

IN THE APPELLATE TRIBUNAL INLAND REVENUE, LAHORE

STA No.637/LB/2015

M/s. Easy Farming, Chak Hakeem Imam-ud-Din  
Depalpur Distt, Okara.

Appellant

Versus

The CIR, RTO, Lahore.

Respondent

Appellant by : Mr.Basharat Ali, Advocate

Respondent by : Mr. Yasir Butt, D.R

Date of hearing : 23-11-2016

Date of Order : 23-01-2017

**ORDER**



AMAR-UL-HAQ BHATTI (JUDICIAL MEMBER): Vide this sales tax appeal has been filed at the instance of the appellant-registered person calling in question the Order-in-Appeal No 1971207 passed by the learned Commissioner Inland Revenue (Appeals-III), Lahore dated 08-05-2015.

2. Both the learned representatives appearing at the bar have been heard and the relevant available records perused

3. Facts giving rise to the instant appeal are that on the basis of discrepancies detected through Computerized Risk Based Evaluation of Sales Tax(CREST), the appellant was found to have failed to charge further tax @1% on supplies made to various unregistered persons in terms of section 3(1A) of the Act with effect from 13<sup>th</sup> July, 2013. Accordingly, a show cause notice u/s 11(2) of the Act was issued by the concerned authority requiring the appellant to explain as to why further sales tax

amounting to Rs.2,072,301/- may not be recovered from it alongwith default surcharge u/s 34 and penalty u/s 33(5). In response thereto, no compliance was made by the appellant. hence this has forced the assessing officer to pass the impugned order directing the appellant to deposit the said amount u/s 11(2) along with default surcharge u/s 34 and penalty u/s 33, of the Sales Tax Act, 1990.



4. Feeling aggrieved with the action of the assessing officer, the appellant-registered person preferred appeal before the learned CIR (Appeals-III), Lahore who by virtue of his order dated supra upheld the order of the assessing officer with the finding recorded therein. This dispensation had compelled the appellant-registered person to file appeal before the learned Appellate Tribunal Inland Revenue.

5. On his turn, the learned A.R. vociferously contended that the Order-in-Appeal is illegal, void abinitio, against the provisions of law as contained in section 3(1A) of the Act read with SRO 648(I)/2013 dated 09.06.2013. He further contended that the case of the appellant fairly and squarely covered by S.No 5 of the Table of SRO.648(I)/2013 dated 09.06.2013 under which supply of goods directly to end consumers including food and beverages, fertilizers and vehicles are not liable to further tax. He also stated that the Order-in-Appeal is based on misreading of

S.No.5 of SRO.648(I)/2013 as it has wrongly been assumed by respondent No.1 that only taxable supplies of food and beverages, fertilizers and vehicles directly made to end consumers are entitled for non-levy of further tax in terms of S.No.5 of the Table of SRO.648(I)/2013 dated 09.06.2013. He also agitated that the buyers/farmers in the subject case are neither registered nor required to be registered as they are not involved in making any taxable supplies. hence the order passed by the learned CIR(Appeals-III) is liable to be stuck down being illegal and unsubstantiated.



6. On the contrary, the learned D.R. supported the orders of the authorities below with the findings recorded thereon. He strongly opposed the submissions of the learned counsel raised at the bar. He further stated that the appellant had failed to provide any concrete material evidence to strengthen his case before the authorities below.

7. We have given anxious thought to the averments made by the rival parties as well as perused the other allied documents and case law tendered by the learned counsel of the appellant-registered person during the court proceedings. However before reaching in an escapable conclusion we, deem it appropriate to reproduce the SRO 648(1)/2013 dated 09.07.2013 which reads as under:-

SRO 648(1)/2013 dated 09.07.2013,-- In case of powers conferred by the proviso to sub-section (IA) of section 3 of the Sales Tax Act, 1990, the Federal Government is pleased to direct that further tax at the rate of one percent shall not be levied or paid on the taxable supplies mentioned in Colum(2) of the Table below, namely:-



**TABLE**

Description of goods

(1)	(2)
1.	Electrical energy supplied to domestic and agricultural consumers.
2.	Natural gas supplied to domestic consumers,
3.	Motor spirit, diesel oil, jet fuel, kerosene oil and fuel oil.
4.	Goods sold by retailers to the end consumers
5.	<b><u>Supply of goods directly to the end consumers including food and beverages, fertilizers and vehicle.</u></b>
6.	Items falling in the Third Schedule to the Sales Tax Act, 1990.

From perusal of the provision reproduced supra it is abundantly clear that as per S.No.5 of the Table of SRO.648(1)/2013 dated 09.06.2013 under which supply of goods directly to end consumers including food and beverages, fertilizers and vehicles are not liable to further tax. It is pertinent to state here that when a statute requires anything to be done in a particular manner it has to be done in that manner and if not done so the same is nullity in the eyes of law. It is also significant to mention here that where basic action / order is without lawful authority then the superstructure build on it have to fall on ground automatically.

8. Keeping in view of the aforementioned discussion, we have no ambiguity in our mind to declare that the Order passed by the Deputy Commissioner Inland Revenue against the norms of justice and thereafter the confirmation made by the learned CIR(Appeals-III), Lahore bearing Order-in-appeal No.19/1207 dated 08.07.2015 is also not maintainable in the eye of law consequently, we have no hesitation to delete the further tax @ 1% amounting to Rs.2.072.301/- u/s 11(2) of the Sales Tax Act 1990 created by the assessing officer only to drag the appellant-registered person to another chain of litigation. Hence, both the orders passed by the lower fora are hereby cancelled. This would result into acceptance of the appellant-registered person's appeal in the manner as indicated above.

9. Ordered accordingly.



Sd/-  
(MASOOD AKHTAR SHAHEEDI)  
ACCOUNTANT MEMBER

Sd/-  
(QAMAR-UL-HAQ BHATTI)  
JUDICIAL MEMBER