. ANWAAR UL HAQ)

Judicial Member
Empowered u/s 130
(8) (a) of the Income
Tax Ordinance,
2001 to sit singly.

Copy of the bench order forwarded to

1. The Appellant
2. The CIR,

Assistant Registrar
Appellant Tribunal Inland Revenue
Lahore.